CHAPTER 219

COMMON CARRIERS; REGULATIONS AND LIABILITIES

219.07 WIDTH OF CROSSINGS AND GRADES; IN MUNICIPALITIES.

Plaintiff, 18 years old, whose leg was run over by a fast-moving train when he stumbled and fell as he was running on a highway to catch a ride on the train, was guilty of contributory negligence as a matter of law. Snelson v Webster, 219 M 262, 17 NW(2d) 511.

219.24 ADDITIONAL SAFEGUARDS.

A village should not by ordinance require a railroad to install automatic warning devices at crossings. That duty devolves upon the railroad and warehouse commission. In case of a hazardous and dangerous blind crossing the village should proceed before the commission. OAG June 27, 1947 (369-m).

219.32 FAILURE TO FENCE; LIABILITY.

1. **Generally**
2. **Animals killed or injured**
3. **Added or plural costs**

2. Animals killed or injured

Where stray cattle are killed by reason of wandering upon the unfenced railroad track, the fact that the fence was removed at the request of the state highway department and with consent of the railroad and warehouse commission does not relieve the road from liability. OAG Feb. 15, 1946 (844-A-16).

219.383 SAFE OPERATION OF TRAINS OVER STREETS AND HIGHWAYS.

The train crew may properly assume that the driver of a vehicle approaching railroad crossing will exercise care and stop, and they need not themselves stop or reduce speed of train until it becomes apparent to them that the driver will not stop. Ohrmann v Chgo. & N. W. 223 M 580, 27 NW(2d) 806.

Sections 160.34, 219.383, and 616.01 are in pari materia and should be construed together; and there can be no violation of section 160.34 and section 616.01 by stopping a train across a public highway unless the stop exceeds ten minutes, in violation of section 219.383; and where the ten minutes is exceeded all three statutes are violated. Mlenek v Fleming, 224 M —, 27 NW(2d) 800.

219.53 CONTRIBUTORY NEGLIGENCE.

The train crew may properly assume that the driver of a vehicle approaching railroad crossing will exercise care and stop, and they need not themselves stop or reduce speed of train until it becomes apparent to them that the driver will not stop. Ohrmann v Chgo. & N.W. 223 M 580, 27 NW(2d) 806.

Where a motorist, driving at night, approaches a railroad crossing with which he is familiar, at a rate of speed which does not permit him to stop within the distance illuminated by his lights and collides with a freight train standing on the crossing, he is guilty of contributory negligence as a matter of law where on his own testimony he admits he could not stop his car within the distance illuminated by his lights. Mlenek v Fleming, 224 M —, 27 NW(2d) 801.

219.681 REMOVAL OF RAILROAD TRACKS MUST BE APPROVED BY COMMISSION.

The legislature clearly intended to repeal sections 219.68 and 219.74 of Minnesota Statutes 1941, and to supersede them by L. 1945, c. 21. A repealing provision which provides that section 645.35 shall not apply to the 1945 act, makes such general saving clause statute inoperative as to said act. State v Chgo. Gt. Western, 222 M 504, 25 NW(2d) 295.

219.741 APPLICATION FOR REMOVAL.

The legislature clearly intended to repeal sections 219.68 and 219.74 of Minnesota Statutes 1941, and to supersede them by L. 1945, c. 21. A repealing provision which provides that section 645.35 shall not apply to the 1945 act, makes such general saving clause statute inoperative as to said act. State v Chgo. Gt. Western, 222 M 504, 25 NW(2d) 295.

219.77 LIABILITY OF CORPORATIONS FOR INJURY OR DEATH TO EMPLOYEES.

In an action for personal injuries under the federal employers liability act, by a brakeman employed at the time of injury in interstate commerce switching operations, question whether railroad's employees were negligent was one of fact for the jury where, in violation of railroad's rules requiring a train to be stopped on signal from the brakeman given either to the engineer or fireman, the engineer did not stop with the consequence that the brakeman, was carried to a point beyond the switch, and because of insufficient clearance was injured. Jacobson v Chgo. & North Western Ry. Co. 221 M 454, 22 NW(2d) 455.

219.78 COMMON CARRIERS; LIABILITY FOR PERSONAL INJURY.

See, Jacobson v Chgo. & North Western Ry. Co. 221 M 454, 22 NW(2d) 455, under section 219.77.

Absence of conflict was not conclusive. The court must determine whether there was substantial evidence upon which the verdict could properly be based; and the reviewing court is required to assume as established all facts supporting plaintiff's claims which reasonably tended to prove his case. C.N.W. v Grauel, 160 F(2d) 820.

Action against foreign carrier for cause arising outside the state as burden upon interstate commerce. 13 MLR 485, 503.

219.79 CONTRIBUTORY NEGLIGENCE NOT TO BAR.

On evidence in the instant case, the jury was justified in finding that all the defendants were guilty of negligence, that such negligence proximately caused plaintiff's injury, and that plaintiff was free from contributory negligence. Murphy v Dyson, 223 M 19, 25 NW(2d) 291.

The train crew may properly assume that the driver of a vehicle approaching railroad crossing will exercise care and stop, and they need not themselves stop or reduce speed of train until it becomes apparent to them that the driver will not stop. Ohrmann v Chgo. & N.W. 223 M 580, 27 NW(2d) 806.

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Doctrine of last clear chance. 8 MLR 329.

Loss distribution by comparative negligence. 21 MLR 1.

Causal relation required; apportionment where plaintiff's negligence contributes a part only of the damage. 22 MLR 410.

Last clear chance; "wilful and wanton negligence" doctrine. 24 MLR 81.

Intervening crime and liability for negligence. 24 MLR 635.

Liability of original tort-feasors for injury caused by intervening criminal acts. 24 MLR 666.

The administration of the rule of avoidable consequences as affected by the degree of blameworthiness of the defendant. 27 MLR 483, 538.

Contributory negligence and the landowner cases. 29 MLR 61.

219.80 ASSUMPTION OF RISK NO DEFENSE.

As a phase of contributory negligence in a personal injury action, plaintiff assumes the risk of injury by an intentional and unreasonable exposure of himself to danger created by the defendant's negligence.

Negligence must be predicated on what should be reasonably anticipated and not merely on what happened. Johnson v Evanski, 221 M 323, 22 NW(2d) 213.

Federal employers' liability act; assumption of risk. 15 MLR 327.

Assumption of risk; simple tool doctrine. 18 MLR 435.

Federal employers' liability act amendment abolishing assumption of risk. 25 MLR 253.

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