

CHAPTER 222

GENERAL PROVISIONS RELATING TO RAILWAY COMPANIES
AND UTILITIES

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

HISTORY. 1931 c. 300; M. Supp. s. 7501-11.

222.02 RIGHT OF WAY OF RAILROAD CORPORATIONS OVER STATE LANDS.

HISTORY. 1878 c. 73 ss. 1, 2; G.S. 1878 c. 34 ss. 43, 44; 1879 c. 45 ss. 1, 2; Ex. 1881 c. 69 s. 1; 1885 c. 42 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 46b; G.S. 1894 ss. 2670, 2671, 2675; R.L. 1905 s. 2891; G.S. 1913 s. 6213; G.S. 1923 s. 7502; M.S. 1927 s. 7502.

Relating to a railroad's right of way over state school lands and sustaining the right of a purchaser from the state to bring action in damages for trespass. *Lawver v Great Northern*, 97 M 36, 105 NW 1129; *Lawver v Great Northern*, 112 M 46, 127 NW 431.

By proper application to the governor a railroad may acquire on and over state land a right of way for its main track and in addition thereto station grounds including spur and switch tracks reasonably necessary for loading and unloading freight and transacting its business at the station; and may as against third parties rely upon its equitable title even though the patent to the railroad did not properly describe the land. *Reid v Minneapolis & Rainy River*, 179 M 110, 228 NW 548.

Concerning the right of the landlord to bring action for his expenses incurred in condemnation proceedings after abandonment of same. *Barmel v Minneapolis Sanitary District*, 201 M 622, 277 NW 208.

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

HISTORY. 1878 c. 73 s. 3; G.S. 1878 c. 34 s. 45; 1879 c. 45 s. 3; G.S. 1894 s. 2672; R.L. 1905 s. 2892; G.S. 1913 s. 6214; G.S. 1923 s. 7503; M.S. 1927 s. 7503.

See annotations under section 222.02.

State lands are not subject to appropriation in condemnation proceedings except when the right to so acquire them is expressly or by necessary implication granted by the legislature. *Independent School District v State*, 124 M 271, 144 NW 960.

222.04 SELECTION OF SWAMP LANDS.

HISTORY. 1893 c. 62 ss. 1 to 3; G.S. 1894 ss. 2677 to 2679; R.L. 1905 s. 2893; G.S. 1913 s. 6215; G.S. 1923 s. 7504; M.S. 1927 s. 7504.

222.05 SALES OF PUBLIC LAND BY MUNICIPAL CORPORATIONS.

HISTORY. 1866 c. 41 s. 1; G.S. 1878 c. 34 s. 48; G.S. 1894 s. 2680; R.L. 1905 s. 2894; G.S. 1913 s. 6216; G.S. 1923 s. 7505; M.S. 1927 s. 7505.

Where a land has been dedicated to specific, limited, and definite public use, the legislature has no power to destroy the trust or to divert the property to any other purpose inconsistent with the particular use to which it was dedicated. The state holds such property, not in a proprietary, but in a sovereign capacity, in trust for the use to which it was dedicated. *City of St. Paul v C. M. & St. P. Ry. Co.*, 63 M 330, 63 NW 267, 65 NW 649, 68 NW 458.

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

HISTORY. 1874 c. 29 s. 1; G.S. 1878 c. 34 s. 65; 1881 c. 94 ss. 1, 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 ss. 68a, 68c; G.S. 1894 ss. 2714, 2716; 1899 c. 229; R.L. 1905 s. 2895; G.S. 1913 s. 6217; G.S. 1923 s. 7506; M.S. 1927 s. 7506.

By legislative authority the St. Paul, Minneapolis & Manitoba Railway leased its road between St. Paul and Hinckley to the Great Northern Ry Co. Under the same authority the Great Northern Ry. Co. granted to the Eastern Ry. Co. the right to operate over the same road. Held, that a fire occurring, the St. Paul, Minneapolis & Manitoba were free of liability, and the Eastern Ry. Co. and the Great Northern Ry. Co. being concurrently negligible, are liable. *Heron v St. Paul, Minneapolis & Manitoba*, 68 M 542, 71 NW 706.

In a proceeding to enforce personal property taxes against the defendant railway it is held that certain stocks and bonds were owned and used by the defendant company for railway purposes within the meaning of the gross earnings statute, and that other stocks and bonds owned by the defendant, a foreign corporation, were held and kept in its office in New York and had no taxable situs in Minnesota. It was held that no ad valorem tax could be imposed. *State v Northern Pacific*, 139 M 473, 167 NW 294.

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 entered dismissing the bill. *State v Northern Securities*, 123 F 692, 161 US 646.

Trial by jury as a matter of right. 11 MLR 452.

222.07 LIABILITY OF RAILROAD CORPORATION LEASING TO FOREIGN CORPORATION.

HISTORY. 1925 c. 87 s. 1; M.S. 1927 s. 7506-1.

222.08 CONSOLIDATION FORBIDDEN.

HISTORY. 1903 c. 86; R.L. 1905 s. 2896; G.S. 1913 s. 6218; G.S. 1923 s. 7507; M.S. 1927 s. 7507.

222.09 CONSOLIDATION PERMITTED.

HISTORY. 1858 c. 70 ss. 21 to 23; P.S. 1858 c. 17 ss. 263 to 265; G.S. 1866 c. 34 ss. 36 to 38; G.S. 1878 c. 34 ss. 66 to 68; 1881 c. 94 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 68b; 1889 c. 228 s. 1; G.S. 1894 s. 2715; R.L. 1905 s. 2897; G.S. 1913 s. 6219; G.S. 1923 s. 7508; M.S. 1927 s. 7508.

