

CHAPTER 222

GENERAL PROVISIONS RELATING TO RAILWAY COMPANIES AND UTILITIES

222.01 SALE AND LEASE OF AIR RIGHTS AFFECTING PUBLIC SERVICE CORPORATIONS.

Control of public utilities. 16 MLR 457.

222.03 PLAT; PAYMENT; CONVEYANCE; RESERVATION OF MINERALS; NEW RIGHT OF WAY.

See, annotations under section 222.02.

222.04 SELECTION OF SWAMP LANDS.

Cases relating to selection and grant of swamp lands: *Nash v Sullivan*, 29 M 206, 12 NW 698; *St. Paul & Chgo. Ry. v McDonald*, 34 M 195, 25 NW 453; *Mpls. Co. v Duluth Co.* 45 M 104, 47 NW 464; *White Townsite Co. v Neils*, 100 M 16, 110 NW 371.

222.06 PURCHASE, LEASE, OR CONTROL OF ONE ROAD BY ANOTHER.

A vendee is charged with notice of encumbrances, liens, and equities affecting his title, which appear in any instrument in his chain of title, and its vendor cannot convey to it any better title than the vendor has; and a railroad taking conveyance with notice of reservation of trackage rights in prior recorded deed to its grantor is bound thereby. *Byram v Chgo. St. Paul, and Omaha*, 21 F(2d) 388.

A general power given a railroad by its charter, to consolidate with, purchase, lease, or acquire the stock of other roads, may, while it remains unexecuted, be limited by the legislature, without impairing any vested right, to cases where the other roads are not parallel or competing. *Pearsall v Gt. Northern*, 16 SC 705, 161 US 646.

A state may not, by a suit in its own name, invoke the original jurisdiction of a federal circuit court to restrain and prevent violations by competing interstate railway companies, of the federal anti-trust act, because, alone, of the alleged remote and indirect injury to its proprietary interests arising from the absence of free competition in trade and commerce as carried on by such carriers within its limits. *Minnesota v Northern Securities Co.* 24 SC 598, 194 US 48.

A charter exemption from taxation which has ceased and become void for failure to construct a railroad within the time limited by the charter cannot be revived by a subsequent statute enacted when the state constitution has been amended and prohibits the granting of special privileges with respect to taxation. *Chgo. Gt. Western v Minnesota*, 30 SC 353, 216 US 234.

222.08 CONSOLIDATION FORBIDDEN.

A holding company was formed for the purpose of acquiring control of the Great Northern and Northern Pacific Railways, and the State of Minnesota brought a bill in equity in the federal court in opposition to the proposed plan. A decree was included dismissing the bill. *State v Northern Securities Co.* 123 F. 692, 161 US 646.

See, *United States v Crescent Amusement Co.* 323 US 173, Art. 191; 65 SC 263, and cases therein cited.

222.10 RIGHTS AND DUTIES OF CONSOLIDATED CORPORATION.

Where a domestic and a foreign corporation consolidate under revisions of L. 1881, c. 94, the resulting unit is a domestic corporation. *St. Paul Ry. v Minnesota Co.* 36 M 85, 30 NW 432.

After-acquired property under conflicting corporate mortgage indentures. 13 MLR 81.

222.11 METHOD OF COMBINATION.

The state having created railway corporations for public purposes, the legislature may enact statutes to increase their capital stock and may enact generally as to the terms, conditions, and limitations under which the issue may be made and confer upon the commission the duty of supervising, within the provisions of the statute, such proposed increase. *State v Great Northern*, 100 M 445, 110 NW 289.

222.13 BONDS; FUNDING INDEBTEDNESS.

In the instant case, one holding claim upon which a tort action has been commenced against a receiver of a railway company is not entitled to share ahead of the mortgage lien holders in the residue remaining from a sale of the railway property. *Northwestern Trust v St. Paul Southern*, 177 M 584, 225 NW 919.

222.14 MORTGAGES AND DEEDS OF TRUST.

After-acquired property under conflicting corporate mortgage indentures. 13 MLR 81.

222.18 RECORD; NOTICE.

Attorney generals opinion in re-recording of mortgages and deeds of trust. 1944 OAG 296, July 7, 1944 (365-A), but see clarifying and remedial act L. 1945 c. 250.

