168.423 LICENSES, RENEWAL, MEMBERS OF ARMED FORCES

HISTORY. 1951 c 90 s 1, 2.

168.43 APPLICATION FOR EXAMINATION AND LICENSE; FEES; REFUNDS

HISTORY. 1929 c 433 s 5; 1939 c 426 s 5; 1941 c 427 s 1; 1943 c 493 s 2; 1953 c 377 s 2.

168.44 REVOCATION OF LICENSES

HISTORY. 1929 c 433 s 6; 1939 c 426 s 6; 1941 c 427 s 2; 1943 c 331 s 1; 1953 c 331 s 2.

168.46 ARREST; BOND TO APPEAR

Where a lost or abandoned car is found on the city streets, it may be condemned under a legal ordinance and sold by public officer who will deliver a certificate of sale to the purchaser which the purchaser may present in order to obtain registration of the vehicle. OAG July 31, 1950 (632-E-29).

168.50-168.53 Unconstitutional.

(State v Ernst, 209 M 586, 297 NW 24.)

CHAPTER 169

HIGHWAY TRAFFIC REGULATION

169.01 DEFINITIONS

HISTORY. 1895 c 151; 1903 c 356 s 1-7; 1909 c 251; 1911 c 365; 1912 c 7 s 1; 1913 c 235 s 65-69; 1917 c 119 s 22; 1917 c 320; 1917 c 475; 1919 c 391; 1921 c 396; 1921 c 472; 1923 c 440; 1925 c 336 s 8; 1925 c 416 s 1; 1927 c 412 s 1; 1929 c 158; 1929 c 390; 1929 c 407; 1931 c 128; 1931 c 402; 1933 c 220; 1933 c 252; 1935 c 224; 1935 c 389; 1937 c 464 s 1; Ex1937 c 38 s 1; 1939 c 430 s 1; 1947 c 204 s 1; 1947 c 428 s 1-4; 1949 c 90 s 1; 1949 c 247 s 1; 1951 c 114 s 1; 1951 c 331 s 1; 1953 c 289 s 1; 1953 c 303 s 1.

Regulation of traffic on highways. 33 MLR 44.

Loss of use of automobiles as a proper item of damages; measure of loss of use. 33 MLR 783.

Key of automobile left in ignition as proximate cause of injuries resulting from thief's negligence derived while in flight. 35 MLR 81.

Minnesota rules of the road. 35 MLR 357.

Rights and duties of motorists at intersections. 35 MLR 358.

Rights and duties of motorists on the road. 35 MLR 366.

Rights and duties of pedestrians at crosswalks. 35 MLR 369.

Plaintiff, who was walking in the street about six or eight feet from the south curb line of an east-west street prior to the time she entered an intersection, and who was struck by defendant's auto after she entered the intersection when approximately four feet from the southeast curb line thereof, was not contributorily negligent as a matter of law. Olson v Evert, 224 M 528, 28 NW(2d) 753.

A streetcar, although not a motor vehicle, must exercise due care with respect to other traffic. Peterson v Minneapolis Street Ry., 226 M 27, 31 NW(2d) 905.

A streetcar, deriving its power from overhead wires, is not a "motor vehicle;" but a motorman is not absolved from the common-law duty to exercise due care with respect to other traffic. Peterson v Minneapolis St. Ry. Co., 226 M 27, 31 NW(2d) 905.

If the public generally has the right to use a road for vehicular traffic, it is a public roadway. The amount of traffic on the road is immaterial in determining whether the road is public or private way. Bosell v Rannestad, 226 M 413, 33 NW(2d) 40.

In order to establish a public highway by statutory user under section 160.19, both used by the public and maintenance at public expense for the statutory period must be shown, but it is not necessary to show maintenance and repair at public expense in order to establish a common law dedication. Bosell v Rannestad, 226 M 413, 33 NW(2d) 41.

The driver of a vehicle approaching an intersection from the left must yield the right of way to the driver on the right if they approach so nearly at the same time that there would be eminent hazard of a collision if both continued the same course and the same speed; but this rule must be applied in the light of existing circumstances in each case and it is for the jury to say whether or not the rule has been violated and if so, whether the violation of the rule was the proximate cause of the collision. Bosell v Rannestad, 226 M 413, 33 NW(2d) 41.

Section 160.19, providing for the dedication of a road by statutory user, is not exclusive and did not supersede the common law dedication of a highway. The intent of the owner to dedicate a road to the public may be implied from a long time use by the public. Keiter v Berge, 219 M 374, 18 NW(2d) 35, states the rules for the establishment of a public highway by common law dedication. Bosell v Rannestad, 226 M 413, 33 NW(2d) 41.

By providing that in a civil action violation of highway traffic regulation act shall be prima facie evidence of negligence, the act adopted negligence as a basis of determining liability based on violations. Rue v Wendland, 226 M 449, 33 NW(2) 593.

In an action against a father who owned the automobile, and against the son who was permitted by the father to use the automobile, to recover for death of one who accompanied the son on the trip, whether the son was driving the automobile at the time of a fatal accident, or whether deceased was driving as contended by the son, was for the jury, although the son had made admissions that he was driving at the time of the accident. Manahan v Jacobson, 226 M 505, 33 NW(2d) 606.

An award of $500 increased to $1,000 by additur, to a motorist for damages to his automobile and personal injuries, including a sacroiliac sprain, was inadequate; and although the grant or refusal of a new trial for inadequate damages rests largely with the trial court, whose decision thereon is subject to the general rule applicable to other discretionary orders for purposes of review, a new trial is ordered by the appellate court where upon the record the damages awarded appear inadequate. Olson v Christiansen, 230 M 198, 41 NW(2d) 248.

Where defendant A had his wrecker truck parked in a northeasterly direction, in the nighttime, without having set out flares, across the south lane of a state highway running east and west, with the wrecker attached by chain and cable to a car in the south ditch; and where defendant B parked his sedan on the north lane of the highway a short distance west of the parked wrecker, with his lights on bright; where defendant C was driving his pickup truck, in which plaintiff was a passenger, in an easterly direction at a speed in excess of the statutory limit permitted within municipalities; and where the pickup truck collided with the wrecker and plaintiff was injured, the verdict of the jury that A, B, and C were negligent and that the negligence of each was the proximate cause of the accident is supported by the evidence. The verdict, although liberal, was not excessive.

Where the most serious result of plaintiff's accident was a disfigured face, and the oral testimony was to the effect that prior to the accident she was an attractive

young woman, court did not err in receiving in evidence a photograph of plaintiff when she was 19 years of age taken three years before the accident and six years before the trial, where there was testimony that there was little change in her appearance from the time of the accident up to the time of trial. Johnson v Larson, 234 M 505, 49 NW(2d) 8.

Trial court erred in submitting as fact question to jury whether junction of two roads joining at not more than a 45-degree angle but not crossing each other constituted an "intersection" within statutory definition thereof contained in M.S.A., Section 169.01, Subdivision 36 (a) of the highway traffic regulation act. Chapman v Dorsey, 235 M 25, 49 NW(2d) 4.

The statute requiring that vehicles be required to drive on the right half of the roadway is applicable to alleys as well as streets and highways. Pettit v Lifson, ... M ....., 57 NW(2d) 34.

Where judgment was reversed for failure of the trial court properly to instruct the jury, and no contention was made that the issue of damages was improperly tried, or that plaintiff's injuries were not the result of the collision and not due to the negligence of one or both of the defendants, and the only actual controversy was the issue of liability, that issue alone should be retried. Olson v Hiel, 177 F(2d) 552.

In an action for injuries sustained by a Wisconsin citizen against a Minnesota citizen for injuries resulting from an automobile collision occurring in Minnesota, the controlling substantive law was that of Minnesota. Olson v Hiel, 177 F(2d) 552.

The commissioner of highways has power to regulate highways on trunk highways by placing signs thereon so as to restrict traveling on each roadway on a trunk highway to one direction. OAG Jan. 28, 1952 (229-D-15).

Non-tribal Indians are subject to prosecution for highway offenses committed on the Red Lake Indian Reservation; but tribal Indians are not subject to prosecution for violation of the traffic laws. OAG June 13, 1949 (240-K).

The provisions of section 169.01 are not to be construed to prevent the owners of realty used by the public for purposes of vehicular traffic by permission of the owner and not as a matter of right, from prohibiting such use or from requiring additional conditions than those specified in the statutes. OAG Sept. 2, 1947 (618-A-2).

A privately-owned vehicle of a volunteer fireman, constable, deputy sheriff, or sheriff is not an emergency vehicle under section 169.01, subdivision 5, except that a vehicle of an active volunteer fireman is permitted to display a red light in the front if permitted to do so by the commissioner of highways under section 169.58. Privately-owned vehicles of other enumerated persons cannot be equipped with red lights. OAG March 5, 1951 (989-A-18).

The mere leasing of a vehicle by volunteer firemen to a municipality for the nominal sum of $1 per year does not qualify the vehicle as an emergency vehicle within the purview of section 169.01. OAG June 7, 1951 (989-A-18).

The right of a town to adopt traffic ordinances relating to speed limits on non-trunk highways is limited by the requirement that such ordinances must be approved by the commissioner of highways. OAG Aug. 9, 1951 (989-A-19).

Cars owned by the United States and used by the border patrol in law enforcement work are within the meaning of Minnesota Statutes, Section 169.01, Subdivision 5, and are authorized emergency vehicles, capable of being marked, equipped, and operated as set forth in this section. They are entitled to the privileges accorded to such officers and not accorded to private citizens. OAG May 28, 1953 (989-A-18).

A motor vehicle owned by a police officer, even though used in the performance of his duties, is not an emergency motor vehicle, as defined in section 169.01, subdivision 5. Sirens, spotlights, and red lights may not be installed thereon. OAG July 7, 1953 (989-A-18); OAG Sept. 9, 1953 (989-A-18).

The term "police vehicles" as it refers to authorized emergency vehicles, is broad enough to include any vehicle equipped and used by a police officer or municipality while driven in the performance of police duties. It is broad enough to

include a police vehicle which a municipality leases or uses for police purposes, even though the vehicle is owned by a police officer authorized expressly or by the inherent powers of his office to use the same in the enforcement of traffic or other statutes. This modifies previous opinions of the attorney general's office. OAG Nov. 4, 1953 (989-A-18).

169.02 SCOPE

Section 169.12, providing that it shall be unlawful for any person who is a habitual user of narcotic drugs, or any person under the influence of intoxicating liquor or narcotic drugs, to drive or operate any vehicle within the state of Minnesota, when read in conjunction with section 169.02, subdivision 1, makes it unlawful for such person to drive or operate any vehicle upon highways and "elsewhere within the state." Defendant, while under the influence of intoxicating liquor, operating an automobile on a private roadway at a summer resort, was properly convicted of operating an automobile while under the influence of intoxicating liquor. State v Carroll, 225 M 384, 31 NW(2d) 44.

Where the driver of the lead car in a funeral procession comes to an unexpected and abrupt stop on the highway and one of the cars in the procession collides with the car in front of it, negligence of the driver of the lead car presents a question for the jury. It was proper, in the instant case, to instruct the jury that violation of a traffic law was prima facie evidence of negligence. Benson v Hoenig, 228 M 412, 37 NW(2d) 422.

The substantive law of Wisconsin applies in an action brought in Minnesota by a Wisconsin resident for injuries received in Wisconsin as the result of being struck by an automobile driven by a resident of Minnesota. Submission of special interrogatories mandatory under the law of Wisconsin upon timely request is procedural and at the discretion of the court under Federal Rule 49. Lang v Rogney, 201 F(2d) 88.

The regents of the University of Minnesota do not have control of streets within the University campus. OAG April 8, 1947 (618-A-2).

Parking on the trunk highway during the night without lights, so as to endanger the traveling public, is under section 169.02, a misdemeanor. Section 169.53 makes it unlawful to so park a vehicle on the highways during the times when lighted lamps on vehicles are required, unless the vehicle be equipped with such lamps as this section requires. OAG Sept. 7, 1951 (989-A-16).

Sections 169.02 and 169.09 apply to accidents off of the public highway as well as accidents happening thereon, and must be reported as provided in section 169.09, subdivision 7. OAG Sept. 28, 1953 (989-A-1).

169.03 APPLICATION

HISTORY. 1911 c 365 s 18; 1925 c 416 s 24, 26; 1927 c 412 s 32, 33; 1937 c 464 s 5-7; Ex1937 c 38 s 1; 1945 c 383 s 1; 1949 c 521 s 1.

Where evidence most favorable to prevailing party was that a distance of 400 to 600 feet separated the automobile in which plaintiffs were riding as gratuitous guests and an automobile approaching from the opposite direction which suddenly swung into its wrong lane of the pavement, it was a question for the jury whether the driver of the automobile in which plaintiffs were riding was guilty of negligence. There was no error in the submission of the emergency rule, even though it did not follow the precise language of Johnson v Townsend, 195 M 107, 261 NW 859. Kime v Koch, 227 M 372, 35 NW(2d) 534.

Streetcars do not have the mobility of a motor car but the fact that there is no statute defining the duty of a street car operator in a given situation does not absolve the company or its servant from the duty of exercising reasonable or ordinary care in operating its cars upon streets shared in common with others nor permit streetcars to ignore with impunity other vehicles upon the street. Peterson v Minneapolis Street Railway Co., 226 M 27, 31 NW(2d) 905.

Whether a roadway is public or private depends upon the right of the public generally to use the way for vehicular traffic and in no way depends on the amount of travel thereon, or the use made thereof. Bosell v Rannestad, 226 M 413, 33 NW(2d) 40.

Utterances of a party incapable of recollecting and narrating the facts to which his utterances relate are inadmissible as admissions. Utterances of a party incapable of recollecting and narrating the facts to which his utterances relate are inadmissible as part of the res gestae. Ordinarily, under the rule of Ryan v Metropolitan Life Ins. Co., 206 M 562, 289 NW 557, an instruction that there is a presumption that decedent at the moment of death was in the exercise of due care should not be given in a civil case; but if it be conceded, as it is contended here, that such an instruction should be given in an action for wrongful death, where the evidence as to decedent's alleged contributory negligence is in equilibrio or the jury disbelieves it, refusal to give such an instruction here was, under the circumstances stated in the opinion, without prejudice. Amundson v Tinholt, 228 M 115, 36 NW(2d) 521.

Bicycle riders are granted the same rights and are subject to all the duties applicable to the driver of a vehicle under the state highway traffic regulation act, subject, however, to special regulations found in section 169.221, subdivision 2 to 6, and except as to those provisions thereof which by their nature can have no application. Demmer v Grunke, 230 M 188, 42 NW(2d) 1.

Due care in keeping a lookout for other approaching vehicles is not to be determined by the number of times the operator of the bicycle or other vehicle looked or by how often or when or from where; but the mere failure on the part of one who looks and does not see that which is in plain sight and which might have been seen, does not in itself constitute contributory negligence as a matter of law without regard to surrounding circumstances. Demmer v Grunke, 230 M 188, 42 NW(2d) 1.

Where the record is devoid of evidence of excessive speed and where it appears that the speed of a truck under the situation involved was not the proximate cause of the accident, it was not error to refuse to submit the question of speed. Where there is no evidence to sustain a finding that defendant did not have his truck under proper control, the question was properly not submitted. The court was justified in submitting only the question of failure to maintain a proper lookout.

Where children are known or may reasonably be expected to be in a vicinity at play, a degree of vigilance commensurate with the greater hazard created by their presence or probable presence is required of a driver of a motor vehicle to measure up to the standard of what the law regards as ordinary care. The trial court did not err in its instruction in connection with that point. O'Neill v Mund, 235 M 112, 49 NW(2d) 812.

169.04 LOCAL AUTHORITIES

HISTORY. 1925 c 416 s 26; 1927 c 413 s 32, 33; 1937 c 464 s 8; 1939 c 359 s 1.

Torts; proximate cause; liability of owner for damages caused by a thief. 33 MLR 175.

An automobile which was parked on a street in the business area of Minneapolis, with doors and ignition switch unlocked and the key left in the switch, all contrary to an ordinance, was stolen. Several hours after the theft and about five miles from the scene of the theft, plaintiff was injured and her car damaged through the negligence of the thief. The court erred in overruling the demurrer to plaintiff's complaint, because the injuries and damage sustained by the plaintiff were not a proximate result of the shopper's negligence. Wannebo v Gates, 227 M 194, 34 NW(2d) 695.

The General Welfare Clause of the Minneapolis City Charter gives the city council power to license and make regulations governing open air motor vehicle parking lots; and unless a municipal ordinance is manifestly an arbitrary exercise of legislative power the courts will not declare a municipal ordinance void. A requirement that every licensee must post signs at each entrance and exit showing rates charged for automobile parking is a reasonable exercise of the police power of the city. State v United Parking Stations, 235 M 147, 50 NW(2d) 50.

The city of Mankato has the power to enact reasonable ordinances, and the question whether a particular ordinance is a reasonable exercise of police power is a question of fact. OAG Nov. 27, 1951 (59-A-32).

The city does not own the fee in the streets. It has only an easement for the use of the property as a street, and has no authority to rent advertising space on city parking meters as a private enterprise for profit. OAG March 2, 1949 (59-A-53).

The city of Redwood Falls or the city of Faribault may transfer any surplus in the parking meter fund to the general fund. OAG Feb. 6, 1950 (59-A-53); July 11, 1950 (59-A-53).

Surplus revenue from parking meters may be expended to improve the streets of the city of Owatonna as proposed and when authorized by ordinance. OAG June 10, 1952 (59-A-53).

Local authorities have limited power with respect to streets and highways and, provided the ordinance does not conflict with the state law, a town through its board and upon obtaining the consent of the commissioner of highways, may enact an ordinance regulating traffic on a trunk highway within the borders of the town. OAG May 3, 1950 (989-B-4).

Except as limited by section 169.04 and the state speed regulations, towns affected by section 368.01 have authority to adopt traffic regulations. Fines collected for violation of such regulations go into town treasury unless the arrest was made by a state traffic patrolman. OAG July 7, 1950 (989-B-4).

169.06 SIGNS, SIGNALS, MARKINGS

In an action where a collision occurred on a paved highway and it became necessary for the jury to determine on which side of the center line the impact took place, a verdict for the plaintiff was not unreasonable. Melzer v Snow, 225 M 59, 29 NW(2d) 647.