See annotations under section 222.06.

222.10 RIGHTS AND DUTIES OF CONSOLIDATED CORPORATION.

HISTORY. 1858 c. 70 ss. 21 to 23; P.S. 1858 c. 17 ss. 263 to 265; G.S. 1866 c. 34 ss. 36 to 38; G.S. 1878 c. 34 ss. 66 to 68; 1881 c. 94 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 68b; 1889 c. 228 s. 1; G.S. 1894 s. 2715; R.L. 1905 s. 2898; G.S. 1913 s. 6220; G.S. 1923 s. 7509; M.S. 1927 s. 7509.

A corporation formed by consolidation of a domestic and a foreign corporation pursuant to the provision of this section must be deemed a domestic corporation and has powers of eminent domain if the proceedings are in strict accord with the statute. In re proceedings by St. Paul & Northern Pacific, 36 M 85, 30 NW 432; In the Matter of the Petition of the Minneapolis & St. Louis Ry. Co. 36 M 481, 32 NW 556.

After acquired property under conflicting corporate mortgage indentures. 13 MLR 88.

222.11 METHOD OF COMBINATION.

HISTORY. 1858 c. 70 ss. 21 to 23; P.S. 1858 c. 17 ss. 263 to 265; G.S. 1866 c. 34 ss. 36 to 38; G.S. 1878 c. 34 ss. 66 to 68; 1881 c. 94 s. 2; G.S. 1878 Vol. 2 (1888

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Supp.) c. 34 s. 68b; 1889 c. 228 s. 1; G.S. 1894 s. 2715; R.L. 1905 s. 2899; G.S. 1913 s. 6221; G.S. 1923 s. 7510; M.S. 1927 s. 7510.

This is an appeal from an order granting a temporary injunction restraining the defendant from making any increase in its capital stock without the consent of the commission. The terms and conditions upon which corporations may be created, the powers and capital stock they may have, the purposes for which they may increase their capital stock, and the conditions and limitations thereof are exclusively matters for legislative action which cannot be delegated. *State v Great Northern*, 100 M 445, 111 NW 289.

222.12 AID IN CONSTRUCTION OF CONNECTING ROADS.

HISTORY. 1858 c. 70 s. 24; P.S. 1858 c. 17 s. 266; G.S. 1866 c. 34 s. 39; G.S. 1878 c. 34 s. 69; G.S. 1894 s. 2721; R.L. 1905 s. 2900; G.S. 1913 s. 6222; G.S. 1923 s. 7511; M.S. 1927 s. 7511.

A railroad corporation cannot escape the performance of any duty or obligation imposed by charter or the general laws of the state by leasing its road without the consent of the state. The statutes of this state do not consent to the lease by any railroad of the state of its road to an Iowa railroad company. So where a railroad corporation without the consent of the state leased its road to another railroad corporation which entered upon and controlled and managed the road, a former corporation is liable for injuries to persons caused by negligent defects in its track at a highway crossing. *Freeman v Minneapolis & St. Louis*, 28 M 443, 10 NW 594.

The right to hold exempt from taxation lands granted to a railroad corporation in aid of its principal enterprise is a franchise, but ancillary and subordinate; and the right to exercise such franchise and to continue its corporate existence for such purposes only, cannot lawfully survive after a sale of its railroad and the abandonment of its principal business as a railroad corporation. *State ex rel v Minnesota Central*, 36 M 246, 30 NW 816.

Where under legislative authority a railroad leases its property to another railway company and the lessee grants to a third railway company the right to operate a road over the right of way and these transactions were made in accordance with the statutory provisions, in case of an accident the injured person has no right of way against the original railway but does have a concurrent right of recovery from the lessee and the operating roads. *Heron v St. Paul, Minneapolis & St. Louis*, 68 M 542, 71 NW 706.

222.13 BONDS; FUNDING INDEBTEDNESS.

HISTORY. 1858 c. 70 s. 13; P.S. 1858 c. 17 s. 255; 1865 c. 6 s. 22; G.S. 1866 c. 34 s. 40; 1875 c. 14 s. 4; G.S. 1878 c. 34 s. 70; 1893 c. 74 s. 2; G.S. 1894 s. 2722; R.L. 1905 s. 2901; G.S. 1913 s. 6223; G.S. 1923 s. 7512; M.S. 1927 s. 7512.

Petitioner sold to a railroad company a locomotive upon condition that it should be paid for on delivery. It was delivered but was not paid for. The vendor without attempting to repossess the locomotive brought suit. Later receiver was appointed for the railroad company. The delivery in the first instance conditional became absolute when the vendor brought suit and as far as filing the claim in the receivership proceedings, it can only be filed as a general claim. The plaintiff is only a general creditor. *Manchester v Truesdale*, 44 M 115, 46 NW 30.

A prior mortgagee cannot be required against his will, at the instance of a subsequent mortgagee, to foreclose his mortgage. Where the trustee in the junior of a series of mortgages where the mortgage provides that upon default the trustee may take possession, operate the road, and receive its earnings, brings an action to foreclose making the prior mortgagees parties defendant, the senior mortgagees may apply to the court to have the receiver hold and pay to them so much of the net earnings as is necessary to cover their mortgages. *Seibert v Minneapolis & St. Louis*, 52 M 246, 53 NW 1151.

As to mortgagees railroad rolling stock is by statute to be considered a part of the real estate, and mortgagees may have an injunction to restrain a levy on any part of the rolling stock. *Central Transfer Co. v Moran*, 56 M 188, 57 NW 471.

