CHAPTER 219

COMMON CARRIERS; REGULATIONS AND LIABILITIES.

219.01 CONSTRUCTION OF RAILROADS.

HISTORY. 1899 c. 78; R.L. 1905 s. 1992; G.S. 1913 s. 4250; G.S. 1923 s. 4728; M.S. 1927 s. 4728.

219.02 RAILROADS REQUIRED TO FURNISH WATER AND SANITARY DRINKING CUPS; HOLDER.

HISTORY. 1919 c. 335 ss. 1, 2; G.S. 1923 ss. 4724, 4725; M.S. 1927 s. 4724, 4725.

219.03 INTERLOCKING DEVICES.

HISTORY. 1907 c. 276 s. 1; G.S. 1913 s. 4251; G.S. 1923 s. 4729; M.S. 1927 s. 4729.

219.04 BLOCK SIGNAL SYSTEM; APPROVAL BY COMMISSION.

HISTORY. 1907 c. 276 s. 2; 1911 c. 322 s. 1; G.S. 1913 s. 4252; G.S. 1923 s. 4730; M.S. 1927 s. 4730.

219.05 CONSTRUCTION OF SWITCHES.

HISTORY. 1887 c. 16 ss. 1, 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 ss. 60a, 60c; G.S. 1894 ss. 2681, 2683; R.L. 1905 s. 1993; G.S 1913 s. 4254; G.S. 1923 s. 4732; M.S. 1927 s. 4732.

Plaintiff claimed that defendant negligently omitted to block and keep in good condition the frog on its track at a grade crossing of the Northern Pacific track. While uncoupling a car, his foot caught in the frog and was run over and crushed. The evidence sustained a verdict for the plaintiff. Boham v St. P. & Duluth, 49 M 488, 52 NW 133.

The law requiring railroad companies to block "frogs" in their yards was designed for the protection of those rightfully on the premises and not for the protection of trespassers. The evidence indicates that plaintiff was a trespasser, with no right of recovery. Akers v Chi. St. P. & O. Ry. Co. 58 M 540, 60 NW 669.

219.06 SIGNS AT CROSSINGS.

HISTORY. 1858 c. 70 s. 17; P.S. 1858 c. 17 s. 259; G.S. 1866 c. 34 s. 33; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 53; 1889 c. 222 s. 6; G.S. 1894 ss. 2684, 2690; R.L. 1905 s. 1994; G.S. 1913 s. 4255; G.S 1923 s. 4733; M.S. 1927 s. 4733.

Upon the laying out by the city of a public street across the track of the relator railroad company, the railway is not entitled to compensation for providing and maintaining cattle guards and sign posts, but is entitled to compensation for planking the railway crossing and for the maintenance of same. State ex rel v District Court, 42 M 247, 44 NW 7; State ex rel v Shardlow, 43 M 524, 46 NW 74.

Where in a collision between a train and a motor car there was conflicting evidence, it was the province of the jury to determine whether or not statutory signals were given. Peterson v G. N. Ry. Co. 159 M 308, 199 NW 3.

A person in attempting to cross a railroad track in a vehicle is not as a matter of law guilty of contributory negligence if he fails to stop, look and listen before attempting to cross. Turner v Mpls. & Sault, 164 M 335, 205 NW 213.

Statutory signals for trains passing over a highway crossing are exclusively for the benefit of travelers on the highway so as to warn them of approaching

trains; but if the train is actually occupying the crossing when the driver arrives, the train itself is an effective warning. Olson v Chi. G. W. Ry. Co. 193 M 533, 259 NW 7.

The jury may find negligence on the part of a railroad in failing to warn approaching travelers where the track lies in a deep valley and in such position that the lights of a car do not shine on the train. The railroad may be required to take precautions with respect to public safety in addition to those required by statute or by order of the commission. Licha v N. P. Ry. Co. 201 M 427, 276 NW 813.

The railroad company may be found guilty of negligence toward a passenger in an automobile by permitting an engine to stand on a passing track in the darkness of a foggy night, with headlight extinguished, emitting steam and smoke which combined with the fog, was not distinguishable from the general atmospheric conditions and obscured the view. Even if the husband in driving the car was guilty of contributory negligence, such negligence is not to be imputed to the wife, a guest in the car, because of the marriage relation. Munkel v Chi. M. & P. Ry. Co. 202 M 264, 278 NW 41.

The rails themselves are a warning of railway tracks and where, as in this instance, the driver of a motor car was protected by the statutory signs, by warning signals, by bell and whistle, and by a 200-watt headlight on a locomotive, he was guilty of contributory negligence as a matter of law, and the argument of unfamiliarity with the crossing is without merit. Luce v G. N. Ry. Co. 203 M 470, 381 NW 805.

An ordinance prohibiting the unnecessary ringing of bells and blowing of whistles on locomotives within the corporate limits of a city is reasonable and valid. This might be excepted against, did the engineer sense the immediate presence of danger. Larson v Lowden, 204 M 80, 282 NW 669.

Where a freight train is passing over a highway crossing and a motor car traveling 45 miles per hour runs into the 67th car from the engine, failure to sound bell or whistle cannot be considered a proximate cause of the collision. Except in extraordinary situations as to environment, the railway company need not install warning signals in addition to those required by the commission under statutory authority. Sullivan v Boone, 205 M 437, 286 NW 350.

The supreme court takes judicial notice that fogs frequently occur and collisions with moving trains during fog have occurred frequently, and men of ordinary prudence operating railroads should anticipate possibility of injury from failure to have adequate warnings visible from both sides of the road. This modifies the holding in Rhine v Duluth, 210 M 281, 297 NW 852.

The driver of an automobile approaching a railroad crossing and observing a highway sign 300 feet from the crossing, and nevertheless approaching the railroad crossing through a dense fog at a speed that did not permit him to stop within the range of his lights, was contributorily negligent. The driver of the car cannot recover; the passenger may. Wessman v Scandrett, 217 M 312, 14 NW(2d) 445.

Signals required by Minnesota statutes to be given by trains approaching a highway crossing are solely for the benefit of travelers on the highway and they are immaterial where train is actually on and occupying the crossings, and signals are not required to prevent driver running into the sides of cars. The train is itself a signal. Flogg v Chicago Co. 143 F(2d) 90.

219.07 WIDTH OF CROSSINGS AND GRADES; IN MUNICIPALITIES.

HISTORY. 1887 c. 15 ss. 1, 5; 1889 c. 222 ss. 1, 5; G.S. 1894 ss. 2685, 2689; R.L. 1905 s. 1995; 1913 c. 78 s. 1; G.S. 1913 s. 4256; 1919 c. 468 s. 1; 1921 c. 152 s. 1; G.S. 1923 s. 4734; M.S. 1927 s. 4734.

The statutes requiring railroad companies to construct crossings wherever highways cross their tracks are not, as to highways laid out after the passage of the statute, unconstitutional because they make no provision for compensation; for such provision is made by the statute regulating the laying-out of highways. State ex rel v Shardlow, 43 M 524, 46 NW 74.

In proceedings to lay out a highway, the notice of the time and place of hearing on the petition is jurisdictional, and must be given in strict conformity to statute. As a notice in this case did not properly specify defendant's land, all proceedings as to dfeendant were without jurisdiction, and void. Lyle v Chi. M. & St. P. Ry. Co. 55 M 223, 56 NW 820.

This section is applicable to a case where, in the course of the construction of a railroad, a stream of water has been turned from its natural channels into an original one wholly upon the right of way, and has by reason thereof made it necessary for the company to bridge this stream. The bridge must be built and kept in repair by the railroad company. Board v Duluth, Red Wing & Southern, 67 M 213, 69 NW 898.

The finding of the jury holding that a "gravel crossing" was insufficient and constituted negligence on the part of the railroad company, is not sustained. The crossing as constructed was ample. Kemp v N. P. Ry. Co. 89 M 139, 94 NW 439.

The evidence supports the verdict that a proposed new street over the railroad right of way is a public necessity and the entire cost and expense of extending same, including the necessary planking over the railroad tracks, was properly imposed upon the railroad company; following State v St. Paul, 98 M 380, 108 NW 261, and Chicago v City of Minneapolis, 115 M 460, 133 NW 169, but overruled State against District Court, 42 M 247, 44 NW 7. Chi. M. & St. P. Ry. Co. v Village of Le Roy, 124 M 107, 144 NW 464.

This section making it a duty of every railroad company wherever its right of way crosses a public street in a municipality to construct a suitable sidewalk to connect with and extend to the walk constructed by the municipality or by abutting property owners, is a valid exercise of the police power of the state and an extension of the common law duty. It is not to be construed as a disguised attempt to levy a local assessment tax. State ex rel v G. N. Ry. Co. 130 M 480, 153 NW 879.

A public street leading to a bridge at a four per cent grade filled to its full width and at a height above abutting property which permits the use of such property for business purposes at street level, susceptible of all the uses of a public street with sidewalk, curbing and other street improvements, is not an "approach" to the bridge which the railroad company is forever bound to maintain in surface repair. State ex rel v G. N. Ry. Co. 136 M 164, 161 NW 506.

Railroad companies are required by sections 219.07 and 219.08 to maintain grade crossings in a safe condition and to maintain planks between the rails level with the tops of the rails. The planking in this case was below the required level, and the runners of the sleigh which was heavily loaded, might stick on the rails. It was held in this case that such delay was the proximate cause of the accident and resultant damage. Gowan v McAdoo, 143 M 227, 173 NW 440.

When public welfare, convenience or safety, requires a city street crossing a railroad right of way to be paved, and the council so determines, the city may in the exercise of its police power, compel the railroad to pave the crossing at its own cost. State ex rel v Chi. St. P. & O. Ry. Co. 148 M 91, 180 NW 925.

Where there is conflicting testimony, the question of negligence on the part of the defendant or contributory negligence on the part of the plaintiff, is for the jury. McCarty v Chi. M. Ry. Co. 154 M 350, 191 NW 810; Hendrickson v G. N. Ry. Co. 170 M 394, 212 NW 600.

A person seeing standing cars blocking a street is presumed to know that they are liable to be moved at any time. If he attempts to pass through a narrow opening between standing cars at the time when moving cars in plain sight are about to come against them, he is guilty of contributory negligence. Olin v Minn. Trans. Ry. Co. 164 M 512, 205 NW 440.

The finding that the accident resulted from the negligence of the defendant was not justified by the evidence. McDonald v G. N. Ry. Co. 165 M 30, 205 NW 633.

While the law does not absolve a guest rider from exercise of care, the negligence of the driver is not imputed to him; whether the plaintiff's intestate was negligent was for the jury. Lundh v G. N. Ry. Co. 165 M 141, 206 NW 43.

The conduct of plaintiff's decedents in their driving of the car and approach to the track where a collision occurred, shows as a matter of law contributory negligence on the part of the chauffeur and his companion. Bailey v M. St. P. & S. S. M. 166 M 118, 207 NW 26, 560.

The presumption of due care on the part of a pedestrian run down and killed by box cars being pushed across a grade crossing without the customary protection to travelers of a guard at the crosing or on the front car, was not so rebutted by the defendant that the court was warranted as a matter of law in holding the decedent guilty of contributory negligence. Montcalm v G. N. Ry. Co. 167 M 135, 208 NW 539.

Plaintiff was driving a truck, hauling gravel. He had lived in this vicinity for several years and had driven the truck over this same crosing 24 times a day during the two weeks preceding the accident. He also knew that the defendant's fast passenger train was due. When crossing the track he was struck by the passenger train. These undisputed facts charged the plaintiff with contributory negligence. Munson v G. W. Ry. Co. 170 M 513, 212 NW 946.

The town board having authorized road grading over the railroad crossing at the expense of the railroad company was acting within the scope of its authority, and plaintiff's decedent while engaged in the grading was an employee of the relator and consequently his dependents are entitled to compensation under the workmen's compensation act. Gabler v Township of Bertha, 169 M 413, 211 NW 477.

In this case the plaintiff as a matter of law was guilty of contributory negligence in crossing a railroad in front of an approaching train. Angone v N. P. Ry. Co. 171 M 355, 214 NW 661.

It is only where there are unusual conditions and where the situation is extra hazardous that it is the duty of the railroad company to provide gates or other safeguards at the crossing. Lawson v M. St. P. & S. 174 M 404, 219 NW 554.

Under ordinary conditions, an engineer is not required to slow down or stop his train on seeing a vehicle on or near the track if he gives the usual signals of the approach of the train. It is not until collision is imminent that he must slow down or stop. Asklund v Chi. G. W. Ry. Co. 176 M 214, 223 NW 95.

While the evidence sustains the finding that defendant was guilty of negligence and that such negligence was a proximate cause of the injury, there is also evidence that the plaintiff was guilty of such contributory negligence that there can be no recovery. Jones v G. N. Ry. Co. 178 M 322, 227 NW 45.

Where the only evidence of negligence to support a verdict against the employer is evidence of the negligence of a co-defendant employee, in whose favor the jury finds a verdict, the verdict against the employer is perverse and a new trial is granted. Ayr v Chi. M. & P. Ry. Co. 187 M 169, 244 NW 681.

Statutory signals for trains approaching a highway crossing are solely for the benefit of travelers on the highway. They are immaterial when and where a train is actually occupying the crossing. Such signals are not for the purpose of preventing automobile drivers from running into the side of the train. Crosby v G. N. Ry. Co. 187 M 263, 235 NW 31.

Upon the facts, decedent was guilty of contributory negligence as a matter of law. Farden v G. N. Ry. Co. 189 M 17, 248 NW 84.

The tracks of themselves are notice. It is the duty of the driver of the automobile to use ordinary care in attempting the crossing, which he did not in this case, and the plaintiff is therefore guilty of contributory negligence. Fischer v Chi. N. W. Ry. Co. 193 M 73, 258 NW 4.

The evidence sustains the finding of negligence on the part of the defendant railroad in failing to sound whistles or bells, in traveling at high rate of speed, and in negligently placing a string of box cars upon a spur track in such manner that plaintiff's view was obstructed. Polchow v Chi. St. P. & O. Ry. Co. 199 M 1, 270 NW 673.

Whether in view of obstructions to vision existing at the time of the accident, the guest passenger was contributorily negligent in failing to discover and warn the driver of the approaching train, was a question of fact for the jury. Doll v Scandrett, 201 M 316, 276 NW 281.

Running a train at a speed of 40 miles per hour over a much traveled but regulation highway crossing when the engineer knows that a wigwag system operates and all statutory warnings are given, and there is an easy unobstructed view of the train for more than half a mile, is not actionable negligence. Hoyum v Duluth, Winnipeg & Pacific, 203 M 35, 279 NW 729.

Plaintiff's decedent was guilty of contributory negligence as a matter of law and there can be no recovery. Luce v G. N. Ry. 203 M 470, 281 NW 812; Massman v G.N. Ry. Co. 204 M 170, 282 NW 815.

The court rightly submitted to the jury the issue whether the violation of the city speed ordinance was a proximate cause of the injury and also correctly submitted to the jury whether defendant's trucks were maintained as required by statute, and whether such failure of maintenance was a proximate cause of the collision. The verdict is sustained by the evidence. Lang v Chi. N. W. Ry. Co. 208 M 487, 295 NW 57.

Where plaintiff observed a speeder approaching on a railroad track at a point where several hundred workmen daily crossed the tracks with railroad's consent, and started to cross the tracks ahead of the speeder when it appeared he could do so safely, but the speeder suddenly increased speed, contrary to custom, and struck plaintiff, evidence presented a fact question as to negligence and sustained jury's finding of negligence on part of railroad. Peyla v Duluth Co. 218 M 196, 15 NW(2d) 518.

Where the driver of an automobile collides with an obstruction upon a highway because atmospheric or other conditions interfere with his ability to see it in time to avoid the collision, the presence of the obstruction upon the highway is a material element or substantial factor in the happening of a resulting collision with it and consequently a proximate cause of any resulting injury. Flaherty v Gt. Northern, 218 M 488, 16 NW(2d) 553.

If railroads must, in order to escape the charge of negligence, moderate their speed to less than 40 miles per hour at every crossing where vehicles pass frequently, there would be few, if any, crossings where this slackening of speed would not be required, and such rule would be inconsistent with modern transportation requirements. Engberg v Gt. Northern, 207 M 194, 290 NW 579; Roth v Swanson, 145 F(2d) 269.

It is the duty of railroad companies to maintain in good repair and free from snow and other obstruction every railroad crossing over any public highway. 1936 OAG 239, Feb. 14, 1936 (365a-5).

This section places within the discretion of the commission to make such requirements as may be necessary for the protection of the public. 1936 OAG 240, Jan. 11, 1935 (369i).

219.08 CROSSINGS; CHANGE OF GRADE.

HISTORY. 1911 c. 329 s. 1; G.S. 1913 s. 4257; G.S. 1923 s. 4735; M.S. 1927 s. 4735.

See annotations under section 219.07.

It is the duty of a railroad to maintain that part of a town road which crosses a railroad right of way. OAG May 5, 1933.

219.09 WHERE MORE THAN ONE TRACK CROSSES HIGHWAY; DUTY OF RAILROAD.

HISTORY. 1911 c. 329 s. 2; G.S. 1913 s. 4258; G.S. 1923 s. 4736; M.S. 1927 s. 4736.

It is the duty of the railroad to construct and maintain road beds and approaches where the track crosses the trunk highway on grade. Whether the railroad's failure was the proximate cause of the injury, and whether plaintiff assumed the risk in driving over a crossing not properly maintained, was contributory negligence, was for the jury. Engstrom v Duluth & Missabe, 190 M 208, 250 NW 134.

219.10 PENALTY FOR VIOLATION.

HISTORY. 1911 c. 329 s. 3; G.S. 1913 s. 4259; G.S. 1923 s. 4737; M.S. 1927 s. 4737.

219.11 DUTY OF COUNTY ATTORNEY.

HISTORY. 1911 c. 329 s. 4; G.S. 1913 s. 4260; G.S. 1923 s. 4738; M.S. 1927 s. 4738.

219.12 POWERS OF TOWN AND COUNTY BOARDS.

HISTORY. 1911 c. 329 s. 5; G.S. 1913 s. 4261; G.S. 1923 s. 4739; M.S. 1927 s. 4739.