A pedestrian is not absolved from the duty of exercising ordinary care for his own safety merely because he is on a crosswalk and has the right of way. Under facts of instant case, question of plaintiff's negligence was for the jury. Violation of the statute providing for pedestrian's right of way while lawfully on a crosswalk is only prima facie evidence of negligence. In case at bar, since there was evidence tending to show a reasonable explanation for failure to yield right of way to the pedestrian, held that the defendant was not guilty of negligence as a matter of law, and the question of his negligence was properly submitted to the jury. Swanson v Carlson 231 M 373, 43 NW(2d) 217.

Where a pedestrian was struck at the intersection by an automobile operated by defendant, mere proof that light was green for the defendant as he approached the semaphore signal, was not sufficient to establish that it had been red for the victim when he left the curb, but the light might nevertheless have been green for the victim when he left the curb and might have changed to red as the pedestrian was in the act of crossing. In such case the instruction that there is a presumption that the defendant acted with due care is reversible error. Knuth v Murphy, 237 M 225, 54 NW(2d) 771.

Evidence of the battered condition of an automobile involved in a collision, as well as evidence of the distance the vehicle was moved by the impact and of the throwing of passengers out of the automobile, is admissible as indicative of the speed of the offending vehicle. Knuth v Murphy, 237 M 225, 54 NW(2d) 771.

Where a bright, healthy, and experienced 15 year-old bicyclist, who, by daily travel and observation for a substantial period of time, was thoroughly familiar with the area of the accident and who, relying solely upon prior observation which so far antedated his entry into the danger zone as to be wholly ineffectual in warning him of an approaching truck, darted blindly, without reducing his speed sufficiently to prepare for a quick stop, from behind a parked vehicle, which obscured his view, into the path of, or against, passing truck, the bicyclist was guilty of contributory negligence. Steinke v Indianhead Truck Line, 237 M 253, 54 NW(2d) 777.

Traffic control signals may not be erected by a municipality on a trunk highway intersection without first receiving permission from the commissioner of highways. OAG May 6, 1953 (989-A-21).

169.08 UNLAWFUL TO ALTER, DEFACE OR REMOVE SIGNS

Where a mining company maintains an overpass bridge across a highway, over which bridge operates ore cars to its washing plant, and so constructs such bridge and operates its cars and trams that reddish-brown liquid drops upon the highway and upon the signs erected and maintained to warn drivers of the presence of a center pier in the middle of the highway in such quantities that such signs are materially obscured, it violates M.S.A., Section 169.08, forbidding the defacement of such signs, and in consequence prima facie contributes proximately to the collision of a car with the pier and is liable to passengers injured or killed in such collision.

Such being the case, defendant's request to charge were irrelevant to the issues, and its exceptions to the charge given are without merit.

The trial court properly directed the jury that there was insufficient evidence of plaintiffs' contributory negligence where neither the passengers nor the driver had been over the road before and the negligence, if any, of the driver was not imputable to the passengers. Robinson v Duluth Railway, 229 M 155, 38 NW(2d) 183.

169.09 ACCIDENTS

NOTE: A person is guilty of contributory negligence as a matter of law if he knows of the existence of a condition which is dangerous to him and then acts without using ordinary care to avoid injury from such danger.

Confidential nature of accident reports. 33 MLR 45.

Recovery of damages for loss of use of automobile under diminution of value of theory. 35 MLR 101.

Privileged communications; admissibility of contents of a policy officer's accident report. 36 MLR 540.

In event of a new trial in the instant automobile case, the testimony of the highway patrolman who arrived shortly after the accident, which occurred in 1945, would be admissible under the provisions of Laws 1947, Chapter 114. Beckman v Schroeder, 224 M 370, 28 NW(2d) 629.

Testimony of a highway patrolman who investigated an automobile collision was admissible under section 169.09 in a trial held subsequent to the enactment of Laws 1947, Chapter 114, even though the collision occurred prior to the amendment. Rom v Calhoun, 227 M 143, 34 NW(2d) 359.

Under section 169.09, subdivision 13, as amended by Laws 1947, Chapter 114, a police officer may testify as to the facts of an accident within his knowledge and may refresh his recollection by reference to notations made in a personal notebook at the time of such accident, notwithstanding he filed an official report with the highway department, the privilege provided for in such statute as now amended extending only to such official report or to information derived directly therefrom. Garey v Michelsen, 227 M 468, 35 NW(2d) 750.

Where a pedestrian is struck by an automobile on a public street or highway, negligence of the driver and contributory negligence of the person injured are issues of fact which should be submitted to the jury; but particular facts make one or both issues questions of law for the court. Rivera v Mandsager, 228 M 227, 36 NW(2d) 700.

It was a question for the jury whether the use of employee's own car was expressly or impliedly authorized, and if so authorized, whether defendant employer was responsible for employee's negligence while engaged in the furtherance of his master's business. Rampi v Vevea, 229 M 11, 38 NW(2d) 297.

Where defendant issued an insurance policy to plaintiff against loss or damage to a combine caused by fire, lightning, and transportation, in which the transportation clause was supplemented by a clause describing the transportation coverage as "by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the combine is being transported on land or on water," defendant is liable for loss incurred in a collision in which the combine first collided with another object before the conveyance on which it was loaded struck such object. Jorgenson v Girard Fire Insurance Co., 229 M 48, 38 NW(2d) 209.

The failure of the defendant as driver to keep a lookout during daylight while driving an automobile over 40 miles per hour over a stretch of highway under construction with the result that the vehicle struck a washout and rolled over was, as a matter of law, negligence which proximately caused his guest occupant's injuries, and the guest's failure to look out was not contributory negligence. Rutz v Iacono, 229 M 591, 40 NW(2d) 892.

Evidence that a motorist proceeded cautiously through intersection and was struck when more than half way through by an automobile being driven without lights at midnight, by a drunken driver, supported a ruling refusing to submit the issue of contributory negligence of the motorist to the jury. Freeman v Mattson, 230 M 261, 41 NW(2d) 249.

Under the facts in the instant case, where plaintiff, a child four and a half years old, was struck and injured by defendant's automobile while crossing the street at an intersection, the trial court was in error in directing a verdict for the defendant. The motorist's negligence in traveling at an excessive speed and without proper lookout, and whether such negligence was the approximate cause for striking the child who was crossing street, were questions for jury under the evidence. Schroeder v Streed, 231 M 267, 42 NW(2d) 816.

The mere fact that the accident resulting in death to plaintiff's decedent would not have happened but for the original negligence of the defendant does not compel the conclusion that defendant's negligence was the proximate cause of decedent's death. Goede v Rondorf, 231 M 322, 43 NW(2d) 770.

Where defendant after negligently driving his automobile so as to hook his right rear bumper onto the left front fender of decedent's car, thereafter stopped on the right half of the pavement for the purpose of separating the cars, and decedent was struck by a car approaching from the opposite direction which swerved over on the wrong side of the highway, the action of such third party was an intervening cause superseding the negligence of defendant as proximate cause. Goede v Rondorf, 231 M 322, 43 NW(2d) 770.

The negligent driving by thieves while fleeing in defendant's automobile, in which he had left his key in violation of the Minneapolis traffic ordinance, was an intervening efficient cause breaking the chain of causation between defendant's act in leaving his key in the ignition switch and the collision with the decedent's automobile. Anderson v Theisen 231 M 369, 43 NW(2d) 273.

Where two automobiles were proceeding in the opposite direction on an east-west state highway, each approaching an intersection at a proper rate of speed, and suddenly the one approaching from the west, turned to its left without warning into the path of the other car, its front striking the left front of the other car, the collision taking place near the west curb line of the intersecting street in the northwest quadrant of the intersection, the evidence disclosed no negligence on the part of the operator of the west-bound car. Lind v Nebel, 232 M 255, 45 NW(2d) 401.

Although the admission by a party is not conclusive it may constitute credible evidence, particularly when facts to which it relates are within the personal knowledge of the party claimed to have made the admission. Lovel v Squirt Bottling Co., 234 M 333, 48 NW (2d) 525.

In an action for injuries sustained by an infant when struck by a truck where the driver's admissions indicated he was aware of the child's presence in close proximity to the parked truck shortly prior to its departure, evidence of the failure of the truck driver to sound his horn prior to departure was admissible. A degree

of vigilance commensurate with the greater hazard is required of the driver to measure up to the standard which the law regards as ordinary, and whether the driver has measured up to such standards is a fact question for the jury. Lovel v Squirt Bottling Co., 234 M 333, 48 NW(2d) 525.

A jury's verdict may be adequately sustained by the testimony of a single witness, even though such witness is a party to the action and even though his testimony is in direct conflict with that of several other witnesses. A conflict in the opinion of expert witnesses is to be resolved by the jury, and in determining the comparative weight to be given to the respective opinions the jury may consider the qualifications of each expert and the source of his information. Robinson v Butler, 234 M 252, 48 NW(2d) 169.

Where defendant in sanding a highway drove his truck around a banked curve at a speed less than five miles per hour at a time when the highway was covered with glazed ice and the rear end of the truck slid across the center lane and collided with plaintiff's truck driven in the opposite direction, there was no showing of negligence and the trial court properly granted a motion for judgment notwithstanding the jury's verdict for the plaintiff. Thompson v Peterson, 235 M 142, 50 NW(2d) 53.

In an action growing out of a collision between a car operated by plaintiff's decedent traveling south on a paved highway, and defendant's car going north, the finding of the jury that the accident was caused by the negligent act of decedent in operating his car over the center line of the highway directly into the path of him, is supported by the evidence. Behnken v Smolnik, 235 M 315, 50 NW(2d) 696.

Where statements were made to a highway patrolman relating to the manner in which an automobile collision occurred, such statements were not privileged under section 169.09, subdivision 13. Statements heard by patrolman are as much facts as what he observed. Rockwood v Pierce, 235 M 519, 51 NW(2d) 670.

In a proper case, the entire testimony at a former trial or hearing may be used to show failure of the witness to assert a fact which ought to have been asserted or that the witness has altered or added to his testimony in some material respect. Rockwood v Pierce, 235 M 519, 51 NW(2d) 670.

Where the medical bill of plaintiff was $23 and plaintiff testified that he was prevented from working for about nine weeks because of his injuries, but admitted that during substantially all of that period he was able to attend dances and take part therein, and further testified that prior to the collision his automobile was worth $300 and after the collision he could only obtain $15 for it and the jury returned a verdict for $175, the trial court did not err in denying plaintiff's motion for a new trial on the ground of inadequate damages the result of passion or prejudice. Olson v Moske, 237 M 18, 53 NW(2d) 562.

In an action for injuries received by first passenger and unlawful death of second passenger against the drivers of two automobiles involved in a head-on collision on level paved highway where the host driver was allegedly driving to the left of center of the highway at the time of the collision, plaintiffs had the burden to establish the host driver's negligence, and total absence of any evidence on such issue meant that plaintiffs had failed to sustain the burden. Whitman v Speckel, 237 M 36, 53 NW(2d) 558.

A motion for a new trial based on the ground of newly discovered evidence, or on accident and surprise, is addressed to the sound discretion of the trial court, which discretion must be exercised cautiously and sparingly, and order denying such motion will not be disturbed on appeal in the absence of showing of clear abuse of discretion. In an action arising out of a head-on collision, instruction on the emergency rule was not prejudicial to plaintiff motorist in view of the fact that denial of recovery was based on the motorist's contributory negligence. Schiro v Raymond, 237 M 271, 54 NW(2d) 329.

Where defendant was traveling on highway which opened into another highway only on one side and defendant's vehicle entered intersection from right at reasonable rate of speed, and defendant's vehicle had traveled over 40 feet in intersection, and

plaintiff's vehicle, after skidding 116 feet, had barely reached intersection when accident occurred, plaintiff was guilty of contributory negligence in failing to yield right of way. Dosdall v Swift & Co., ... M ....., 56 NW(2d) 433.

Where driver of an automobile stopped at the stop sign at the approach to a through street 60 feet wide and a car was approaching from his right at a distance of 125 to 150 feet away and at a speed of 40 to 45 miles per hour when he entered the intersection from the north and a collision took place in the most southerly lane of the four-lane highway, the court did not err in submitting to the jury the question whether, when the first car entered the intersection, the car to his right was then so close as to constitute an immediate hazard. Rod v Jeffords, ... M ....., 56 NW(2d) 638.

Where two automobiles collided at intersection and occupant of one automobile recovered verdict against both drivers, and trial court granted motion of one driver for judgment notwithstanding verdict and denied motion of other driver for new trial, driver whose motion for new trial was denied was so prejudiced by action of court in granting judgment notwithstanding verdict in favor of other driver that motion to dismiss appeal as to driver whose motion for judgment notwithstanding verdict was granted would be denied. Bocchi v Karnstedt, ... M ....., 56 NW(2d) 628.

Viewing the evidence in the light most favorable to the prevailing party, a verdict of the jury will not be set aside where there is conflict in the evidence as to how the collision occurred unless the verdict is manifestly and palpably contrary to the evidence. Raiche v Martin, ... M ....., 56 NW(2d) 625.

A motorist who is on his own side of the road must exercise due care to avoid collisions with other vehicles, even with those on his side of the road, and while he may assume that an approaching vehicle on his side of the road will return to its proper lane, he will not be permitted to act upon that assumption where the factual basis for it has disappeared. Katlaba v Pfeifer, ... M ....., 56 NW(2d) 825.

The purpose of the summary judgment rule is to afford procedure for just, speedy, and inexpensive disposition of actions where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In the instant case, the motorist, who while endeavoring to extricate his automobile from a ditch at night, stood between his own vehicle and an assisting vehicle which was situated partly on the shoulder and partly on the pavement on the wrong side of a well traveled highway, assumed risks incident to dangers of position which he voluntarily took and was therefore guilty of contributory negligence as a matter of law barring his recovery from the driver of the assisting vehicle for injuries sustained when a third vehicle struck the front end of the assisting vehicle driving it back against the motorist and his own vehicle. Lindgren v Sparks, ... M ....., 58 NW(2d) 317.

In a consolidated action for damages to a tractor-trailer and its driver's death as the results of a collision with a tractor-trailer driven by defendant tractor owner for co-defendant corporations, the evidence was sufficient to take to the jury the issue whether the collision was caused by defendant's driver or decedent's negligence and to support the verdict based on the jury's necessary finding that the collision was caused by the defendant driver's negligence. Dealer's Transport Co. v Werner Co., 203 F(2d) 549.

169.11 CRIMINAL NEGLIGENCE

Where plaintiff, a registered nurse, 26 years of age, sustained serious injuries in an automobile accident, resulting in special damages of $1,200 and leaving numerous permanent and disfiguring scars on her face and neck, a verdict of $15,740 was not excessive. Nikkari v Jackson, 226 M 88, 32 NW(2d) 149.

Where a motorist skidded only 36 feet on an icy surface in stopping, was uninjured and his motor car only slightly damaged following a head-on collision with a tractor whose driver was killed on a one-way bridge which was dangerous because of curved blind approaches, the evidence was insufficient to sustain a conviction for criminal negligence in operation of an automobile with respect to speed and lookout. State v Homme, 226 M 83, 32 NW(2d) 151.

Under the facts in the instant case, where plaintiff, a child four and a half years old, was struck and injured by defendant's automobile while crossing the street at an intersection, the trial court was in error in directing a verdict for the defendant. The motorist's negligence in traveling at an excessive speed and without proper lookout, and whether such negligence was the approximate cause for striking the child who was crossing the street, were questions for the jury under the evidence. Schroeder v Streed, 231 M 267, 42 NW(2d) 816.

In consolidated actions for injuries to guests sustained when the truck preceding the automobile in which the guests were riding suddenly stopped on a two-lane highway and the host swung the automobile to the left and collided with the oncoming automobile, the jury could find from conflicting evidence that the defendant truck driver, without any warning, suddenly stopped his truck and that the car following the truck was so close to the truck at the time that it could not stop behind the truck and in an effort to avoid striking the truck the driver of the car applied her brakes and turned her car to the left onto the left lane of the highway where it collided with an oncoming car at a point immediately to the left of the stopped truck and that the truck driver was negligent and that his negligence was a contributing approximate cause of the collision. Devall v Leonard, ... M ....., 57 NW(2d) 835.

If an inquest is held and the death is believed to be occasioned by a motor vehicle accident, it is the duty of the coroner to report such accident, the number of the vehicle, and the circumstances of the accident to the department of highways. OAG Feb. 5, 1948 (989-A-1).

The office of coroner is created by statute. Section 390.11 imposes upon the coroner the duty to hold inquests upon dead bodies of such persons as are supposed to have come to death by violence. Section 390.11 except as modified by section 169.09, subdivision 11, is directory; but section 169.09, subdivision 11, imposes upon the coroner the duty of reporting in writing to the department of highways the death of a person within his jurisdiction as the result of an accident involving a motor vehicle and the circumstances of such accident and is mandatory. "Jurisdiction" refers to areas and to his duty and authority. OAG Feb. 6, 1948 (103-2, 989-A-1).

A fine collected as the result of a violation of section 169.11, criminal negligence in operation of a vehicle resulting in death must, under authority of section 161.03, be paid to the state treasurer when the arrest is made by a member of the state highway patrol. OAG Sept. 2, 1949 (199-B-4).

169.12 PERSONS UNDER INFLUENCE OF DRUGS OR LIQUOR PROHIBITED FROM DRIVING VEHICLES

Evidence of defendant's talk and conduct near in point of time to the commission of the offense charged is admissible as an aid to the jury in determining whether he was under the influence of intoxicating liquor; and the evidence sustains the verdict finding defendant guilty of driving a motor vehicle on a public highway in this state while under the influence of intoxicating liquor. State v Murray, 223 M 297, 26 NW(2d) 364.

Section 169.12, when read in connection with section 169.02, subdivision 1, makes it unlawful for a user of narcotic drugs or a person under the influence of intoxicating liquor to drive or operate any vehicle upon highways and elsewhere within the state. State v Carroll, 225 M 384, 31 NW(2d) 44.

Section 169.12, providing that it shall be unlawful for any person who is a habitual user of narcotic drugs, or any person under the influence of intoxicating liquor or narcotic drugs, to drive or operate any vehicle within the state of Minnesota When read in conjunction with section 169.02, subdivision 1, makes it unlawful for such person to drive or operate any vehicle upon highways and "elsewhere within the state." Defendant, while under the influence of intoxicating liquor, operated an automobile on a private roadway at a summer resort, was properly convicted of operating an automobile while under the influence of intoxicating liquor. State v Carroll, 225 M 384, 31 NW(2d) 44.