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222.14 MORTGAGES AND DEEDS OF TRUST.

HISTORY. 1868 c. 56 ss. 1, 2; G.S. 1878 c. 34 ss. 71, 72; G.S. 1894 s. 2723; Ex. 1902 c. 22; R.L. 1905 s. 2902; G.S. 1913 s. 6224; G.S. 1923 s. 7513; M.S. 1927 s. 7513.

Where a telephone company borrows money for its corporate purposes secured by a mortgage on its property and franchises and its bonds or notes are issued for the loan so secured bearing six per cent interest, section 222.14 applies. It is not usury in the absence of an intent to evade the usury law, if the notes or bonds are sold at less than their par value, or if the lender discounts the same, resulting in an agreement to produce more than lawful rate of interest. *Clearwater County State Bank v Bagley Telephone Co.* 116 M 4, 133 NW 91.

The holder of a claim upon which a court action has been commenced against a receiver of a railway company is not entitled to share ahead of the mortgage lienholders. *Northwestern Trust v St. Paul Southern*, 177 M 584, 225 NW 919.

After-acquired property under conflicting corporate mortgage indentures. 13 MLR 85.

Disregard of corporate entity to allow pleading of usury. 15 MLR 112.

222.15 ROLLING STOCK; LIEN FOR PURCHASE MONEY.

HISTORY. 1885 c. 210 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 91d; G.S. 1894 s. 2729; R.L. 1905 s. 2903; G.S. 1913 s. 6225; 1921 c. 206 s. 1; G.S. 1923 s. 7514; M.S. 1927 s. 7514.

222.16 LEASE; CONDITIONAL SALE.

HISTORY. 1885 c. 210 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 91e; G.S. 1894 s. 2730; R.L. 1905 s. 2904; G.S. 1913 s. 6226; G.S. 1923 s. 7515; M.S. 1927 s. 7515.

222.17 CONTRACTS; REQUISITES OF VALIDITY.

HISTORY. 1885 c. 210 ss. 3, 5; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 ss. 91f, 91h; G.S. 1894 ss. 2731, 2733; R.L. 1905 s. 2905; G.S. 1913 s. 6227; G.S. 1923 s. 7516; M.S. 1927 s. 7516.

Application of section. OAG July 7, 1944 (365a). See Laws 1945, Chapter 250.

222.18 RECORD; NOTICE.

HISTORY. 1867 c. 58 s. 1; 1868 c. 56 s. 1; G.S. 1878 c. 34 ss. 73, 74; 1883 c. 66 s. 1; G.S. 1894 s. 2725, 2726; R.L. 1905 s. 2906; G.S. 1913 s. 6228; G.S. 1923 s. 7517; M.S. 1927 s. 7517; 1945 c. 250.

In the instant case the recording of a mortgage on railroad property does not place a lien on after-acquired property. *Guaranty Trust Co. v Minneapolis & St. Louis*, 33 F(2d) 512.

222.19 PREFERRED AND SPECIAL STOCK AND INCOME CERTIFICATES.

HISTORY. 1877 c. 143 s. 1; G.S. 1878 c. 34 s. 75; G.S. 1894 s. 2734; R.L. 1905 s. 2907; G.S. 1913 s. 6229; G.S. 1923 s. 7518; M.S. 1927 s. 7518.

This section not applicable to corporations under Minnesota business corporation act. See Section 301.61.

222.20 HOLDERS OF BONDS MAY VOTE FOR DIRECTORS.

HISTORY. 1877 c. 143 s. 2; G.S. 1878 c. 34 s. 76; G.S. 1894 s. 2735; R.L. 1905 s. 2908; G.S. 1913 s. 6230; G.S. 1923 s. 7519; M.S. 1927 s. 7519.

222.21 AGREEMENT AS TO CONTROL OF PROPERTY.

HISTORY. 1877 c. 144 s. 1; G.S. 1878 c. 34 s. 77; G.S. 1894 s. 2736; R.L. 1905 s. 2909; G.S. 1913 s. 6231; G.S. 1923 s. 7520; M.S. 1927 s. 7520.

222.22 SUBSCRIPTION BOOKS; COMMENCEMENT OF WORK.

HISTORY. 1850 c. 70 s. 8; P.S. 1858 c. 17 s. 250; 1865 c. 6 s. 23; G.S. 1866 c. 34 s. 41; G.S. 1878 c. 34 s. 78; G.S. 1894 s. 2737; R.L. 1905 s. 2910; G.S. 1913 s. 6232; G.S. 1923 s. 7521; M.S. 1927 s. 7521.

222.23 UNPAID AND FICTITIOUS STOCK.

HISTORY. 1887 c. 12 ss. 1, 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 ss. 8a, 8d; G.S. 1894 ss. 2743, 2746; R.L. 1905 s. 2911; 1913 c. 384 s. 1; G.S. 1913 s. 6233; G.S. 1923 s. 7522; M.S. 1927 s. 7522.

This section is not applicable to corporations under Minnesota business corporation act. See Section 301.61.

This section does not forbid the issue of first mortgage bonds and full-paid stock by a railroad company in payment of the construction of its road if the amount issued does not unreasonably exceed the value actually received. *Brown v Duluth*, 53 F 889.

This section was enacted for the purpose of protecting stockholders and creditors against fictitious indebtedness or watered stock and gives the state no authority to protect such private rights by a bill in equity in its own name. *State v Guaranty Trust*, 73 F 914.