The town board authorized the road grading over the railroad crossing at the expense of the railroad companies, and plaintiff's decedent while engaged in grading the road was an employee of the relator, and was properly held to be entitled to compensation under the workmen's compensation act. Gabler v Township of Bertha, 169 M 413, 211 NW 477.

219.13 FARM CROSSING.

HISTORY. 1887 c. 174 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 57a; G.S. 1894 s. 2696; R.L. 1905 s. 1996; G.S. 1913 s. 4262; G.S. 1923 s. 4740; M.S. 1927 s. 4740.

Certain crossings made by the company, at the owner's request, in constructing the road, being apparently only temporary, the court was right in declining to charge that the amount of the verdict should be the difference in the values without the railroad, and with the railroad "with crossings over and under the track now there." Sigafoos v Mpls. Lyndale & Minnetonka Ry. 39 M 8, 38 NW 627.

The owner of a farm consisting of distinct parcels of land, separated by lands previously but not now owned by him and over which he has no private roadway, is not entitled to have such separate parcels treated as one entire tract for the purpose of assessment of damages, but can only recover damages for the portion taken. Cameron v Chi. M. & St. P. Ry. Co. 42 M 75, 43 NW 785.

When the defendant corporation acquired its right of way across the farm, a contract was entered into relative to two farm crossings which were built and maintained by the defendant. This particular crossing consisted of dirt approaches to the track with planks on the outside and between the rails. From 1886 until Nov. 29, 1897, the road was so maintained "except that in winter seasons defendant customarily removed said planks from said crossing, replacing them in the spring." It was not negligence under the circumstances for the defendant to remove the planks. Walters v Minneapolis, St. Paul & Sault, 76 M 506, 79 NW 516.

It is the duty of the landowner, for whose benefit and convenience gates are constructed and placed in a railroad right of way fence at a private farm crossing, to keep such gates closed. Swanson v Chi. M. & St. P. Ry. Co. 79 M 398, 82 NW 670; Moores v N. P. Ry. Co. 80 M 24, 82 NW 1085.

219.14 RAILROAD CROSSINGS TO BE PROTECTED.

HISTORY. 1919 c. 434 s. 1; 1921 c. 500 s. 1; G.S. 1923 s. 4741; M.S. 1927 s. 4741.

Plaintiff noted the absence of the flagman usually stationed at the crossing, and though the day was foggy he was held guilty of contributory negligence in failing to look and see the approaching train. Buelow v Chicago & R. I. Ry. Co. 164 M 52, 204 NW 571.

The commission may require the construction of an overhead or underground crossing at a point where a trunk highway and railway intersect, and divide the cost between the railroad company and the highway department. State v N. P. Ry. Co. 176 M 501, 223 NW 915.

The statutory jurisdiction of the commission over railroad crossings extends to the reconstruction of an old bridge over a highway. It is not limited to the original construction attendant upon separation of grades. State ex rel v Mpls. St. P. & Sault. 190 M 162, 251 NW 275.

A railroad may be required to take precautions in the management and operation of a road with respect to public safety, in addition to those required by statute, or order of the commission. A jury may find negligence on the part of a railroad in failing to warn approaching travelers of a train upon a crossing which is not clearly visible to approaching travelers. Licha v N. P. Ry. Co. 201 M 427, 276 NW 813.

219.15 HIGHWAY; PROTECTION; HEARING.

HISTORY. 1919 c. 434 s. 2; G.S. 1923 s. 4742; M.S. 1927 s. 4742.

See annotations under section 219.14.

219.16 GRADE CROSSING.

HISTORY. 1925 c. 336 s. 1; M.S. 1927 s. 4743-1.

The trains passed over the crossing at a moderate rate of speed. The street ended at the lake. The portion of it below the crossing did not connect with any other street and merely afforded access to the Whitney plant. There was little travel except by trucks going to and from the Whitney plant, and the drivers were familiar with the situation. The conditions did not render the crossing extra hazardous and the railroad company cannot be charged with negligence in failing to protect the crossing by gates or other safeguards. Lawson v Mpls. St. P. & S. 174 M 404, 219 NW 554.

The statute should be construed to mean "to construct and maintain overhead or underground crossings." State v N. P. Ry. Co. 176 M 505, 223 NW 915.

By this and the following sections the legislature conferred upon the commission exclusive jurisdiction over all questions relating to the matter of railroad crossings. Olson v Chi. G. W. Ry. Co. 193 M 533, 259 NW 70.

This and the following section does not constitute a complete code, and the railroad must take precautions in the operation of its road with respect to public safety in addition to those required by the commission. Licha v N. P. Ry. Co. 201 M 427, 276 NW 813.

Under Minnesota law, the city council's estimate of the general welfare should be followed by the courts in determining whether the city had power to enact a particular ordinance purporting to be for general welfare, unless such estimate is plainly erroneous; but in the instant case, an ordinance requiring that a light Diesel engine should carry while switching both an engineer and a fireman imposed restrictions that bore no reasonable relation to safety, and is unenforcible. Northern Pacific v Weinberg, 53 F. Supp. 134.

219.17 UNIFORM WARNING SIGNS; TYPES OF.

HISTORY. 1925 c. 336 s. 2; M.S. 1927 s. 4743-2.

A triangle sign placed a few feet east of the crossing on the south side of the railroad track, painted white with black letters reading "railroad crossing" was sufficient where the view was open and the rails of the track itself could be seen for more than 100 feet. Massmann v G. N. Ry. Co. 204 M 170, 282 NW 815.

It is the duty of the railroad and warehouse commission to prescribe uniform signs for protection of the public at grade crossings. Flagg v Chicago Railway, 143 F(2d) 90.

219.18 RAILROAD TO ERECT SIGNS.

HISTORY. G.S. 1866 c. 34 s. 33; G.S. 1878 c. 34 s. 53; 1925 c. 336 s. 3; M.S. 1927 s. 4743-3.

A railroad company cannot be charged with negligence for failure to protect its train, temporarily stopped in the night time on a grade crossing over a city street, where the city maintains proper lights and the situation does not create a dangerous condition. Ausen v Mpls. St. P. & S. 193 M 316, 258 NW 512.

Statutory signals for trains passing over highway crossings are exclusively for the benefit of travelers, warning them of approaching trains. Where a train

is actually occupying such crossing, the train itself is an effective and adequate warning. Olson v Chi. G. W. Ry. Co. 193 M 533, 259 NW 70.

The placing of the statutory warning sign between the main track and an industry track was sufficient under the circumstances in this case. Luce v G. N. Ry. Co. 203 M 470, 281 NW 812.

The operators of a railroad who violated section 219.18 by not having a warning sign on both sides of the railroad track at such crossing are guilty of negligence as a matter of law where the crossing was established after the enactment of that section, if, since its enactment, the existing sign had been replaced. Wessman v Scandrett, 217 M 312, 14 NW(2d) 445.

219.19 ADDITIONAL WARNING SIGNS; RAILROADS TO PROVIDE.

HISTORY. 1925 c. 336 s. 4; M.S. 1927 s. 4743-4.

The signs in place at the crossings were ample and no additional notice was required. Ausen v Mpls. St. P. & S. 193 M 316, 258 NW 511.

The jury may find negligence on the part of a railroad in failing to warn approaching travelers of a train on a crossing which is not clearly visible to approaching travelers. Licha v N. P. Ry. Co. 201 M 427, 276 NW 813.

A railroad company may be found guilty of negligence toward a passenger in a car for permitting an engine to stand on a passing track, the weather and other conditions being in accordance with the evidence in this case. Munkel v Chi. G. W. Ry. Co. 202 M 264, 278 NW 41.

Unless there are special circumstances creating an extraordinary hazard, due care does not require that the railroad company install signals other than those required by the commission. Sullivan V Bonne, 205 M 437, 286 NW 350.

Engberg v Great Northern, 207 M 195, 290 NW 580.

219.20 STOP SIGNS.

HISTORY. 1925 c. 336 s. 5; M.S. 1927 s. 4743-5.

The legislature conferred upon the commission exclusive jurisdiction over all questions relating to railroad crossings. Statutory signals are exclusively for the benefit of travelers to warn them of approaching trains. Where the train is actually occupying the crossing it is itself an adequate warning. Olson v Chi. G. W. Ry. Co. 193 M 533, 259 NW 7.

219.21 VEHICLES REQUIRED TO COME TO FULL STOP.

HISTORY. 1925 c. 336 s. 6; M.S. 1927 s. 4743-6.

219.22 STOP, LOOK, AND LISTEN.

HISTORY. 1925 c. 336 s. 7; M.S. 1927 s. 4743-7.

The evidence justified the jury that appellant who was riding in the front seat of the car on the righthand side by an open window was guilty of contributory negligence. Koscielski v Mpls. St. P. & S. Ry. Co. 182 M 461, 234 NW 693.

The jury may find negligence on the part of a railroad in failing to warn approaching travelers of a train on a crossing which is not clearly visible to them. In special instances the compliance by the road of the rules laid down for them by the commission is not a sufficient compliance. Licha v N. P. Ry. Co. 201 M 427, 276 NW 813.

Plaintiff's decedent could easily see the main line when 60 feet away from it. He apparently did not stop, look or listen and was therefore guilty of contributory negligence as a matter of law. Luce v G. N. Ry. Co. 203 M 470, 281 NW 812.

Commercial advertising signs erected on private property adjacent to a trunk highway and not adjacent to a railroad crossing were in the form of the railroad crossing sign and bore the words "stop, look and listen." These signs are unlawful and should be abated. 1934 OAG 485, Feb. 7, 1934 (377a-5).

219.23 WATCHMEN; RAILROADS TO PROVIDE.

HISTORY. 1925 c. 336 s. 9; M.S. 1927 s. 4743-9.

Defendant was not negligent in failing to provide gates or watchman or other safeguards at the crossing as it was not a crossing where they were required by law, and was not extra hazardous. Lawson v Mpls. St. P. & S. Ry. Co. 174 M 404, 219 NW 554.

219.24 ADDITIONAL SAFEGUARDS.

HISTORY. 1925 c. 336 s. 10; M.S. 1927 s. 4743-10.

A railroad may be required to take precautions in the management and operation of the road in addition to those required by statute or order of the commission. Licha v N. P. Ry. Co. 201 M 427, 276 NW 813.

219.25 CROSSING GATES.

HISTORY. 1925 c. 336 s. 11; M.S. 1927 s. 4743-11.

219.26 GRADE CROSSINGS; UNIFORMITY OF DEVICES FOR PROTECTION.

HISTORY. 1925 c. 336 s. 12; M.S. 1927 s. 4743-12.

219.27 HEARINGS BY COMMISSION.

HISTORY. 1925 c. 336 s. 13; M.S. 1927 s. 4743-13.

Requiring construction of bridge at highway crossing. State v N. P. Ry. Co. 176 M 501, 223 NW 915.

219.28 OVERHEAD OR UNDERGROUND CROSSINGS; SEPARATE GRADES.

HISTORY. 1925 c. 336 s. 14; M.S. 1927 s. 4743-14.

The commission may require the construction at any point of intersection of a railroad and a trunk highway of an overhead or underground crossing and divide the cost between the railroad company and the highway department. State v N.P. Ry. Co. 176 M 507, 223 NW 915.

The jurisdiction of the commission over railroad crossings extends to the reconstruction of an old bridge over a highway. State ex rel v St. P. M. & S. Ry. Co. 190 M 162, 251 NW 275.

An accident was caused because the reflector on a bridge pier was not in condition. The railway company is not liable because having properly constructed the bridge which was approved by the comissioner, it does not have the further duty of caring for the reflector. Murphy v G. N. Ry. Co. 189 M 109, 248 NW 715.

Where a train is actually occupying the crossing when the driver upon the highway arrives, the train is in itself an adequate warning. Olson v Chi. G. W. Ry. Co. 193 M 533, 259 NW 70.

Making of regulations governing separation of grades is exercise of legislative, not judicial, power. The court on appeal from an order of the commission does not try the matter anew as an administrative body, nor substitute its finding for those of the commission. State v Chi. M. & Pac. Ry. Co. 50 F(2d) 430.

219.29 OBSTRUCTING SIGNS.

HISTORY. 1925 c. 336 s. 15; M.S. 1927 s. 4743-15.

219.30 INJURING, DESTROYING SIGNS.

HISTORY. 1925 c. 336 s. 16; M.S. 1927 s. 4743-16.

219.31 FENCES AND CATTLE GUARDS.

HISTORY. 1872 c. 25 s. 1; 1876 c. 24 s. 1; G.S. 1878 c. 34 s. 54; G.S. 1894 s. 2692; R.L. 1905 s. 1997; 1907 c. 333; 1911 c. 309 s. 1; G.S. 1913 s. 4263; G.S. 1923 s. 4744; M.S. 1927 s. 4744.

1. Generally.
2. Within Municipal Limits.
3. Implied Exceptions; Streets; Depot Grounds.
4. Cattle Guards.

1. Generally

There is no obligation on the part of the railroad company to construct fences along its line. The additional cost to the owner of fencing is a proper element of damage; but the rule is otherwise where the statute requires the company to construct such fences. Winona & St. Peter v Waldron, 11 M 515 (392).

The fact that defendant's track was not fenced, the law not requiring it, did not impose upon the railroad company as to cattle unlawfully upon its track, the duty of any greater care than if it had been fenced. Locke v St. P. & Pac. Ry. Co. 15 M 350 (283).

Regulating the construction by railroad companies of fences and cattle guards is exercise of the police power of the state. A clause in a railroad charter providing what fences and other structures required for the protection of life and property shall be maintained by the company, and when it shall provide them, is not sufficient to prevent the state from future exercise of the police power. Gilliam v St. P. Ry. Co. 26 M 268, 3 NW 353; Finch v Chi. M. & St. P. Ry. Co. 46 M 250, 48 NW 915.

The duty of the railway company to maintain its fences already built is discharged by the exercise of reasonable care and diligence, and a fence may be temporarily prostrate or broken without a breach of duty; but where plaintiff's horses escaped through a breach in the railroad fence and were killed, the fact that the condition of the fence had existed for two weeks or more was presumptive evidence of negligence on the part of the defendant. Varco v Chi. M. & St. P. Ry. Co. 30 M 18, 13 NW 921; Evans v St. P. & S. C. Ry. Co. 30 M 489, 16 NW 271.

The wire fence constructed in accordance with the provisions of General Statutes, Chapter 18, Section 2, would be a compliance with the statute requiring railroad companies to fence their roads. Halvorson v Mpls. & St. L. Ry. Co. 32 M 88, 19 NW 392.

The statute requiring railroads to be fenced is not a law relating to partition fences, but a police regulation. Smith v Mpls. & St. L. Ry. Co. 37 M 103, 33 NW 316.

Where the owner of land builds the fence along an adjoining "right of way" the railroad company may, with his permission, adopt it, and in this case unless there shall be an express agreement to the contrary, it is the company's duty to maintain it in good condition. Hovorka v Mpls. & St. L. Ry. Co. 34 M 281, 25 NW 595.

The statute requiring railroads to fence their right of way and making the company liable for damages in consequence of failure, is within the police power of the state; and damages may be recovered against a railroad company for injury done to a farm by rendering it less fit for pasturing cattle in accordance with failure to fence. Emmons v Mpls. & St. L. Ry. Co. 35 M 503, 29 NW 202; 149 US 364; 13 SC 370.

A horse accidentally escaping from his owner's premises without his fault is not to be deemed unlawfully running at large while proper efforts are being made to retake it. The neglect to fence the railroad right of way is not excused by the fact that the construction of cattle guards so as to completely enclose the track is impracticable. Nelson v G. N. Ry. Co. 52 M 276, 53 NW 1129.

The words "on each side of such roads" mean the margin or border of the entire grounds or right of way. Where the company has only an easement extending through farm lands and it neglects to fence the right of way, the adjoining landowner may maintain an action for damages. Gould v G. N. Ry. Co. 63 M 37, 65 NW 125.

Overruling Fitzgerald v St. P. Mpls. & Man. Ry. Co. 29 M 336, 13 NW 168, held that the statute requiring railway companies to fence their roads is not exclusively designed to prevent domestic animals from straying upon the track; but where a young child non sui juris strays upon the tracks in consequence of failure of the company to erect a fence, the company is liable to it for injury. Rosse v St. P. & Dul. Ry. Co. 68 M 216, 71 NW 20; Nickolson v N. P. 80 M 508, 83 NW 454; Marengo v G. N. Ry. Co. 84 M 397, 87 NW 1117.

The fact that several railroad tracks run parallel to each other and that a track of another company is almost immediately adjacent and parallel thereto, will not excuse either company from complying with the statutory obligation to fence its tracks. Marengo v G. N. Ry. Co. 84 M 397, 87 NW 1117.

The rights of way of two railroads were parallel and adjacent and there was no fence between them. The defendant fenced the north side of its right of way and the other company the south side of its way. The defendant left a gap in its fence through which the horse of the plaintiff passed through and was killed upon the track of the other company. The horse was not killed by the defendant nor on its right of way, and the failure of the defendant to fence its right of way was not the proximate cause of the death of the horse which was due proximately to the failure of the North Western Company to fence its road on the north side thereof. It is true that defendant was negligent in not fencing its road, but such negligence was merely the occasion of the injury and not the proximate cause. Frisch v Chi. G. W. Ry. Co. 95 M 398, 104 NW 228.

The failure of a railroad company to fence its road as required by statute is prima facie but not conclusive evidence of negligence. When not fenced, the question whether a properly constructed fence would have prevented the child from going upon the right of way is a question of fact. Ellington v G. N. Ry. Co. 96 M 176, 104 NW 827.

Failure of a railroad company to fence its track as required by statute is evidence of negligence; but this liability is subject to such qualifications as the general rules of law imposed in analagous cases, and if a sectionman enters and continues in such service knowing that the road is not fenced, he assumes the risks naturally incident to such conditions. Kommerstad v G. N. Ry. Co. 120 M 376, 139 NW 713.

Decedent, a boy nine years of age, was killed while stealing a ride upon one of defendant's freight trains. Defendant had failed to fence its right of way as required by statute. Held: defendant's failure to fence under circumstances shown by the evidence was not the proximate cause of the injury. Jeanette v Mpls. St. P. & S. Ry. Co. 130 M 513, 153 NW 1086.

The movements of the cows from time of their escape through the defective fence of the defendant until they were killed were, for all practical purposes, continuous and uninterrupted. The question whether the defect in the right of way fence through which the cows originally escaped was the proximate cause of their presence upon the right of way at the time they were killed was one of fact for the jury. Turner v Chi. & R. I. Ry. Co. 136 M 383, 162 NW 469.