In an action for injuries sustained when defendant's automobile, in which the plaintiff was riding, went off a highway while attempting to pass the second defend-

ant's automobile at night and where there was no testimony as to use of narcotic drugs and the evidence did not establish that either of the defendants were under the influence of intoxicating liquor, the refusal of the trial judge to instruct the jury that it was unlawful for any person who was a habitual user of narcotics or under the influence of intoxicating liquor to operate a vehicle within the state was not reversible error. Dahlin v Kron, 232 M 312, 45 NW(2d) 833.

The fact that medical attention and nursing have been rendered gratuitously to one injured by wrongful act of another will not preclude the injured party from recovering the value of such services as part of his compensatory damages. Dahlin v Kron, 232 M 312, 45 NW(2d) 833.

A conviction upon a plea of guilty to the crime of drunkenness does not constitute a bar to prosecution for operating and driving a motor vehicle while under the influence of intoxicating liquor. He is not placed in double jeopardy. OAG Aug. 15, 1951 (133-B-8).

A youth 20 years of age was legally convicted of driving a motor car while under the influence of liquor, and under section 169.12 was properly sentenced to a term in the county jail. His offense was a misdemeanor. Being more than 18 years of age, section 260.22 does not apply. Section 260.125 did not apply because the sentence imposed did not exceed 90 days in jail. OAG Jan. 15, 1948 (632-B-2).

The act of starting the motor of a car while intoxicated is covered by the statute prohibiting the operation of a car while in an intoxicated condition. OAG Jan. 25, 1949 (632-B-2).

Operating a motor vehicle while under the influence of 3.2 beer is no defense for prosecution for drunken driving under section 169.12 or under an ordinance containing similar language. OAG Aug. 13, 1951 (632-B-2).

169.13 RECKLESS OR CARELESS DRIVING

Want of ordinary care on the part of a motorist which is not a proximate cause of collision does not establish contributory negligence. Sanders v Gilbertson, 224 M 546, 29 NW(2d) 357.

Whether or not a defendant motorist was negligent in colliding with plaintiff's car is determined solely in light of the duty he owed to the plaintiff and without regard to plaintiff who was driving the other automobile and was negligent. Rue v Wendland, 226 M 449, 33 NW(2d) 593.

Where a guest in an automobile was driven by the son, with the consent of the father, the burden was on the plaintiff to prove that it was the son that was driving the automobile at the time of the fatality and not the deceased guest, as contended by the son. Manahan v Jacobson, 226 M 505, 33 NW(2d) 606.

Where the driver and owner of an automobile collided with a parked truck he was liable for the death of a guest passenger, where the evidence indicated that the night was clear, that the lights on the automobile were good, as were the lights on the parked truck, and the truck was only partly on the pavement and there were no other vehicles to interfere and the road was straight for at least one-half mile before the collision. Gordon v Pappas, 227 M 95, 34 NW(2d) 393.

A guest passenger of an automobile is required to exercise ordinary care for his own safety but need not assume responsibility for management of the vehicle and is not required to be constantly on the alert to discover danger which the driver may not discover; and when riding with an apparently competent driver, the guest must warn the driver of danger which the guest has become aware of and which he has reason to believe the driver has overlooked or is not aware of. Rutz v Iacono, 229 M 591, 40 NW(2d) 892.

Evidence that a motorist proceeded cautiously through intersection and was struck when more than half way through by an automobile being driven without lights at midnight, by a drunken driver, supported a ruling refusing to submit the issue of contributory negligence of the motorist to the jury. Freeman v Mattson, 230 M 261, 41 NW(2d) 249.

Proof of the skidding of an automobile standing alone is not such evidence of negligence as to render res ipsa loquitur doctrine applicable and cast upon the defendant the burden of establishing that he was not negligent. Cohen v Hirsch, 230 M 512, 42 NW(2d) 51.

A jury's finding of willful and wanton negligence on the part of a minor defendant was justified where the evidence discloses that the minor was driving an automobile at a high and dangerous speed at night while being pursued by a state highway patrolman, and that as he came to left curve in highway at crest of hill automobile went off pavement and onto right shoulder until the automobile was about two-thirds of the way down hill, and that it then swung over onto wrong side of pavement and collided headon with plaintiff's automobile which was on its proper side of highway. Lunz v Gordon, 234 M 212, 48 NW(2d) 40.

In an action for injuries received by first passenger and unlawful death of second passenger against the driver of two automobiles involved in a head-on collision on level paved highway where the host driver was allegedly driving to the left of center of the highway at the time of the collision, plaintiffs had the burden to establish the host driver's negligence, and total absence of any evidence on such issue meant that plaintiffs had failed to sustain the burden. Whitman v Speckel, 237 M 36, 53 NW(2d) 558.

In the matter of traffic violations, including reckless driving, where the misdemeanor is committed within city limits, the city attorney may prosecute in the municipal court and in the district court on appeal. OAG Sept. 15, 1948 (59-A-5).

The word "operate" includes the act of driving, and a violation of section 169.13 constitutes a misdemeanor under section 169.89. OAG March 30, 1949 (989-A-24).

Parking on a trunk highway during night without lights, so as to endanger the traveling public, is a violation of this section. OAG Sept. 7, 1951 (989-A-16).

169.14 SPEED RESTRICTIONS

NOTE: Speed restrictions not on trunk highways are governed by section 169.14, subdivision 5. Load restrictions are governed by section 169.87. If imposed by ordinance, the ordinance should be published.

Speed limits can only be changed upon authority of the commissioner of highways in conformity with section 169.14, subdivisions 2 and 5.

Proximate cause. 34 MLR 185.

Insofar as personal injuries sustained by the victim of an automobile collision reasonably tend to disclose the force of the impact, as a basis for inference of the rate of speed of the vehicle, evidence thereof is admissible in such manner and to such an extent as the trial court shall determine. Campbell v Sargent, 186 M 293, 243 NW 142.

Where evidence established that defendant brought his car almost to a complete stop before entering intersection, looked to his left, but failed to observe plaintiff because of an embankment and weeds obstructing his view; where defendant then carefully entered the intersection while plaintiff's motorcycle was still some 53 feet to his left and defendant had almost cleared plaintiff's lane of travel thereon when plaintiff drove his motorcycle into his left rear fender, held that defendant's failure to observe plaintiff's motorcycle coming from his left because of the obstructions, was not negligence proximately causing the accident or sufficient to forfeit his right of way, or to relieve plaintiff from his negligence in failing to yield the right of way to defendant. Wilmes v Mihelich, 223 M 139, 25 NW(2d) 833.

Where a garage mechanic was engaged in the repair of a stalled automobile parked partially on the highway without a light or reflector on the automobile's trailer and while so engaged was run down by an automobile passing the stalled car and trailer from the rear, the verdict of the jury found the owner of the stalled car guilty of negligence and the owner and driver of the colliding car guilty of carelessness and driving at a high rate of speed; appellate court on appeal will not disturb

a general verdict and an assessment of damages against all three defendants. Bakken v Lewis, 223 M 329, 26 NW(2d) 478.

In an order that an intervening cause may break the causal connection and free the wrongdoer from liability, it must not only come between the original cause of the injury in point of time but must also turn aside the natural sequence of events and produce a result which would not otherwise have followed. If the occurrence of the intervening cause might have been reasonably anticipated, it will not interrupt the connection between the original cause and the injury. Eichten v Central Minnesota Co-op., 224 M 180, 28 NW(2d) 862.

Where defendant automobile driver traveling east approached a partially blind intersection from the west at 30 to 35 miles per hour, failed to keep a proper lookout or have his truck under control or apply the brakes while approaching the intersection or to yield the right-of-way to an automobile which first entered the intersection, he was guilty of negligence and the proximate cause of the injury is for the consideration of the jury. Eichten v Central Minnesota Co-op., 224 M 180, 28 NW(2d) 862.

Where a five-year-old boy was struck by an automobile while crossing on a crosswalk, denial of requested instruction as to the rights and duties of pedestrians at crosswalks was prejudicial and warranted the granting of a new trial. Storey v Weinberg, 226 M 48, 31 NW(2d) 913.

The following charge by the trial judge was found to be improper: "If you find from a fair preponderance of the evidence that the deceased, Edward Kordiak, failed to exercise such care as an ordinarily prudent person would have exercised under the same or similar circumstances in respect to riding in an automobile driven by a person not fit to drive by reason of intoxicating liquor, failing to warn or restrain the driver, or in any other respect, you will find him negligent, and if you further find such negligence to have contributed in any degree as a cause to his death, you will find him guilty of contributory negligence and return a verdict in favor of the defendants." Kordiak v Holmgren, 225 M 134, 33 NW(2d) 606.

A motorist driving at night on the wrong side of the road at such a speed that he could not stop within the distance that he could see ahead was contributorily negligent as a matter of law in colliding with a stalled automobile on the righthand side of the road; and the fact that the automobile with which he collided was stopped on the righthand side of the highway at night without lights because of mechanical difficulties did not show willful negligence as would render the owner liable for damage sustained by the driver of the automobile from the opposite direction which collided with him. Spartz v Krebsbach, 226 M 46, 31 NW(2d) 917.

One who was on the wrong side of the road to disturb a chuckhole and who could see only 30 feet ahead and driving at a rate of speed which would have required at least 50 feet to stop, and who ran into defendant's car which was stopped without lights on its own side of the highway, was guilty of contributory negligence as a matter of law. Spartz v Krebsbach, 226 M 46, 31 NW(2d) 917.

In an action for injuries to a five-year-old boy struck by an automobile when rushing across in front of a stopped bus, it was prejudicial error to deny the request of the plaintiff that the jury be instructed as to the rights and duties of pedestrians at crosswalks in accordance with the applicable provisions of section 169.21. Storey v Weinberg, 226 M 48, 31 NW(2d) 912.

A consideration of proximate cause involves the problems of fact of causation, responsibility for events which could not reasonably be foreseen or anticipated, liability to persons to whom no harm could reasonably be anticipated, intervening forces, amount of damages, and shifting responsibility to others. The act of a passenger in grabbing the steering wheel and forcing the automobile to the left across the highway and into a ditch on the left side of the road constitutes an efficient intervening cause of the accident so as to relieve the driver of the vehicle who was attempting to pass plaintiff's automobile in face of an oncoming truck Robinson v Butler, 226 M 491, 33 NW(2d) 821.

The evidence in the record justified a finding that the entry by defendant, Hoskins, into the highway without yielding the right-of-way to plaintiff's truck ap-

proaching thereon, coupled with her attempt to make a lefthand turn at an intersection without signalling, was the proximate cause of plaintiff's colliding with a telephone pole. On plaintiff's appeal from a judgment for defendant notwithstanding the verdict for the plaintiff, the supreme court takes a view of the evidence most favorable to plaintiff. Peterson v Jewell Tea Co., 228 M 521, 38 NW(2d) 51.

In an accident for damages to plaintiff's truck which collided with the telephone pole because defendant's truck driver suddenly turned left at the intersection which plaintiff's driver was passing, contributory negligence of plaintiff's driver in increasing the speed of his truck as he approached the intersection, in violation of the statute, and in swinging into the lefthand lane of a three-lane highway in passing, was for the jury under the evidence. Peterson v Jewell Tea Co., 228 M 521, 38 NW(2d) 51.

A verdict of $8,500 to a 54-year-old woman for injuries which were severe, and to some extent permanent, and which confined her to her bed in the hospital and at home for an extended period and prevented her from putting in a full day's work in the business which she operated, is not excessive. Perry v Reuter, 229 M 44, 38 NW(2d) 60.

In an action against the driver and owner of an automobile for the death of a pedestrian struck while the automobile was traveling 50 miles per hour on a gray, misty morning on a wet pavement, when the pedestrian crossed the highway after alighting from the bus, whether the pedestrian was guilty of negligence was for the jury. Holz v Pearson, 229 M 395, 39 NW(2d) 867.

Instruction indicated that driver of automobile shall drive at speed appropriately reduced when special hazard exists by reason of highway conditions or when automobile is approaching and crossing a railroad crossing. It was duty of defendant to drive her automobile as she approached and crossed railroad crossing at place where men were working in street at a speed appropriately reduced from what it might have been in absence of those conditions. The violation of duty, if there was any violation, would be evidence of negligence and the instruction was not erroneous. Mickelson v Kernkamp, 230 M 448, 42 NW(2d) 18.

Statutory admonition to drive at approximate reduced speed when approaching and crossing an intersection applies with double force when the view at the intersection is obstructed. Dose v Yaeger, 231 M 90, 42 NW(2d) 420.

In an action for injuries sustained by a seven-year-old boy who was struck by a taxicab while crossing the street on the way to school, the evidence was sufficient to show that the boy was within the crosswalk at the time of the impact and that the driver was negligent in failing to yield the right-of-way, to keep a proper lookout, and to have the cab under proper control. The presence of a minor pedestrian using the regular crosswalk was not such an unusual unexpected circumstance that rules applicable in the case of sudden emergencies governed the conduct of the defendant taxicab driver striking pedestrian at such crosswalk. Seitzer v Halverson, 231 M 230, 42 NW(2d) 635.

Where defendant after negligently driving his automobile so as to hook his right rear bumper onto the left front fender of decedent's car, thereafter stopped on the right half of the pavement for the purpose of separating the cars, and decedent was struck by a car approaching from the opposite direction which swerved over on the wrong side of the highway, the action of such third party was an intervening cause superseding the negligence of defendant as proximate cause. Goede v Rondorf, 231 M 322, 43 NW(2d) 770.

The mere fact that the accident resulting in death to plaintiff's decedent would not have happened but for the original negligence of the defendant does not compel the conclusion that defendant's negligence was the proximate cause of decedent's death. Goede v Rondorf, 231 M 322, 43 NW(2d) 770.

The host driver of an automobile owes his guest the duty to operate the car with reasonable care so that the danger of riding in it is not increased or a new danger added to those assumed when the guest entered the car. One who invites another to ride in his motor car is not bound to furnish a sound vehicle, but if he has knowledge of the defective condition of the vehicle making it hazardous to ride therein, he owes

an obligation to warn the guest of such danger. The evidence in the instant case does not sustain a verdict of negligence on the part of the defendant. Otto v Sellnow, 233 M 215, 46 NW(2d) 641.

Where defendant A had his wrecker truck parked in a northeasterly direction, in the nighttime, without having set out flares, across the south lane of a state highway running east and west, with the wrecker attached by chain and cable to a car in the south ditch; and where defendant B parked his sedan on the north lane of the highway a short distance west of the parked wrecker, with his lights on bright; where defendant C was driving his pickup truck, in which plaintiff was a passenger, in an easterly direction at a speed in excess of the statutory limit permitted within municipalities; and where the pickup truck collided with the wrecker and plaintiff was injured, that the verdict of the jury that A, B, and C were negligent and that the negligence of each was the proximate cause of the accident is supported by the evidence. The verdict, although liberal, was not excessive.

Where the most serious result of plaintiff's accident was a disfigured face, and the oral testimony was to the effect that prior to the accident she was an attractive young woman, court did not err in receiving in evidence a photograph of plaintiff when she was 19 years of age taken three years before the accident and six years before the trial, where there was testimony that there was little change in her appearance from the time of the accident up to the time of trial. Johnson v Larson, 234 M 505, 49 NW(2d) 8.

The evidence is sufficient to support a jury's finding that the driver's conduct was negligent and the proximate cause of the collision with the pole when a wheel of the car came off. The trial court properly included in its charge the language of section 169.14 relative to speed that is greater than is reasonable and prudent. There being no proper assignment of error in this respect, the question of the improper argument by counsel is not raised. Rugg v Rugg, 235 M 238, 50 NW(2d) 486.

Failure to decrease speed when approaching a hill crest, was not the proximate cause of a collision which occurred on a downgrade one-tenth of a mile after the hill crest had been passed. Conradson v Vinkemeier, 235 M 461, 51 NW(2d) 651.

In an action for injuries arising out of an exploding bottle of a carbonated beverage the res ipsa loquitur doctrine may be applied in the court's charge to the jury upon the theory that defendant had control of the bottle at the time of the alleged negligent act although not at the time of the accident, provided, that plaintiff shall first prove that the condition of the bottle or container had not been changed after it left defendant's possession, that plaintiff had handled the bottle carefully and that the injury was not due to any voluntary action on her part. The Minnesota doctrine, res ipsa loquitur, originated through court decisions and was not based upon any specific statute. It is nothing more than one form of circumstantial evidence creating a permissive inference of negligence. It arises where (a) the accident is of a kind which ordinarily does not occur in the absence of someone's negligence, and (b) it is caused by an instrumentality within the exclusive control of the defendant, and (c) the possibility of contributing conduct which would make the plaintiff responsible is eliminated.

It is generally presumed that an explanation of the accident is more readily accessible to the defendant than to the plaintiff. Johnson v Coca Cola Bottling Co., 235 M 471, 51 NW(2d) 573.

Section 169.20, subdivision 1, providing that the driver of a vehicle approaching an intersection shall allow the right-of-way to a vehicle which has entered the intersection from a different highway, is modified in another sentence which provides that when two vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. This means that the driver on the left, even though he may reach the intersection first, must yield the right-of-way to the driver on the right where they approach the intersection so nearly at the same time that there would be imminent hazard of a collision if both continued the same course at the same speed. In the instant case under the testimony and obvious physical facts the driver of defendant's car on the left was negligent as a matter of law. Webber v Seymour, 236 M 10, 51 NW(2d) 825.

The jury could reasonably find some circumstantial evidence, contrary to the direct testimony of a speed of only twenty miles per hour, that the defendant was traveling at an excessive speed under driving conditions which then existed, where the force of the impact upon a pedestrian was not only sufficiently violent to mangle the decedent's body and sever one of his legs, but was also of such force as to push in the grill on the defendant's car, bend the fan, buckle the hood, and so damage it and the radiator core that both had to be replaced. Knuth v Murphy, 237 M 225, 54 NW(2d) 771.

In the instant case it was not error for the court to refuse to instruct regarding defendant's failure to apply his brakes or sound his horn when approaching a farm driveway out of which the plaintiff child drove a bicycle; nor was it error on the part of the court to refuse to instruct the jury on the rule pertaining to emergencies. Tilbury v Welberg, ... M ....., 55 NW(2d) 685.