The terms and conditions upon which corporations may be created, the powers and capital stock they may have, the purposes for which they may increase their capital stock, and the conditions and limitations thereof are exclusively matters for legislative action which cannot be delegated. *State v Great Northern*, 100 M 445, 111 NW 289.

222.24 MAY EXERCISE FRANCHISE ELSEWHERE.

HISTORY. 1875 c. 14 s. 1; G.S. 1878 c. 34 s. 1; 1881 c. 31 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 91b; G.S. 1894 s. 2748; R.L. 1905 s. 2914; G.S. 1913 s. 6234; G.S. 1923 s. 7523; M.S. 1927 s. 7523.

222.25 CONNECTION WITH OTHER ROADS.

HISTORY. 1858 c. 70 s. 11; P.S. 1858 c. 17 s. 253; G.S. 1866 c. 34 s. 29; G.S. 1878 c. 34 s. 47; 1879 c. 35 s. 3; Ex. 1881 c. 10; G.S. 1894 s. 2642; R.L. 1905 s. 2915; G.S. 1913 s. 6235; G.S. 1923 s. 7524; M.S. 1927 s. 7524.

The district court is not confined to the precise location mentioned in the petition but may change or modify it; identity of the purpose of the crossing petitioned for and of that prescribed being sufficient. *State ex rel v District Court*, 35 M 461, 29 NW 60.

At any time after making of said order prescribing the crossing the petitioning corporation shall be entitled without hindrance or obligation of any kind or nature to proceed upon the filing of a bond immediately to make and operate the crossing. *State ex rel v District Court*, 35 M 461, 29 NW 60.

A railway company has no absolute right, at its own mere election, to a crossing over the railroad of another company. When an application is made for the appointment of commissioners to proceed by writ of eminent domain, the court to whom the application is made must first determine whether the crossing sought is necessary and required by public interest. *In re St. Paul & Northern Pacific*, 37 M 164, 33 NW 701.

The place and manner of crossing must cause the least possible injury consistent with the accomplishment of the intended purpose. *In re Minneapolis & St. Croix*, 39 M 162, 39 NW 65.

In granting the petition the court in the public interest may impose such conditions as are reasonable. *Winona & Southwestern v C. M. & St. P. Ry. Co.* 50 M 300, 52 NW 657.

There is no express or implied statutory authority and no public necessity shown to warrant condemning a perpetual easement through Jay Cooke State Park for the construction and maintenance of an electric power carrying line. *Minnesota Power v State*, 177 M 343, 225 NW 164.

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The highway condemnation proceeding is in rem. The commissioner of highways may not use any part of the "highway fund" to pay for private property near, but not part of, the right of way of a trunk highway. *State ex rel v Werder*, 200 M 148, 273 NW 714.

222.26 RIGHT OF WAY OVER PUBLIC WAYS.

HISTORY. 1858 c. 70 s. 11; P.S. 1858 c. 17 s. 253; G.S. 1866 c. 34 s. 29; G.S. 1878 c. 34 s. 47; 1879 c. 35 s. 3; Ex. 1881 c. 10; G.S. 1894 s. 2642; R.L. 1905 s. 2916; G.S. 1913 s. 6236; G.S. 1923 s. 7525; M.S. 1927 s. 7525.

The fact that the railroad company obtained the consent of the City of Mankato to the building of its road through the city does not relieve the railway corporation from liability in damages to abutting property owners. *Harrington v St. Paul & Sioux City*, 17 M 215 (188); *Adams v Hastings & Dakota*, 18 M 260 (236).

The right which a railroad company is authorized to exercise in acquiring a right of way over a highway is to appropriate for the purposes of its railroad the public easement in the highway so far as may be necessary for the purposes of the railroad. The railroad does not obtain the servient estate of the owner of the fee. *Kaiser v St. Paul, Stillwater & Taylors Falls*, 22 M 149.

A municipal corporation is not relieved of the care and responsibility for the condition of one of its streets merely by permitting a railway company to lay out and operate its track upon and along it. *Campbell v City of Stillwater*, 32 M 308, 20 NW 320.

This section does not apply to a purely private railroad. *Gustafson v Hamm*, 56 M 334, 57 NW 1054.

This section is limited to tracks and does not extend to depots, freight houses and similar. *St. Paul v C. M. & St. P.* 63 M 330, 63 NW 267, 65 NW 649, 68 NW 458.

This section does not apply to street railways. *Stillwater v Lowry*, 83 M 275, 86 NW 103.

A railroad company has the right to acquire by condemnation under this section a right of way over streets and alleys of cities and villages and over private property within the municipal limits without securing a franchise from the municipal authorities. *Minneapolis & St. Paul Suburban v Manitou*, 101 M 132, 112 NW 13; *Village of Excelsior v Minneapolis & St. Paul Suburban*, 108 M 407, 120 NW 526, 122 NW 486; *State ex rel v St. Paul, Minneapolis & Manitoba*, 101 M 545, 112 NW 1142; *Duluth Terminal Ry. v City of Duluth*, 113 M 459, 130 NW 18; *State v C. M. & St. P.* 115 M 51, 131 NW 859.

The legislature has power to grant authority to a railroad company to cross public highways and streets; and authority to construct a railroad between designated points implies authority to cross highways and streets which the railroad intersects. The legislature may require that a franchise be obtained from the municipality before a railroad company is permitted to cross its streets; but, in the absence of such requirement, a franchise from the city or its consent is not necessary. *International Falls v Minnesota, Dakota & Western*, 117 M 14, 134 NW 302.

A franchise from the city council of the City of Thief River Falls is a necessary prerequisite to the institution of railroad condemnation proceedings to acquire the right to maintain its track along a public street. Such franchise must be obtained in accordance with the statute and in the manner specified by the city charter. *Larson v Minnesota Electric*, 131 M 183, 154 NW 948.