Where a railroad crosses a farm it is required to provide a gate at a farm crossing and to maintain the gate and its fastening in a reasonably good state of repair. There is sufficient evidence in this case to raise an issue of fact as to whether a reasonably secure gate fastening was maintained. Lindeman v Chi. R. I. Ry. Co. 154 M 363, 191 NW 825.

Whether the failure of the company to fence and protect its tracks with cattle guards caused the child's injuries was made a jury trial by the evidence, and the court erred in directing a verdict for the company. Arnao v Mpls. & Sub. Ry. Co. 193 M 498, 259 NW 12; Arnao v Mpls. & Sub. Ry. Co. 199 M 34, 270 NW 910.

Where a wall was erected by a railroad company along embankment extending outside the railroad's right of way at the top, and the wall itself and the ground on which it stood were outside of the right of way, the railroad was not guilty of negligence as a matter of law in failing to fence the right of way either under the statute or under common law. There was no common law duty to erect a useless barrier on defendant's property and no right to go on their property to raise such a barrier. Bremner v Hendrickson, 31 F(2d) 893.

Violation of statute or ordinance as negligence. 19 MLR 666.

Necessity that plaintiff be member of a class protected by statute. 19 MLR 670, 678.

Proximate cause. 21 MLR 48.

2. Within Municipal Limits

Except for exceptions named or implied, requiring railroad companies to fence their roads and to build cattle guards at wagon crossings applies as well to the limits of incorporated cities and villages as in the country. Greely v St. P. Mpls. & Man. Ry. Co. 33 M 136, 22 NW 179; Croft v Chi. G. W. Ry. Co. 72 M 47, 74 NW 898; Nickolson v N. P. Ry. Co. 80 M 508, 83 NW 454.

The fact that a railroad is within the limits of an incorporated village does not exempt the company from enclosing the track where practicable by fences and cattle guards. The fact that it is necessary to leave the track unenclosed at a particular place does not justify the neglect to enclose it beyond that place. La Paul v Truesdale, 44 M 275, 46 NW 363.

3. Implied Exceptions; Streets; Depot Grounds

The statute requiring railroad companies to fence their roads is to be construed as allowing an exception where it would obstruct public streets or other public grounds. There is also an implied exception as to places required to be left open by public necessity, such as depot grounds, freight warehouses, and similar. Greely v St. P. Mpls. & Man. Ry. Co. 33 M 136, 22 NW 179; Croft v Chi. G. W. Ry. Co. 72 M 47, 74 NW 898; Nicholson v N. P. Ry. Co. 80 M 508, 83 NW 454.

When station grounds are required by public convenience to be left unenclosed, a railroad company owes no duty to the owner of abutting land to build a fence between his land and such station grounds. Smith v Mpls. & St. L. Ry. Co. 37 M 103, 33 NW 316.

It is the duty of a railroad company to erect and maintain suitable fences and guards to prevent domestic animals from passing over or through the depot grounds onto the track beyond the limit of such grounds. Kobe v N. P. Ry. Co. 36 M 518, 32 NW 783.

The evidence in this case establishes the fact that the place where the injury occurred was a part of defendant's depot grounds and that public convenience required that it remain unfenced. Hooper v Chi. St. P. Mpls. & O. Ry. Co. 37 M 52, 33 NW 314.

The exception by implication cannot be extended to a siding used merely for the loading of ties, wood, and similar, and for the passing of trains at a point where no depot is maintained or employee stationed. Hurt v St. P. Mpls. & Man. Ry. Co. 39 M 485, 40 NW 614.

Where a railroad occupies a public street in a city or village subject to the public easement it is not entitled to fence its track and therefore obstruct the street and interfere with its use. Rippe v Chi. Mil. & St. P. Ry. Co. 42 M 34, 43 NW 652; Palyo v N. P. Ry. Co. 144 M 398, 175 NW 687.

This section refers to the repair shops and side tracks of defendants wherever practicable to be fenced. The question of practicability is for the jury. Mattes v G. N. Ry. Co. 95 M 386, 104 NW 234; Mattes v G. N. Ry. Co. 100 M 34, 110 NW 98.

Where a child under four years of age who went upon defendant's tracks at a place where it is not fenced, and was injured, the burden was on the defendant to prove facts bringing this place within the exception to the statute requiring fences. Jensen v Chi. Milw. & St. P. Ry. Co. 156 M 218, 194 NW 620.

4. Cattle Guards

The term "wagon crossings" as used in the statutes requiring railroad companies to build and maintain "cattle guards" refers to wagon roads used for public travel crossing railroads, and not to private ways or farm crossings. Sather v Chi. M. & St. P. Ry. Co. 40 M 91, 41 NW 458.

Plaintiff's horse was killed because the wagon crossing was not protected by a cattle guard, and the burden rests upon the railroad company to show that the

track was not fenced or guarded because it was necessary to be kept open for the accommodation of the public. This implied exemption does not apply in this particular case. In case of an accident resulting from an animal upon a railway track, it is the condition of the road where the animal enters, and not where it was killed, that must govern. Cox v Mpls. & Sault Ry. Co. 41 M 101, 42 NW 924.

Distinguishing Blais v Mpls. & St. Louis Ry. Co. 34 M 57, 24 NW 558, and Stacey v Winona & St. Peter Ry. Co. 42 M 158, 43 NW 905, the question of whether a railway company must, in the exercise of reasonable care, keep its cattle guards clear of ice and snow, depends upon the location and elevation of the tracks, the character of the weather, the prevalence of storms, the use of the adjacent crossing or vicinity for the passage of animals, and all facts and circumstances relative to the matter. Yates v Chi. M. & O. Ry. Co. 115 M 496, 132 NW 994.

219.32 FAILURE TO FENCE; LIABILITY.

HISTORY. 1872 c. 25 ss. 2, 3; 1876 c. 24 ss. 2, 3; 1877 c. 73 s. 1; G.S. 1878 c. 34 ss. 55, 57; G.S. 1894 ss. 2693, 2695; R.L. 1905 s. 1998; G.S. 1913 s. 4264; G.S. 1923 s. 4745; M.S. 1927 s. 4745.

1. Generally.

2. Animals Killed or Injured.

3. Added or Plural Costs.

1. Generally

Damages may be recovered against a railroad company for injury done to a farm by rendering it less fit for pasturing cattle in consequence of failure to fence the road as required by statute. Emmons v M. & St. L. Ry. Co. 35 M 503, 29 NW 202; Emmons v M. & St. L. Ry. Co. 38 M 215, 36 NW 340; Nelson v M. & St. L. Ry. Co. 41 M 131, 42 NW 788; Finch v Chi. M. & St. P. Ry. Co. 46 M 250, 48 NW 915; M. & St. L. Ry. Co. v Emmons, 149 US 364, 13 SC 870.

Overruling Fitzgerald v St. Paul, 29 M 336, 13 NW 168, it is held that the statute requiring railway companies to fence their roads is not exclusively designed to prevent domestic animals from straying upon the track; but where a young child, who is non sui juris, strays upon the track in consequence of the failure of a railway company to erect a fence as required by statute, and is injured by a train, the company is liable to compensate for the injury. Rosse v St. P. & Dul. Ry. Co. 68 M 216, 71 NW 20; Nickolson v N. P. Ry. Co. 80 M 508, 83 NW 454; Marengo v G. N. Ry. Co. 84 M 397, 87 NW 1117; Mattes v G. N. Ry. Co. 100 M 34, 110 NW 98.

A railroad company owes no duty to a trespasser upon its premises, child or adult, except to refrain from wantonly or wilfully injuring him. Ellington v G. N. Ry. Co. 96 M 176, 104 NW 827.

Failure to fence is prima facie but not conclusive evidence of negligence. Ellington v G. N. Ry. Co. 96 M 176, 104 NW 827; Komerstad v G. N. Ry. Co. 120 M 376, 139 NW 713.

2. Animals Killed or Injured

While the failure to build and maintain fences is by statute made an act of negligence on the part of the railroad company, this does not exclude the operation of the general rule regarding contributory negligence, and its effect as respects a right of recovery against the railroad. Whittier v Chi. M. & St. P. Ry. Co. 24 M 394; Fleming v St. P. & Dul. Ry. Co. 27 M 111, 6 NW 448; Johnson v Chi. M. & St. P. Ry. Co. 29 M 425, 13 NW 673.

The statute making it the duty of the railroads to fence their right of way does not make railroad companies liable for damages done by cattle trespassing upon the railroad's lands and passing fence by reason of the lack of fences to the lands of adjoining owners, on whose lands the cattle do damage. Gowan v St. P. Stillwater & Taylors Falls, 25 M 328.

It is not a defense that cattle were trespassers upon land from which they passed, for want of a fence, to the railroad track. Gillam v S. C. & St. P. Ry. Co. 26 M 268, 3 NW 353.

The company is liable only where the injury is the natural and proximate consequence of the neglect to fence. Nelson v Chi. M. & St. P. Ry. Co. 30 M 74, 14 NW 360; Green v St. P. Mpls. & Man. Ry. Co. 60 M 134, 61 NW 1130.

Liability extends to all domestic animals including estrays. Merely permitting animals to run at large unlawfully does not in itself constitute contributory negligence. Wattier v Chi. St. P. & O. Ry. 31 M 91, 16 NW 537; Green v St. P. Mpls. & Man. 55 M 192, 56 NW 752; Ericson v Dul. & Iron Range Ry. 57 M 26, 58 NW 822.

Whenever the building of the fence would have prevented an accident to domestic anmials, the negligence of the railroad company in not fencing its road is the cause of the injury, and the company is liable regardless of the species of animals. In the case of sheep or swine, there would be a question of fact depending on the size of the animals. Halvorson v M. & St. L. Ry. Co. 32 M 88, 19 NW 392.

It was the duty of the railroad company to keep the fences in repair. Varco v Chi. M. & St. P. Ry. Co. 30 M 18, 13 NW 921; Evans v St. P. & S. C. Ry. Co. 30 M 489, 16 NW 271; Hovorka v M. & St. L. Ry. Co. 31 M 221, 17 NW 376; Hovorka v M. & St. L. Ry. Co. 34 M 281, 25 NW 595.

It is prima facie contributory negligence for one to voluntarily allow a valuable horse to run at large in the public streets contrary to law in the immediate vicinity of unfenced railroad tracks. Moser v St. P. & Dul. Ry. Co. 42 M 480, 44 NW 530.

A horse accidentally escaping from the owner's premises without his fault is not to be deemed to be unlawfully running at large while proper efforts are being made to retake it. Nelson v G. N. Ry. Co. 52 M 276, 53 NW 1123; Chisholm v N. P. Ry. Co. 53 M 122, 54 NW 1061.

Contributory negligence held a question for the jury. Sarja v G. N. Ry. Co. 99 M 332, 109 NW 600.

Whether the company was negligent in failing to keep the fence in repair was for the jury. Church v Chi. M. & St. P. Ry. Co. 102 M 295, 113 NW 886.

Statutory duty to fence; liability for death of animals not caused by collision. 13 MLR 270.

3. Added or Plural Costs

The statute which provides an extra allowance of $10.00 in justice court and double costs in district court in case of recovery, is not unconstitutional but is a legitimate exercise of legislative discretion. Johnson v Chi. M. & St. P. Ry. Co. 29 M 425, 13 NW 673; Schimele v Chi. M. & St. P. Ry. Co. 34 M 216, 25 NW 347.

To entitle plaintiff to extra or double costs, the action should not be commenced until after the expiration of the 30 days allowed the railroad company to pay or render the actual damages. Hooper v Chi. St. P. Mpls. & O. Ry. Co. 37 M 52, 33 NW 314.

The provision regarding costs has no reference to costs in the supreme court but is limited to costs in the justice and district courts. Croft v Chi. G. W. Ry. Co. 72 M 47, 74 NW 898.

219.33 FENCES; CROSSINGS, CATTLE GUARDS.

HISTORY. 1870 c. 16 s. 2; 1876 c. 24 s. 4; 1877 c. 73 s. 1; G.S. 1878 c. 34 s. 57; 1897 c. 346; R.L. 1905 s. 1999; G.S. 1913 s. 4265; G.S. 1923 s. 4746; M.S. 1927 s. 4746.

Where a child 5 years old walked upon the tracks and was injured, it was error in this case for the judge to refuse to charge that it was the legal duty of the defendant railroad company to fence its tracks at the point where the child first entered the right of way. The mere fact that the point of entry and the point of the injury were both within the yard limits of the defendant company did not relieve the company of the statutory duty to fence its tracks. Nickolson v N. P. Ry. Co. 80 M 508, 83 NW 454.

Where the right of way of two roads running east and west parallel and join each other with no fence between them, one railroad built a fence on the north side of its way and the other company on the south side. The road on the north left a gap in its fence through which the horse passed over and was killed on the south track. Held: that the proximate cause of the death of the horse was

the negligence of the south railroad in failing to fence its road. Frisch v Chi. G. W. Ry. Co. 95 M 398, 104 NW 228; Bear v Chi. G. W. Ry. Co. 141 Fed. 25.

The railroad cannot be held as a matter of law negligent in failing to properly fence a right of way where a wall had been erected along the embankment outside the tracks, but outside a right of way. The company is not required to go outside of the right of way on the land of some other property owner to erect the fence required by statute. Bremner v Hendrickson, 31 F(2d) 893.

Violation of statute or ordinance as negligence or evidence of negligence. 19 MLR 666.

Necessity that plaintiff be member of a class protected by the statute. 19 MLR 670.

219.34 FENCES BETWEEN RAILROAD AND PUBLIC ROAD.

HISTORY. G.S. 1866 c. 34 s. 33; 1870 c. 16 s. 1; G.S. 1878 c. 34 ss. 53, 59; G.S. 1894 s. 2699; R.L. 1905 s. 2000; G.S. 1913 s. 4266; G.S. 1923 s. 4747; M.S. 1927 s. 4747.

219.35 FARM CROSSINGS AND DRAINS.

HISTORY. 1887 c. 174 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 57b; G.S. 1894 s. 2697; R.L. 1905 s. 2001; G.S. 1913 s. 4267; G.S. 1923 s. 4748; M.S. 1927 s. 4748.

It was error on the part of the trial court to charge the jury upon appeal from an award by the commissioners in proceedings to require a right of way through plaintiff's farm for railway purposes "that no crossings having been reserved to plaintiff, he was not as a matter of law entitled to any, and that his damages should be assessed accordingly." Schmidt v Mpls. Lyndale & Minn. Ry. Co. 38 M 491, 38 NW 487.

In condemnation proceedings the commissioners provided in their award that in addition to paying damages the railway companies should construct and perpetually maintain a cattle chute along the railroad. The sufficiency of the cattle chute was not an issue in the trial at the district court, and evidence directed to that question was inadmissible. Mpls. St. P. & Dub. Ry. Co. v St. Martin, 108 M 494, 122 NW 452.

219.36 GATES AT FARM CROSSINGS.

HISTORY. 1877 c. 98 s. 4; G.S. 1878 c. 95 s. 87; G.S. 1894 s. 6889; R. L. 1905 s. 2002; G.S. 1913 s. 4268; G.S. 1923 s. 4749; M.S. 1927 s. 4749.

The term "wagon crossings" requiring cattle guards, refers to public travel roads and not to private ways or farm crossings. The provision in the statute requiring the railroad companies to furnish landowners with locks for gates at farm crossings is permissive but not mandatory. Sather v Chi. M. & St. P. Ry. Co. 40 M 91, 41 NW 458.

Where the apparatus for fastening the gate had been out of order for many weeks, that fact was sufficient to justify the jury in finding the defendant railway company guilty of negligence. Chisholm v N. P. Ry. Co. 53 M 122, 54 NW 1061.

The railway company owes no duty to the landowner at whose instance and convenience, and upon whose land, farm crossing gates are put into the railroad fences; or to those in privity with him to keep such gates closed. Its full duty is performed if the gates are kept in reasonably good repair. Swanson v Chi. M. & St. P. Ry. Co. 79 M 398, 82 NW 607; Mooers v N. P. Ry. Co. 80 M 24, 82 NW 1085.

Defendant's land was crossed by the railroad right of way and in compliance with the statutes a farm crossing was constructed opened by gates. Defendant's land was fully and completely fenced. A storm blew a tree across this fenced land, and plaintiff's cattle being pastured on an adjoining tract, crossed through the opening in the fence to the railroad right of way. The defendant was held not liable. The proximate cause of an injury is such as operates to produce particular consequences without the intervention of any independent or unforseen cause or event without which the injury could not have occurred. Strobek v Bren, 93 M 428, 101 NW 795.

219.37 DITCHES AND CULVERTS.

HISTORY. 1909 c. 377 s. 1; G.S. 1913 s. 4269; G.S. 1923 s. 4750; M.S. 1927 s. 4750.

In an action for damages for the flooding of plaintiff's land there was proof that the capacity of the ditch was adequate, and there was no evidence that the ditch or embankment caused water to overflow plaintiff's land. Nordlum v G. N. Ry. Co. 177 M 360, 225 NW 145.

219.38 EMPTY CARS KEPT CLOSED.

HISTORY. 1895 c. 271; R.L. 1905 s. 2024; G.S. 1913 s. 4290; G.S. 1923 s. 4871; M.S. 1927 s. 4871.

219.383 SAFE OPERATION OF TRAINS OVER STREETS AND HIGHWAYS.

HISTORY. 1945 c. 220 ss. 1 to 5.

219.39 DANGEROUS CROSSINGS; COMPLAINTS; HEARINGS.

HISTORY. 1911 c. 243 s. 1; G.S. 1913 s. 4203; 1923 c. 134 s. 1; G.S. 1923 s. 4662; M.S. 1927 s. 4662.

A railroad company received a charter and franchise subject to the right of the state to establish and open such streets over and across its right of way, as public convenience may require. That right on the part of the state attaches by implication to the franchise of the railroad company, and imposes upon it an obligation to construct and maintain at its own expense suitable crossings at new streets to the same extent as required by the rules of common law relative to streets in existence when the railroad was constructed. State v St. P. Mpls. & Man. Ry. Co. 98 M 380, 108 NW 261.