In this action, arising out of an automobile-motorcycle collision, the record indicates that the negligence of both drivers was a question for the jury. The jury found for the defendant and the trial court granted a new trial. The appellate court held that even if the automobile driver was negligent as a matter of law, there was no prejudicial error in the court's failure to so instruct the jury, since a finding of negligence is implicit in the verdict returned. The action of the trial court is reversed. Mutual Service Insurance Co. v Overholser, ... M ....., 58 NW(2d) 268.

Where special hazards existed, it may be improper or unreasonable for a motorist to drive at a speed authorized by statute. The degree of care required must be commensurate with conditions existent and hazards to be expected. Evidence of defendant's knowledge of special hazards at the place of accident may be proper for the trial court to instruct the jury on statutory regulations with reference to speed; and where there was evidence that a minor aged 18 months was playing in the highway in clear view of defendant just prior to being struck by defendant's car, the jury could reasonably accept such evidence as more reasonable than the evidence by defendant that the minor was playing in tall weeds at the side of the highway and emerged suddenly therefrom. Westling v Holm, ... M ....., 58 NW(2d) 252.

A statute permitting speed up to 60 miles per hour under normal driving conditions does not render one free from negligence as a matter of law when not exceeding that speed if the weather conditions or special hazards exist which make it improper or unreasonable to drive at that speed. A person of reasonable intelligence and ordinary experience, without proof of further qualification, may express an opinion as to how fast an automobile was traveling. Hatley v Klingsheim, 236 M 370, 53 NW(2d) 123.

The trial court should have instructed the jury that provisions of the reduced-speed statute were not applicable until such time as appellant should have seen that the approaching automobile on an intersecting highway was not going to stop and danger was imminent unless he reduced his speed, and it was error to instruct the jury that the provisions of the reduced-speed statute were applicable, if he apparently saw the automobile before he entered the intersection. Neal v Neal, ... M ....., 56 NW(2d) 673.

In an action by an automobile passenger against his host, whose westbound automobile was traveling on an arterial highway, and another motorist, whose northbound automobile did not stop for the stop sign, for injuries arising from the intersectional collision, failure to properly qualify an instruction that reduced-speed statute was applicable if, before entering the intersection, the westbound motorist saw the northbound automobile was reversible error in view that the westbound motorist's counsel objected thereto before and at the end of the charge. Neal v Neal, ... M ....., 56 NW(2d) 673.

Excessive speed could not have been a proximate cause of injuries sustained by a workman when he struck the side of a passing streetcar while engaged in replacing the bulb in a warning light at the end of a girder between the streetcar tracks, and hence refusal to instruct the jury that the motorman was under a duty to keep the car under control so that he could stop it in time to avoid a collision was not error, particularly in the absence of evidence that the speed of the car was excessive. Peterson v Minneapolis St. Ry., 236 M 118, 53 NW(2d) 817.

Since the failure to drive at an appropriate reduced speed in compliance with section 169.14, subdivision 3, constitutes driving at an unlawful speed under section 169.20, subdivision 1, it was not error in the instant case to instruct the jury that the driver of a motor vehicle traveling at an unlawful speed forfeits any right of way which he would otherwise have under the statute. Norton v Nelson, 236 M 237, 53 NW(2d) 31.

The fact that neither car moved appreciably from the place of impact from the point of collision tends to show that both vehicles were traveling at the same rate of speed. Katlaba v Pfeifer, ... M ....., 56 NW(2d) 725.

No jury issue arises as to what a motor vehicle driver ought reasonably to have anticipated in the exercise of ordinary care where he admits that long before he reached the scene of collision he actually knew that the highway was very slippery and knew that at the speed he was traveling he could not apply the brakes to the tractor without having the tractor-trailer "jackknife" and could not apply the brakes to the trailer alone without having it "fishtail," and that the highway had many curves, hillcrests and grades, which reasonably made it necessary for him to rely upon his brakes, and where he must reasonably have known and anticipated that he would have occasion to pass or stop for other vehicles, which would be driving at an abnormally slow rate of speed, and might actually stop preparatory to crossing the opposing traffic lane, and where the resulting failure to keep the tractor-trailer unit under control contributed proximately to the collision. Kopp v Ryckman, ... M ....., 57 NW(2d) 31.

Where from the evidence the jury might conclude that the truck was approximately 29 feet north of the point of impact when the minor suddenly emerged into alley, and where the driver testified that within the space of 20 feet he possibly could have stopped the truck and swerved to the right, and where 25 feet would have been sufficient to avoid striking the minor, the trial court did not err in reading to the jury the statutory highway traffic regulation act with reference to the duty of the driver to keep proper lookout, to sound a warning, to have his vehicle under control, and to drive at a reasonable rate of speed. Pettit v Lifson, ... M ....., 57 NW(2d) 34.

It was not error for the court to refuse to grant defendant's request for an instruction to the jury embodying section 169.14, subdivision 3, nor did the court err in its rules upon evidence during the trial. Schleuder v Soltow, ... M ....., 59 NW(2d) 320.

In an action for injuries received by an automobile passenger when the automobile slid on slippery pavement at night and collided with a train being moved over an open track intersecting a city street, the evidence established that negligence of the defendant in failing to maintain permanent crossing signs was not the proximate cause, but was merely a condition, or accident, and that the negligence of the driver of the automobile was the sole cause of plaintiff's injuries. Chicago, Milwaukee & St. Paul v Slawik, 184 F(2d) 920.

Section 169.14, subdivision 6, applies to criminal cases. As to whether or not it applies to civil actions depends upon the allegation in the complaint. OAG May 10, 1949 (989-A-10).

As to a trunk highway, a speed restriction varying from that established by statute would have to be established by the commissioner of highways, as provided in section 169.14, subdivision 4. As to other highways, the speed limits are established by section 169.14, subdivision 2, and in order to change those speed limits it is necessary to proceed as provided in section 169.14, subdivision 5, as amended by Laws 1947, Chapter 428, Section 13, which provides that alteration of speed limits on streets or highways is permitted only upon the authority of the commissioner of highways. OAG July 22, 1948 (989-A-19).

A town is a municipality within the purview of section 169.14, subdivision 2. The right of a town to adopt traffic ordinances relating to nontrunk highways is limited by the requirement that as to speed limits the ordinance must be approved by the commissioner of highways. OAG Aug. 9, 1951 (989-A-19).

The following agencies of state government are authorized under the Constitution and the statutes to make arrests for traffic law violations: (1) the commissioner of highways is authorized, under section 161.03, subdivision 21, to employ and designate patrolmen, supervisors, assistant supervisors, and sergeants, who will constitute the highway patrol and are authorized to make arrests on trunk highways; (2) the superintendent and members of the state bureau of criminal apprehension, under section 626.33; (3) game refuge patrolmen and game wardens have only certain powers of arrest, as found in section 629.37; (4) officers of the bureau of criminal apprehension have only such powers of arrest as concern their particular office and as listed in section 629.37; (5) any private person under section 629.37, may arrest anyone who violates the traffic or any other law in his presence. Under section 169.14, subdivision 2, the lawful speed limits where no speed limits exist are: (1) 30 miles per hour in any municipality; (2) 60 miles per hour in other locations during the daytime; (3) 50 miles per hour in such other locations during the nighttime. Speed must be reduced when approaching and in crossing a street intersection, railway crossing, going around a curve, approaching a hillcrest, traveling along a narrow or winding road, and when special hazards exist with respect to pedestrians, traffic, weather, or other highway conditions. Any speed in excess of the statutory limitations is prima facie evidence that the speed is not reasonable or prudent and that it is unlawful. OAG Oct. 3, 1953 (989-A-24).

169.15 IMPEDING TRAFFIC

Section 169.15, the so-called "slow speed" statute, does not apply to a collision in a rural area between an automobile making a left turn between intersections and one approaching from the opposite direction. Howard v Marchildon, 228 M 539, 37 NW(2d) 833.

169.17 EMERGENCY VEHICLES

Where a motorist pulled down a sun visor when blinded by the lights on an approaching automobile but continued forward keeping on his own side of the road until struck by the approaching car, the question whether or not he was contributorily negligent in continuing forward when he could only see 10 or 12 feet ahead with the visor down was a question for the jury. Moan v Aasen, 225 M 504, 31 NW(2d) 255.

The driver of an automobile on the right side of the road must exercise due care to avoid collisions even with those on his side of the road, and, while he may assume that an approaching vehicle on his side of the road will turn to his own side, he cannot act on the assumption where factual basis for that assumption has disappeared. Kapla v Lehti, 225 M 325, 30 NW(2d) 685; Moan v Aasen, 225 M 504, 31 NW(2d) 265.

It is a fact question whether a motorist in stopping his car and permitting it to stand at night on the left side of a paved highway with its headlights on bright was guilty of negligence and was the proximate cause of a collision with defendant's approaching automobile when the defendant, misled as to the location of the highway, attempted to pass plaintiff's standing automobile by turning right onto the shoulder. Rue v Wendland, 228 M 435, 37 NW(2d) 533.

169.18 DRIVING RULES

HISTORY. 1937 c 464 s 32-39; 1939 c 450 s 7; 1947 c 428 s 15; 1951 c 363 s 1.

In an action against owner and driver of an automobile for the death of an occupant when the evidence indicated that the automobile zigzagged from one shoulder on one side of the highway to the other shoulder on the other side of the highway and finally turned over, and where the driver defendant testified that the accident occurred because the occupant decedent grabbed the steering wheel, the jury might determine because of the contradictory and evasive testimony of the defendant that the facts were such that the defendant was liable. Grengs v Erickson, 225 M 153, 29 NW(2d) 881.

In an action by a passenger in an automobile overtaking and passing two other automobiles to recover for injuries sustained as the result of a head-on collision be-

tween the passing automobile and the one on-coming from the opposite direction alleged to have been caused by the concurrent negligence of the drivers of both cars, there is no basis for holding the passenger guilty of contributory negligence; the passenger not being aware of danger in attempting to pass until the on-coming car was close, and although he warned the driver of the passing car of the approach of the on-coming car, it was too late to prevent the collision. Kapla v Lehti, 225 M 325, 30 NW(2d) 686.

The driver of an automobile meeting and about to pass an oncoming automobile has the right to assume until the contrary appears that the oncoming automobile will keep on its right side of the road. Moan v Aasen, 225 M 504, 31 NW(2d) 265.

The question as to whether defendant was guilty of contributory negligence was one of fact and not of law, where there was evidence showing that when defendant turned into a strip of road 120 feet long he saw that the road was unobstructed; that plaintiffs' car was coming from the opposite direction on its right side of the road with its headlights turned on; that when plaintiff driver turned onto the 120-foot strip defendant pulled down his sun visor because he was blinded by the lights on plaintiffs' car; that after the visor was down defendant with his vision thus limited proceeded on his right side of the road close to the shoulder; and that plaintiffs' car collided with defendant's car by suddenly crossing to the wrong side of the road. Moan v Aasen, 225 M 504, 31 NW(2d) 265.

When a motorist pulled down a sun visor when blinded by lights of an approaching automobile and continued forward keeping to the right side of the road until struck by an approaching automobile, it was a question for the jury whether by continuing forward, when he could see only from 10 to 20 feet ahead with the visor down, it constituted contributory negligence. Moan v Aasen, 225 M 504, 31 NW(2d) 265.

Where an automobile was struck from behind by a streetcar, the fact that the court erroneously applied to the streetcar a statute relating to motor cars was not prejudicial when the instruction by the court in effect stated the common law rule which applies to streetcars in the absence of a statute. Peterson v Minneapolis Street Ry., 226 M 27, 31 NW(2d) 905.

Whether a motorist was negligent was a question of fact, where he approached at night on a paved highway at a speed of 45 to 60 miles per hour an automobile with its headlights on bright facing him standing on the shoulder to his right practically parallel to the pavement, which he first saw as he came over a knoll about 700 feet away approaching him in its right lane and cutting across the pavement where it stopped, and after it stopped it appeared to him to continue to approach him in its right lane with the consequence that he was misled thereby to attempt to pass it by turning right onto the shoulder and then to his left to get back again on the pavement, but too late to avoid a collision. Whether the operator of the standing automobile was negligent in permitting it to stand on the shoulder with its headlights on bright was a question of fact. Rue v Wendland, 226 M 449, 33 NW(2d) 593.

In an action for injuries sustained by plaintiff while crossing street at an intersection when struck by an automobile which was being driven to left of center of the street while passing a bus from which plaintiff had alighted, instruction that no vehicle be driven at left side of roadway when traversing any intersection was proper. The width of the bus and the position in which it was parked do not justify the overtaking automobile in driving to left side of street in passing the bus. Murray v Wilson, 227 M 365, 35 NW(2d) 521.

In a case brought to recover damages incurred as a result of an automobile accident, physical facts are an aid to the jury in determining how the collision occurred, but need not be conclusive. The court did not err in instructing the jury to take all evidence into consideration and to examine this evidence in the light of the proper statutes, which the court read to the jury in determining which of two parties involved was negligent. If properly done the trial court may allow counsel to read excerpts of the testimony from the court reporter's record in making his closing argument. Aasen v Aasen, 228 M 1, 36 NW(2d) 28.

Riding a bicycle from a driveway across a highway onto the wrong side thereof, and failing to yield the right-of-way to an on-coming truck, constituted violation of the traffic statute which in the absence of explanation constituted conclusive evidence of contributory negligence precluding recovery for death of bicyclist. A child 10 and one-half years of age, an experienced bicyclist, had the capacity and intelligence to be guilty of contributory negligence as a matter of law. Warning v Kanabec County Association, 231 M 293, 42 NW(2d) 881.

Where the motorist who was driving in a southeasterly direction on a road which entered another north and south road at a 45 degree angle, collided with an automobile being driven in a northerly direction on the other road, no question of precedence as to the right of crossing was presented, since the drivers could have proceeded on intended courses and paths would not be crossed, nor was either driver privileged to enter or use the left half of the roadway, and statutory right-of-way rule was not applicable. Chapman v Dorsey, 235 M 25, 49 NW(2d) 4.

Where plaintiff was riding on a motorcycle of which he was bailee, behind the operator of the motorcycle, whom he had asked to drive it, the court under all the facts in the case did not err in instructing the jury, as a matter of law, that the negligence, if any, of the operator was imputed to the plaintiff. A "servant" is a person employed by a master to perform services in his affairs whose physical conduct in performance of such service is controlled or is subject to the right of control by the master. The difference between a mere bailment relation and that of master and servant is the distinction between a mere permissive use and a use which is subject to control. Tschida v Dorle, 235 M 461, 51 NW(2d) 561.

Section 169.20, subdivision 1, providing that the driver of a vehicle approaching an intersection shall allow the right-of-way to a vehicle which has entered the intersection from a different highway, is modified in another sentence which provides that when two vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. This means that the driver on the left, even though he may reach the intersection first, must yield the right-of-way to the driver on the right where they approach the intersection so nearly at the same time that there would be imminent hazard of a collision if both continued the same course at the same speed. In the instant case under the testimony and obvious physical facts the driver of defendant's car on the left was negligent as a matter of law. Webber v Seymour, 236 M 10, 51 NW(2d) 825.

A statutory violation constituting prima facie evidence of negligence prevails as a controlling evidentiary factor against the violator only so long as there is an absence of evidence tending to show a reasonable ground for such violation.

A jury may disregard the positive testimony of a witness, although he is not contradicted by other witnesses, if his testimony is impeached and made improbable by reasonable inferences drawn from the surrounding physical facts and circumstances as disclosed by the record. Knudson v Nagel, ... M ....., 56 NW(2d) 420.

Where defendant was traveling on highway which opened into another highway only on one side and defendant's vehicle entered intersection from right at reasonable rate of speed, and defendant's vehicle had traveled over 40 feet in intersection, and plaintiff's vehicle, after skidding 116 feet, had barely reached intersection when accident occurred, plaintiff was guilty of contributory negligence in failing to yield right-of-way. Dosdall v Swift & Co., ... M ....., 56 NW(2d) 433.

A statute requirement that vehicles should be driven on the right path of the roadway is applicable to alleys as well as to streets and highways. In an alley 20 feet in width where the truck was traveling southerly to the left of center and came in contact with a boy aged 9 emerging into the alley and turning northerly into the path of the truck, whether the driver's action was negligent, proximately causing or contributing to the accident, was for the jury. Pettit v Lifson, ... M ....., 57 NW(2d) 34.

Upon the state of evidence in the instant case, the issue of decedent's contributory negligence in driving onto the left lane of the highway in violation of section

169.18 was for the jury, and it was error for the trial court to dismiss plaintiff's action at the conclusion of plaintiff's case. Olson v Olson, ... M ....., 55 NW(2d) 706.

In a head-on collision case, the evidence sustained a finding of contributory negligence on the part of plaintiff by first swerving over the center line. Schiro v Raymond, 237 M 271, 54 NW(2d) 329.

In a case involving collision between an automobile and a tractor-trailer, the evidence warranted a verdict for the driver of the automobile. Raiche v Martin, ... M ....., 56 NW(2d) 625.

Where a motorist was aware of a stop sign and chose to ignore it, he violated his duty to stop, look for, and yield the right of way to cars within the zone where they constituted an immediate hazard. Bocchi v Karnstedt, ... M ....., 56 NW(2d) 628.

Where the driver of an automobile stopped at the stop sign at the approach to a through street 60 feet wide, and a car approaching on his right at 150 feet away and at a speed of 45 miles per hour when he entered the intersection, and a collision took place in the south lane of a four-lane highway, the court did not err in submitting to the jury the question whether, when the first car entered the intersection, the car to his right was then so close as to constitute an immediate hazard. Rod v Jeffords, ... M ....., 56 NW(2d) 638.

In a head-on collision on a dark, sleety morning, wherein it appeared that the third car was stopped on the side of the highway momentarily to scrape ice from the windshield, the evidence sustained a verdict against the owner of the temporarily parked or stopped car. Tripplet v Hernandez, ... M ....., 56 NW(2d) 645.

It is incumbent upon a motorist approaching an intersection to also make observations to the left where a hill or other obstruction obstructs his view. Hierl v McClure, 237 M 456, 56 NW(2d) 721.

A driver of an automobile, on his own side of the road, must exercise due care to avoid collision with other vehicles even with those on his side of the road and, while he may assume that an approaching vehicle on his side of the road, will return to its proper lane, he will not be permitted to act on this assumption where the factual basis for it has disappeared, for example, where the vision of the driver in the wrong lane is so impaired by a heavy fog that in the light of the short distance between the two opposing vehicles it would be unreasonable to rely upon the driver's ability to discover his error and the consequent danger, to return to his proper lane of traffic. Katlaba v Pfeifer, ... M ....., 56 NW(2d) 725.

