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.

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

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

If the law is to completely achieve its avowed purposes, the legislature could either waive governmental immunity from suit in negligence cases, as the United States has done in the federal tort claims act, which the legislature could do not only in behalf of the state but in cities and their governmental subdivisions, or it could require such municipalities or subdivisions to cover their drivers with insurance. The language of the Safety Responsibility Act must be interpreted as enacted by the legislature and the authorities' construction of the import of the language will not be accepted unless such construction is consistent with the legislative intent as evidenced by the language used. It is, therefore, held that the trial court is right in holding the drivers of vehicles owned or operated by the city exempt from the provisions of Laws 1945, Chapter 285 (coded as sections 170.21 to 170.58). City of St. Paul v Hoffman, 223 M 76, 25 NW(2d) 661.

The driver of a motor vehicle has the right to assume, until observation indicates the contrary, that anyone to his left occupying a stationary vehicle outside an intersection will not suddenly propel the vehicle forward, but will comply with the law and yield the right-of-way; and a person's conduct in a moment of peril is not to be measured by the same standard of exactness as that dictated by leisurely observation made after the accident. Sanders v Gilbertson, 225 M 546, 29 NW(2d) 358.

The legal owner of an automobile is "owner" and held liable under the owner's vicarious liability section of the Safety Responsibility Act; and the owner of a car who permitted her father, during her absence, to use her automobile was "owner" within the statute and liable under the doctrine of respondeat superior for any damage caused by negligence of the father in the operation of the car. Aasen v Aasen, 228 M 1, 36 NW(2d) 27.

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.

A motor tractor to which a shovel or scoop is attached and which is equipped with rubber tires, and is capable of driving at slow speeds over the highways is a "motor vehicle" within the meaning of New Hampshire Financial Responsibility Law and was therefor an "automobile" within a liability policy indorsement relating to the use of automobiles. American Mutual Liability Insurance Co. v Chaput, 95 NH 200, 60 A(2d) 118.

170.25 LICENSE, SUSPENSION; WHEN NOT APPLICABLE

HISTORY. 1945 c 285 s 5; 1949 c 92 s 1; 1951 c 126 s 1; 1953 c 258 s 1; 1953 c 660 s 2.

In the absence of a statutory definition, "residence" expresses different concepts according to the context in which it is used, namely: (1) a legal domicile, (2) an actual residence, or (3) a temporary abode. Where the purpose of a motorist for staying in Minnesota was to teach during the school term and work in a department store during the summer months and about a year after the accident she left Minnesota and went to Missouri and never returned, the motorist was a resident of the state at the time of the accident and a constructive service of process under the statutes by serving the commissioner of highways was not authorized. Chapman v Davis, 233 M 62, 45 NW(2d) 822.

170.26 REQUIREMENTS AS TO SECURITY AND SUSPENSION, APPLICATION

HISTORY. 1945 c 285 s 6; 1949 c 92 s 2.

Instruction that evidence that an automobile skidded, standing alone, is not evidence of negligent operation thereof, unless such skidding could have been prevented by exercise of ordinary care, when read together with instructions as a whole, adequately stated applicable law in an action for injuries sustained where defendant's automobile skidded into an automobile driven by plaintiff who had stopped in obedience to a traffic light. The doctrine of res ipsa loquitur does not apply. Cohen v Hirsch, 230 M 512, 42 NW(2d) 51.

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 decendent'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.

A release of all claims for non-injuries bars recovery for unknown consequences of known injuries, but it is not a bar to recovery for unknown injuries not within the contemplation of the parties at the time of contracting for such release. Whether the parties intended a release to cover unknown injuries is a question of fact. Aronovitch v Levy, ... M ....., 56 NW(2d) 570.

170.34 SATISFACTION OF JUDGMENT

HISTORY. 1945 c 285 s 14; 1953 c 660 s 3.

170.40 MOTOR VEHICLE LIABILITY POLICY

HISTORY. 1945 c 285 s 20; 1953 c 660 s 4.

Automobile liability insurance; financial responsibility law; rights of injured person when insured has breached warranty or condition. 33 MLR 525.