222.26 RIGHT OF WAY OVER PUBLIC WAYS.

The uncompensated duty rests upon a railroad which intersects a street, which it carries over its tracks by a bridge, to maintain the surface of the bridge in fit condition for public travel and when run out to replace it. This duty is imposed upon the railroad company in the exercise of the police power of the state and is not a tax for public improvement from which the railroad company is exempted by the gross earnings law. *City of St. Paul v Great Northern*, 145 M 355, 177 NW 491.

222.27 POWER TO ACQUIRE PROPERTY.

A railroad company may, when it is no longer needed for its use, release its easements for right of way to the owner of the land; and a deed without reservation to the owner of an estate in the land operates as such release. *Flatén v Moorhead*, 58 M 324, 59 NW 1044.

In determining damages to a farm by the taking of a part thereof by a railway in a condemnation proceeding, it is proper to show the use made of the land so taken by the company. *Gt. Northern v Johannsen*, 142 M 208, 171 NW 775.

The statute relating to the exercise of the right of eminent domain, and not an order of the railroad and warehouse commission made pursuant to L. 1917, c. 287, imposes the duty and is the source of the right of a railroad company to institute a proceeding to condemn land for sidetracks to grain elevators and is the source of the jurisdiction of the court to entertain the proceeding. *Northern Pacific v Pioneer Fuel*, 148 M 214, 181 NW 341.

A condemnation by a railroad company of upland abutting on a navigable water will embrace without mention in the granting description all incidental riparian

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rights appurtenant to the land. Pike Rapids Power Co. v Mpls. St. Paul & Sault, 99 F(2d) 902.

222.28 EXTENSIONS AND BRANCHES.

Where owners of property executed a deed to a railroad company granting the right of way for a branch road, the branch road became a part of the company's road system and subject to general state laws governing railroads. As the grade at which the road should be built was not fixed by the contract, it might be changed as the exigencies of traffic and public necessity might require. A property owner, who subsequent to the building of the road built warehouses on his own property contiguous to the right of way, has no claim for damages on account of the expense necessary to raise the warehouses to conform to a new grade established by the railway company. Liedel v Northern Pacific, 89 M 284, 94 NW 877.

222.31 ALTERATION OF ROUTE.

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

222.34 LAND GRANT RAILROAD COMPANIES.

In 1866 congress granted to the state of Minnesota, in aid of the construction of a railroad therein, certain lands consisting of the odd-numbered sections within ten miles on either side of the center line of the road when definitely located. The state, by Sp. L. 1867, p. 11 (c. 9), accepted the grant, and in turn granted the lands to the railroad company upon certain conditions named in the act. The Hastings & Dakota Railroad Company, the grantee and beneficiary, filed its map of definite location in June, 1867, fully complied with the conditions of the grant, completed its road in 1880, and the land was formally conveyed by the state to plaintiff, the successor of the railroad company, in 1891. Defendant settled upon the land in controversy in this action, the same being a part of that so granted to the railroad company, and within the place limits of its grant, in 1877, and has ever since continuously remained in the open, adverse, and exclusive possession of the same. Subsequent to filing the map of definite location by the Hastings & Dakota Company and the completion of its road, the St. Paul, Minneapolis & Manitoba Railroad Company made claim to this and other lands within the primary limits of the grant to the Hastings & Dakota Company, which claim it presented to the Interior Department of the general government for adjudication, where it was pending and undetermined from 1883 to 1891, when it was disposed of adversely to the Manitoba Company. In this action by plaintiff, successor to all the rights of the Hastings & Dakota Company, to recover possession of the land from defendant, it is held:

1. That the grant to the railroad company was in praesenti, and the legal title to the land in question passed to the Hastings & Dakota Railroad Company upon the filing of its map of definite location in 1867.

2. The statute of limitations began to run in favor of defendant's alleged title by adverse possession at the time of his settlement upon the land, the legal title thereto being then in the railroad company.

3. After the title so passed from the government to the railroad company, the Interior Department had no jurisdiction to hear or determine the asserted claim of the Manitoba Company, and the pendency of that controversy before the department did not suspend the running of the statute of limitations in favor of defendant's adverse claim.

4. When the legal title to public land has passed from the government, the Interior Department has no jurisdiction to determine controversies between individual claimants concerning the title or right to the possession thereof. Sage v Rudnick, 91 M 325, 100 NW 106.