In an action for the wrongful death of decedent as a result of an intersectional collision between decedent's automobile and an automobile driven by a rural mail carrier, under the federal tort claims act the evidence established that the mail carrier was guilty of negligence when entering the highway from a secondary road in failing to keep proper lookout, and his negligence was the proximate cause of the collision. Van Wie v United States, 77 F. Supp. 22.

169.19 TURNING AND STARTING

Section 169.19, subdivision 3, does not impose absolute liability as an insurer, but requires only reasonable care on the part of a driver in starting a vehicle which has stopped, or is standing or parked. Marcum v Clover Leaf Co., 225 M 139, 30 NW(2d) 25.

Where the driver of the lead car in a funeral procession consisting of 15 cars comes to an unexpected and abrupt stop on the highway and one of the cars in the procession collides with the car in front of it, the negligence of the driver of the lead car presents a question for the jury; and where the driver of the fourth car from the last who had brought her car safely to a stop was run into by the car following her, the court properly directed a verdict in her favor. Benson v Hoenig, 228 M 412, 37 NW(2d) 422.

In an action for damages to plaintiff's truck which collided with a telephone pole, the evidence justified a finding that the action of the driver of defendant's

truck in entering the highway in the path of plaintiff's truck from a service station road, without yielding the right of way to plaintiff's truck, coupled with an effort of defendant's driver to make a left turn at an intersection without signaling when plaintiff's driver had increased his speed in an attempt to pass the truck so as to avoid a rear end collision, was the proximate cause of the collision of plaintiff's truck with the telephone pole. Peterson v Jewel Tea Co., 228 M 521, 38 NW(2d) 51.

Contributory negligence becoming an affirmative defense, the burden is upon the defendant to prove it. A violation of the highway regulation act, constituting prima facie evidence of contributory negligence is no defense unless it is found to constitute contributory negligence as a matter of fact, and unless such contributory negligence was a proximate cause of the harm for which recovery is sought. Howard v Marchildon, 228 M 539, 37 NW(2d) 833.

Where two automobiles were proceeding in the opposite direction on an east-west state highway, each approaching an intersection at a proper rate of speed, and suddenly the one approaching from the west, turned to its left without warning into the path of the other car, its front striking the left front of the other car, the collision taking place near the west curb line of the intersecting street in the northwest quadrant of the intersection, the evidence disclosed no negligence on the part of the operator of the west-bound car. Lind v Nebel, 232 M 255, 45 NW(2d) 401.

A jury's finding of willful and wanton negligence on the part of a minor defendant was justified where the evidence discloses that the minor was driving an automobile at a high and dangerous speed at night while being pursued by a state highway patrolman, and that as he came to left curve in highway at crest of hill automobile went off pavement and onto right shoulder until the automobile was about two-thirds of the way down hill, and that it then swung over onto wrong side of pavement and collided head on with plaintiff's automobile which was on its proper side of highway. Lunz v Gordon, 234 M 212, 48 NW(2d) 40.

Where plaintiff was riding on a motorcycle of which he was bailee, behind the operator of the motorcycle, whom he had asked to drive it, the court under all the facts in the case did not err in instructing the jury, as a matter of law, that the negligence, if any, of the operator was imputed to the plaintiff. A "servant" is a person employed by a master to perform services in his affairs whose physical conduct in performance of such service is controlled or is subject to the right of control by the master. The difference between a mere bailment relation and that of master and servant is the distinction between a mere permissive use and a use which is subject to control. Tschida v Dorle, 235 M 461, 51 NW(2d) 561.

169.20 RIGHT OF WAY

The provisions of section 169.20, subdivision 1, impose certain duties but do not cover the full measure of the driver's duty and do not nullify the common law duty to exercise due care, and the driver of the motor vehicle crossing a highway intersection is required to yield the right-of-way to a vehicle approaching from his right where both are so close to the intersection that there is danger of a collision if both proceed. Wilmes v Mihelich, 223 M 139, 25 NW(2d) 833.

Where two trucks, one traveling on an arterial street and the other on a non-arterial street collided, the evidence as to causation, negligence and contributory negligence was for consideration of the jury and the appellate court will not disturb their decision. Leitner v Pacific Gamble Co., 223 M 260, 26 NW(2d) 228.

A motorist approaching an intersection protected by a stop sign, ignored the sign and collided in the intersection with an automobile in which plaintiff was riding on the sign-protected road, violated his statutory duty by failing to yield the right of way to automobiles within the zone which was prima facie negligence. Olson v Anderson, 224 M 216, 28 NW(2d) 66.

The first sentence of section 169.20, subdivision 1, which purports to give the right-of-way at highway intersections to the driver of the car first entering the intersection is modified by the second sentence of that section which provides: "When two vehicles enter an intersection from different highways at approximately the same time the driver of the vehicle on the left shall yield the right-of-way to

the vehicle on the right." On a bright day, where there were no obstructions to vision or distracting circumstances at a highway intersection, the defendant was guilty of negligence as a matter of law in colliding with plaintiff's car approaching from the right although defendant testified that he looked in the direction of plaintiff's car when it was approximately 100 feet away and did not see it. Moore v Kujath, 225 M 107, 29 NW(2d) 883.

Unless observation otherwise indicates the contrary, a motorist has the right to assume that a stationary vehicle on his left and outside of the intersection will not suddenly propel his car forward. Sanders v Gilbertson, 225 M 546, 29 NW(2d) 357.

Evidence that the motorist entered an intersection with which she was unfamiliar and at which the view to the right was obstructed by standing corn, at a speed of 25 miles per hour and did not apply brakes even when she observed an automobile approaching from her right, sustained judgment against motorist for injuries sustained by her guests in a collision with the automobile coming from the right. Delyea v Goossen, 226 M 91, 32 NW(2d) 180.

Under the statutory right-of-way rule, an automobile approaching an intersection from the right must yield the right-of-way to an automobile approaching from the left which has left the intersection an appreciable length of time ahead of the automobile from the right and is in actual possession of the intersection; but this rule is relative and whether or not it was violated depends upon circumstances and is a question for the jury. Mattfeld v Nester, 226 M 106, 32 NW(2d) 291.

A driver of a vehicle approaching a highway intersection to the left of a vehicle approaching it at approximately the same time has a right to assume that the driver to the right will exercise ordinary care until the driver to the left becomes aware to the contrary. Whether the rule that a vehicle approaching a highway intersection to the left of a vehicle approaching intersection at approximately the same time must yield the right-of-way has been violated is a fact question for the jury. Bosell v Rannestad, 226 M 413, 33 NW(2d) 40.

Whether plaintiff was guilty of contributory negligence was a fact question where the evidence showed that on a clear day and a dry road he approached an intersection in his motor car with his view more or less obstructed until within 35 to 45 feet from the center thereof, where he could observe to his right the intersecting road about 75 feet from the center of the intersection but could not see beyond a knoll; that there he looked to his right and saw no approaching traffic; that he entered the intersection at a speed of 24 miles per hour; that when he had passed the center of the intersection, defendant, who came from the right of the knoll at a speed of 40 miles per hour collided with plaintiff's automobile without first seeing it and without slackening his speed. Mattfeld v Nester, 226 M 106, 32 NW(2d) 291.

Section 160.19, providing for the dedication of a road by statutory user, is not exclusive and did not supersede the common law dedication of a highway. The intent of the owner to dedicate a road to the public may be implied from a long time use by the public. Keiter v Berge, 219 M 374, 18 NW(2d) 35, states the rules for the establishment of a public highway by common law dedication. Bosell v Rannestad, 226 M 413, 33 NW(2d) 41.

The look-and-not-see-that-which-is-in-plain-sight rule, as applied to a motorist who has made observations preparatory to entering an intersection, must always be tempered with a consideration of surrounding circumstances which may have obscured or interfered with his vision.

Ordinarily, where a defendant motorist approaching from the right or left on an intersecting highway is out of sight of a plaintiff driver crossing the intersection, as where defendant is behind an obstruction or in a dip of the road and it appears to plaintiff as a result of observation that it is safe to cross and would be but for defendant's unanticipated speed or other negligence, the question whether plaintiff was guilty of contributory negligence is one of fact for the jury.

Mathematical computation in determining the rate of speed and the distance traveled by two vehicles immediately prior to their collision, as a basis for establishing contributory negligence or the absence of negligence as a matter of law, is rarely decisive and is wholly unsatisfactory where based upon factors which are dependant upon the interpretation placed upon conflicting evidence.

A motorist, having stopped and looked to his right and to his left preparatory to entering an intersection with a through highway, is not guilty of contributory negligence as a matter of law because he does not look again before entering or after starting across the intersection.

If the trial court erroneously directs a verdict on the ground of contributory negligence as a matter of law, its order must, nevertheless, be upheld if the record will not sustain a finding of negligence. Martin v Reibel, 227 M 106, 34 NW(2d) 290.

A driver of an automobile on a highway who crosses railroad tracks after train has passed and is struck by another traveling in opposite direction is negligent as a matter of law. Blaske v Northern Pacific Ry., 228 M 444, 37 NW(2d) 758.

If an automobile was so close to an intersection that a collision was eminent if the streetcar proceeded into the intersection, it was the duty of the streetcar motorman to yield the right-of-way to the automobile. Carlson v Fredsall, 228 M 461, 37 NW(2d) 744.

Riding a bicycle from a driveway across a highway onto the wrong side thereof, and failing to yield the right-of-way to an on-coming truck, constituted violation of the traffic statute which, in the absence of explanation, constituted conclusive evidence of contributory negligence precluding recovery for death of bicyclist. A child ten and one-half years of age, an experienced bicyclist, had the capacity and intelligence to be guilty of contributory negligence as a matter of law. Warning v Kanabec County Ass'n, 230 M 293, 42 NW(2d) 881.

Under section 169.20 an automobile approaching from the left is under the duty of yielding the right-of-way to one approaching from the right where they approach the intersection under such circumstances that, if both continue in their respective courses at the speeds at which they are traveling, a collision is likely to occur; and an automobile approaching from the right is required to yield the right-of-way to one approaching from the left which has reached the intersection an appreciable length of time ahead of it and is in actual possession of the intersection; and, where the evidence is in conflict as to the existence of the factors mentioned, a fact question is presented for the determination of the jury.

The contributory negligence of the bailee is not imputable to the bailor, even where the bailee is the minor child of the bailor living with him as a member of his family.

Where a father permits his minor child to use his automobile to go shopping, an inference is not permissible that the child is the father's servant or agent while so using the automobile. Ristau v Riley, 230 M 341, 41 NW(2d) 772.

Where defendant, while approaching an intersection at the rate of five to six miles per hour, was 30 feet away when he saw the car in which plaintiff was riding between 400 to 450 feet to his right, and where he was in the middle of the intersection, driving 18 to 20 miles per hour when plaintiff was 100 feet away, the facts not only rebut any prima facie showing of negligence in failing to comply with M.S.A., Section 169.20, Subdivision 1, but are conclusive that defendant was in possession of the intersection and had the right-of-way. The exclusion of defendant's accident statement, which had been given to plaintiff's insurance company pursuant to an exchange agreement between the companies insuring the vehicles involved, was harmless error. Halloran v Tousignant, 230 M 399, 41 NW(2d) 875.

A motorist traveling on a through highway forfeits his right-of-way at intersection by traveling at an unlawful speed. Dose v Yaeger, 231 M 90, 42 NW(2d) 420.

The driver of a vehicle approaching a through highway is under a duty to stop at a place where he may effectively observe approaching traffic if there is a reasonable opportunity to do so.

The driver of a vehicle approaching a through street must exercise a degree of care commensurate with the extra hazards created by obstructions to his view surrounding the intersection.

Defendant motorist's negligence in proceeding on through highway after discovering minor plaintiff approaching intersection on her bicycle would not excuse

plaintiff's negligence in entering such highway without yielding the right-of-way to defendant, nor would defendant's negligence constitute a superseding intervening cause. Bohnen v Gorr, 234 M 71, 47 NW(2d) 459.

Evidence merely showing negligence, and want of ordinary or reasonable care, will not sustain a finding of willful or wanton negligence. In negligence cases one seeking contribution from another tort-feasor is not barred from recovery by the fact that he was guilty of ordinary negligence in the matter; but if his negligence amounted to an intentional wrong, or if he knew or presumed to have known that he was doing an unlawful act which constituted the negligence to which he was liable, then he is not entitled to contribution. Hardware Mutual v Danbury, 234 M 391, 48 NW(2d) 567.

Statutory right-of-way rule (section 169.20, subdivision 1) is not applicable to an automobile intersection collision in which no question of precedence between crossing vehicles is presented, where, as here, it conclusively appears that there was no common area at intersection upon which both plaintiff and defendant were privileged to enter and both drivers could have proceeded on their intended courses without their paths coming in conflict. Although a formal exception need not be taken to an inadvertent omission or error in a trial court's instruction to the jury, such omission or error is no ground for granting a new trial where trial court's attention has not been seasonably directed thereto in some manner. Chapman v Dorsey, 235 M 25, 49 NW(2d) 4.

Section 169.20, subdivision 1, providing that the driver of a vehicle approaching an intersection shall allow the right-of-way to a vehicle which has entered the intersection from a different highway, is modified in another sentence which provides that when two vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. This means that the driver on the left, even though he may reach the intersection first, must yield the right-of-way to the driver on the right where they approach the intersection so nearly at the same time that there would be imminent hazard of a collision if both continued the same course at the same speed. In the instant case under the testimony and obvious physical facts the driver of defendant's car on the left was negligent as a matter of law. Webber v Seymour, 236 M 10, 51 NW(2d) 825.

The right of a driver on an arterial highway to assume that another driver approaching on an intersecting highway will heed the stop sign is not absolute. It exists only when the driver on the arterial highway is traveling at a lawful rate of speed and is lost entirely if he is traveling at an unlawful speed. Norton v Nelson, 236 M 237, 53 NW(2d) 31.

Since the failure to drive at an appropriate reduced speed in compliance with section 169.14, subdivision 3, constitutes driving at an unlawful speed under section 169.20, subdivision 1, it was not error in the instant case to instruct the jury that the driver of a motor vehicle traveling at an unlawful speed forfeits any right-of-way which he would otherwise have under the statute. Norton v Nelson, 236 M 237, 53 NW(2d) 31.

In an action for damages sustained in an intersectional collision in the daytime when plaintiff's automobile came to a stop at an intersection and waited for two automobiles to pass, and looked to his left for a distance of 200 feet down the avenue where there was no obstruction, no distracting circumstances, and the view was clear and the plaintiff's sight good, and yet plaintiff failed to see defendant's automobile as he entered the intersection, instruction that the plaintiff was guilty of negligence in not seeing the defendant's automobile that was within the space where he looked, and that the question for the jury was whether the plaintiff's failure to look was the proximate cause of what occurred, was not reversible error. Shoop v Peterson, 237 M 61, 53 NW(2d) 633.

Whether defendant who stopped his automobile at a through highway as required by section 169.20, subdivision 3, did so at a point where he could effectively observe what traffic was approaching the intersection upon the through highway, or whether he was negligent in failing to yield the right-of-way to plaintiff who was approaching the intersection with his automobile on the through highway under

that portion of the statute requiring the defendant to yield the right-of-way to vehicles so close to the intersection on the through highway as to constitute an immediate hazard, were issues properly submitted to the jury; and whether the plaintiff was guilty of contributory negligence was an issue properly submitted to the jury. Schleuder v Soltow, ... M ....., 59 NW(2d) 320.

Where evidence fails to establish that plaintiff was confronted by an emergency not of her own making, and that she chose one of two courses of action open to her, it was not error for the trial court to refuse to instruct the jury on the rule pertaining to emergencies. Tilbury v Welburg, ... M ....., 55 NW(2d) 685.

The rule that, where children are known to be or may reasonably be expected to be in the vicinity, a degree of vigilance commensurate with the greater hazard created by their presence or probable presence, is required of the driver of a motor vehicle to measure up to the standard of what the law regards as ordinary care has no application to the junction of an ordinary farm driveway and highway, but is applicable only to those places where children are known to be or where, by the nature of the place involved, children may reasonably be anticipated to be. Tilbury v Welburg, ... M ....., 55 NW(2d) 685.

Where there was no evidence of unlawful speed, it was not error to refuse to instruct the jury that defendant might forfeit his right-of-way if driving at an unlawful speed. Tilbury v Welburg, ... M ....., 55 NW(2d) 685.

Where the defendant was traveling on highway which opened into another highway only on one side and defendant's vehicle entered intersection from right at reasonable rate of speed, and defendant's vehicle had traveled over 40 feet in intersection, and plaintiff's vehicle, after skidding 116 feet, had barely reached intersection when accident occurred, plaintiff was guilty of contributory negligence in failing to yield right-of-way. Dosdall v Swift & Co., ... M ....., 56 NW(2d) 433.

A ditch crossing designed as an entrance from a highway to an adjoining farmer's field is a private road or driveway within the meaning of section 169.20, subdivision 4; and a vehicle on the highway is approaching within the meaning of section 169.20, subdivision 4, when such vehicle is so close that, if it continues in the same course at the same speed, there is reasonable likelihood or danger of collision should the vehicle on the private road or driveway enter upon or cross the highway. Peterson v Lang, ... M ....., 58 NW(2d) 609.

The "imminent hazard of a collision" test in coustruing section 169.20, subdivision 1, is for all practical purposes synonymous with the "reasonable likelihood or danger of a collision" test held applicable under section 169.20, subdivision 4. The act of entering and driving upon a highway with knowledge of its slippery condition does not constitute negligence in the absence of a showing that it involved an unreasonable risk of injury under the circumstances. Peterson v Lang, ... M ....., 58 NW(2d) 609.

169.21 PEDESTRIANS

NOTE: See section 614.66 as to right-of-way accorded to blind persons.

Where the defendant was driving an old automobile with defective brakes and worn out batteries on a slippery street at excessive speed after dark, and without keeping a proper lookout, the evidence was sufficient to take to the jury the negligence of the driver in striking a pedestrian who approached the intersection on the right side of the street in violation of the statute. It was error of the trial court to direct a verdict for the defendant. Olson v Evert, 224 M 528, 28 NW(2d) 752.

Plaintiff, who was walking in the street about six or eight feet from the south curb line of an east-west street prior to the time she entered an intersection and who was struck by defendant's automobile after she entered the intersection when approximately four feet from the southeast curb line thereof, was not contributorily negligent as a matter of law. Olson v Evert, 224 M 528, 28 NW(2d) 753.