Laws 1905, Chapter 280, as amended by Laws 1907, Chapter 396, does not vest in the board of railway commissioners exclusive authority and jurisdiction to order and require the construction by railroad companies of bridges, or the instalment of safety devices at highway crossings. State ex rel v G. N. Ry. Co. 114 M 293, 131 NW 330.

In a proceeding in mandamus to compel defendant to provide gates and gateman for the protection of travelers at certain street crossings, it was error to strike from the answer and veriments that other less expensive devices were more effective, and that a viaduct in course of construction would divert from these crossings nine-tenths of the present traffic. Owatonna v Chi. R. I. Ry. Co. 156 M 475, 195 NW 452.

Where a trunk highway and a railroad track intersect the commissioner may require the construction of an overhead or underground crossing and divide the cost. Where the highway is carried over railroad tracks by a bridge, the company may be required to construct the bridge and approaches, but not a part of the highway outside. State v N. P. Ry. Co. 176 M 501, 223 NW 915.

The statutory jurisdiction of the commission over railroad crossings extends to the reconstruction of an old bridge over a highway. It is not limited to original construction attendant upon separation of grades. State ex rel v Mpls. St. P. & S. Ry. Co. 190 M 162, 251 NW 275.

In a taxpayer's suit to restrain the public officials from issuing and selling municipal bonds to provide funds to raise and alter existing private railroad bridges over the Mississippi river in order to make it possible for river traffic to ply the stream: Held, that since the private bridge owners have the legally enforceable and uncompensable duty to alter the structures pursuant to a command under the police power, the city cannot undertake this private duty, even though proper bridge clearances would permit the city to enjoy the benefits of river traffic when the improvements were completed by the federal government. Bybee v City of Minneapolis, 208 M 55, 292 NW 617.

219.40 COMMISSION REPORT; ORDER; FLAGMEN, SAFETY DEVICES.

HISTORY. 1911 c. 243 s. 2; 1913 c. 294 s. 1; G.S. 1913 s. 4204; 1923 c. 134 s. 2; G.S. 1923 s. 4663; M.S. 1927 s. 4663.

See annotations under section 219.39.

Growth of a city may demand expensive changes in its streets both as to grade and width of roadway, and where such streets are carried over railroad tracks the cost of corresponding changes in the viaduct or bridges may be divided between the city and the railroad company by order of the commission. St. Paul v G. N. Ry. Co. 178 M 193, 226 NW 470.

If track scales are used by a common carrier for weighing carload freight, the cost of testing by the commission must be paid by the common carrier using the scales and not by the owner of the warehouse. OAG July 5, 1934 (371b-2).

219.41 APPEAL; ORDER; HOW ENFORCED.

HISTORY. 1911 c. 243 s. 3; G.S. 1913 s. 4205; G.S. 1923 s. 4664; M.S. 1927 s. 4664.

219.42 FAILURE TO COMPLY; PENALTY.

HISTORY. 1911 c. 243 s. 4; G.S. 1913 s. 4206; G.S. 1923 s. 4665; M.S. 1927 s. 4665.

219.43 TEMPORARY FLAGMAN.

HISTORY. 1911 c. 243 s. 5; G.S. 1913 s. 4207; G.S. 1923 s. 4666; M.S. 1927 s. 4666.

219.45 CLEARANCE BETWEEN STRUCTURE AND CARS.

HISTORY. 1913 c. 307 s. 1; G.S. 1913 s. 4272; G.S. 1923 s. 4753; M.S. 1927 s. 4753; 1937 c. 238 s. 1; M. Supp. s. 4753.

219.46 UNLAWFUL STRUCTURES.

HISTORY. 1913 c. 307 s. 2; G.S. 1913 s. 4273; 1915 c. 171 s. 1; G.S. 1923 s. 4754; M.S. 1927 s. 4754; 1937 c. 238 s. 2; M. Supp. s. 4754; 1943 c. 390 ss. 1 to 7.

There was no negligence in the maintenance of a semaphore in the defendant's yards at a less distance from the center of the track from that prescribed by the statute; and as the semaphore carried the usual colored lights for signalling, there is no requirement that it carry additional lights to light up the yards. Breen v Hines, 162 M 271, 202 NW 726.

Assumption of risk is not a defense in an employee's action against the employer for violation of a safety statute. Suess v Arrowhead, 180 M 21, 230 NW 125.

Piles and pieces of scrap iron left for short periods within eight feet of the center line of a railroad track do not constitute a permanent or fixed structure or obstruction within the meaning of this statute. State v M. S. P. & S. Ry. Co. 205 M 394, 286 NW 303.

219.47 EXCEPTIONS.

HISTORY. 1913 c. 307 s. 3; G.S. 1913 s. 4274; 1915 c. 171 s. 2; G.S. 1923 s. 4755; M.S. 1927 s. 4755; 1937 c. 238 s. 3; M. Supp. s. 4755; 1943 c. 390 s. 8.

219.50 OBSTRUCTING SPACE BETWEEN TRACKS; EXCEPTIONS.

HISTORY. 1913 c. 307 s. 6; 1913 c. 448 s. 1; G.S. 1913 s. 4277; G.S. 1923 s. 4758; M.S. 1927 s. 4758.

A switch stand, or any of the parts connected with the operation of the road, is not a "foreign obstacle" in a railroad yard, and the maintenance of this stand was not a breach of the intent of this statute. Porsmer v Davis, 152 M 181, 188 NW 279.

A pile of hardened snow sloping from the depot platform toward a rail with a tendency to cause an employee to fall thereon and to be thrown towards

the wheels of moving cars, may be held by a jury to constitute negligence. McDermott v Mpls. Northfield & S. Ry. Co. 204 M 215, 283 NW 116.

219.51 VIOLATION, PENALTY; DUTIES OF ATTORNEY GENERAL AND COMMISSION.

HISTORY. 1913 c. 307 s. 7; G.S. 1913 s. 4278; G.S. 1923 s. 4759; M.S. 1927 s. 4759; 1937 c. 238 s. 4; M. Supp. s. 4759.

219.52 INSPECTORS OF BUREAU OF LABOR; DUTIES.

HISTORY. 1913 c. 307 s. 8; G.S. 1913 s. 4279; G.S. 1923 s. 4760; M.S. 1927 s. 4760; 1937 c. 238 s. 5; M. Supp. s. 4760.

219.53 CONTRIBUTORY NEGLIGENCE.

HISTORY. 1913 c. 307 s. 9; G.S. 1913 s. 4280; G.S. 1923 s. 4761; M.S. 1927 s. 4761.

Under the workmen's compensation act notice must be given by the employee in order to start running of statute of limitations therein provided for. Notice of the accident and injury given to the commissioner of labor by the employee does not put the statute in operation. Schonberg v Zinsmaster, 173 M 414, 217 NW 491.

219.54 FREIGHT PLATFORMS.

HISTORY. 1893 c. 61 ss. 1, 2; G.S. 1894 s. 2708, 2709; R.L. 1905 s. 2003; G.S. 1913 s. 4281; 1923 c. 142 s. 1; G.S. 1923 s. 4762; M.S. 1927 s. 4762.

Two freight houses operated by the Minnesota Transfer Ry. Co. for the receipt and delivery to less than carload freight may not be closed without the permission of the commission. Minn. Tr. Ry. Co. v R. R. & Whse. Comm. 200 M 422, 274 NW 408.

219.55 LOADING PLATFORMS.

HISTORY. 1899 c. 222 ss. 1 to 3; R.L. 1905 s. 2004; G.S. 1913 s. 4282; G.S. 1923 s. 4763; M.S. 1927 s. 4763.

219.56 CABOOSE CARS.

HISTORY. 1909 c. 382 s. 1; G.S. 1913 s. 4387; G.S. 1923 s. 4879; M.S. 1927 s. 4879; 1941 c. 230.

A grain warehouse lease provision, exempting railroad as lessor from liability to lessee for loss caused by reason of railroad's negligent acts, was valid and exempted the railroad from liability for loss of warehouse and contents by a fire started by the railroad's maintenance crew on the right of way, notwithstanding the rule prohibiting the carrier from contracting against carrier's liability. Michigan Millers v Canadian Northern, 58 F Supp. 326.

Caboose cars are not required by statute to have steel under frames. OAG March 9, 1934.

219.57 PREVENTION OF FIRE.

HISTORY. 1895 c. 196 s. 12; 1903 c. 363 s. 12; R.L. 1905 s. 2037; 1909 c. 182; 1911 c. 9 s. 1; G.S. 1913 s. 4410; G.S. 1923 s. 4911; M.S. 1927 s. 4911.

Evidence considered and held that it did not sufficiently trace or identify the fire which destroyed plaintiff's property to or with the fire started by defendant's sectionmen on the right of way. Baxter v G. N. Ry. Co. 73 M 189, 75 NW 1114; McCool v Davis, 158 M 146, 197 NW 93.

A complaint which alleges that a railway company was negligent in failing to patrol its right of way to prevent and extinguish fires and in not equipping locomotive engines with spark arresters, that certain engineers negligently failed to inspect their engines before taking them out on the road, and that a section

boss was negligent in failing to keep the right of way clear of combustible matter, which resulted in starting a fire from sparks by the engines, which destroyed the property of another on adjoining premises, states a cause of action against each defendant. Patry v N. P. Ry. Co. 114 M 375, 131 NW 462.

In an action for damages caused by a fire alleged to have been set by defendant's locomotive, the trial court was within its discretion in refusing to permit an amendment to the complaint alleging that the loss was caused by a different fire, starting at a different time and place from that alleged in the original complaint. Smith v Davis, 162 M 256, 202 NW 483.

In determining whether or not a particular fire is the source of a certain loss, evidence tending to show the existence of other fires any one of which may have been a probable source of the loss, must be considered. Potter v G. N. Ry. Co. 164 M 213, 204 NW 928.

219.58 COUPLERS ON FREIGHT CARS.

HISTORY. 1907 c. 202; 1909 c. 488 s. 1; G.S. 1913 s. 4411; G.S. 1923 s. 4914; M.S. 1927 s. 4914.

The evidence made it a jury question whether the defective coupler was a contributing cause of the death of plaintiff's intestate. Schendel v Chi. M. & St. P. Ry. Co. 158 M 378, 197 NW 744.

The use by a railway company engaged in interstate commerce of a freight car with a defective uncoupling safety appliance thereon, in violation of the federal safety appliance act, establishes negligence on the part of the company as a matter of law. Schendel v Chi. M. & St. P. Ry. Co. 165 M 223, 206 NW 436; Ross v. Dul. Missabe & I. R. Ry. Co. 203 M 312, 281 NW 76, 271.

The evidence sustains a finding that a handhold which it was the absolute duty of the defendant to furnish secure under the safety appliance act, on the freight car of which the plaintiff, a brakeman, was working in interstate commerce, loosened and caused his fall. Perkins v G. N. Ry. Co. 159 M 492, 199 NW 891.

Application of federal safety appliance act to persons not employees. 23 MLR 103.

219.59 GRAB IRONS.

HISTORY. 1907 c. 202; 1909 c. 488 s. 2; G.S. 1913 s. 4412; G.S. 1923 s. 4915; M.S. 1927 s. 4915.

219.60 TRAIN BRAKE SYSTEM.

HISTORY. 1907 c. 202; 1909 c. 488 s. 3; G.S. 1913 s. 4413; G.S. 1923 s. 4916; M.S. 1927 s. 4916.

Where a brakeman on his way to release a defective brake, stepped off a ladder at the side of the car in the night time, without lowering his lantern to see what was beyond him, and fell through a bridge, the accident is not proximately attributable to the defect in the brake within the meaning of the federal safety appliance act. Bohn v Chi. M. & St. P. Ry. Co. 161 M 74, 200 NW 804.

A railroad company owes the duty of due care to the servants of a shipper who will be exposed to danger arising from defects in a car turned over to the shipper for reloading. Peneff v Dul. Missabe & N. Ry. Co. 164 M 6, 204 NW 524.

Causal connection between negligence and an accident may be established by circumstantial evidence. It must be fairly and reasonably inferable from the facts and circumstances actually disclosed by the evidence. It cannot be left to conjecture. Neilis v Chi. & R. I. Ry. Co. 173 M 587, 218 NW 125; Duryea v Chi. St. P. & O. Ry. Co. 194 M 431, 260 NW 528.

219.61 DRAW BARS.

HISTORY. 1907 c. 202; 1909 c. 488 s. 4; G.S. 1913 s. 4414; G.S. 1923 s. 4917; M.S. 1927 s. 4917.

The draw beams of a freight car to which the draw bar is attached, are an integral part of the automatic coupling apparatus required by the federal safety appliance act. Kowalski v Chi. N. W. Ry. Co. 159 M 388, 199 NW 178.

219.62 PASSENGER TRAFFIC.

HISTORY. 1907 c. 202; 1909 c. 488 s. 5; G.S. 1913 s. 4415; G.S. 1923 s. 4918; M.S. 1927 s. 4918.

Control of public utilities in Minnesota. 16 MLR 528.

219.63 CARS FROM CONNECTING LINES.

HISTORY. 1907 c. 202; 1909 c. 488 s. 6; G.S. 1913 s. 4416; G.S. 1923 s. 4919; M.S. 1927 s. 4919.

219.64 ASSUMPTION OF RISK; CONTRIBUTORY NEGLIGENCE.

HISTORY. 1907 c. 202; 1909 c. 488 s. 7; G.S. 1913 s. 4417; G.S. 1923 s. 4920; M.S. 1927 s. 4920.

219.65 CARS IN TRAIN; POWERS OF COMMISSION.

HISTORY. 1907 c. 202; 1909 c. 488 s. 8; G.S. 1913 s. 4418; G.S. 1923 s. 4921; M.S. 1927 s. 4921.

219.66 PENALTY FOR VIOLATION.

HISTORY. 1907 c. 202; 1909 c. 488 s. 9; G.S. 1913 s. 4419; G.S. 1923 s. 4922; M.S. 1927 s. 4922.

219.67 RAILROAD COMPANIES TO EQUIP ENGINES WITH CLASSIFICATION LAMPS.

HISTORY. 1913 c. 93 s. 1; G.S. 1913 s. 4421; 1923 c. 392 s. 1; G.S. 1923 s. 4924; M.S. 1927 s. 4924.

The evidence justified the finding of the jury that the defendant was negligent in using on a switching engine in its railroad yards a 1,500 candlepower headlight. Roach v G. N. Ry. Co. 133 M 257, 158 NW 232; McIntosh v G. N. Ry. Co. 151 M 527, 188 NW 551.

219.68 ABANDONMENT OF ROAD.

HISTORY. 1893 c. 59 ss. 1, 4; G.S. 1894 s. 2755; R.L. 1905 s. 2038; 1907 c. 261 s. 1; G.S. 1913 s. 4423; G.S. 1923 s. 4926; M.S. 1927 s. 4926. [Repealed by 1945 c. 21 s. 8.]

Where a municipality issues its bonds to aid in the construction, maintenance and operation of a railroad, and the company abandons the operation of its road and tears up and moves the track, the municipality granting the aid has cause for action against the railroad at common law. Hinckley v Kettle R. Ry. Co. 70 M 105, 72 NW 835.

The original charter of the Lake Superior & Mississippi was transferred to the St. Paul & Duluth, and later acquired by the Northern Pacific. The commission applied for a writ of mandamus commanding the Northern Pacific to reopen and operate a 20th Avenue depot in the city of Duluth. The trial court so ordered, and it was sustained on appeal. State ex rel v N. P. Ry. Co. 89 M 363, 95 NW 297.

Unless a railroad company has contracted to keep its road in operation, it has the constitutional right to abandon it if it can no longer be operated except at a loss. State v Dul. & Northern, 150 M 30, 184 NW 186; Mpls. & St. P. Sub. v Birchwood, 186 M 563, 244 NW 57.

219.681 REMOVAL OF TRACKS MUST BE APPROVED BY COMMISSIONER.

HISTORY. 1945 c. 21 s. 1.

This section does not confer power on the commission to interfere with the abandonment of a railroad which is being operated at a loss. Hill City v Youngquist, 32 F(2d) 819.

That the order of the interstate commerce commission permitting a railroad to abandon a branch line, on the ground that operation thereof constitutes a burden on interstate commerce, may run counter to state statute, ordinance, or charter provision, does not bar the commission's exclusive and plenary jurisdiction to regulate interstate commerce. Mantorville v Chi. G. W. Ry. Co. 8 F Supp. 791.

Discontinuance of service by utilities. 13 MLR 181, 325.

219.69 RAILROAD SHOPS OR TERMINALS MAY NOT BE ABANDONED.

HISTORY. 1931 c. 64 s. 1; M. Supp. s. 4926-1.

219.691 VIOLATIONS; FORFEITURE.

HISTORY. 1945 c. 21 s. 5.

219.692 TREBLE DAMAGES.

HISTORY. 1945 c. 21 s. 6.

219.695 "TERMINAL" AND "SHOP" DEFINED.

HISTORY. 1931 c. 64 s. 2; M. Supp. s. 4926-2.

219.70 APPLICATION TO ABANDON; POWER OF COMMISSION.

HISTORY. 1931 c. 64 s. 3; M. Supp. s. 4926-3.

219.71 HEARING; ORDER.

HISTORY. 1931 c. 64 s. 4; M. Supp. s. 4926-4.

219.74 ABANDONMENT; PROCEDURE.

HISTORY. 1893 c. 59 ss. 1, 2; G.S. 1894 ss. 2755, 2756; R.L. 1905 s. 2039; 1907 c. 261 s. 2; G.S. 1913 s. 4424; G.S. 1923 s. 4930; M.S. 1927 s. 4930. [Repealed by 1945 c. 21 s. 8.]

Although a railroad company may have the constitutional right to abandon its road for the reason that it can be operated only at a loss, the legislature has withheld from the railroad and warehouse commission power to authorize such abandonment. State v Dul. & Northern, 150 M 30, 184 NW 186; Mpls. & St. P. Sub. v Birchwood, 186 M 563, 244 NW 57; Hill City v Youngquist, 32F(2d) 819.

Right of railroads to cease operation. 6 MLR 81.

219.741 APPLICATION FOR REMOVAL.

HISTORY. 1945 c. 21 s. 2.

219.742 PROCEDURE; APPEAL.

HISTORY. 1945 c. 21 s. 3.

219.743 EXCEPTIONS.

HISTORY. 1945 c. 21 s. 4.