The operation of a commercial railroad upon a public street imposes an additional servitude which a municipality cannot authorize; and one injured in his private rights by such use, as is the owner of the fee of the street, is entitled to relief against such use. The village plat in this instance dedicated a street to the public for street purposes only and expressly declared that upon the vacation of the street the title should be in the platter. *Drake v Chicago, Rock Island & Pacific*, 136 M 366, 162 NW 453.

Where pursuant to statutory authority a municipal corporation and an electric traction company have agreed upon the terms by which the street can be crossed by the electric railway and the use of steam as a motive power is

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prohibited by such contract, a purchaser of the electric traction company's lines takes its subject to such prohibition. The facts as outlined in this case do not, however, limit the power of the purchasing company if it has such power to acquire by condemnation the right to use the street crossings for a steam railway. This case distinguished from *International Falls v Minnesota, Dakota & Western*, 117 M 14, 134 NW 302. *Village of St. Louis Park v Minneapolis, Northfield & Southern*, 156 M 164, 194 NW 327.

222.27 POWER TO ACQUIRE PROPERTY.

HISTORY. 1879 c. 80 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 39f; G.S. 1894 s. 2645; R.L. 1905 s. 2917; 1913 c. 502 s. 1; G.S. 1913 s. 6237; G.S. 1923 s. 7526; M.S. 1927 s. 7526.

A railway company has no absolute right at its own mere election to a crossing over the railroad of another company. The court to whom the application for the appointment of commissioners is made is first to determine whether the crossing sought is necessary and required in the public interest. In a *Matter of Proceedings by St. Paul & Northern Pacific*, 37 M 164, 33 NW 701.

The petitioner in condemnation proceedings may legally amend his petition with leave of the court so as to strike therefrom land as to which he does not wish to continue the proceedings, the owner of such land not objecting. *Fletcher v C. St. P. & O.* 67 M 339, 69 NW 1085.

A railway company is authorized to acquire land by condemnation for a right of way for a spur track from its main line to its gravel pit for the purpose of obtaining gravel to enable it to safely maintain and operate its road. *Minneapolis & St. Louis v Nicolin*, 76 M 302, 79 NW 304.

Where in condemnation proceedings the damages were paid into court an executor of a decedent's estate, claiming that the property belonged to his testator's estate at the time of its taking, had the right to sue, as for money had and received, a party who had obtained such deposited money out of court. *Eyre v City of Fari-bault*, 121 M 233, 141 NW 170.

Two freight houses operated by the Minnesota Transfer Railway for the receipt and delivery of less than carload freight may not be closed without the permission of the commission. *Minnesota Transfer v Railroad & Warehouse Commission*, 200 M 422, 274 NW 408.

A public service corporation authorized to condemn private property for public purposes may take riparian rights, and a condemnation by a railroad of the upland abutting upon water embraces without mention in the description all incidental riparian rights appurtenant to the property. *Pike Rapids Power Co. v M. St. P. & S. S. M. R. Co.* 99 F(2d) 902.

222.28 EXTENSIONS AND BRANCHES.

HISTORY. G.S. 1866 c. 34 s. 1; 1869 c. 78 s. 1; 1875 c. 14 s. 1; G.S. 1878 c. 34 s. 1; 1881 c. 31 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 91c; G.S. 1894 s. 2749; 1901 c. 225 s. 1; 1901 c. 248 s. 1; R.L. 1905 s. 2918; G.S. 1913 s. 6238; G.S. 1923 s. 7527; M.S. 1927 s. 7527.

The appellant company was authorized by its original charter and by special laws to construct the roads in question, and hence this section had no application. *Minneapolis & St. Louis v Olson*, 81 M 265, 84 NW 101, 742.

222.29 CONTRACTOR'S BOND; LIABILITY OF COMPANY.

HISTORY. 1872 c. 27 s. 1; 1873 c. 29 s. 1; G.S. 1878 c. 34 s. 89; G.S. 1894 s. 2764; R.L. 1905 s. 2919; G.S. 1913 s. 6239; G.S. 1923 s. 7528; M.S. 1927 s. 7528.

Where a contractor asked plaintiff to give credit to a subcontractor, the words "see them paid" are not an agreement on the part of the defendants to see that someone else pays the plaintiff but an agreement to pay plaintiff themselves. *Grant v Wolf*, 34 M 32, 24 NW 289.

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222.30 LIABILITY OF COMPANY AFTER NOTICE.

HISTORY. 1872 c. 27 ss. 2, 3; 1873 c. 29 ss. 2, 3; G.S. 1878 c. 34 ss. 90, 91; G.S. 1894 ss. 2765, 2766; R.L. 1905 s. 2920; G.S. 1913 s. 6240; G.S. 1923 s. 7529; M.S. 1927 s. 7529.

222.31 ALTERATION OF ROUTE.

HISTORY. 1881 c. 95 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 91a; G.S. 1894 s. 2750; R.L. 1905 s. 2921; G.S. 1913 s. 6241; G.S. 1923 s. 7530; M.S. 1927 s. 7530.

The evidence was sufficient to sustain the finding of the trial court to the effect that the defendant by regular procedure altered its line of railway as proposed in its petition; and the petitioner has the right in condemnation proceedings with leave of court to amend his petition so as to strike therefrom land as to which he does not wish to continue the proceedings, the owner of such land not objecting. *Fletcher v C. St. P. M. & O.* 67 M 339, 69 NW 1085; *Minneapolis & St. Louis v Olson*, 81 M 265, 84 NW 101, 742.