In an action for injuries sustained by a five year old boy who was struck by automobile while crossing street at intersection crosswalk, denial of requested instruction as to rights and duties of pedestrians at crosswalks was prejudicial, and

such error sustained granting of new trial though not set out by trial court as one of the grounds for granting new trial and notwithstanding that the errors set out by the court consisting of its inadvertent omission from charge of requisite instructions as to speed were inadequate because of failure to call court's attention in time to its inadvertent omission. Storey v Weinberg, 226 M 48, 31 NW(2d) 912.

Where defendant drove his automobile at a lawful rate of speed on the proper side of the highway, with lights on and brakes in good operating condition, and stopped car some seven or eight feet after coming in contact with plaintiff, a pedestrian hurrying across the street without observing defendant's car, held that issue of defendant's negligence was properly submitted to jury. Where jury might find that plaintiff hurried across street at point other than crosswalk, without keeping proper lookout, court properly submitted to jury issue of plaintiff's contributory negligence. Garey v Michelsen, 227 M 468, 35 NW(2d) 750.

The fact that the law gives a funeral procession the right-of-way over other traffic does not relieve the driver of any vehicle in such procession from exercising due care, but such fact is a circumstance that must be kept in mind in considering the negligence of the driver of the lead car. Benson v Hoenig, 228 M 412, 37 NW(2d) 422.

While a pedestrian has the right-of-way over vehicles at intersections where there are no stop-and-go lights if he is within the area of the crosswalks, that right-of-way does not absolve him from the exercise of ordinary care for his own safety under circumstances that would deter a person of ordinary prudence from so relying. In the instant case, the evidence of the circumstances under which plaintiff was crossing at intersection justified the jury in finding that he was guilty of contributory negligence.

Violation of the pedestrian's right of way statute is only prima facie evidence of negligence. Since in the instant case there was evidence tending to show a reasonable explanation for failure to yield the right-of-way to the pedestrian, the court properly submitted the question of the negligence of defendant driver to the jury. Becklund v Daniels, 230 M 442, 42 NW(2d) 8.

The presence of a minor pedestrian using a regular crosswalk was not such an unusual unexpected circumstance as would justify an instruction that rules applicable in case of sudden emergency govern the conduct of the defendant taxicab driver striking the pedestrian at such crosswalk. Seitzer v Halvorson, 231 M 230, 42 NW(2d) 635.

Where the evidence as to whether plaintiff had sustained vertebral fractures was conflicting but there was evidence that she had been required to spend two weeks in bed and that she was unable to lift anything with her right arm at the time of the trial, an award of $5,000 was not so excessive as to indicate that it was rendered under influence of passion and prejudice. Wiest v Twin City Motor Bus Co., 235 M 225, 52 NW(2d) 442.

A city bus company is not liable for accidents resulting from ordinary jerks, jolts, and lurches of vehicles when operated in their usual manner. Wiest v Twin City Motor Bus Co., 236 M 225, 52 NW(2d) 442.

In an action by a passenger against a streetcar company for injuries received while stepping down from the company's streetcar onto an alleged defective platform furnished by the company, the question of the company's negligence and the passenger's contributory negligence, were for the jury. Peterson v Minneapolis Street Railway Co., 236 M 186, 52 NW(2d) 433.

Notwithstanding the provisions of section 169.21, subdivision 5, which requires pedestrians to walk near the lefthand side of the roadway and yield to oncoming traffic, the issue of plaintiff's contributory negligence in walking on the righthand side of the roadway because of highway ruts and ledges on the lefthand and center thereon, was for the jury to decide. Brodd v Priem, 236 M 148, 52 NW(2d) 429.

Evidence of the battered condition of an automobile involved in a collision, as well as evidence of the distance the vehicle was moved by the impact and of the

throwing of passengers out of the automobile, is admissible as indicative of the speed of the offending vehicle. Knuth v Murphy, 237 M 225, 54 NW(2d) 771.

Where a pedestrian was struck at the intersection by an automobile operated by defendant, mere proof that light was green for the defendant as he approached the semaphore signal, was not sufficient to establish that it had been red for the victim when he left the curb, but the light might nevertheless have been green for the victim when he left the curb and might have changed to red as the pedestrian was in the act of crossing. In such case the instruction that there is a presumption that the defendant acted with due care is reversible error. Knuth v Murphy, 237 M 225, 54 NW(2d) 771.

Where a bright, healthy, and experienced 15-year-old bicyclist, who, by daily travel and observation for a substantial period of time, was thoroughly familiar with the area of the accident and who, relying solely upon prior observation which so far antedated his entry into the danger zone as to be wholly ineffectual in warning him of an approaching truck, darted blindly, without reducing his speed sufficiently to prepare for a quick stop, from behind a parked vehicle, which obscured his view, into the path of, or against, passing truck, the bicyclist was guilty of contributory negligence. Steinke v Indianhead Truck Line, 237 M 253, 54 NW(2d) 777.

The presence of a pedestrian on a highway at a point where it is his duty to yield to vehicular traffic does not establish his contributory negligence as a matter of law, and is not applicable where the pedestrian is struck in a lane in which the vehicle is unlawfully proceeding before the pedestrian has reached the lane. Pettit v Lifson, ... M ....., 57 NW(2d) 34.

It was the duty of the driver of a motor bus making a right turn at a street intersection to use reasonable care in keeping a proper lookout ahead so as not to strike a pedestrian on a crosswalk. Donato v Minneapolis Street Ry. Co., ... M ....., 56 NW(2d) 308.

This subdivision does not prohibit a pedestrian from crossing a highway at other than a crosswalk, but merely requires that he yield the right-of-way to a vehicle lawfully using such highway. Pettit v Lifson, ... M ....., 57 NW(2d) 34.

Where one road opens onto another only on one side and there is a space common to both roads, even at a 45-degree angle junction, the right-of-way rule applies. Dosdall v Swift, ... M ....., 56 NW(2d) 432.

169.22 HITCHHIKING

In an action for personal injuries to a pedestrian who was run down by a motor bus making a right turn at an intersection, all evidence on the issues of negligence and contributory negligence was for the jury. Donato v Minneapolis Street Ry. Co., ... M ....., 56 NW(2d) 308.

169.221 BICYCLES

Bicycle riders are granted the same rights and are subject to all the duties applicable to the driver of a vehicle under the state highway traffic regulation act, subject, however, to special regulations found in section 169.221, subdivisions 2 to 6, and except as to those provisions thereof which by their nature can have no application. Demmer v Grunke, 230 M 188, 42 NW(2d) 1.

169.24 PASSING STREETCAR ON RIGHT

Where a passenger in alighting from a streetcar was caught by the sudden closing of the exit doors, and when the doors were suddenly opened fell out and was injured by an automobile, the question as to the negligence of the motorman was for the jury. Hall v Minneapolis Street Ry. Co., 223 M 243, 26 NW(2d) 178.

169.27 RAILROAD STOP CROSSINGS

Rule that vehicles of a rail carrier have the right-of-way at highway crossings held to extend to gas motorcars being operated on tracks. Statute impliedly requir-

ing that locomotives be equipped with a bell or whistle does not apply or extend to gas motorcars. Printed rules and regulations of a railway company are for the guidance of its employees and do not represent rules or principles of negligence applicable in highway crossing collision cases. Verdict of $12,571 was not excessive where plaintiff's injuries permanently impaired his faculties and rendered him unfit for further employment in the sole line of work for which he was trained. Lee v Molter, 227 M 557, 35 NW(2d) 801.

Issue of plaintiff's contributory negligence and that of his subordinate held properly submitted to the jury, where evidence indicated that due care required their observation of the condition of the track, the approach of an expected freight train, and the highway as well, and where it appeared that while endeavoring to carry out such responsibility they looked, but failed to see defendant, who at the time of such observation could have been beyond their range of vision. Lee v Molter, 227 M 557, 35 NW(2d) 801.

Where defendant, operator of a truck, upon approaching a railroad crossing with which he was thoroughly familiar, failed to stop or appreciably slacken speed for either of two "stop" signs plainly visible at such crossing and failed to observe a gas motorcar approaching in clear view from the left on the tracks, as a result of which a collision occurred between the two vehicles, held that defendant was negligent as a matter of law. Minnesota Statutes, Section 169.96, providing that "a violation of any of the provisions of this chapter *** shall not be negligence per se but shall be prima facie evidence of negligence only," did not prevent court from holding defendant negligent as a matter of law where his violation of the statute was admitted and was clearly the proximate cause of the accident, and where there was no evidence tending to justify or excuse such violation. Lee v Molter, 227 M 557, 35 NW(2d) 801.

Where the commissioner of highways is empowered under section 161.03, subdivision 7, to close such portions of a highway under construction as may be necessary to prevent any or all traffic from passing over such highway, it does not appear that there was such a closing of the highway by the commissioner as to prevent defendant from driving his automobile on the new construction on the date of the accident involved. Froden v Ranzenberger, 230 M 366, 41 NW(2d) 807.

169.28 CERTAIN VEHICLES TO STOP AT RAILROADS

Before railroad may escape liability insofar as passengers in an automobile, killed at railway crossing, are concerned, evidence must establish either that the contributory negligence of the passengers was proximate cause or that railroad was entirely free from negligence proximately causing the accident. Where conditions surrounding and in proximity to a railroad crossing make it more hazardous than an ordinary crossing, it may be negligence for a train to travel over the crossing at its usual rate of speed. Blaske v Northern Pacific Ry., 228 M 444, 37 NW(2d) 758.

In actions by driver and passenger in an automobile for injuries sustained when the automobile collided with a train on a crossing, negative testimony by the passenger and driver of the automobile that they heard no whistle or bell would not be permitted to prevail against testimony of six disinterested witnesses who were in a position to know whether the whistle was blown and who testified that the horn was sounded for a considerable time before the collision occurred. The law imposes no greater degree of care upon operators of diesel engines than is required of operators of steam locomotives even though there is a difference between the amount of noise made. Jorgenson v Minneapolis-St. Paul & Soo Ry. Co., 231 M 121, 42 NW(2d) 540.

Where a truck driver approached a railroad crossing at a speed of about five miles per hour, and the train was in plain sight when the driver reached a point 26 feet from the crossing, and the train whistle was sounded continually from the time the train was one-fourth of a mile away, and the whistle was loud and clear, the driver was guilty of contributory negligence as a matter of law precluding recovery for his death. Hicks v Northern Pacific Ry., ... M ....., 58 NW(2d) 750.

169.30 DESIGNATION OF THROUGH HIGHWAYS

Evidence justified freedom against the driver of an automobile on a county road for injuries sustained by a passenger in collision with another automobile at inter-

section with the state road on the ground that the driver was negligent in failing to stop in obedience to a stop sign before entering the intersection and that such negligence was the approximate cause of the collision. Dose v Yager, 231 M 90, 42 NW(2d) 420.

The driver of a vehicle approaching a through highway is under a duty to stop at a place where he may effectively observe approaching traffic if there is a reasonable opportunity to do so.

The driver of a vehicle approaching a through street must exercise a degree of care commensurate with the extra hazards created by obstructions to his view surrounding the intersection.

Defendant motorist's negligence in proceeding on through highway after discovering minor plaintiff approaching intersection on her bicycle would not excuse plaintiff's negligence in entering such highway without yielding the right-of-way to defendant, nor would defendant's negligence constitute a superseding intervening cause. Bohnen v Gorr, 234 M 71, 47 NW(2d) 459.

Where a village street has been designated as a state aid road in order to erect and maintain a stop sign at the entrance to the village, consent of the county board and the state department of highways must be obtained. OAG Feb. 19, 1952 (379-C-11).

169.32 STOPPING, STANDING, PARKING

HISTORY. 1925 c 416 s 14; 1927 c 412 s 24; 1937 c 464 s 67.

Plaintiff, who parked his car on a main paved highway at night during a snowstorm, where visibility was poor and driving conditions extremely hazardous, and, without observing approaching traffic, thereafter stationed himself to the left of his car near the center lane of the highway to remove the snow from the windshield, so that a car driven by defendant collided with the rear of his car, causing him injuries, held guilty of contributory negligence as a matter of law within the rule of Dragotis v Kennedy, 190 M 128, 250 NW 804. Henry v Hallquist, 226 M 39, 31 NW(2d) 641.

Evidence that the automobile was stopped on its right-hand side of a highway at night without lights because of mechanical difficulties, and failure of lights did not show such willful negligence as to render the owner liable for damage sustained by a driver of an automobile from the opposite direction which collided therewith, as the driver of the other automobile was on the wrong side of the road and traveling at such speed that he could not stop within the distance which he could see ahead. Spartz v Krebsbach, 226 M 46, 31 NW(2d) 917.

A verdict is to be liberally construed so as to give effect to the intention of the jury. In actions for damages in automobile collision cases the burden is upon the defendant to show plaintiff's contributory negligence as a defense and to establish negligence alleged in the counterclaim. Chevalier v Rogers, 230 M 540, 41 NW(2d) 872.

The mere fact that the accident resulting in death to plaintiff's decedent would not have happened but for the original negligence of the defendant does not compel the conclusion that defendant's negligence was the proximate cause of decedent's death. Goede v Rondorf, 231 M 322, 43 NW(2d) 770.

Where defendant after negligently driving his automobile so as to hook his right rear bumper onto the left front fender of decedent's car, thereafter stopped on the right half of the pavement for the purpose of separating the cars and decedent was struck by a car approaching from the opposite direction which swerved over on the wrong side of the highway, the action of such third party was an intervening cause superseding the negligence of defendant as proximate cause. Goede v Rondorf, 231 M 322, 43 NW(2d) 770.

Where the testimony of a party to the action consists of a narrative of events in which the party participated or which he observed, such testimony may be contradicted by the testimony of other witnesses. Conflicting testimony of witnesses as to the movement of defendant's truck presented question of fact for the jury as to

negligence and proximate cause, even though it would appear as a matter of law from plaintiff's testimony, standing alone, that negligence was not proximate cause of plaintiff's injuries.

Where plaintiff in one action sued for $2,500 and jury returned a verdict of $4,500, which was reduced on motion of plaintiff to $2,500, and plaintiff in other action sued for $1,100 and jury returned verdict of $1,600, which was reduced on motion of plaintiff to $946.04, the amount of the repair bill, and where the verdicts were against the great weight of the evidence, there should be a new trial rather than a remittitur. McHardy v Standard Oil Co. of Indiana, 231 M 493, 44 NW(2d) 91.

When an automobile was parked or stopped on a street or highway and there was conflicting testimony with reference to its position, lights, etc., from which a jury could find that an emergency condition was created which was the proximate cause of an accident, it was not error on the part of the trial court to instruct the jury on the emergency rule.

It appears from the record that plaintiffs did establish a cause of action against appellant defendant; that the verdicts were justified by the evidence and were not contrary to law; and that the trial court did not err in failing to grant defendant's motion for a directed verdict at the close of all the evidence.

It is within the discretion of the trial court to determine the matter of arguments of counsel under each situation before it, keeping in mind that no unfair advantage shall be taken against any litigant which would result in a miscarriage of justice. Tripplet v Hernandez, ... M ....., 56 NW(2d) 645.

An instruction should be based upon a statement of fact and not upon hypothetical weighing of the evidence and should not assume existence of facts or place too much emphasis on particular facts. In the instant case the testimony indicates the truck was still moving and came to a stop some time after the oncoming car had passed the crest of the hill and instruction based on an assumption that it was stopped at the time the on-coming car had reached the crest of the hill and during all the time it traveled down grade therefrom, may have misled the jury and limited the consideration of the issue of negligence on the part of the truck driver in parking in violation of section 169.32. Leman v Standard Oil Co., ... M ....., 57 NW(2d) 814.

While stopping a truck on the highway in an improper manner may constitute a violation of section 169.32, nevertheless by virtue of section 169.96 such violation does not constitute negligence per se but prima facie evidence of negligence only. Leman v Standard Oil Co., ... M ....., 57 NW(2d) 814.

Where the jury could find from conflicting evidence that the defendant truck driver, without any warning, suddenly stopped his truck on a two-lane highway, that the car following the truck in which plaintiffs were passengers was so close to the truck at the time that it could not stop behind the truck, and that in an effort to avoid striking the truck the driver of the car applied her brakes and turned her car to the left on the left lane of the highway where it collided with an on-coming car immediately at a point to the left of the stopped truck, the jury's finding that the truck driver and the driver of the car were both negligent, and that such negligence was a contributory cause of the collision, was sustained by the evidence. Devall v Leonard, ... M ....., 57 NW(2d) 835.

Under Minnesota law, the policy of applying arbitrary standards of behavior amounting in effect to rules of law to all cases without regard to surrounding circumstances in cases arising out of auto accidents is rejected. Questions of negligence, contributary negligence and proximate cause were in the instant case properly submitted to the jury. Northern Liquid Gas v Hildreth, 180 F(2d) 330.

169.33 POLICE MAY MOVE CARS

Where the sheriff took possession of an abandoned motor vehicle and stored it in a garage, it is assumed that in storing the motor car the bailee took notice of the fact that he must rely upon the owner of the vehicle or the proceeds of the sale of the vehicle to pay the storage charges. The bailee has no personal claim against the sheriff. OAG Sept. 5, 1952 (632-D-1; 390-A-14).

169.34 PROHIBITED STOPS

HISTORY. 1927 c 412 s 24, 25; 1937 c 464 s 69; Ex1937 c 38 s 1; 1939 c 430 s 13.

Where a party places himself in a position to encounter known hazards, which the ordinarily prudent person would not do, he assumes the risk of injury therefrom. Such assumption of risk is but a phase of contributory negligence and is properly included within the scope of that term. Where plaintiff, a guest in defendant's car, remained seated therein after defendant driver of car had parked it in violation of section 169.34 (13); where a police officer thereafter advised driver, in the hearing of plaintiff, that he might remain thus parked to assist a disabled car in front of him, but that he should be cautious in connection therewith; where rear lights on defendant's automobile may have been defective; and where such factors may all have contributed to a subsequent rear-end collision which injured plaintiff, it could not be held as a matter of law that plaintiff, by remaining seated in the car, assumed the risk of injury, particularly in view of her lack of knowledge as to the condition of the rear lights and as to whether defendant driver had complied with the police officer's instructions. Grabow v Hanson, 226 M 265, 32 NW(2d) 593.