222.37 USE OF PUBLIC ROADS; RESTRICTION.

A telephone company having the right to construct and maintain a line upon the boulevard of a public street must exercise due care not to injure trees growing

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thereon and upon adjacent property. The license conferred upon the company is not exclusive of the rights of others. *St. Paul Realty v Tri-State Tel. Co.* 122 M 424, 142 NW 807.

Those who transmit high-voltage electricity are required to exercise a degree of care to insure against injury commensurate with the danger to be apprehended; but they are not insurers against injury. In the instant case they were not bound to anticipate the action and conduct of the person injured. *Znidarsich v Minn. Utilities*, 155 M 293, 193 NW 449; *Keep v Otter Tail Power*, 201 M 475, 277 NW 213.

Where defendant in operating its business negligently, or at least neglected to sufficiently surround the dangerous instrumentality by ample protection, and where there was evidence of contributory negligence, the alleged defense of contributory negligence on the part of the plaintiff and the negligent protection afforded by the defendant, were jury issues and the evidence supports the verdict. *Ekdahl v Minnesota Utilities*, 203 M 374, 281 NW 517; *Schorr v Minnesota Utilities*, 203 M 384, 281 NW 523.

In this case involving the electrocution of an employee by the defendant's uninsulated electric wire, where recovery is caused by the employee's insurer, as subrogee, for payments made to the employee's dependants under the workmen's compensation act, the questions of negligence, assumption of the risk and the contributory negligence of both the employee and the employer, were for the jury. *Standard Accident v Minnesota Utilities*, 207 M 24, 289 NW 782.

An individual by mere entry upon and use of the public highway of a township with his water supply system obtains no statutory privileges but is limited by the provisions of section 222.37. The system cannot be classified as "water power." A dedicator cannot attach to the dedication any conditions or limitations inconsistent with the legal character of the dedication, or change or question public policy, or which take the property from public control. *Keuhn v Mahtomedi*, 207 M 518, 292 NW 187.

Where defendant Marsolek so negligently drove his car that it left the highway, smashed into a truck and nearby pole carrying the highly charged electric wires of the defendant power company, thereby causing the pole to fall forward and partly upon the highway, so that the wires endangered traffic thereon, the jury properly found that a dangerous traffic situation was presented, requiring, after notice thereof, prompt action on the company's part to take more efficient and prompt means to safeguard the public than that employed by it, and its failure to do so act was a contributing cause of the death of plaintiff's intestate. *Arnold v Northern States Power*, 209 M 551, 297 NW 182.

Where a distributor of electricity places connections between its customer's and its own high-voltage electric wires on a crossarm four feet above the roof of a lean-to shed on which the presence of workmen might reasonably be anticipated, it may be found negligent if one of the connections is partly uninsulated, for failure to insulate the connection or to place it above the danger line of contact. *Schroepfer v City of Sleepy Eye*, 215 M 525, 10 NW(2d) 398.

Where the thing causing the accident is shown to be in the possession and under the control of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management exercise due care, if affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of such care. *Novotny v Bouley*, 223 M 592, 27 NW(2d) 817.

The fact that a telegraph or telephone line when completed will be used as an instrument of interstate commerce gives a company no greater rights respecting right of way than are possessed by a purely local company, and it can use the public streets or highways for its lines only subject to state statutes. *Northwestern Tel. Co. v City of St. Charles*, 154 F. 386.

Where a city without authority granted a telephone franchise for the maintenance and operation of a telephone system along its streets, without advertising for proposals, or competition, as required by its charter, and the grantee of the franchise immediately carried the same into operation by expending money in

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equipping a plant, the city is not by that fact estopped from later questioning the validity of the franchise. *Tri-State v City of Thief River Falls*, 183 F. 854.

Telephone line on public highway must be moved at expense of telephone company when highway is widened and leaving the telephone line in its old location would constitute an obstruction. OAG Aug. 5, 1947 (98-a-12).

222.43 BORROWING MONEY.

After-acquired property under conflicting corporate mortgage indentures. 15 MLR 81.

222.45 RAILROAD FAILING TO USE; POWERS AND DUTIES OF COMMISSION AND ATTORNEY GENERAL.

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