219.75 ACTION AGAINST COMPANY.

HISTORY. 1893 c. 59 ss. 3, 4; G.S. 1894 ss. 2757, 2758; R.L. 1905 s. 2040; 1907 c. 261 s. 3; G.S. 1913 s. 4425; G.S. 1923 s. 4931; M.S. 1927 s. 4931. [Repealed by 1945 c. 21 s. 8.]

Under the police power, a railroad company may be compelled to depress its tracks where they traverse populous municipalities; and in determining the necessity of such depression the convenience and general welfare of the public is to be considered as to its safety. Twin City Separator v Chi. M. & St. P. Ry. Co. 118 M 491, 137 NW 193.

The right of private enterprises to railroad side track facilities whether based upon contract, prescription or estoppel, as against the railroad company, is subject to a city's police power to order a separation of railroad and street grades where public necessity so requires. Twin City Separator v Chi. M. & St. P. Ry. Co. 118 M 491, 137 NW 193.

219.751 RESTORATION OF TRACKS FOR SERVICE.

HISTORY. 1945 c. 21 s. 7.

219.755 SECTION 645.35 NOT TO APPLY.

HISTORY. 1945 c. 21 s. 8.

219.76 FIRE CAUSED BY ENGINE; INSURABLE INTEREST.

HISTORY. 1874 c. 30 s. 1; G.S. 1878 c. 34 s. 60; G.S. 1894 s. 2700; R.L. 1905 s. 2041; 1909 c. 378 s. 1; G.S. 1913 s. 4426; G.S. 1923 s. 3532, 4932; M.S. 1927 s. 3532, 4932.

Prior to the passage of the statute, it was held in this case that as the same evidence which showed the fire to have caught from the engine, tends also to show the negligence alleged, it was unnecessary for the plaintiff to show affirmatively by direct evidence any defect in construction or condition or any negligence in the managment of the engine; and that to disprove the prima facie case of negligence made by plaintiff, it was not enough for the defendant to show that the engine was of approved construction and in good condition, and was operated by a skilful engineer and fireman in the customary manner, without showing that the "customary" manner was also a careful manner. Woodson v Mil. & St. P. Ry. Co. 21 M 60.

The statute makes the fact of the fire being scattered or thrown from the engine prima facie evidence of negligence. It relieves plaintiff of the initiative in proving negligence. The existence of negligence is still the issue to be tried by the jury. The presumption of negligence does not arise, and the defendant need not introduce evidence to rebut it until the plaintiff has made out a case for the jury on the issue of the cause of the fire. Karsen v Milw. & St. P. Ry. Co. 29M 12, 11 NW 122; Sibley v N. P. Ry. Co. 32 M 526, 21 NW 732; Mahoney v St. P. M. & Man. Ry. Co. 35 M 361, 29 NW 6; Weber v Winona & St. Peter Ry. Co. 63 M 66, 65 NW 93; Flanaghan v Chi. M. & St. P. Ry. Co. 65 M 112, 67 NW 794; Babcock v Can. Northern Ry. Co. 117 M 434, 136 NW 275; Niskern v Chi. M. & St. P. Ry. Co. 22 Fed. 811.

Presumption held not overcome. Karsen v M. & St. P. Ry. Co. 29 M 12, 11 NW 122; Sivilrud v M. & St. L. Ry. Co. 29 M 58, 11 NW 146; Johnson v Chi. M. & St. P. Co. 31 M57, 16 NW 488; Sibley v N. P. Ry. Co. 32 M 526, 21 NW 732; Clarke v Chi. St. P. M. & O. Ry. Co. 33 M 359, 23 NW 536; Nelson v Chi. M. & St. P. Ry. Co. 35 M 170, 28 NW 215; Nichols v Chi. St. P. & O. Ry. Co. 36 M 452, 32 NW 176; Dean v Chi. M. & St. P. Ry. Co. 39 M 413, 40 NW 270; Hoffman v Chi. M. & St. P. Ry. Co. 40 M 60, 41 NW 301; Hoffman v Chi. M. & St. P. Ry. Co. 43 M 334, 45 NW 608; Doyscher v Chi. M. & St. P. Ry. Co. 43 M 427, 45 NW 719; Wilson v N. P. Ry. Co. 43 M 519, 45 NW 1132; Hayes v Chi. M. & St. P. Ry. Co. 45 M 17, 47 NW 260; Cantlon v Eastern Ry. 45 M 481, 48 NW 22; Hoye v Chi. M. & St. P. Ry. Co. 46 M 269, 48 NW 1117; McClellan v St. P. M. & Man. Ry. Co. 58 M 104, 59 NW 978; DeCamp v Chi. N. W. Ry. Co. 62 M 207, 64 NW 392; Burud v G. N. Ry. Co. 62 M 243, 64 NW562; Solum v G. N. Ry. Co. 63 M 233, 65 NW 443; Babcock v Can. N. Ry. Co. 117 M 434, 136 NW 275; Potter v G. N. Ry. Co. 164 M 213, 204 NW 928.

Where the uncontradicted evidence on the part of the railroad company clearly shows that it has fully performed its duty, the presumption of negligence

is rebutted and evidence of negligence other than the bare fact that the fire was set by the engine will be necessary in this case to warrant a verdict for the plaintiff. Daly v Chi. M. & St. P. Ry. Co. 43 M 319, 45 NW 611; Woodward v Chi. M. & St. P. Ry. Co. 145 Fed. 577.

There is no presumption that the right of way was in unsafe condition and upon the evidence in this case the question of negligence of the defendant in leaving combustible matter on its right of way was one of fact for the jury. Bowen v St. P. M. & Man. Ry. Co. 36 M 522, 32 NW 751.

The statute makes the fact of the fire being scattered or thrown from railroad engines prima facie evidence of negligence and evidence to rebut that presumption must be as broad as the presumption and must satisfactorily rebut every negligent act or omission which might, under the circumstances, reasonably or naturally have caused the fire. Karsen v M. & St. P. Ry. Co. 29 M 12, 11 NW 122; Nelson v Chi. M. & St. P. Ry. Co. 35 M 170, 28 NW 215; Hoffman v Chi. M. & St. P. Ry. Co. 43 M 334, 45 NW 608; Cantlon v Eastern Ry. Co. 45 M 481, 48 NW 22.

Plaintiff's case must rest upon something more than mere speculation or conjecture. Mpls. Sash & Door Co. v G. N. Ry. Co. 83 M 370, 86 NW 451; Babcock v Can. N. Ry. Co. 117 M 434, 136 NW 275; Carr v Davis, 159 M 485, 199 NW 237.

Whether presumption is overcome is ordinarily a question for the jury. Karsen v M. & St. P. Ry. Co. 29 M 12, 11 NW 122; Sibley v N. P. Ry. Co. 32 M 526, 21 NW 732; Nelson v Chi. M. & St. P. Ry. Co. 35 M 170, 28 NW 215.

No unfairness or prejudice resulted in the charge of the trial court by referring to the necessity of resorting to circumstantial evidence as to the origin of a fire set by sparks, because it is common knowledge that sparks emitted in the daytime are ordinarily invisible. Where defendant's track was 275 feet from plaintiff's church, and the nearest point from the track where the fire could have originated was 150 feet, the evidence sustains the finding of the jury in favor of the plaintiff. Trustees v Chi. M. & St. P. Ry. Co. 119 M 181, 137 NW 970.

Evidence considered and held that it did not sufficiently trace or identify the fire which destroyed plaintiff's property. Baxter v G. N. Ry. Co. 73 M 189, 75 NW 1114; McCool v Davis, 158 M 146, 197 NW 93.

The defendant may rebut the presumption by sufficient proof of its nonconnection as a cause, or as such construction, equipment, maintenance or operation of the engine as was required in the exercise of care commensurate with the circumstances of the particular case. Such rebuttal proof must conform as to character and extent to the standard by which in ordinary cases is measured the propriety of a holding by a trial court that a defendant, against whom a prima facie case of negligence has been made, is free from fault as a matter of law. Continental v Chi. & N. W. Ry. Co. 97 M 467, 107 NW 548.

Two independent fires spread and joined together and proceeded to plaintiff's land, causing damage. One of the two fires was started by plaintiff's engine and while the other fire was not so started it had been burning for several days on and along defendant's right of way, and defendant knew this and took no care to prevent it spreading. Having started the first fire, and negligently allowing the other fire to spread and join it, defendant is liable for damage. Farrell v Mpls. & Rainy River, 121 M 357, 141 NW 491.

Where a plaintiff banked railroad ties on defendant's right of way, it was under license or tacit consent of the defendant. The statutes of Wisconsin requiring railroad companies to keep their right of way reasonably free from dead grass, negligence of the defendant being proven, plaintiff had a right to recover. Martin v G. N. Ry. Co. 123 M 423, 144 NW 145.

The evidence supports the verdict to the effect that the fire did not originate from defendant's engine, and defendant was in no way responsible. Home Ins. Co. v Chi. St. P. M. & O. Ry. Co. 146 M 240, 178 NW 608.

This section virtually makes railroad companies insurers against damage caused by fires set by their engines and entirely eliminates the question of negligence. Anderson v M. & St. P. & S. Ry. Co. 146 M 430, 179 NW 45.

The evidence sustains a finding that a fire emitted by the locomotive of the railroad mingled with other fires and came to plaintiff's property and destroyed it. The railroad was responsible for the damage. Borscheim v G. N. Ry. Co. 149

M 210, 183 NW 519; Carr v Davis, 159 M 485, 199 NW 237; Dumbeck v Chi. G. W. Ry. Co. 177 M 261, 225 NW 111.

This statute is applicable to the director general of railroads. Borscheim v G. N. Ry. Co. 149 M 210, 183 NW 519; Anderson v M. St. P. & S. Ry. Co. 150 M 530, 185 NW 299.

Record examined and held to support the second verdict for the plaintiff, a defect of proof existing on the first appeal having been remedied at the second trial. McCool v Davis, 162 M 281, 202 NW 900.

In an action for fire insurance, the defense being incendiarism by the insured, a verdict for plaintiff was properly directed where evidence for the defendant who had the burden of proof did not support a reasonable inference that the fire was set by the insured or with his connivance. Barich v Penn. Fire Ins. Co. 191 M 628, 255 NW 80.

This section is constitutional. It cannot be classed as arbitrary class legislation. Chi. N. W. Ry. Co. v Kendall, 186 Fed. 139.

Motor vehicle accident compensation. 4 MLR 4.

219.77 LIABILITY OF CORPORATIONS FOR INJURY OR DEATH TO EMPLOYEES.

HISTORY. 1915 c. 187 s. 1; 1923 c. 333 s. 1; G.S. 1923 s. 4933; M.S. 1927 s. 4933.

1. Generally.
2. Interstate commerce.
3. Simple tools.
4. Negligence.
5. Release.
6. Evidence.
7. Instructions.
8. Questions for jury.
9. Federal Employers Liability Act.
10. Federal Safety Appliance Act.

1. Generally.

It is the duty of the master to take proper precautions to guard against those dangers which ordinary sagacity and foresight ought to anticipate, but does not require him to guard against unforeseeable dangers. Larson v Dul. Missabe & N. Ry. Co. 142 M 366, 172 NW 762.

This section imposes on a steam railway company liability for injury to an employee caused by the negligence of a fellow-servant while acting within the course and within the scope of his employment even though the injury does not result from a "railroad hazard." Larson v Dul. Missabe & N. Ry. Co. 142 M 366, 172 NW 762.

While work was in progress the crew found a revolver in a leather case hidden by some unknown person. Mayer, the foreman, attempted to break it open, and discharged it, wounding plaintiff, another employee. Mayer was not engaged in furthering the defendant's business and defendant is not liable. Larson v Dul. Missabe & N. Ry. Co. 142 M 366, 172 NW 762.

Plaintiff while engaged in the line of her employment, was injured as she was getting into an elevator in client's office building through the negligence of the elevator operator who was her fellow-servant. This act applies to employees in her situation. Seamer v G. N. Ry. Co. 142 M 376, 172 NW 765.

A private steam railroad not engaged as a common carrier remains within the act and liable to injured employees precisely as other employers. State ex rel v. District Court, 145 M 181, 176 NW 749.

Enactment by Congress of the Federal Transportation Act of 1920, section 206f, did not have the effect of revising causes of action which had theretofore

become barred by the Minnesota statute of limitations. Fullerton v N. P. Ry. Co. 156 M 20, 194 NW 9.

A railway company employed a bridge crew, furnished a kitchen car, fuel, oil, and assisted in the collection of board bills. The bridge crew hired a cook and paid his wages. The railway company had no right of selection, could not discharge, and in any way supervise or direct the cook. It was held that the cook was not in the employ of the railroad. Edelbrock v M. St. P. & S. Ry. Co., 158 M 25, 196 NW 807.

Although it was the duty of those in charge of the supplies to unload the gasoline, the conductor in charge of the train was not a volunteer intermeddler in attempting to remedy whatever prevented it from properly falling into the intake pipe. Reynolds v G. N. Ry. Co. 159 M 370, 199 NW 108.

Rule relating to exclusive damages. Lemm v G. N. Ry. Co. 159 M 436, 199 NW 20.

This act is constitutional. Lombard v N. P. Ry. Co. 160 M 1, 199 NW 887.

Section 573.02 does not apply to actions under the state railway employers liability act. Lombard v N. P. Ry. Co. 160 M 1, 199 NW 887.

Where a telephone company's motor car and trailer were being operated over a railway company's tracks in charge of a conductor-pilot furnished by the railway, the pilot could not be denied his status and rights under either the federal or state employers' liability act by the contract between the railroad company and the telephone company. Under the facts in this case, he remained an employee of the railroad company. Wegman v G. N. Ry. Co. 189 M 325, 249 NW 422.

Minnesota's wrongful death statutes. 6 MLR 585.

Recovery upon either general statute or railway statute under one complaint. 10 MLR 418.

2. Interstate commerce

The evidence sustains a finding that the plaintiff was employed in interstate commerce at the time of his injury. Elder v R. I. Ry. Co. 163 M 457, 204 NW 557.

Deceased was a switchman in the employ of an interstate railroad. His crew had just picked up and put into the train 20 cars of interstate freight and leaving these cars in charge of a flagman they proceeded to pick up five cars of intrastate freight which they intended to join and move on with the 20 interstate cars. While engaged in picking up the five local cars, the deceased was injured. He was engaged in interstate commerce. Healey v Chi. M. & St. P. Ry Co. 164 M 353, 205 NW 260.

The decedent was a car inspector in defendant's yards. A train was partially made up to go to Iowa. In the process, a defective car was put on the track to be a part of the train and the decedent was repairing it when other cars to make up the train were shunted against the opposite end of the car from that on which he was working. The finding of the jury that decedent was employed in interstate transportation is sustained. Witort v Chi. N. W. Ry. Co. 170 M 482, 212 NW 944.

It was error to direct a verdict for defendant, for the deposition of one of the defendant's employees, introduced by the plaintiff, made it a jury question whether plaintiff's decedent at the time he met death was engaged in interstate commerce. Witort v Chi. & N. W. Ry. Co. 170 M 482, 212 NW 944.

An employee of an interstate railway company is engaged in interstate commerce within the meaning of the federal employee's liability act while lining up a pipe used in transporting sand from a drying room to a storage tank for use upon locomotives engaged in interstate commerce. Phillips v Chi. G. W. Ry. Co. 173 M 169, 216 NW 940.

When is a workman engaged in interstate commerce? 12 MLR 493.

3. Simple tools

A shovel is a simple tool and the defect in this instance was of peculiar character and the employee had equal knowledge thereof with the employer. Actionable negligence did not exist. Mollock v G. N. Ry. Co. 162 M 90, 202 NW 49.

A claw bar which had been flattened by use and having acquired a quarter of an inch too much spread was selected by the foreman and furnished to the plaintiff in the night time for emergency work, and under circumstances which prevented the plaintiff from making a casual inspection of the tool before proceeding to use it. In such a situation the rule of the simple tool case does not apply. Thompson v Chi. G. W. Ry. Co. 164 M 494, 205 NW 439.

A spouthook six or seven feet long, placed on the tender of an engine before it started on its trip for the use of the fireman in pulling the spout from the standpipe in filling the tender with water, is not within the simple tool rule. Jackson v C. & G. W. Ry. Co. 165 M 58, 205 NW 689.

The master owes a duty to his servant to exercise ordinary care and diligence in keeping tools and instrumentalities reasonably safe by inspection and repairs; but there is an exception to the rule in the case of simple tools and instrumentalities. The heavy hammer known as a "spike maul" does not come within the simple tool exception to the general rule. Natalino v St. Paul Bridge & Term. Co. 190 M 118, 251 NW 9.

4. Negligence

While it is the duty of a railroad company to have instrumentalities reasonably safe for the performance of the functions for which they are designed, an injury arising out of the improper use of instrumentalities does not justify the inference of negligence. Hahn v Chi. M. & St. P. Ry. Co. 157 M 354, 196 NW 257.

Reasonable care in the management of trains which must make time between stations does not require the engineer to check the speed of the train when he sees section men at work on or near the track. If he gives the usual signals to warn them of the approaching train, he may act on the assumption that they can hear and see and will heed the signals. Greisch v M. St. P. & S. Ry. Co. 160 M 83, 199 NW 517.

A tool slipped off a moving section car and derailed it, resulting in the death of a member of the crew. A little attention on the part of a fellow-servant would have kept the tool in place and prevented the accident. These facts sustain the jury's conclusion of negligence. Jambor v G. N. Ry. Co. 161 M 195, 201 NW 321.

Whether the engineer's act in running the train when the fireman was replacing the light bulb in the locomotive headlight was negligence, in view of the position to be occupied in doing the work, was for the jury. The defense of the assumption of risk was a jury question and the jury could find that the foreman undertook the work at the engineer's request, and that he did not go outside the scope of his duties. Larsen v G. N. Ry. Co. 162 M 419, 203 NW 57.

The evidence sustains the verdict as to negligence for which the defendants were responsible; it does not appear as a matter of law that plaintiff assumed the risk; nor does the evidence show that plaintiff's negligence was the sole cause of his injuries. Kline v Byram, 172 M 284, 214 NW 890.

After the two front wheels of a locomotive were derailed, the train continued 2,872 feet before the complete derailment of the engine, fatal to plaintiff's decedent. There was evidence that other engineers in similar circumstances knew at once of the derailment of the two wheels and that an emergency stop would have prevented the final and complete derailment, and there was reasonable basis for the jury's finding that the engineer was negligent in failing to stop. Lindberg v G. N. Ry. Co. 185 M 331, 241 NW 49.