Where the jury's findings of negligence may have rested upon any one of several acts or omissions on the part of the defendant, it was error for the court to hold that the jury's finding was limited to only one of such acts, to wit, his negligence in parking in violation of section 169.34 (13). Grabow v Hanson, 226 M 265, 32 NW(2d) 593.

Cities and villages may enact traffic regulations not inconsistent with the state traffic code but any local regulation affecting trunk highways within the municipality must have the consent of the commissioner of highways. OAG June 13, 1951 (989-A-16).

169.35 PARKING

HISTORY. 1925 c 416 s 14; 1937 c 464 s 70; Ex1937 c 38 s 1; 1939 c 430 s 14; 1947 c 428 s 21.

It is a fact question whether a motorist in stopping his car and permitting it to stand at night on the left side of a paved highway with its headlights on bright was guilty of negligence and was the proximate cause of a collision with defendant's approaching automobile when the defendant, misled as to the location of the highway, attempted to pass plaintiff's standing automobile by turning right onto the shoulder. Rue v Wendland, 228 M 435, 37 NW(2d) 533.

Where a truck was parked on a highway leaving 22 feet of the highway clear and as an automobile was starting to pass around the truck from the rear a second automobile came up abreast of the first and turned to the right striking the truck, though there was room for both automobiles to pass the truck at the same time, there was no such causal connection between the truck driver's negligence and the accident as would permit recovery from the truck owner for injuries sustained by a guest in the first automobile. Collar v Meyer, 251 Wis 292, 29 NW(2d) 31.

169.36 BRAKES TO BE SET

Evidence that plaintiff stopped his pickup truck, saw nothing coming for a distance of 350 feet ahead of him, and proceeded to make a left turn across a trunk highway into a private driveway and was struck by the defendant who suddenly appeared driving at a high rate of speed out of dip in highway some 350 feet from the point where plaintiff was crossing, presented questions of defendant's negligence and plaintiff's contributory negligence for the jury. Rose v Western States Life Insurance Co., 230 M 393, 41 NW(2d) 804.

In an action for injuries sustained when a five-year-old boy who had been watching street repair operations ran across the street and was hit by a truck, the jury should have been instructed that where children are known or may reasonably be expected to be in the vicinity, a degree of vigilence commensurate with greater hazard created by their presence or probable presence is required of a truck driver to measure up to the standard of what the law requires as ordinary care. Audette v Lindahl, 231 M 239, 42 NW(2d) 717.

In an action for injuries arising out of an exploding bottle of a carbonated beverage the res ipsa loquitur doctrine may be applied in the court's charge to the jury upon the theory that defendant had control of the bottle at the time of the alleged negligent act although not at the time of the accident, provided, that plaintiff shall first prove that the condition of the bottle or container had not been changed after it left defendant's possession, that plaintiff had handled the bottle carefully and that the injury was not due to any voluntary action on her part. The Minnesota doctrine res ipsa loquitur originated through court decisions and was not based upon any specific statute. It is nothing more than one form of circumstantial evidence creating a permissive inference of negligence. It arises where (a) the accident is of a kind which ordinarily does not occur in the absence of someone's negligence, and (b) it is caused by an instrumentality within the exclusive control of the defendant, and (c) the possibility of contributing conduct which would make the plaintiff responsible is eliminated.

It is generally presumed that an explanation of the accident is more readily accessible to the defendant than to the plaintiff. Johnson v Coca Cola Bottling Co., 235 M 471, 51 NW(2d) 573.

Where the truck of the defendant slid off the road and became stuck, and plaintiff got out of the truck, pushed it in a position selected by him, and slipped and fell under the wheels of the truck and was injured, plaintiff was guilty of contributory negligence as a matter of law precluding recovery by him for injuries. Liebelt v Krause, 235 M 547, 51 NW(2d) 667.

169.37 OBSTRUCTING VIEW OF DRIVER

The host driver of an automobile owes his guest the duty to operate the car with reasonable care so that the danger of riding in it is not increased or a new danger added to those assumed when the guest entered the car. One who invites another to ride in his motorcar is not bound to furnish a sound vehicle, but if he has knowledge of the defective condition of the vehicle making it hazardous to ride therein, he owes an obligation to warn the guest of such danger. The evidence in the instant case does not sustain a verdict of negligence on the part of the defendant. Otto v Sellnow, 233 M 215, 46 NW(2d) 641.

169.42 REFUSE ON HIGHWAYS OR ADJACENT LANDS

HISTORY. 1937 c 464 s 77; 1951 c 663 s 1.

169.43 SWINGING GATES

HISTORY. 1937 c 464 s 78, 79; Ex1937 c 38 s 3; 1947 c 428 s 22; 1949 c 263 s 1.

Fastening of a loading rack on the left side of a truck is prohibited. OAG Sept. 15, 1953 (989-A-18).

169.44 SCHOOL BUSES; STOP SIGNALS; CONDUCT OF OTHER VEHICLES

HISTORY. 1937 c 464 s 80; 1939 c 430 s 15; 1947 c 428 s 23; 1953 c 326 s 1.

169.471 TELEVISION

HISTORY. 1949 c 78 s 1, 2.

169.48 VEHICLE LIGHTING

HISTORY. 1911 c 365 s 13; Ex1912 c 7 s 1; 1919 c 391; 1921 c 472 s 4; 1925 c 416 s 13; 1937 c 464 s 84.

One whose car was parked unlighted on a highway at night on its own side of the street was not guilty of willful negligence as to a person approaching from the opposite direction on the wrong side of the road when it produced evidence of mechanical trouble which caused his lights to fail, and that he had stopped about 20 minutes prior to the collision. Spartz v Krebsbach, 226 M 46, 31 NW(2d) 917.

Whether the motorist, pinned between the rear of an automobile and the overtaking automobile, while attempting to obtain gasoline from a tank to clear frost from the windshield was contributorily negligent in stopping the automobile during a heavy sleet storm on a lightly traveled highway at a point where the shoulder was so narrow that two and one-half feet of the automobile extended onto the pavement, in failing to keep a proper lookout for approaching traffic, or failing to display lights because of reduced visibility, was a question of fact for the jury. Le Mire v Nelson, ... M ....., 58 NW(2d) 189.

During the hours of darkness lighted lamps are required on the rear of every motor vehicle and every vehicle which is being drawn at the end of a train of vehicles and lighted lamps or reflectors are required on some vehicles. OAG May 13, 1952 (989-A-10).

169.50 REAR LAMPS

HISTORY. 1925 c 416 s 13; 1927 c 412 s 48; 1937 c 464 s 86; 1947 c 428 s 25; 1953 c 201 s 1.

Where a motorist parked his car and trailer on the highway without lights on the trailer, and a mechanic working on the engine of the automobile was injured by a car approaching from the rear, the negligence of the owner of the parked car in parking without a light or reflector on the trailer was the proximate cause of the injury and renders him liable. Bakken v Lewis, 223 M 329, 36 NW(2d) 478.

169.53 LIGHTS FOR PARKED VEHICLES

The provisions of section 169.96 that a violation of the highway traffic regulation act "shall not be negligence per se but shall be prima facie evidence of negligence only" evinces a legislative intention that negligence shall be the ground of recovery for acts which the statute declares unlawful and that a violation of the act shall be only prima facie evidence of negligence.

In order to constitute actionable negligence or contributory negligence as a defense, the violation of statute upon which the claim of negligence is predicated must, the same as negligence independent of statute, be the proximate cause of the harm for which recovery is sought.

Where the driver of an automobile plainly sees another automobile upon the highway in time to avoid a collision and negligently fails to do so, the driver's negligence is an intervening, efficient, and the proximate cause of the collision, insulating the prior negligence of the driver of the automobile with which he collided and reducing it to a mere occasion or condition. Barrett v Nash Finch Co., 228 M 156, 36 NW(2d) 526.

In an action by a garage mechanic who was struck at night by a passing automobile while working on a stalled automobile parked partially on the highway without a light or reflector on the automobile's trailer, evidence that the passing automobile struck the mechanic because the driver was blinded by the bright lights of another automobile, was insufficient for the jury. Bakken v Lewis, 223 M 329, 26 NW(2d) 478.

Whether a motorist was negligent was a question of fact, where he approached at night on a paved highway at a speed of 45 to 60 miles per hour an automobile with its headlights on bright, facing him, standing on the shoulder to his right parallel to the pavement, which he first saw as he came over a knoll about 700 feet away approaching him in its right lane and cutting across the pavement where it stopped, and after it stopped it appeared to him to continue to approach him in its right lane with the consequence that he was misled thereby to attempt to pass it by turning right onto the shoulder, and then to his left to get back again on the pavement, but too late to avoid a collision. Whether the operator of the standing automobile was negligent in permitting it to stand on the shoulder with its headlights on bright was a question of fact. Rue v Wendland, 226 M 449, 33 NW(2d) 593.

It is a fact question whether a motorist in stopping his car and permitting it to stand at night on the left side of a paved highway with its headlights on bright was

guilty of negligence and was the proximate cause of a collision with defendant's approaching automobile when the defendant, misled as to the location of the highway, attempted to pass plaintiff's standing automobile by turning right onto the shoulder. Rue v Wendland, 228 M 435, 37 NW(2d) 533.

169.54 Repealed, 1951 c 132 s 1.

169.55 LIGHTS ON ALL VEHICLES

HISTORY. 1937 c 464 s 91; 1947 c 428 s 27; 1949 c 574 s 1.

Where a motorist attempted service of process under this section upon an administrator of the estate of a nonresident automobile owner, who had died as the result of a collision in Minnesota, such service did not give the federal district court jurisdiction over the administrator in the absence of a provision in the Minnesota Statute providing for substantive service on administrator of the estate of a nonresident owner. Wittman v Hanson, 140 F. Supp. 747.

The following vehicles may use a reflector instead of a rear lamp or lantern: (1) bicycles; (2) implements of husbandry, such as road machinery, road rollers, and farm tractors; (3) animal-drawn vehicles; (4) vehicles not required by some other specific provision of the act to have rear lamps. Reflectors required on motor vehicle trailers and semi-trailers are in addition to the lighted rear lamp required under section 169.50. OAG May 13, 1952 (989-A-10).

169.57 VEHICLE SIGNALS

HISTORY. 1937 c 464 s 93; 1945 c 207 s 3; 1947 c 428 s 28; 1949 c 90 s 2.

Where defendant was traveling on highway which opened into another highway only on one side and defendant's vehicle entered intersection from right at reasonable rate of speed, and defendant's vehicle had traveled over 40 feet in intersection, and plaintiff's vehicle, after skidding 116 feet, had barely reached intersection when accident occurred, plaintiff was guilty of contributory negligence in failing to yield right-of-way. Dosdall v Swift & Co., ... M ....., 56 NW(2d) 433.

169.58 IDENTIFICATION LAMPS

HISTORY. 1937 c 464 s 94; 1945 c 207 s 4; 1949 c 349 s 1.

169.61 COMPOSITE BEAMS

HISTORY. 1937 c 464 s 97; 1945 c 207 s 5; 1953 c 330 s 1.

Whether a motorist was negligent was a question of fact, where he approached at night on a paved highway at a speed of 45 to 60 miles per hour an automobile with its headlights on bright facing him standing on the shoulder to his right practically parallel to the pavement, which he first saw as he came over a knoll about 700 feet away approaching him in its right lane cutting across the pavement, where it stopped, and after it stopped appeared to him to continue to approach him in its right lane, with the consequence that he was misled thereby to attempt to pass it by turning right onto the shoulder and then to his left to get back again on the pavement, but too late to avoid collision. Rue v Wendland, 226 M 449, 33 NW(2d) 593.

It is a fact question whether a motorist in stopping his car and permitting it to stand at night on the left side of a paved highway with its headlights on bright was guilty of negligence and was the proximate cause of a collision with defendant's approaching automobile when the defendant, misled as to the location of the highway, attempted to pass plaintiff's standing automobile by turning right onto the shoulder. Rue v Wendland, 228 M 435, 37 NW(2d) 533.

Where there was evidence that the plaintiff was blinded by the bright lights of defendant's truck, the issue of decedent's contributory negligence in driving onto the left lane of the highway was for the jury and it was error for the trial court to

dismiss the plaintiff's action at the conclusion of plaintiff's case. Olson v Olson, 236 M 363, 55 NW(2d) 706.

169.64 PROHIBITED LIGHTS

HISTORY. 1937 c 464 s 100; 1947 c 428 s 29; 1949 c 90 s 3; 1953 c 103 s 1.

A privately owned vehicle of a volunteer fireman, constable, deputy sheriff or sheriff is not an emergency vehicle under section 169.01, subdivision 5, except that a vehicle of an active volunteer fireman is permitted to display a red light in the front if permitted to do so by the commissioner of highways under section 169.58. Privately owned vehicles of other enumerated persons cannot be equipped with red lights. OAG March 5, 1951 (989-A-18).

169.67 BRAKES

HISTORY. 1925 c 416 s 11; 1927 c 412 s 43; 1937 c 464 s 105, 106; Ex1937 c 38 s 2; 1939 c 430 s 19; 1945 c 205 s 7; 1953 c 423 s 1.

Where an employee of the seller of a house trailer, attached the house trailer to a motorist's automobile with a ball and socket of such disproportionate size as to easily permit their separation after being locked together, and used safety chains which were far below required tensile strength, and the trailer brakes were not attached or connected to permit their separation from the motorist's automobile nor was the motorist advised of their presence or need for being coupled to his automobile but was told that the attachment was safe and that he could proceed on his trip, the seller was liable to occupants of another automobile which collided with the trailer when it became detached while being towed, notwithstanding that the motorist had detached the trailer and subsequently reattached the trailer in the same manner as it had been originally attached by the seller. Kothe v Tysdale, 233 M 163, 40 NW(2d) 233.

Where vendor or lessor of a trailer to be used on a public highway, furnished the vendee or lessee thereof with an attachment therefore which was defective and dangerous and in conflict with state regulations, said vendor or lessor was liable to persons using the public highway whose car came in contact with the trailer after it, as a result of defective attachment, had become detached from the vendee's or lessee's car then hauling it. Kothe v Tysdale, 233 M 163, 46 NW(2d) 233.

Laws 1937, Chapter 464, Section 105, Subdivision 4, (coded as section 169.67), was intended to apply prospectively to any vehicles sold and operated in Minnesota after the passage of the act. The statute requiring service brakes on four wheels was not intended to apply to vehicles purchased prior to the enactment of chapter 464. OAG Sept. 7, 1949 (632-A-4).

169.672 BRAKE FLUID; COMMISSIONER'S APPROVAL REQUIRED

HISTORY. 1953 c 302 s 1.

169.68 HORNS

If the jury should determine that defendant was aware of child's presence in close proximity to his parked truck shortly prior to his departure, then his failure to sound the horn might constitute an element in establishing his failure to discharge his increased obligations of care resting upon him because of such knowledge of evidence thereof and should have been received. Lovel v Squirt Bottling Co., 234 M 333, 48 NW(2d) 525.

No vehicle other than an authorized emergency vehicle can be equipped with a siren. OAG March 5, 1951 (989-A-18).

The term "police vehicles" as it refers to authorized emergency vehicles, is broad enough to include any vehicle equipped and used by a police officer or municipality while driven in the performance of police duties. It is broad enough to include a police vehicle which a municipality leases or uses for police purposes, even

though the vehicle is owned by a police officer authorized expressly or by the inherent powers of his office to use the same in the enforcement of traffic or other statutes. This modifies previous opinions of the attorney general's office. OAG Nov. 4, 1953 (989-A-18).

169.69 MUFFLERS

HISTORY. 1937 c 464 s 108; 1939 c 430 s 20; 1953 c 306 s 1.

169.71 WINDSHIELDS

If the director of civil defense determines that the display of a sticker on the rear window of a motor vehicle will be of assistance in the protection of our civilian population and aid in the carrying out of his civil defense duties, he may attach same. OAG Oct. 20, 1953 (835-A).

169.733 WHEEL FLAPS ON TRUCKS AND TRAILERS

HISTORY. 1951 c 640 s 1; 1953 c 619 s 1.

Truck tractors are not required to be equipped with wheel flaps. OAG Dec. 19, 1951 (632-E-34).

The chief purpose of this section is to provide a protection against the throwing by trucks or semi-trailers of water, slush, snow, mud, or any other substance on the automobiles or persons in the rear of such trucks or semi-trailers. OAG March 14, 1952 (632-E-34).

Rigid body trucks which unload by mechanical means are not within exception of "rear-end dump trucks" as described in Laws 1953, Chapter 619. OAG Aug. 31, 1953 (989-A-18).

169.743 BUG DEFLECTOR

HISTORY. 1953 c 304 s 1.

169.75 FLARES AND FLAGS

HISTORY. 1937 c 464 s 114; 1939 c 430 s 23; 1947 c 428 s 32; 1949 c 656 s 1.

If a soldier is entitled to tuition or a similar benefit under a federal law, rule, or regulation he is not entitled to benefits under the Minnesota law until he has exhausted his rights under the federal law. If a school teaches exclusively business subjects, it is not a trade school, and if the department of education has approved the school to be a trade school, a soldier is entitled to have his tuition paid for the course which he selects. OAG Oct. 13, 1953.

169.751 DEFINITIONS

HISTORY. 1953 c 651 s 1.

169.752 PATROL MOTOR VEHICLES, FIRST AID EQUIPMENT

HISTORY. 1953 c 651 s 2.

169.753 LAW ENFORCEMENT OFFICERS, TRAINED TO USE FIRST AID EQUIPMENT

HISTORY. 1953 c 651 s 3.

169.754 APPROPRIATIONS AUTHORIZED

HISTORY. 1953 c 651 s 4.

169.79 VEHICLE REGISTRATION

HISTORY. 1925 c 416 s 2; 1927 c 412 s 6; 1937 c 464 s 118.

169.80 SIZE, WEIGHT, LOAD

HISTORY. 1937 c 464 s 119, 120, 121; Ex1937 c 45 s 1; 1939 c 23 s 1; 1939 c 430 s 24; 1951 c 49 s 1; 1951 c 394 s 1.

169.81 HEIGHT AND LENGTH LIMITATION

HISTORY. 1925 c 416 s 5; 1927 c 412 s 35; 1937 c 464 s 122, 123; 1943 c 226 s 1; 1953 c 731 s 1.

Where the manner in which bales of straw were placed on a truck was not a proximate cause of the action and instruction that it was prima facie evidence of negligence to drive a vehicle on a highway unless the vehicle was so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom was error. Novotny v Bouley, 223 M 594, 27 NW(2d) 813.