222.32 ALTERATIONS AND EXTENSIONS OF ROUTE; BRANCHES.

HISTORY. 1901 c. 248 s. 1; R.L. 1905 s. 2922; G.S. 1913 s. 6242; G.S. 1923 s. 7531; M.S. 1927 s. 7531.

222.33 TO KEEP GENERAL OFFICE IN STATE.

HISTORY. 1873 c. 28 s. 1; 1874 c. 27 ss. 1, 2; G.S. 1878 c. 34 ss. 82, 83; G.S. 1894 ss. 2759, 2760; R.L. 1905 s. 2923; G.S. 1913 s. 6243; G.S. 1923 s. 7532; M.S. 1927 s. 7532.

222.34 LAND GRANT RAILROAD COMPANIES.

HISTORY. 1873 c. 28 s. 1; 1874 c. 27 ss. 3, 4; G.S. 1878 c. 34 ss. 84, 85; G.S. 1894 ss. 2761, 2762; R.L. 1905 s. 2924; G.S. 1913 s. 6244; G.S. 1923 s. 7533; M.S. 1927 s. 7533.

222.35 ANNUAL MEETINGS, HOW CALLED; WHO MAY VOTE.

HISTORY. 1858 c. 55 s. 3; P.S. 1858 c. 17 s. 301; G.S. 1866 c. 34 s. 1; 1877 c. 19 s. 1; G.S. 1878 c. 34 s. 86; G.S. 1894 s. 2763; R.L. 1905 s. 2925; G.S. 1913 s. 6245; G.S. 1923 s. 7534; M.S. 1927 s. 7534.

A general stockholders meeting for the election of officers held out of the state, all of the stockholders not consenting and the by-laws providing that it shall be held at a specified place in the state, is illegal and as against officers thus elected, those previously in office have the right to retain control of the affairs of the corporation. *Hodgson v Duluth, Huron & Denver*, 46 M 454, 49 NW 197.

222.36 RIGHT OF EMINENT DOMAIN IN CERTAIN CASES.

HISTORY. 1858 c. 70 s. 14; P.S. 1858 c. 17 s. 256; 1865 c. 6 s. 5; G.S. 1866 c. 34 s. 13; G.S. 1878 c. 34 s. 13; 1885 c. 18; 1887 c. 161 s. 2; G.S. 1894 s. 2604; 1901 c. 301; 1901 c. 360; R.L. 1905 s. 2926; G.S. 1913 s. 6246; G.S. 1923 s. 7535; M.S. 1927 s. 7535.

Telephone companies have the same right of eminent domain as have telegraph companies. The federal statute authorizing telegraph companies upon complying with the terms of the statute to construct and maintain their lines along and over all post roads of United States and making all roads post roads does not confer upon the telegraph company the right to occupy the right of way of a railroad without the consent of the road. No express authority is found in the statute to condemn for its use land already appropriated to another public use and such authority must arise, if at all, by necessary implication. *Northwestern Telephone v C. M. & St. P.* 76 M 334, 79 NW 315.

Suburban railway companies have the right to exercise the power of eminent domain. *Minneapolis & St. Paul Suburban v Manitou*, 101 M 132, 112 NW 13.

The term "public business" as used to confer the power of eminent domain on a public service corporation includes the construction of works for supplying the public with water, light, heat, and power. *Minnesota Canal v Pratt*, 101 M 197, 112 NW 395; *Duluth Terminal v City of Duluth*, 113 M 459, 130 NW 18.

A corporation cannot divert water from the navigable streams of one drainage basin into those of another drainage basin if such diversion will impair the navigability of the streams from which the water is proposed to be taken. *Minnesota Canal v Fall Lake Boom*, 127 M 23, 148 NW 561.

The state under its police power may require a railroad company to provide such sidetrack facilities to industries adjacent to its track as shall be found necessary and reasonable, the expense to be apportioned. *Ochs v Chicago & Northwestern*, 135 M 323, 160 NW 866.

Partition of lands in kind instead of by sale is preferred. The burden is on the one demanding a sale to prove that partition in kind cannot be made without great prejudice to all the owners. *Pigeon River v McDougall*, 169 M 83, 210 NW 850.

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. *Minnesota Power v State*, 177 M 343, 225 NW 164.

Control of public utilities in Minnesota. 16 MLR 492.

222.37 USE OF PUBLIC ROADS; RESTRICTION.

HISTORY. 1858 c. 70 s. 14; P.S. 1858 c. 17 s. 256; 1860 c. 12 s. 1; 1865 c. 6 s. 5; G.S. 1866 c. 34 ss. 13, 28; G.S. 1878 c. 34 ss. 13, 42; 1881 c. 73 s. 1; 1885 c. 18; 1887 c. 162 s. 2; G.S. 1894 ss. 2604, 2641; 1901 c. 301 ss. 1, 2; 1901 c. 360 s. 1; R.L. 1905 s. 2927; 1911 c. 57 s. 1; G.S. 1913 s. 6247; G.S. 1923 s. 7536; M.S. 1927 s. 7536.

The defendant under legislative authority constructed along the side of a country highway, the fee of which was in plaintiff, telephone lines consisting of poles planted in the ground upon which wires were strung. It did not interfere with the safety and convenience of ordinary traffic or unreasonably impair plaintiff's special easement and did not impose an additional servitude upon the highway. *Cater v Northwestern Telephone*, 60 M 539, 63 NW 111.