The plaintiff, a freight trucker, was injured while loading iron pipe from a freight house into a freight car. The injury resulted from the negligence of a co-employee who was helping him. The finding of the jury in favor of the plaintiff is sustained. Stritzke v Chi. G. W. Ry. Co. 190 M 323, 251 NW 532.

Plaintiff, an experienced acetyline torch operator, engaged in cutting discarded car sills into sections preparatory to junking, assumed the risk of injury by the parting of one of the sills due to a crack therein. The plaintiff knew the sill was being junked because of its defective condition and on no one more than himself was it the duty to inspect for and guard against the danger. Leonard v N. P. Ry. Co. 195 M 484, 263 NW 436.

A pile of hardened snow sloping from the depot tending to cause an employee who fell thereon to be thrown in the wheels of moving cars, may be held by a

jury to constitute negligence. McDermott v Mpls. Northfield & S. Ry. Co. 204 M 215, 283 NW 116.

A railroad company owes its employees the continuing duty to use reasonable care in furnishing them a safe place to work regardless of the infrequency of the use of such place, and this duty increases with the risk; so that, negligence in failing to provide a railroad bridge carpenter with a safe place to work was held for the jury, where wooden trestle bridge was constructed without guard rails or solid floors, and the workman was not provided with safety devices. Bimberg v Northern Pacific, 217 M 188, 14 NW(2d) 410.

In an action for injury by railroad employee, evidence of statement concerning cause of accident by conductor and trainmaster who were required to inquire and ascertain cause of the accident, is admissible as evidence by declaration of their principal. Chi. St. P. M. & O. Ry. v Kulp, 102 F(2d).

Violation of statute or ordinance as negligence or evidence of negligence. 19 MLR 666.

5. Release

A release of damages for injuries sustained in an accident may be set aside on the grounds of actual mistake where it clearly appears that a substantial injury not discovered until after the settlement had in fact been ascertained in the accident and existed at the time of the settlement; but such a release cannot be set aside on the ground that known injuries resulted in consequences not known and not expected when it was made. Richardson v Chi. M. & St. P. Ry. Co. 157 M 474, 196 NW 643.

An opinion expressed by a physician sent by defendant to examine the plaintiff before settlement was made as to the length of time required for recovery, and statements made by defendant's claim agent to the effect that defendant would take care of plaintiff and that he, the agent, would make it good for plaintiff, are not sufficient grounds for setting aside the release under the circumstances disclosed under the evidence. Fornaro v Mpls. St. Ry. Co. 182 M 262, 234 NW 300.

After an oral agreement as to the terms of settlement, presentation of a written release for signature is a representation that it is in effect the same as the oral agreement. If in obtaining the signature of an illiterate employee to a release, the employer undertakes to explain it to him, the employer must do so fully so that the employee understands it. Marino v N. P. Ry. Co. 199 M 369, 272 NW 267.

6. Evidence

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

Under local conditions the state of the weather and other present circumstances, a verdict for the plaintiff is justified by the evidence. Parker v Chi. G. W. Ry. Co. 157 M 184, 195 NW 892.

The evidence sustains a verdict for the plaintiff for damages for the death of her intestate, a car inspector and repairman, in the defendant's yards, upon the theory that a switching crew disregarding a blue flag, the customary warning which should be placed upon the track upon which he was working, pushed a car over him. Swanson v Chi. M. & St. P. Ry. Co. 158 M 171, 197 NW 275.

An examination of the record discloses no evidence on the part of the defendant. The rule of res ipsa loquitor does not apply. Guttman v G. N. Ry. Co. 158 M 199, 197 NW 215.

No actionable negligence was proven against the railroad on account of the location of its tracks, or the clearance between its track and the tracks of other defendants, or in any other respect. The risk was fully known and appreciated by him, and hence was assumed. McCann v M. & St. L. Ry. Co. 159 M 70, 198 NW 300.

The evidence sustains a finding of the jury that the death of plaintiff's intestate was caused by a bent airline negligently permitted by the defendant along a track in its yards. Coogan v Chi. M. & St. P. Ry. Co. 160 M 411, 200 NW 477.

The competency of an expert witness is addressed to the sound discretion of the trial court and is admissible when subject matter of inquiry lies outside the range of common knowledge. Noe v G. N. Ry. Co. 168 M 259, 209 NW 905.

Causal connection between negligence and an accident may be established by circumstantial evidence. Such evidence must be something more than consistent with plaintiff's theory. The causal connection must be fairly and reasonably inferable from the facts and circumstances actually disclosed by the evidence; it cannot be left to conjecture. Nealis v Chi. R. I. & Pac. Ry. Co. 173 M 587, 218 NW 125.

The evidence was insufficient to show that the engineer was negligent in operating his engine or in failing to stop, and no liabilities of defendants for the action resulting in the death of plaintiff's intestate is shown. Meisenhelder v Byram, 182 M 615, 233 NW 849, 236 NW 195.

The evidence does not support a finding of negligence on the part of plaintiff's fellow-servant who was unloading a pile of ties with plaintiff on defendant's right of way. Nadeau v Mpls. St. P. & S. Ry. Co. 182 M 111, 233 NW 808.

Even though the crossing was governed by automobile signals, the engineer first brings his train within the contact area may not blindly follow the "proceed" signal if he discovers another train in such situation that he realizes a collision must occur unless he stops short of the crossing. His first duty is to protect his train. The rules of the Milwaukee were properly admitted and required no higher duty than the law imposes. O'Connor v Chi. M. & St. P. Ry. Co. 190 M 277, 251 NW 674.

The rules of the company and the testimony of the foreman showed that it was the primary duty of such foreman to inspect the tracks and watch for obstructions. If the foreman had looked, he could have seen the obstruction in time to avoid the accident. The motor car was operating at an unsafe speed. Thom v N. P. Ry. Co. 190 M 622, 252 NW 660.

In an action under the federal employers liability act there must be substantial evidence of employer's, or his servants', negligence. Noeson v M. St. P. & S. Ry. Co. 204 M 233, 283 NW 246.

The signal maintainer traveling after dark on a gasoline speeder was killed by defendant's locomotive. In an action under the federal employers liability act there was evidence to support a finding that there was a violation of the boiler inspection act with respect to proper maintenance of the headlight. Chi. G. W. Ry. Co. v Rambo, 298 US 99, 692; 56 SC 693, 945.

In support of an allegation in an amendment allowed by the court, the plaintiff put in testimony of an exemption existing on the defendant road nine years previously. This was too remote in point of time to establish the existence of such an exemption at the time the plaintiff was injured, and was prejudicial to the defendant, and a new trial must be granted. Ross v Dul. Missabe & I. R. Ry. Co. 203 M 312, 281 NW 76, 271.

7. Instructions

Under the evidence the court correctly charged the jury that plaintiff's decedent, a night watchman, was employed in "interstate commerce" at the time of his death. Fitzgerald v G. N. Ry. Co. 157 M 412, 196 NW 657.

Under the evidence defendant was entitled to have the jury instructed that if plaintiff's intestate went between the cars to lift the pin in a defective coupler, contrary to the express command of the foreman, he was guilty of contributory negligence, and his wilful disobedience was the sole proximate cause of his death. Schendel v Chi. M. & St. P. Ry. Co. 158 M 378, 197 NW 744.

To instruct a jury in an action for wrongful death that "there is a presumption of law that the decedent was in the exercise of due care" is not proper. Bimberg v Northern Pacific, 217 M 188, 14 NW(2d)410.

8. Questions for jury

Where only one engine is moving in a railroad yard, the rules for determining negligence toward a member of the engine crew are substantially the same as they would be in any other locality. An issue of fact is raised. Thayer v Hines, 145 M 240, 176 NW 752.

Plaintiff working in defendant's gravel pit used the track, with the permission of the defendant, going two miles from his home to his work. He was struck by an engine. No warning was given. The question of the defendant's negligence was for the jury. Sinderson v Payne, 151 M 142, 186 NW 237.

Whether the defendant was negligent in banking snow near one of its tracks, allowing it to remain there without a sufficient clearance for an employee on the side of the train, on attempting to board it, was for the jury. Fitzgerald v G. N. Ry. Co. 157 M 412, 196 NW 657.

The disputed facts in this case present a jury question on defendant's negligence and on the assumption of the risk of plaintiff's intestate. Genova v St. P. Bridge & Term. Ry. Co. 189 M 555, 250 NW 190.

A charge stating a fact in the alternative leaves it to the jury to ascertain the fact. Marino v N. P. Ry. Co. 199 M 369, 272 NW 267.

9. Federal Employers Liability Act

Plaintiff's decedent, a night watchman, was employed in interstate commerce and was endeavoring to board an interstate train at the time of his injury. His duties were in the way of protection of interstate freight, which gives him a right of action under the federal employers liability act. Fitzgerald v G. N. Ry. Co. 157 M 412, 196 NW 657.

The purpose of the federal employers liability act to compensate the beneficiary for a recovery for the death of an employee for pecuniary damages actually sustained, controls not only the amount of the recovery but also a distribution where there is more than one beneficiary. Inasmuch as all of the three minor children could have expected support of their father, had he lived until they attained their majorities, the residue of the fund remaining for distribution, outside of the widow's share, should be distributed upon the basis of the several periods during which they might have expected such support. Lepper v Chi. B. & Q. Ry. Co. 176 M 130, 222 NW 643.

Upon this appeal it is unimportant whether plaintiff was engaged in interstate or intrastate commerce when injured, for the state and federal employers liability acts are substantially alike. Thompson v Byram, 179 M 67, 228 NW 546.

The plaintiff applied for employment in 1921 and was not rejected, and entered the company's service and continued at work until his injury in 1928. The finding of the arbitrators that he acquired the status of an employee under the federal employers liability act is sustained by the evidence. There is no causal connection between plaintiff's misrepresentation of his age and the injury which he sustained. Borum v Mpls. St. P. & S. Ry. Co. 184 M 126, 238 NW 4.

The cause of action under the federal employers liability act is transitory; and the probate court has jurisdiction to appoint a special administrator to bring suit in Minnesota even though the next of kin reside in another state and the injury and death of the employee occurred there. Peterson v Chi. B. & Q. Ry. Co. 187 M 228, 244 NW 823.

It cannot be held as a matter of law that defendant's section foreman was not guilty of negligence in driving gasoline motor car over a bolted frog in the slot of which had been placed a rail anchor iron by a trespasser. Thom v N. P. Ry. Co. 190 M 622, 252 NW 660.

Plaintiff was the operator of a track car and foreman of a mowing crew which, together with a conductor-pilot, occupied the track car when it collided with an automobile at a highway crossing. Under the rules of the company and the federal employers liability act, plaintiff was not guilty of primary negligence. Westover v Chi. M. & St. P. Ry. Co. 197 M 194, 236 NW 741; 267 NW 427.

Decision of the problem of sufficiency of evidence to show proximate cause will be the same whether the case arises under the federal or state liability act. McDermott v Mpls. Northfield & S. Ry. Co. 204 M 215, 283 NW 116.

Recovery for benefit of remoter beneficiary when immediate beneficiary dies before commencement of action. 9 MLR 71.

Apportionment of damages. 7 MLR 415.

10. Federal Safety Appliance Act

In a case based upon the federal safety appliance act, it is not necessary to prove negligence. A disregard of the statutes is a wrongful act and where it results in damage to one of the class for whose benefit the statute was intended, the right to recover damages from the party in default is implied. Contributory negligence is seldom a defense. Schendel v Chi. G. W. Ry. Co. 159 M 166, 198 NW 450, 199 NW 111.

The federal safety appliance act applies to sill steps on cars but it does not apply to an ordinary platform step on a passenger car. Whether an appliance, within the act, complies with the act is a question for the jury; but the question whether the appliance is within the purview of the act is purely judicial. Hill v Mpls. St. P. & S. Ry. 160 M 484, 200 NW 485.

A car coupler in which there are no mechanical defects and which operates properly both before and after an accident, cannot be found to be defective merely because a brakeman while riding on the moving car in a switching operation failed to lift the coupler pin by pressing on the pinlifter with his foot. Meisenhelder v Byram, 182 M 615, 233 NW 849, 236 NW 195.

Under the federal Boiler Inspection Act, the interstate commerce commission is given extensive jurisdiction to specify and describe the sort of equipment to be used on locomotives and to make rules and regulations by which fitness for service shall be determined. A decision and order of the interstate commerce commission is construed as standardizing a side cab curtain known as the "Wisconsin" curtain. Mahutga v M. St. P. & S. Ry. Co. 182 M 362, 234 NW 474.

The physical facts in evidence demonstrate the falsity of the opinions and conclusions by expert witnesses upon which plaintiff's case depended and the record justified the trial court in directing a verdict for defendant. Larsen v N. P. Ry. Co. 185 M 313, 241 NW 312.

The sufficiency of the evidence to establish negligence in actions under the federal employers liability act, is a federal question. Bimberg v Northern Pacific, 217 M 187, 14 NW(2d) 410.

219.78 COMMON CARRIERS; LIABILITY FOR PERSONAL INJURY.

HISTORY. 1915 c. 187 s. 2; 1923 c. 333 s. 2; G.S. 1923 s. 4934; M.S. 1927 s. 4934.

A brakeman on the freight train hauling interstate commerce whose run was from Oshkosh to Milwaukee and return, having a number of hours off duty in Milwaukee and using a caboose on his train as an abode during that time, was injured. Held: not employed in interstate commerce at the time of the injury. Smith v C. M. & St. P. Ry. Co. 157 M 60, 195 NW 534.

This act is constitutional. Lombard v N. P. Ry. Co. 160 M 1, 199 NW 887.

Right of recovery under federal employers liability act. Kokolos v C. G. W. Ry. Co. 167 M 502, 210 NW 62.

The doctrine of res ipsa loquitor applies to the master and servant relation under the state railway liability act. Ryan v St. P. Union Depot Co. 168 M 287, 210 NW 32.

There was no claim in the pleadings or at the trial that the plaintiff was engaged in interstate commerce. There was no reference to the federal act. In developing the case there was evidence to show that the plaintiff was so engaged, but as the court was not asked to declare that the plaintiff was so engaged or submit the question to the jury for a finding, there is no error on the part of the trial court in giving a charge embodying the res ipsa loquitor rule. Ryan v St. Paul Union Depot Co. 168 M 287, 210 NW 32.

Plaintiff, a section foreman, operating a motor car for use in his work, was injured by derailment of his car. To sustain a recovery in an action for negligence, the evidence must furnish a reasonable basis for concluding that it is more probable that the accident resulted from the negligence of the defendant than from

other causes. In this case the facts make it seem probable that the accident resulted from a cause other than the negligence of the defendant. Robertson v R. I. Ry. Co. 177 M 303, 225 NW 160.

Where an employee brings action for personal injury based upon the violation of the employer of a statute requiring him to provide and maintain safety appliances, assumption of risk is not a defense when the violation of the statute is a proximate cause of the injury. Suess v Arrowhead Co. 180 M 21, 230 NW 125.

Plaintiff was working under a freight car which was being dismantled, with his right leg extending back of him on the ground beyond the side of the car. A man working with him, on top of the car, dropped a heavy board on plaintiff's leg, causing injury. A slight bruise is alleged to have developed later into a serious injury. Whether the ailments and disability from which the plaintiff was suffering at the time of the trial were caused by the original physical injury complained of, was a question of fact for the jury, and the evidence is reasonably sufficient to sustain the jury's findings. Christmann v G. N. Ry. Co. 181 M 97, 231 NW 710.

The state railway employers liability act adopts the comparative negligence doctrine. A railroad is not entitled to a verdict unless the negligence of the plaintiff is the sole proximate cause of his injury. Stritzke v C. G. W. Ry. Co. 190 M 323, 251 NW 532.

Negligence rules in Minnesota; affirmative defenses. 19 MLR 684.

219.79 CONTRIBUTORY NEGLIGENCE NOT TO BAR.

HISTORY. 1915 c. 187 s. 3; G.S. 1923 s. 4935; M.S. 1927 s. 4935.

The plaintiff was within the railway employers liability act which adopts the comparative negligence doctrine; and if the defendant was negligent, the plaintiff could recover though negligent himself, his damages being reduced in accordance with the comparative negligence rule. Sinderson v Payne, 151 M 142, 186 NW 237.

The defenses of contributory negligence and assumption of risk are separate and distinct. The first involves the notion of carelessness while the second does not. The facts may make a case where both defenses are available. Assumption of risk may be a defense although there was no contractual relation between the parties. The nature of the act, rather than the actor's relation to the defendant, is the proper test for determining whether one defense or the other is proper. Westcott v Chi. G. W. Ry. Co. 157 M 325, 196 NW 272.

In a case based upon the federal safety appliance act, it is not necessary to prove negligence. A disregard of the statute is a wrongful act, and where it results in damage to one of the class for whose benefit the statute was intended, the right to recover the damages from the party in default is implied. Contributory negligence is not a defense. Schendel v Chi. G. W. Ry. Co. 159 M 166, 198 NW 450, 199 NW 111.

If the engineer gives the usual signals to warn working section hands of the approach of the train, he may act upon the assumption that they will heed the signals and get off the track. Negligence cannot be predicated upon the circumstances in this case, and the issue with respect thereto should not have been submitted to the jury. Greisch v M. St. P. & S. Ry. Co. 160 M 83, 199 NW 517.

In an action under the federal employers liability act, the evidence sustains the verdict, and the question of plaintiff's contributory negligence was fairly submitted to the jury and the jury findings are justified by the evidence. Kokolas v Chi. G. W. Ry. Co. 167 M 502, 210 NW 62.

On the record presented, the jury was justified in finding that plaintiff was injured by the negligence of the fellow-servant, for which negligence the defendant is liable under the provisions of this section. Christmann v G. N. Ry. Co. 181 M 97, 231 NW 710.

The state railway employers liability act adopts the comparative negligence doctrine. A railroad is not entitled to a verdict unless the evidence of the plaintiff is the sole proximate cause of his injury and in this case the evidence did not require the finding that it was. Stritzke v Chi. G. W. Ry. Co. 190 M 323, 251 NW 532.