169.82 TRAILER EQUIPMENT

The vendor in a sale or lessor in a lease of a vehicle intended for public use on public highway owes a duty to the person using such highway to exercise reasonable care in supplying the purchaser or lessee with a vehicle which will not constitute a menace or sole source of damage. In the instant case the defendant furnished to a motorist a trailer and an attachment thereto which was defective and dangerous and in conflict with statutory regulations and was liable. Kothe v Tysdale, 233 M 163, 45 NW(2d) 233.

169.83 WEIGHT LIMITATION

HISTORY. 1937 c 464 s 125; 1943 c 226 s 3; 1945 c 113 s 1; 1951 c 39 s 1, 2; 1951 c 587 s 1; 1951 c 588 s 1-4; 1953 c 65 s 1, 2.

Overloads on motor vehicles authorized by permit issued pursuant to sections 169.83 to 169.86 are subject to taxation. OAG March 20, 1950 (632-E-1).

The exception found in subdivision 6 of section 169.83 is applicable to vehicles operated exclusively in a village and city contiguous to each other. OAG April 4, 1950 (989-A-12).

169.84 LOAD LIMIT ON BRIDGES

HISTORY. 1937 c 464 s 126; 1953 c 22 s 1.

169.85 WEIGHING

HISTORY. 1937 c 464 s 127; 1951 c 212 s 1; 1953 c 719 s 1.

169.86 SPECIAL PERMITS

HISTORY. 1937 c 464 s 128; 1943 c 226 s 4; 1953 c 307 s 1.

Overloads on motor vehicles authorized by permit issued pursuant to sections 169.83 to 169.86 are subject to taxation. OAG March 20, 1950 (632-E-1).

The conditions prescribed in subdivision 3 has to do with damage to the road itself. An insurance requirement has to do with public liability and property damage. The commissioner has authority to prescribe the first condition in granting a permit. He might prescribe an insurance policy as security to compensate for injury to the road but there is no law permitting him to insist upon an insurance to protect the public. OAG Aug. 13, 1952 (229-A-12).

169.87 SEASONABLE LOAD RESTRICTIONS

HISTORY. 1937 c 464 s 129; 1947 c 505 s 1; 1949 c 695 s 1; 1951 c 445 s 1.

Seasonable road restrictions. 33 MLR 45.

A bus driver under contract to carry pupils is not required to furnish transportation when the equipment may not be used in violation of road restrictions. OAG April 19, 1948 (166-A-2-E).

The purpose of section 169.87, subdivision 2, is to automatically restrict the operation of vehicles on such county and town roads as are adversely affected by climatic conditions. Hard surfaced roads are not so adversely affected. What roads are hard surfaced roads is a question of fact. OAG June 8, 1950 (377-A).

The restriction as to size and weight of loads prescribed by section 169.80, and of seasonable road restrictions in section 169.87, apply to the driver of a school bus. OAG May 9, 1947 (989-A-12).

School buses may not be given more favorable consideration than other vehicles in imposing road restrictions. This applies in the instant case to weight of vehicle, including the load, operating on highways during the spring break-up. OAG Jan. 29, 1948 (989-A-12).

Local authorities have power to impose load restrictions in protection of highways. Such restrictions must be consistent with the provisions of section 169.87, subdivision 1, 2; and where there are no local restrictions, section 169.87, subdivision 2, applies. OAG March 15, 1948 (989-A-12).

The county board may impose load restrictions during the spring break-up of in excess of 8,000 pounds per axle providing it erects and maintains appropriate signs pursuant to section 169.87, subdivision 1. In the event the power granted to a county under subdivision 1 is not exercised, then automatic road restrictions apply on county and township roads between March 20 and May 15 of each year. OAG Aug. 17, 1951 (989-A-12).

Municipalities may by ordinance restrict the use of streets, under the jurisdiction of the municipality, for use by certain trucks and commercial vehicles provided the restriction is reasonable and not arbitrary. OAG Jan. 27, 1949 (989-A-12).

169.88 DAMAGES, LIABILITY

HISTORY. 1925 c 416 s 33; 1937 c 464 s 130.

The failure of the defendant as driver to keep a lookout during daylight while driving an automobile over 40 miles per hour over a stretch of highway under construction with the result that the vehicle struck a washout and rolled over was, as a matter of law, negligence which approximately caused his guest occupant's injuries, and the guest's failure to look out was not contributory negligence. Rutz v Iacono, 229 M 591, 40 NW(2d) 892.

Plaintiff's injuries were: fracture dislocation of the left hipbone, which was reduced; fracture of the lower bone in the pelvic girdle known as the sacrum; fracture of one of the parts of the pelvic bone in front; tearing of the ligaments near the hipbone; and bruises on the face and right arm. A $2,000 verdict was so inadequate as to require a new trial on the issue of the amount of damages. Blacktin v McCarthy, 231 M 303, 42 NW(2d) 818.

In an action for injuries sustained by an infant when struck by a truck where the driver's admissions indicated he was aware of the child's presence in close proximity to the parked truck shortly prior to its departure, evidence of the failure of the truck driver to sound his horn prior to departure was admissible. A degree of vigilance commensurate with the greater hazard is required of the driver to measure up to the standard which the law regards as ordinary, and whether the driver has measured up to such standards is a fact question for the jury. Lovel v Squirt Bottling Co., 234 M 333, 48 NW(2d) 525.

Although the admission by a party is not conclusive it may constitute credible evidence, particularly when facts to which it relates are within the personal knowledge of the party claimed to have made the admission. Lovel v Squirt Bottling Co., 234 M 333, 48 NW(2d) 525.

In consolidated actions for injuries to guests sustained when the truck preceding the automobile in which the guests were riding suddenly stopped on a two-lane highway and the host swung the automobile to the left and collided with the oncoming automobile, the jury could find from conflicting evidence that the defendant truck driver, without any warning, suddenly stopped his truck and that the car following the truck was so close to the truck at the time that it could not stop behind the truck and in an effort to avoid striking the truck the driver of the car applied her brakes and turned her car to the left onto the left lane of the highway where it collided with an oncoming car at a point immediately to the left of the stopped truck and that the truck driver was negligent and that his negligence was a contributing approximate cause of the collision. Devall v Leonard, ... M ....., 57 NW(2d) 835.

169.90 OFFENSES

HISTORY. 1937 c 464 s 132, 133; 1951 c 663 s 2.

NOTE: See section 169.42.

169.91 ARRESTS

Under the facts in the instant case, where plaintiff, a child four and one-half years old, was struck and injured by defendant's automobile while crossing the street at an intersection, the trial court was in error in directing a verdict for the defendant. The motorist's negligence in traveling at an excessive speed and without proper lookout, and whether such negligence was the approximate cause for striking the child who was crossing the street, were questions for the jury under the evidence. Schroeder v Streed, 231 M 267, 42 NW(2d) 816.

Where defendant after negligently driving his automobile so as to hook his right rear bumper onto the left front fender of decedent's car, thereafter stopped on the right half of the pavement for the purpose of separating the cars, and the decedent was struck by a car approaching from the opposite direction which swerved over on the wrong side of the highway, the action of such third party was an intervening cause superseding the negligence of defendant as proximate cause. Goede v Rondorf, 231 M 322, 43 NW(2d) 770.

The mere fact that the accident resulting in death to plaintiff's decedent would not have happened but for the original negligence of the defendant does not compel the conclusion that defendant's negligence was the proximate cause of decedent's death. Goede v Rondorf, 231 M 322, 43 NW(2d) 770.

The arresting officer is not required to take a prisoner before any particular justice. His discretion is controlled by the words of the statute "nearest or most accessible." OAG Oct. 3, 1947 (266-B-24).

169.94 RECORD OF CONVICTION

Prior convictions under state or federal law but not convictions for violations of the municipal ordinances nor convictions for violations of traffic regulations not amounting to felonies are admissible on the issue of accused's credibility, but unless accused offers evidence of good character the state may not attack his character in respect to trait involved in crime alleged at bar. State v Silvers, 230 M 12, 40 NW(2d) 630.

169.95 COURTS TO KEEP SEPARATE RECORDS OF VIOLATIONS

Where an appeal is taken from the municipal court to the district court under section 488.25, the provisions thereof as to a stay apply to acts required by sections 169.95 and 171.16. OAG Aug. 4, 1952 (291-F).

169.96 INTERPRETATION AND EFFECT

Contributory negligence as a defense to a violation of the statute. 32 MLR 105.

By providing that in a civil action violation of highway traffic regulation act shall be prima facie evidence of negligence, the act adopted negligence as a basis of determining liability based on violations. Rue v Wendland, 226 M 449, 33 NW(2d) 593.

Issue of plaintiff's contributory negligence and that of his subordinate held properly submitted to the jury, where evidence indicated that due care required their observation of the condition of the track, the approach of an expected freight train, and the highway as well, and where it appeared that while endeavoring to carry out such responsibility they looked, but failed to see defendant, who at the time of such observation could have been beyond their range of vision. Lee v Molter, 227 M 557, 35 NW(2d) 801.

Rule that vehicles of a rail carrier have right-of-way at highway crossings held to extend to gas motorcars being operated on tracks. Statutes impliedly requiring that locomotives be equipped with a bell or whistle does not apply or extend to gas motorcars. Printed rules and regulations of a railway company are for the guidance of its employees and do not represent rules or principles of negligence applicable in highway crossing collision cases. Verdict of $12,571 was not excessive where plaintiff's injuries permanently impaired his faculties and rendered him unfit for further employment in the sole line of work for which he was trained. Lee v Molter, 227 M 557, 35 NW(2d) 801.

The provisions of section 169.96 that a violation of the highway traffic regulation act "shall not be negligence per se but shall be prima facie evidence of negligence only" evinces a legislative intention that negligence shall be the ground of recovery for acts which statute declares unlawful and that a violation of the act shall be only prima facie evidence of negligence. In order to constitute actionable negligence or contributory negligence as a defense, the violation of statute upon which the claim of negligence is predicated must, the same as negligence independent of statute, be the proximate cause of the harm for which recovery is sought. Where the driver of an automobile plainly sees another automobile upon the highway in time to avoid a collision and negligently fails to do so, the driver's negligence is an intervening, efficient, and the proximate cause of the collision, insulating the prior negligence of the driver of the automobile with which he collided and reducing it to a mere occasion or condition. Barrett v Nash Finch Co., 228 M 156, 36 NW(2d) 526.

The evidence in the record justified a finding that the entry by defendant, Hoskins, into the highway without yielding the right-of-way to plaintiff's truck approaching thereon, coupled with her attempt to make a left hand turn at an intersection without signalling, was the proximate cause of plaintiff's colliding with a telephone pole. On plaintiff's appeal from a judgment for defendant notwithstanding the verdict for the plaintiff, the supreme court takes a view of the evidence most favorable to plaintiff. Peterson v Jewell Tea Co., 228 M 521, 38 NW(2d) 51.

In an accident for damages to plaintiff's truck which collided with the telephone pole because defendant's truck driver suddenly turned left at the intersection which plaintiff's driver was passing, contributory negligence of plaintiff's driver in increasing the speed of his truck as he approached the intersection, in violation of the statute, and in swinging into the left hand lane of a three-lane highway in passing, was for the jury under the evidence. Peterson v Jewell Tea Co., 228 M 521, 38 NW(2d) 51.

Where the motorist was guilty of contributory negligence as a matter of law in making a left turn between intersections on a paved trunk highway into a private driveway must be determined by standards of care embodied in instructions applying the statute to the effect that it was the motorist's duty not to attempt a left turn unless it was reasonably safe to do so and then only after giving a signal of intention to do so and that violation of such duties constituted prima facie evidence of negligence. Howard v Marshalltown, 228 M 539, 37 NW(2d) 833.

Where a 17-year-old boy knew that the street was slippery but ran into the street in front of an approaching streetcar and upon realizing that the car was not going to stop, he turned to the left and attempted to cross in front of the car by a longer route and was struck, the boy was contributorily negligent as a matter of law. McGuiggan v St. Paul City Ry. Co., 229 M 534, 40 NW(2d) 435.

Where a bridge on a township road was washed out and the road overseer placed a barrier across the road on one side of the washout but did nothing on the other side, failure to place a warning on the other side of the washout was an act of "nonfeasance" so that the town officers were not liable to a party injured in driving into the washout. Giefer v Dierckx, 230 M 34, 40 NW(2d) 425.

A 15-year-old girl is obliged to use only that degree of care which an ordinarily prudent girl of her age, intelligence, and experience can reasonably be expected to exercise under the same or similar circumstances; and when riding in a purely vehicular area of the street as distinguished from the sidewalk or crosswalk, and who did not follow any authorized traffic channel but traveled at right angles thereto in contravention of the state highway regulation act, was not guilty of neglect per se but her actions were prima facie evidence of negligence. Demmer v Grunke, 230 M 188, 42 NW(2d) 1.

While a pedestrian has the right-of-way over vehicles at intersections where there are no stop-and-go lights if he is within the area of the crosswalks, that right-of-way does not absolve him from the exercise of ordinary care for his own safety under circumstances that would deter a person of ordinary prudence from so relying. In the instant case, the evidence of the circumstances under which plaintiff was crossing an intersection justified the jury in finding that he was guilty of contributory negligence.

Violation of the pedestrian's right-of-way statute is only prima facie evidence of negligence. Since in the instant case there was evidence tending to show a reasonable explanation for failure to yield the right-of-way to the pedestrian, the court properly submitted the question of the negligence of defendant driver to the jury. Becklund v Daniels, 230 M 442, 42 NW(2d) 8.

A verdict is to be liberally construed so as to give effect to the intention of the jury. In actions for damages in automobile collision cases the burden is upon the defendant to show plaintiff's contributory negligence as a defense and to establish negligence alleged in the counterclaim. Chevalier v Rogers, 230 M 540, 41 NW(2d) 872.

Violation of traffic statute is prima facie evidence of negligence, which, if not rebutted, is conclusive. Where reasonable men can draw but one conclusion, contributory negligence becomes a question of law. Warning v Kanabec County Association, 231 M 293, 42 NW(2d) 881.

A pedestrian is not absolved from the duty of exercising ordinary care for his own safety merely because he is on a crosswalk and has the right-of-way. Under facts of instant case, question of plaintiff's negligence was for the jury. Violation of the statute providing for pedestrian's right-of-way while lawfully on a crosswalk is only prima facie evidence of negligence. In case at bar, since there was evidence tending to show a reasonable explanation for failure to yield the right-of-way to the pedestrian, held that the defendant was not guilty of negligence as a matter of law, and the question of his negligence was properly submitted to the jury. Swanson v Carlson, 231 M 373, 43 NW(2d) 217.

Defendant motorist was guilty of negligence as a matter of law where, under the facts of the case, he made a left-hand turn in an intersection when a vehicle approaching from the opposite direction was so close thereto as to constitute an immediate hazard. Tschida v Dorle, 235 M 461, 51 NW(2d) 561.

In an action for injuries arising out of an exploding bottle of a carbonated beverage the res ipsa loquitur doctrine may be applied in the court's charge to the jury upon the theory that defendant had control of the bottle at the time of the alleged negligent act although not at the time of the accident, provided, that plaintiff shall first prove that the condition of the bottle or container had not been changed after it left defendant's possession, that plaintiff had handled the bottle carefully and that the injury was not due to any voluntary action on her part. The Minnesota doctrine res ipsa loquitur originated through court decisions and was not based upon any specific statute. It is nothing more than one form of circumstantial evidence creating a permissive inference of negligence. It arises where (a) the accident is of a kind which ordinarily does not occur in the absence of someone's negligence, and (b) it is caused by an instrumentality within the exclusive control of the de-

fendant, and (c) the possibility of contributing conduct which would make the plaintiff responsible is eliminated.

It is generally presumed that an explanation of the accident is more readily accessible to the defendant than to the plaintiff. Johnson v Coca Cola Bottling Co., 235 M 471, 51 NW(2d) 573.

Under the statute, violation of the highway traffic regulation statutes constitutes only prima facie evidence of negligence. Brodd v Priem, 236 M 148, 52 NW(2d) 429.

In an action by a passenger against a streetcar company for injuries received while stepping down from the company's streetcar onto an alleged defective platform furnished by the company, the question of the company's negligence and the passenger's contributory negligence, were for the jury. Peterson v Minneapolis Street Railway Co., 236 M 186, 52 NW(2d) 433.

Where the evidence as to whether plaintiff had sustained vertebral fractures was conflicting but there was evidence that she had been required to spend two weeks in bed and that she was unable to lift anything with her right arm at the time of the trial, an award of $5,000 was not so excessive as to indicate that it was rendered under influence of passion and prejudice. Wiest v Twin City Motor Bus Co., 236 M 225, 52 NW(2d) 442.

Insofar as the decedent truck driver crossed the center line of the highway at all, even though it was only a foot, he violated section 169.18 and this violation was prima facie evidence of negligence. Knudson v Nagel, ... M ....., 56 NW(2d) 420.

Violation of the provisions of the highway traffic regulation act does not establish negligence as a matter of law. Pettit v Lifson, ... M ....., 57 NW(2d) 34.

An instruction should be based upon a statement of fact and not upon hypothetical weighing of the evidence and should not assume existence of facts or place too much emphasis on particular facts. In the instant case the testimony indicates the truck was still moving and came to a stop some time after the oncoming car had passed the crest of the hill, and instruction based on an assumption that it was stopped at the time of the oncoming car had reached the crest of the hill and during all the time it traveled down grade therefrom, may have misled the jury and limited the consideration of the issue of negligence on the part of the truck driver in parking in violation of section 169.32. Leman v Standard Oil Co., ...M ....., 57 NW(2d) 814.

Under Minnesota law, the policy of applying arbitrary standards of behavior amounting in effect to rules of law to all cases without regard to surrounding circumstances in cases arising out of auto accidents is rejected. Questions of negligence, contributory negligence, and proximate cause were in the instant case properly submitted to the jury. Northern Liquid Gas v Hildreth, 180 F(2d) 330.

CHAPTER 170

SAFETY RESPONSIBILITY

170.01-170.19 Superseded by Laws 1945, Chapter 285.

170.21 DEFINITIONS

HISTORY. 1945 c 285 s 1; 1953 c 660 s 1.

Statutory liability of an owner for the negligence of persons operating automobiles without the owner's consent. 30 MLR 636.

Contribution between insurers issuing separate motor vehicle liability policies when there is double coverage. 32 MLR 510.