Telephone companies are by statute given the right to erect poles and wires within the urban ways and streets of this state as well as upon rural highways. The provisions of the charter of Minneapolis confer upon that city no authority to arbitrarily order a removal of poles and wires but only the right to regulate the placing of the same in its streets and to compel the telephone companies to put their wires in subsurface conduits when reason, convenience or good government requires. *Northwestern v City of Minneapolis*, 81 M 140, 86 NW 69.

A telephone company having established its plant in reliance upon the provisions of the general law such action upon its part constituted an acceptance of the right or privilege thus granted and its occupancy of the streets thus acquired including the right to extend such system as occasion might require became a vested right which cannot be revoked by the city except within the exercise of its police power. *Duluth v Duluth Telephone Co.* 84 M 486, 87 NW 1127.

Where a public service corporation was organized to furnish water, light, heat, and power for public use and being authorized to exercise the power of eminent domain became subject to state regulation and control, the actual exercise of the state's power did not constitute a condition precedent to the corporation's use of its power of eminent domain; the state being authorized to pass such regulatory measures as the future business of the corporation might require. *Minnesota Canal v Pratt*, 101 M 197, 112 NW 395.

A public service corporation which has acquired a franchise from a city is bound by the implication of the law to make no unreasonable discrimination and must serve all alike who are similarly circumstanced with reference to its system. *State ex rel v Consumers Power Co.* 119 M 225, 137 NW 1104.

The license conferred on the defendant to construct and maintain a telephone line is not exclusive of the rights of the abutting land owner, and the rights of each must be so exercised as not to unnecessarily infringe upon, interfere with, or impede those of the other; so a telephone company must exercise due care not to

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injure trees growing upon the highway or upon adjacent property. *St. Paul Realty v Tri-State Telephone Co.* 122 M 424, 142 NW 807.

A grant of the right to construct and operate a telephone line within the City of Brainerd expressly provided that the line so constructed should be subject to the regulation and control of the city council with authority among other powers to fix a maximum charge and that the plant should be completed within one year in the fall of which the grant should be deemed abandoned. In compliance the telephone company constructed its line up to the city limits thence extending it into the city over the poles and lines of another telephone company and into the interexchange thereof. Under and by virtue of contract with that company, by which the control and operation of the mine in the fixing of charges was surrendered to it, was not a compliance with the franchise granted, and the city council was justified in declaring the grant abandoned and forfeited. *State ex rel v City of Brainerd*, 126 M 90, 147 NW 712.

Moving a house along a village street is not using the street for the purpose of ordinary travel; and the statutory requirement that a telephone company shall locate its lines so as not to interfere with the safety and convenience of ordinary travel does not make it the duty of the company to remove its wires to permit the passage of a house. *Coller v Bingham Lake Telephone*, 132 M 110, 155 NW 1075.

An electric power line located on the highway and not a part of a real estate plant is personal property. *St. Paul Electric v Baldwin Engineering*, 159 M 221, 199 NW 9.

A compliance by a public service corporation with the conditions of this section does not as a matter of law absolve them from negligence in regards to those injured by contact with such wires when engaged in their own pursuit upon their own premises in proximity to such wires. *Newman v Interstate Power*, 179 M 46, 228 NW 342.

One using high tension wires in the transmission of electric power must exercise diligent care to prevent injury to others commensurate with the dangers reasonably to be apprehended. *Faribault v Northern States Power*, 188 M 514, 247 NW 680.

The plaintiff's decedent was killed by an electric shock received by coming in contact with an insulated wire not under the control of defendant but on which defendant had contracted to furnish current of not more than 115 volts. Death was caused because the current carried approximately 300 volts. A verdict for the plaintiff was sustained. *Baumann v Interstate Power*, 190 M 468, 252 NW 222.

Because of the high destructive qualities of electricity, the law requires that those dealing in such deadly agency should be held accountable to all those whose likelihood of injury could reasonably be foreseen. An injured plaintiff may rely upon the maximum of *res ipsa loquitur*. *Anderson v Eastern Minnesota Power*, 197 M 144, 266 NW 702.

Plaintiff's decedent met his death while attaching a neon sign to a pole of the defendant village installed to support a street lamp, the pole being directly beneath high tension wires of a power line. The village was held liable because of its failure to properly warn deceased of the possible danger due to proximity of the high tension line. *Thiesen v Village of Wadena*, 200 M 515, 274 NW 617.

Measurements did not demonstrate that plaintiff's injury was not caused by being swept off a load of hay upon which he was riding by a wire of defendant negligently permitted to hang unreasonably low over plaintiff's driveway. *Nelson v Garden Valley Telephone*, 201 M 198, 275 NW 612.

While those who transmit high voltage electricity are required to exercise a degree of care to guard against injury commensurate with the danger to be apprehended, defendant was not bound to anticipate that a boy would make material alterations in the wire peculiar and personal to his own purpose and as so changed to use it as a means of ascending the pole thereby enabling him to come in contact with high tension wires 21 feet above ground. *Keep v Otter Tail Power*, 201 M 475, 277 NW 213.

Where a wire cable used to lower a mast arm holding a light bulb was so negligently attached to a pole which carried a high tension transmission wire that the cable could contact the wire, the cable being within easy reach of school children

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passing the pole, defendant's negligence was for the jury and a verdict of the jury is sustained by the evidence. *Ekdahl v Minnesota Utilities Co.* 203 M 374, 281 NW 517; *Schorr v Minnesota Utilities Co.* 203 M 384, 281 NW 523.

Plaintiff, an individual, by mere entry upon and use of the highways of a township with his water supply system, obtained no statutory franchise. A water supply system, such as plaintiff's, is not to be classified as "water power." *Kuehn v Mahtomedi*, 207 M 518, 292 NW 187.