Defendant wholly failed to sustain the burden of proving contributory negligence. Kogin v Ide, 196 M 493, 265 NW 315.

Stopping a vehicle in the intersection after exercising the right to proceed without giving proper signal of intention to stop, is negligence as to other vehicles; and unless the motor vehicle is equipped with a signalling device, it is negligence for a motorist to fail to warn following drivers by a proper signal of intention to stop. Christensen v Hennepin Transport, 215 M 394, 10 NW(2d) 406.

Where the foreman shouted to the switchman to jump, which the switchman did, into a four-foot ditch, resulting in injuries, such action by the switchman did not constitute contributory negligence. The court properly directed a verdict for the switchman leaving it to the jury to determine the amount. James v Chicago, St. P. Ry. 218 M 333, 16 NW(2d) 189.

Contributory negligence no defense where statute expressly provides for liability for injuries resulting from its breach. 27 MLR 539.

Damages; affirmative defense. 19 MLR 684.

219.80 ASSUMPTION OF RISK NO DEFENSE.

HISTORY. 1915 c. 187 s. 4; G.S. 1923 s. 4936; M.S. 1927 s. 4936; 1935 c. 69 s. 1; M. Supp s. 4936.

Whether the plaintiff assumed the risk incident to the use of the scaffold was a question for the jury. He had a right to assume that defendant would see that the scaffold was kept safe. Dushaw v G. N. Ry. Co. 157 M 171, 195 NW 893.

Contributory negligence involves the notion of carelessness, while the assumption of risk does not. The facts may make a case where both defenses are available. The nature of the act, rather than the actor's relation to the defendant, is the proper test for determining whether one defense or another is appropriate. Westcott v C. G. W. Ry. Co. 157 M 325, 196 NW 272.

The plaintiff's intestate did not as a matter of law assume the risk resulting from the presence of a snowbank, nor was he as a matter of law contributorily negligent. Fitzgerald v G. N. Ry. Co. 157 M 412, 196 NW 657.

Plaintiff's decedent, an employee of the Great Northern, in transmitting signals took a position between the rails of a spur track in the Minneapolis & St. Louis' switch yards paralleling the Great Northern's lead, and was run down and killed. The risk which caused decedent's death was fully known and apprehended by him and hence was assumed, and neither road is liable. McCann v M. & St. L. Ry. Co. 159 M 70, 198 NW 300.

Negligence in any particular on the part of defendant's engineer cannot be predicated upon his failure to check speed. The issue with respect to defendant's negligence should not have been submitted to the jury. Greisch v M. St. P. & S. Ry. Co. 160 M 83, 199 NW 517.

The evidence sustains a finding of the jury that the death of plaintiff's decedent was caused by a bent air line negligently permitted by the defendant on the track in its yards. Decedent did not as a matter of law assume the risks. Coogan v C. M. & St. P. Ry. Co. 160 M 411, 200 NW 477.

Where the fireman at the engineer's request while the train was running, attempted to replace a light bulb in a locomotive headlight, the defense of the assumption of risk was a jury question. Larsen v G. N. Ry. Co. 162 M 419, 203 NW 57.

A spouthook furnished by the railroad and placed on the tender intended for the use of the fireman in pulling the spout from the standpipe in filling the tank with water, is not within the simple tool or appliance rule so as to relieve the railroad from liability for an injury caused by a defect discernible on inspection. The evidence does not require a finding that the plaintiff assumed the risk. Jackson v C. G. W. Ry. Co. 165 M 58, 205 NW 689.

Amendment to federal employers liability act abolishing assumption of risk. 25 MLR 254.

The evidence sustains the verdict as to negligence for which the defendants were responsible, and it does not appear as a matter of law that plaintiff assumed

the risk of the negligent acts of his fellow-employees. Kline v Byram, 172 M 284, 214 NW 890.

The railroad company is not liable where plaintiff failed to protect himself from the switching crew by use of the required blue flag. Witort v Chi. N. W. Ry. Co. 178 M 261, 226 NW 934.

A section hand who cranked and started the engine of a railroad motor car, attempted to board it from the front and in so doing placed his foot so that it caught in the flywheel. Assumption of risk appears as a matter of law. Rosinka v Dul. & I. R. Ry. Co. 181 M 20, 231 NW 404.

Where a car repairer working on the ground was injured from the throwing of a heavy object from the top of the car by his fellow-employees, the question of assumption of risk is for the jury. Christmann v G. N. Ry. Co. 181 M 97, 231 NW 710.

Where a lamplighter and messenger in the employ of the defendant was run over and killed by defendant's train while performing his duties, but while walking along defendant's tracks assumed the risk, was for the jury. Genova v St. Paul Bridge & Term. Ry. Co. 189 M 555, 250 NW 190.

Where plaintiff assisted in loading iron pipe on a freight car, assumed the risk of an unusual and unexpected act by a co-employee, is for the jury. Stritzke v Chi. G. W. Ry. Co. 190 M 323, 251 NW 532.

Where a trespasser placed an anchor iron in the slot of a bolted frog, the question as to whether or not the defendant's foreman was guilty of negligence in driving defendant's motor car over the frog, is for the jury. Thom v N. P. Ry. Co. 190 M 622, 252 NW 660.

Many decisions have been based on the common law rule that a servant assumes the ordinary risks of his work or those usual to his employment. Every vestige of that rule was obliterated by the 1939 amendment to the federal employers liability act. Bimberg v Northern Pacific, 217 M 193, 14 NW(2d) 410.

In an action under the federal employers liability act, refusing to instruct on assumption of risk was not error, since the 1939 amendment abolished the doctrine of assumption of risk in actions under the act. Chicago, Gt. Western v Peller, 140 F(2d) 865.

Injury occurs in obedience to direct order after protest. 23 MLR 234.

219.81 CONTRARY CONTRACTS DECLARED VOID.

HISTORY. 1915 c. 187 s. 5; G.S. 1923 s. 4937; M.S. 1927 s. 4937.

Where telephone company's motor car and trailer were being operated over a railroad company's tracks in charge of the railway company's conductor-pilot, the pilot could not be denied his status and rights under either federal or state employers liability acts by any contract between the railroad company and the telephone company. He remains in the employ of the railroad company. Wegman v G. N. Ry. Co. 189 M 325, 249 NW 422.

The contract based upon the payment of money between an injured employee of an interstate railroad and the road by which the plaintiff agrees to sue only in the state where the injury occurred, was valid in the absence of concealment or fraud. Detwiler v Lowden, 198 M 185, 269 NW 367, 838.

219.815 EMPLOYER.

HISTORY. 1915 c. 187 s. 6; G.S. 1923 s. 4938; M.S. 1927 s. 4938.

Section 573.02, limiting the amount recoverable in actions for injuries covering death, does not apply to actions under Laws 1915, Chapter 187, known as state railway employers liability act. The railway employers act is constitutional. Lombard v N. P. Ry. Co. 160 M 1, 199 NW 887.

219.82 SURVIVAL OF RIGHT OF ACTION.

HISTORY. 1915 c. 187 s. 7; 1923 c. 333 s. 3; G.S. 1923 s. 4939; M.S. 1927 s. 4939.

Jurisdiction of the state and federal courts of the cause of action arising under the federal employers liability act is concurrent. Removability of a case when commenced is determined by the allegations of the complaint. Kowalski v C. & N. W. Ry. Co. 159 M 388, 199 NW 178.

Under the federal employers liability act the personal representative may recover where the deceased employee leaves no wife nor child but leaves a parent who dies after the death of plaintiff's decedent and before action was brought, and a dependent sister who is next of kin. The recovery in such case would be for the benefit of the dependent sister. Wells-Dickey Co. v C. B. & Q. Ry. Co. 159 M 417, 199 NW 101.

A complaint against two defendants alleging that their negligence caused an injury to plaintiff is bad as against a demurrer for misjoinder of causes, where it appears on the face of the pleading that the acts of negligence were separate torts not concurrent in point of time and effect. McGannon v C. & G. W. Ry. Co. 160 M 143, 199 NW 894.

Except for the standard relations act, the evidence shows no negligence in the maintenance of a semaphore in defendant's yards. Breen v Hines, 162 M 271, 202 NW 726.

Dependency is determined from the facts and circumstances of each particular case. It may exist, although there was no actual necessitous want on the part of the alleged dependent, if he or she received support from one who furnished it voluntarily and who might reasonably be expected to continue to do so; as where a sister of the decedent employee was dependent upon him although she was of age, free from physical or mental disability and capable of earning her own livelihood, it being made to appear that at her brother's request she had given up an independent occupation to manage his household. Wells-Dickey Co. v C. B. & Q. Ry. Co. 166 M 79, 207 NW 186.

The complaint stated two causes of action: The first, on account of the death of plaintiff's decedent by negligence of defendant; and the second, for the constant pain and suffering endured by the plaintiff after the injury until released by death. The decedent left a widow and two sons. One of the sons, an adult, would have no interest in the first cause of action but might be interested in the second cause. The jury was not required to determine separately the damages in each cause of action. Consequently, an error in the reception of evidence as to one cause of action will require a new trial. Noesen v M. St. P. & S. Ry. Co. 204 M 233, 283 NW 246.

219.83 LIMITATION.

HISTORY. 1915 c. 187 s. 8; G.S. 1923 s. 4940; M.S. 1927 s. 4940.

1. **Generally**
2. **Application**
3. **Liability**
4. **New roads**
5. **Contributory negligence**

1. Generally

While ordinarily the work of constructing and repairing switches and tracks does not involve such peculiar hazards as to bring about an application of railroad employees safety act, yet a rule has grown up as a "rule of haste" under which it is held that if the employee is engaged in altering or repairing a track and by reason of the work done in great haste, such haste is an essential element in causing the accident, it can be fairly said that the employment involves an element of hazard peculiar to the railroad business, and the statute applies. Jalos v Oliver Iron Mining Co. 121 M 473, 141 NW 843.

The engineer in a switching yard where men are constantly working owes a duty to keep a lookout for them. His duty is that of reasonable care. The evidence is such that a jury might well find that the engineer did not exercise such care. Kludzinski v G. N. Ry. Co. 130 M 223, 153 NW 529.

The two years statute of limitations described by Laws 1915, Chapter 187, applies to all actions to recover damages for injuries received while in the employ of a railway company. Hurr v C. M. & St. P. Ry. Co. 154 M 182, 191 NW 607; Patroe v Davis, 154 M 344, 191 NW 596.

Laws 1915, Chapter 187, is a constitutional act. Lombard v N. P. Ry. Co. 160 M 1, 199 NW 887.

More than two years after the death of plaintiff's intestate, plaintiff amended its complaint. Defendant demurred to the amended pleading, claiming that the amendment was really a new cause of action and barred by the two-year limitation. Demurrer was properly overruled. Edelbrock v M. St. P. & S. Ry. Co. 166 M 1, 206 NW 945.

2. Application

Laws 1887, Chapter 13, making railroad companies liable to an employee for injuries caused by the negligence of a co-employee, applies only to those employees engaged in operating the roads and so exposed to the peculiar dangers attending that business. La Vallee v St. P. M. & Man. Ry. Co. 40 M 249, 41 NW 974; Johnson v St. P. & Dul. Ry. Co. 43 M 222, 45 NW 156; Kline v Minn. Iron Co. 93 M 63, 100 NW 681.

The statute relating to the responsibility of railway companies to their servants for the negligence of fellow-servants, is applicable to the negligence of a locomotive engineer in operating his engine resulting in injury to a section hand at work on the road. Smith v St. P. & Dul. Ry. Co. 44 M 17, 46 NW 149.

A section hand whose duties required the use of a handcar, and is injured from the negligence of a fellow-servant in operating it, may recover. Steffenson v C. M. & St. P. Ry. Co. 45 M 355, 47 NW 1068; Steffenson v C. M. & St. P. Ry. Co. 51 M 531, 53 NW 800; Hider v M. St. P. & S. Ry. Co. 115 M 325, 132 NW 316; Vaneff v G. N. Ry. Co. 120 M 18, 138 NW 1027.

A crew of sectionmen, of which plaintiff was one, was engaged in loading railroad iron from the ground upon a flatcar when some of the crew negligently let one end of the iron rails fall upon plaintiff's arm. This was not an injury resulting from danger peculiar to the operation of the road and does not come within the statute. Pearson v C. M. & St. P. Ry. Co. 47 M 9, 49 NW 302; Mitchell v N. P. Ry. Co. 70 Fed. 15.

Evidence showing the running of a freight train at excessive speed was held to justify the conclusion that it was negligence and the proximate cause of a collision of a handcar running over the road in advance of the train. The foreman of the handcar was negligent in not having stopped and taking the car off the track. Sectionmen riding on the car under the direction of the foreman might not be deemed negligent. Slette v G. N. Ry. Co. 53 M 341, 55 NW 137.

Plaintiff was a wiper in its roundhouse and was called by the foreman to assist in stringing wire cable and was injured by the negligence of a fellow-servant. The company under these circumstances would be liable, the jury having found that the fellow-servant was negligent. Nichols v C. M. & St. P. Ry. Co. 60 M 319, 62 NW 386; Mickelson v Truesdale, 63 M 137, 65 NW 260.

When a stock train arrives, plaintiff's duty was to step from a high platform upon the top of the cars as they drew up opposite the platform to pull bundles of hay from the platform upon the top of the cars. The conductor negligently ordered him to step from the platform while the train was going at too great a rate of speed to enable him to do so with safety. The company in this case was liable. Lier v Minn. Belt Line Co. 63 M 203, 65 NW 269.

Plaintiff was a sectionman repairing defendant's track. The work had to be done with extraordinary haste to avoid approaching trains. A fellow-servant dropped an iron rail, injuring plaintiff. Plaintiff was held to be employed in "railroad business" and the defendant was held to be liable. Blomquist v G. N. Ry. Co. 65 M 69, 67 NW 804.

Plaintiff was employed by defendant for seven years, and on the day of the accident was repairing a car in the repair shed. This work exposed him to no element of hazard or condition of danger peculiar to the operation of railroads and

the railway liability statute has no application. Holtz v G. N. Ry. Co. 69 M 524, 72 NW 805.

An employee injured while engaged in the operation of a steam shovel cannot bring his cause of action within the provisions of the railway liability act. Birmingham v Dul. Missabe & N. Ry. Co. 70 M 474, 73 NW 409; Weisel v Eastern Ry. Co. 79 M 245, 82 NW 576.

Whether the negligence of a fellow-servant, in this case the release of a track jack used in repairing defendant's roadbed, is within the rule relating to peculiar hazards, is for the jury. Anderson v G. N. Ry. Co. 74 M 432, 77 NW 240; Kreuzer v G. N. Ry. Co. 83 M 385, 86 NW 413.

Where a servant is injured being caught by a bolt which remains in a timber in the work of tearing away a portion of a bridge, he assumes the danger of the negligence of his fellow-servants as well as the apparent and probable risks of the service in which he is engaged. O'Neil v G. N. Ry. Co. 80 M 27, 82 NW 1086.

Plaintiff was injured while in defendant's employ as a sectionhand through the carelessness of his fellow-servants, also sectionmen, in removing a handcar from the railway track to make way for an approaching train. Defendant may be held liable. Lindgren v M. & St. L. Ry. Co. 86 M 152, 90 NW 381; N. P. v Behling, 57 Fed. 1037.

The work of removing merchandise from wrecked cars may embrace elements of danger peculiar to railroading when performed in haste under the direction of a foreman and under unusual circumstances, such as working at night and over hours. Hanson v N. P. Ry. Co. 108 M 94, 121 NW 607.

Plaintiff's intestate was killed while unloading rocks from a flatcar, the cars being spotted at an unloading place along the Cloquet river and detached from an engine. The employee was not engaged in an employment exposed to railroad hazards, and the fellow-servant liability act of Minnesota "rule of haste" does not apply. Nylund v Dul. & N. E. Ry. Co. 123 M 249, 143 NW 739.

The evidence in this case is insufficient to sustain a verdict in plaintiff's favor where it was merely conjectural whether the accident was due to a movement of the engine which would have involved liability on defendant's part, or from the settling of the poles which would not. Lewis v C. G. W. Ry. Co. 124 M 487, 145 NW 392.

The foreman of a switching crew, under the circumstances in this case, was bound to anticipate deceased's presence on the spur in the performance of his duties, so that it was negligence for him to cut loose other cars and allow them to run down grade without warnings, lights or attendants. Boos v M. St. P. & S. Ry. Co. 127 M 381, 149 NW 660.

The plaintiff, a sectionhand, was injured by a trespassing horse being struck by an engine and thrown against him. It is a question for the jury whether it was negligence on the part of the trainmen not to give warning, or slacken speed, and the finding in favor of the plaintiff was sustained. Kommerstad v G. N. Ry. Co. 128 M 505, 151 NW 177.

The character of the employment is the test for liability in construing Laws 1915, Chapter 187. Seamer v G. N. Ry. Co. 142 M 376, 172 NW 765.

A railway company is not liable for an injury sustained by an adult servant by over-exertion in lifting a heavy article; and the "rule of haste" as related to hazards incident to the operation of a railroad does not apply where the work consists in handling mail bags during the stop made by a train at a station. Jirmasek v Payne, 151 M 421, 186 NW 819.

The railroad liability act applies to quasi public corporation having franchises from the state and operating railroads open to public travel or use. It does not apply to a logging road built and operated for private purposes and not as a common carrier. Williams v Northern Ry. Co. 113 Fed. 382.

Where a railway company and a brewing company entered into a contract by which the brewing company owned the real estate, the railroad company the tracks, ties and rails, and the engineer and fireman were selected by the railway company and paid by the brewing company, this would be a joint enterprise. Both

defendants would be jointly liable. Schoen v C. M. & M. Ry. Co. 112 M 38, 127 NW 433.

3. Liability

The word "railroad" as used in Laws 1887, Chapter 13, does not include street railways. Funk v St. P. St. Ry. Co. 61 M 435, 63 NW 1099; Lundquist v Dul. Street Ry. Co. 65 M 387, 67 NW 1006.

The statute relating to hazards in the railroad business and the fellow-servant act, applies to private logging railways. Schus v Powers, 85 M 447, 89 NW 68; Kline v Minn. Iron Co. 93 M 63, 100 NW 681; 199 US 593, 26 SC 159; Tay v Willmar & S. Falls Ry. Co. 100 M 131, 110 NW 433.