In the action for a declaratory judgment appellant's claim is untenable that a five-year franchise vested in it by the motion adopted by the village council on September 13, 1939, and the mailing by appellant of a notice to its patrons on September 18 that the proposed rates would be put into effect. *Union Public Service v Minnesota*, 212 M 92, 2 NW(2d) 555.

Where a grain separator was moved over a highway, it would be "ordinary travel" and where the power company permitted a sagging wire, it was guilty of negligence and whether plaintiff, a farmer, was guilty of contributory negligence in attempting to raise the wire to permit passage of separator were questions for the jury. *Interstate Power Co. v Thomas*, 51 F(2d) 964.

The plaintiff has no right to occupy the streets of the city of St. Charles without the consent of the city council and without a franchise authorizing the complainant to so occupy the streets. It did receive such permission as to certain streets named in the resolution of 1896, but it has no right upon other streets. The fact that a telegraph or telephone line when completed will be used as an instrument of interstate commerce gives no greater rights regarding the right of way than are possessed by a purely local company, and it can use the public streets or highways for its line only subject to the state statutes. *Northwestern Telephone v City of St. Charles*, 154 F 386.

Where a city without authority granted a telephone franchise for the 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 carried same into operation by expending money in equipping a plant, the city was not by that fact estopped from later questioning the validity of the franchise. *Tri-State Telephone v Thief River Falls*, 183 F 854.

A proprietor of land who dedicates streets, alleys, and other public places cannot reserve or impose any conditions or limitations which are inconsistent with the legal character of the dedication or which take the property dedicated from the control of the public authorities or which are against public policy. In such cases the dedication takes effect, but the conditions are construed as void. 1934 OAG 143, Aug. 22, 1933 (396g-11).

The control exercised by the commissioner of highways in requiring a private corporation or a political division to move its telephone poles from the right of way is a function of police power done by the state through its agent in its sovereign capacity, and no compensation should be paid to the operator of the telephone system. 1934 OAG 461, Oct. 11, 1933 (229i-4).

County boards have the power to require the removal of telephone poles which are situated on their right of way or for replacement in different positions. 1936 OAG 238, May 4, 1935 (378b).

A cooperative electric light company may construct its lines on public highways so as to have all of the installation within the right of way including cross arms. The installation is subject only to the condition that the line shall be so located as not to interfere with the safety and convenience of ordinary travel. 1938 OAG 365, July 30, 1937 (624c-14).

A rural electrification project is within the purview of this section. The company acting under this section must exercise due care not to injure trees growing on the highway or on adjacent property. The rights of the company must be considered in conjunction with those of the abutting land owner. 1940 OAG 137, April 4, 1939 (98a-28).

When county employees, while burning weeds on a county aid road, set fire to telephone poles, the county is liable in damages. OAG June 30, 1939 (125a-29).

A village may by resolution require a public service corporation to change location of poles. OAG June 5, 1939 (98a-12).

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Where a township road becomes useless by reason of construction of a new street highway, it may vacate the road without being liable for damages to a power company who had line on such vacated road. OAG Jan. 7, 1939 (624c-14).

A reservation in a deed giving to a water-works system the exclusive right to use the street is void. OAG Aug. 22, 1933.

Control of public utilities. 16 MLR 508.

Procedural effect of res ipsa loquitur. 20 MLR 241.

222.38 IN CITIES OF FIRST CLASS; POWERS AND DUTIES.

HISTORY. 1911 c. 102 s. 1; G.S. 1913 s. 6248; G.S. 1923 s. 7537; M.S. 1927 s. 7537.

Two freight houses operated by the Minnesota Transfer Railway for the receipt and delivery of less than carload freight are construed to be stations and may not be closed without the permission of the commission. Minnesota Transfer v Railroad & Warehouse Commission, 200 M 422, 274 NW 408.

222.39 HOW INCORPORATED; CERTIFICATE; SUBSCRIPTION TO STOCK.

HISTORY. 1911 c. 102 s. 2; G.S. 1913 s. 6249; G.S. 1923 s. 7538; M.S. 1927 s. 7538.

222.40 MAPS, PLATS, AND DRAWINGS; DUTIES OF COMMISSION.

HISTORY. 1911 c. 102 s. 3; G.S. 1913 s. 6250; G.S. 1923 s. 7539; M.S. 1927 s. 7539.

222.41 INADEQUATE FACILITIES; COMPLAINT BY RAILROAD; POWERS OF COMMISSION AND DISTRICT COURT.

HISTORY. 1911 c. 102 s. 4; G.S. 1913 s. 6251; G.S. 1923 s. 7540; M.S. 1927 s. 7540.

222.42 ACQUISITION OF PROPERTY; EMINENT DOMAIN.

HISTORY. 1911 c. 102 s. 5; G.S. 1913 s. 6252; G.S. 1923 s. 7541; M.S. 1927 s. 7541.

222.43 BORROWING MONEY.

HISTORY. 1911 c. 102 s. 6; G.S. 1913 s. 6253; G.S. 1923 s. 7542; M.S. 1927 s. 7542.

222.44 RATES TO BE PAID BY RAILROADS; POWER OF COMMISSION; PAYMENTS.

HISTORY. 1911 c. 102 s. 7; G.S. 1913 s. 6254; G.S. 1923 s. 7543; M.S. 1927 s. 7543.

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

HISTORY. 1911 c. 102 s. 8; G.S. 1913 s. 6255; G.S. 1923 s. 7544; M.S. 1927 s. 7544.