A railroad company is liable to its servants for the negligence of employees of a union depot company whose duty it is to operate the switches and direct the movements of the trains out of the depot yards, thus for the occasion becoming the servants of the railroad company. Floody v G. N. Ry. Co. 102 M 81, 112 NW 875, 1081.

A switchman who is required to ride on his engine while assisting in pulling the train out of the depot yards is entitled to recover for injuries received by the negligence of the depot company's servants in operating a switch. Floody v G. N. Ry. Co. 102 M 81, 112 NW 875, 1081.

The by-laws of the defendant fraternal insurance order provided that persons engaged as a railway brakeman or switchman should not be eligible does not apply to the mining brakeman in an open pit mine in the operation of stripping cars. Cook v Mod. Brotherhood, 114 M 299, 131 NW 334.

The supreme court of Minnesota has held that the fellow-servant law of that state applies to mining corporation using a short line of railroad to haul its ore; and the federal courts follow the construction of the constitution and statutes of the state given by its highest tribunal in cases that involve any question of general or commercial law and in questions of right under the federal constitution or laws. Kibbe v Stevenson, 136 Fed. 147; Mahoning v Blomfelt, 163 Fed. 827.

4. New Roads

Defendant had operated its line of railroad from Chicago to St. Paul about six months. Plaintiff was injured by the negligence of a co-employee while operating an engine hauling cars on a temporary track for the purpose of filling in low land in defendant's St. Paul yards. The court sustained the findings of the trial court holding that this case was within the proviso of Laws 1887, Chapter 13, Section 1, exempting a new road not open to travel or use, from liability. Schneider v Chi. B. & N. Ry. Co. 42 M 68, 43 NW 783.

Defendant operates a line composed of the lines or tracks of several companies, and plaintiff was injured on a construction train while improving a yard with tracks in it to be used in connection with and as a part of defendant's operating line. This does not come within the exception relating to new roads, and the defendant in this case may be held liable. Moran v Eastern Ry. Co. 48 M 46, 50 NW 930.

The exception exempts only incomplete railroads and does not apply to an accident on a narrow gauge track on which dump cars were run by a mining company in stripping its mine. Minn. I. Co. v Kline, 199 US 593, 26 SC 159.

5. Contributory negligence

The statute of 1887 subjecting railroad companies to liabilities to their servants for the negligence of their fellow-servant does not change the rule as to the burden of proof of contributory negligence. Lorimer v St. P. St. Ry. Co. 48 M 391, 51 NW 125.

Where a brewing company and a railway company under contract jointly operate side tracks and switches, the maintenance and operation of such yard is the operation of a railroad, and the contributory negligence and fellow-servant rules do not apply. Schoen v C. St. P. M. & O. Ry. Co. 112 M 38, 127 NW 433.

The defendant backed a train at excessive speed and without observing the practice of having a lookout at the front of the forward car and ringing the bell, and because thereof plaintiff was injured. On this record, the defense of contributory negligence was for the jury. Hagen v C. R. I. & Pac. Ry. Co. 123 M 109, 143 NW 121.

219.84 DEPOTS AND WAITING ROOMS.

HISTORY. 1885 c. 190 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 61a; 1891 c. 105 s. 1; G.S. 1894 s. 2702; 1897 c. 94 s. 1; 1901 c. 270 s. 1; R.L. 1905 s. 2028; 1907 c. 54 s. 1; G.S. 1913 s. 4390; G.S. 1923 s. 4886; M.S. 1927 s. 4886; 1943 c. 520 s. 1.

Judgment of the district court in mandamus proceedings compelling defendant to erect a depot in the incorporated village of Emmons is affirmed by a divided court, one member being disqualified. State ex rel v M. & St. L. Ry. Co. 87 M 195, 91 NW 465.

The supreme court of the United States held that when the highest court of a state affirms a judgment it constitutes an affirmation of the finding of the trial court, which then like the verdict of a jury, is conclusive as to the facts upon this court. M. & St. L. Ry. Co. v State, 193 US 52, 24 SC 396.

Under the police power, a railroad company may be compelled to depress its tracks where they traverse populous municipalities; and in determining the necessity for such depression, the convenience and welfare of the general public is to be considered as well as its safety. Twin City Sep. Co. v C. M. & St. P. Ry. Co. 118 M 491, 137 NW 193.

The right of private enterprises to railroad side track facilities whether based upon contract, prescription, or estoppel against the railroad company, is subject to a city's police power to order a separation of railroad and street grades where public necessity so requires. Twin City Sep. Co. v. C. M. & St. P. Ry. Co. 118 M. 491, 137 NW 193.

A railroad company carrying passengers is obliged to reasonably heat its stations in winter for the accommodation of passengers, but it owes such duty only to pasengers. The privileges of a passenger hold for a reasonable time before train time, but not during the whole night before an early morning train. Barnett v M. & St. L. Ry. Co. 123 M 153, 143 NW 263.

The commission has power to determine whether a depot is suitable for the purpose and, if not, to require the construction of a suitable depot. The court may review such order only so far as to determine whether it is reasonable. State v G. N. Ry. Co. 135 M 19, 159 NW 1089.

The ordinance of the city of St. James establishing fire limits provided that no wooden building could be raised, repaired or enlarged therein. The commission ordered the defendant to erect a new depot at St. James. Defendant offered to alter and improve the old wooden structure erected within the fire limits. Both the ordinance and the order of the commission are valid and enforceable. In complying with the commission's order it must be in conformity with the said ordinance. Commercial Club v C. St. P. M. & O. Ry. Co. 142 M 169, 171 NW 312.

The court sustains the order of the commission requiring a railway company to enlarge its depot, construct a platform and to provide agent service in the village of Hines, Minnesota, a village of 200 inhabitants where the traffic amounts to $8,000 or more. Hines v Minn. & Int'l Ry. 151 M 402, 186 NW 797.

The alleged defect in a step in a temporary stairway in a depot examined and held to be so slight and so free from possibility of tripping that no charge of negligence could be based thereon. McDonald v St. P. Union Depot Co. 157 M 66, 195 NW 538.

Whether a common carrier has discharged its duty to a passenger to properly light at night the approaches to its depot is a mixed question of law and fact, the ultimate decision of which is for the jury. Bixby v Mpls. N. & S. Ry. Co. 204 M 316, 283 NW 493.

A passenger is not guilty of contributory negligence as a matter of law by reason of the fact that she was familiar with the path over which she walked in the darkness after alighting from defendant's train. Bixby v Mpls. N. & S. Ry. Co. 204 M 316, 283 NW 493.

219.85 CERTAIN DEPOTS TO BE KEPT OPEN.

HISTORY. 1885 c. 190 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 61a; 1891 c. 105 s. 1; G.S. 1894 s. 2702; 1897 c. 94 s. 1; 1901 c. 270 s. 1; 1903 c. 390; R.L. 1905 s. 2029; G.S. 1913 s. 4391; G.S. 1923 s. 4887; M.S. 1927 s. 4887.

An order of the commission requiring a railway company to provide a small station building and custodian service at a flag station is presumed to be valid until it be shown affirmatively that such order is unlawful and unreasonable. In this case the court sustained the order. State ex rel v G. N. Ry. Co. 123 M 463, 144 NW 155; Hines v M. & Int'l Ry. Co. 151 M 402, 186 NW 797.

The findings of fact for the commission are prima facie correct and its order made thereon is prima facie reasonable; the burden of proving otherwise is on the appellant. This section does not violate the constitutional guarantee of the 14th Amendment to the Federal Constitution. Abrahamson v Can. N. Ry. Co. 177 M 136, 225 NW 94.

A station or freight house having been established either voluntarily or by order of the commission, may not be abandoned except by order of the commission after a hearing. Minn. Trans. Ry. Co. v R. R. Whse. Comm. 200 M 422, 274 NW 408.

The order of the commission denying railroad leave to substitute "custodian" for part time agency service is held unreasonable where the annual gross revenue had decreased to less than $5,000. State v Thomson, 210 M 147, 297 NW 715.

219.86 COMMISSION TO ORDER STATIONS LIGHTED.

HISTORY. 1921 c. 244 s. 1; G.S. 1923 s. 4889; M.S. 1927 s. 4889.

219.87 TOILET ROOMS AT STATIONS.

HISTORY. 1905 c. 208 s. 1; 1913 c. 495 s. 1; G.S. 1913 s. 4393; G.S. 1923 s. 4892; M.S. 1927 s. 4892.

219.88 STATIONS; NAME OF CITY OR VILLAGE; EXCEPTIONS.

HISTORY. 1905 c. 252 ss. 1, 2; G.S. 1913 s. 4396, 4397; G.S. 1923 ss. 4895, 4896; M.S. 1927 ss. 4895, 4896.

219.89 TRAINS TO STOP AT STATIONS.

HISTORY. 1858 c. 70 s. 20; P.S. 1858 c. 17 s. 262; G.S. 1866 c. 34 s. 34; G.S. 1878 c. 34 s. 61; 1885 c. 190 s. 1; 1891 c. 69 s. 1; 1891 c. 105 s. 1; 1893 c. 60 s. 1; G.S. 1894 ss. 2705, 2706; 1897 c. 94 s. 1; 1901 c. 270 s. 1; R.L. 1905 s. 2031; G.S. 1913 s. 4399; G.S. 1923 s. 4898; M.S. 1927 s. 4898.

Laws 1893, Chapter 60, requiring railroad companies to stop all regular passenger trains at county-seats is not unconstitutional even though the train is carrying United States mail, either as being an unreasonable regulation or as interfering with interstate commerce. State v Gladson, 57 M 385, 91 NW 465; Affirmed, 193 US 53, 24 SC 396.

While engaged as news agent on defendant's train, plaintiff was injured in collision caused because the defendant did not stop its train before arriving at a railroad crossing as was required by statute. A contract between the defendant and plaintiff exempting the railroad from liability for injuries caused by its negligence is void as against public policy respecting negligence consisting of the violation of a statute. Starr v G. N. Ry. Co. 67 M 18, 69 NW 632.

When the train was entering Mankato after dark, the brakeman came through the car in which plaintiff and his three year old child were passengers, called "Mankato" twice, then opened the door and fastened it open, opened the vestibule door, and came into the car and called "Mankato" again. The train slowed down and stopped. When the car stopped, this passenger started to get off and when he reached the second step the train started and the child fell off and was injured. The question whether the father was negligent was not material. His negligence is not imputable to the child. If he was negligent, his negligence was concurrent

with that of the defendant and does not bar a recovery by the child. Fox v C. St. P. M. & O. Ry. Co. 121 M 511, 141 NW 845.

One entering a railway train for the purpose of assisting an outgoing passenger is neither passenger nor a trespasser. The extent of the company's duty is to exercise ordinary care not to injure him while in the car or attempting to alight, which does not include any duty to hold the train to enable him to alight safely. Such person is within the protection of the statute requiring passenger trains to be stopped "a sufficient time, not less than one minute, to safely receive and discharge passengers." Whether the defendant violated its duty and whether plaintiff was guilty of contributory negligence, was for the jury. Street v C. M. & St. P. Ry. Co. 124 M 517, 145 NW 746; Doran v C. St. P. M. & O. Ry. Co. 128 M 193, 150 NW 800.

It is a question for the jury whether the defendant was negligent in failing to stop its train at a station a sufficient length of time and whether plaintiff was guilty of contributory negligence in attempting to alight while the train was moving. Street v C. M. & St. P. Ry. Co. 130 M 246, 153 NW 518; Van House v Can. N. Ry. Co. 155 M 57, 192 NW 493.

The evidence made it a jury question whether or not plaintiff alighted at the invitation of the conductor and whether giving such direction was actionable negligence. The defense of contributory negligence was also for the jury. Fullerton v C. G. W. Ry. Co. 159 M 475, 199 NW 93; Leonczak v M. St. P. & S. Ry. Co. 161 M 304, 201 NW 551.

219.90 TIME OF ARRIVAL OF PASSENGER TRAINS; BULLETIN.

HISTORY. 1905 c. 287 s. 1; G.S. 1913 s. 4400; G.S. 1923 s. 4899; M.S. 1927 s. 4899.

219.91 TELEGRAPH OR TELEPHONE OPERATOR AT DEPOT.

HISTORY. 1909 c. 173 s. 1; G.S. 1913 s. 4402; G.S. 1923 s. 4901; M.S. 1927 s. 4901.

219.92 NEW ROADS; NOTICE TO COMMISSION; FILING OF MAPS AND PROFILES.

HISTORY. 1887 c. 11 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 11 s. 129b; G.S. 1894 s. 1670; R.L. 1905 s. 2032; 1907 c. 260; 1913 c. 126 s. 1; G.S. 1913 s. 4404; G.S. 1923 s. 4903; M.S. 1927 s. 4903.

219.93 STOPPING TRAINS AT CROSSINGS.

HISTORY. G.S. 1866 c. 34 s. 34; G.S. 1878 c. 34 s. 61; 1885 c. 85 s. 1; 1891 c. 69 s. 1; G.S. 1894 s. 2706; R.L. 1905 s. 2033; G.S. 1913 s. 4406; G.S. 1923 s. 4905; M.S. 1927 s. 4905.

A news agent on defendant's train could recover for defendant's negligence in failing to stop at a railroad crossing even though he had signed a contract exempting the employer from liability. Starr v G. N. Ry. Co. 67 M 18, 69 NW 632.

It is a question of fact for the jury whether the defendant was guilty of negligence in announcing the station and opening the car doors, and then immediately stopping the train at a railway crossing without warning the passengers in some practical way that the first stop would be at the crossing. The question of plaintiff's contributory negligence is also one for the jury. Larson v M. & St. L. Ry. Co. 85 M 387; 88 NW 994; Farell v G. N. Ry. Co. 100 M 361, 111 NW 388.

The commission was within its powers in ordering a defendant to stop its trains before passing a junction not adequately equipped with an interlocking device. R. R. & Whse. Comm. v G. N. Ry. Co. 124 M 533, 144 NW 771.

This section imposed no duty upon the railway employees to stop their trains before reaching connections of their own tracks with double tracks and connections with such tracks with side-tracks which are all parts of one line of railroad, directed by the same management, or controlled by the same operator. Such connections are not "junctions" within the meaning of this section. C. & G. W. Ry. Co. v M. St. P. & S. Ry. Co. 176 Fed. 237.

219.94 TRANSFER OF PASSENGERS.

HISTORY. 1872 c. 24 s. 1; G.S. 1878 c. 34 s. 62; G.S. 1894 s. 2707; R.L. 1905 s. 2034; G.S. 1913 s. 4407; G.S. 1923 s. 4906; M.S. 1927 s. 4906.

The Omaha Railroad maintained a depot including a ticket and passenger station near the business center of the village of Butterfield. Another railway company constructed another railroad intersecting the Omaha a short distance outside the village limits, and the two companies installed and maintained a joint depot and passenger station at the junction, and the Omaha discontinued the old depot for passenger business. The court sustained the order of the commission requiring maintenance of a ticket and passenger station at the old depot and stoppage there of local trains, but held that it was unreasonable also to require such trains to stop at the junction station on flag. Brogger v C. St. P. M. & O. Ry. Co. 127 M 388, 163 NW 662.

219.95 TOILET ROOMS IN CARS.

HISTORY. 1899 c. 314; R.L. 1905 s. 2035; G.S. 1913 s. 4408; G.S. 1923 s. 4907; M.S. 1927 s. 4907.

219.96 FIRE EXTINGUISHERS AND TOOLS.

HISTORY. 1887 c. 18 ss. 2, 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 ss. 77w, 77x; G.S. 1894 ss. 402, 403; R.L. 1905 s. 2036; G.S. 1913 s. 4409; G.S. 1923 s. 4910; M.S. 1927 s. 4910; 1941 c. 390.

219.97 FORFEITURES; VIOLATIONS; PENALTIES.

HISTORY. 1858 c. 70 s. 20; P.S. 1858 c. 17 s. 262; G.S. 1866 c. 34 s. 34; 1872 c. 24 s. 1; G.S. 1878 c. 34 ss. 61, 62; 1885 c. 85 s. 1; 1885 c. 190 s. 2; 1887 c. 16 ss. 1 to 3; 1887 c. 18 ss. 2, 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 6 ss. 77w, 77x; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 ss. 60a, 60c, 61b; 1891 c. 69 s. 1; G.S. 1894 ss. 402, 403, 2681, 2683, 2703, 2706, 2707; 1899 c. 314 s. 1; 1901 c. 270; 1905 c. 209 s. 2; 1905 c. 252 s. 3; 1905 c. 287 s. 2; R.L. 1905 ss. 1993, 2030, 2033, 2034, 2036; 1907 c. 276 s. 3; 1909 c. 377 s. 2; 1909 c. 382 s. 2; 1913 c. 93 s. 2; 1913 c. 126 s. 2; G.S. 1913 ss. 4253, 4254, 4270, 4388, 4392, 4394, 4398, 4401, 4405, 4406, 4407, 4409, 4422; 1919 c. 335 s. 3; 1921 c. 244 s. 2; G.S. 1923 ss. 4726, 4731, 4732, 4751, 4880, 4888, 4890, 4893, 4897, 4900, 4904, 4905, 4906, 4910, 4925; 1925 c. 336 s. 17; M.S. 1927 ss. 4726, 4731, 4732, 4743-17, 4751, 4880, 4888, 4890, 4893, 4897, 4900, 4904, 4905, 4906, 4910, 4925; 1941 c. 338; 1941 c. 390.

See annotations under sections 219.93 and 219.94.

The jury is sustained in finding that the defendant was negligent in not seeing that a frog was sufficiently blocked and guarded as required by Laws 1887, Chapter 16. Bohan v St. P. & Dul. Ry. Co. 49 M 488, 52 NW 133.

The statute requiring railway companies to block frogs was designed for the protection of those rightfully on the premises and does not protect trespassers. Akers v C. St. P. M. & O. Ry. Co. 58 M 540, 60 NW 669.

The statute "it shall be the duty of all persons controlling the movement of vehicles to bring such vehicles to a full stop and to ascertain whether trains are approaching such crossings" is denounced by this section as a misdemeanor in a case of violation. This is construed to apply only to the results of the act as a violation of the statute and as meaning that such result is not to be taken as per se constituting contributory negligence. Luce v G. N. Ry. Co. 203 M 470, 281 NW 812; Krause v C. St. P. M. & O. Ry. Co. 207 M 175, 290 NW 294.