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

"Constructive possession" of personal property by its owner exists where the owner has intentionally given actual possession of the property to another for the purpose of having him do some act for the owner to or with the property and exists wholly in contemplation of law without possession in fact. Where the language limiting the obligation of the insurer is ambiguous and susceptible of more than one meaning, the rule requiring liberal construction in favor of the insurer is one of selectivity of meaning and not of obliteration of all meaning. Jacobson v Aetna Casualty & Surety Co., 233 M 383, 46 NW(2d) 868.

170.42 OTHER LAWS REQUIRING INSURANCE

HISTORY. 1945 c 285 s 22.

In an action for a declaratory judgment to obtain a declaration of insured's rights under an automobile liability policy, the trial court held that where the automobile liability insurer discovered non-cooperation of the insured during the course of the trial, and after the insurer's suggestion that the insured's non-cooperation might constitute a policy defense, the insured's counsel made certain motions and delivered a closing argument along the lines that the insurer's counsel and the insured's counsel had previously agreed upon, and after adverse verdict, insured was served with formal written notice of no liability, the insured was not prejudiced by the insurer's conduct, and the insurer did not waive the policy defense. Berkman Iron & Metal Co. v Striano, 111 F. Supp. 221.

170.49 SEIZURE OR RETURN OF DRIVER'S LICENSE

Where the sheriff, by the direction of the commissioner of highways, serves upon a person whose driver's license has been suspended a notice by the commissioner to the driver to surrender his driver's license, and the sheriff secures possession of the license, this service by the sheriff is not performed by the county but for a state officer, and the county is not liable therefor and the sheriff's compensation should be paid by the commissioner of highways. OAG May 11, 1951 (390-A-14).

170.51 FEDERAL, STATE, OR MUNICIPAL OWNERSHIP

If the law is to completely achieve its avowed purposes, the legislature could either waive governmental immunity from suit in negligence cases, as the United States has done in the federal tort claims act, which the legislature could do not only in behalf of the state but in cities and their governmental subdivisions, or it could require such municipalities or subdivisions to cover their drivers with insurance. The language of the Safety Responsibility Act must be interpreted as enacted by the legislature and the authorities' construction of the import of the language will not be accepted unless such construction is consistent with the legislative intent as evidenced by the language used. It is, therefore, held that the trial court is right in holding the drivers of vehicles owned or operated by the city exempt from the provisions of Laws 1945, Chapter 285, coded as sections 170.21 to 170.58. City of St. Paul v Hoffman, 223 M 76, 25 NW(2d) 661.

170.54 DRIVER DEEMED AGENT OF OWNER

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

The Safety Responsibility Act. 30 MLR 636.

Total coverage by separate insurers; contribution. 32 MLR 510.

County insurance; extent of the liability of the insurer. 32 MLR 514.

Instruction that any negligence on the part of the farm manager in the operation of a truck was imputable to both farm owner and truck owner was error. In the instant case, the farm manager was operating the truck with the express consent of the owner under the statute and the manager was owner's agent as respects owner's liability to a farm hand injured while riding on the truck. Novotny v Bouley, 223 M 592, 27 NW(2d) 813.

The legal owner of an automobile is "owner" and held liable under the owner's vicarious liability section of the Safety Responsibility Act; and the owner of a car who permitted her father, during her absence, to use her automobile was "owner" within the statute and liable under the doctrine of respondeat superior for any damage caused by negligence of the father in the operation of the car. Aasen v Aasen, 228 M 1, 36 NW(2d) 27.

The family-purpose doctrine is superseded by the safety responsibility statute, and cannot be made the basis of imputing negligence of the owner's son in driving the automobile to owner, as contributory negligence. In an action against the owner of another automobile the statute providing that son operating a vehicle with the owner's consent shall be deemed the owner's agent applies only for the purpose of the owner's liability to a person injured, and does not make a bailee's negligence imputable to a bailor as contributory negligence, in an action against a third person. Jacobsen v Dailey, 228 M 201, 36 NW(2d) 711.

In an action involving damages resulting from an automobile collision, the court erred in submitting to the jury the rule of the so-called family-purpose doctrine. An instruction unobjected to becomes the law of the case, however erroneous it may be, and, whether the charge be right or wrong, it must for the purposes of an appeal be taken as the law of the case. Ellingboe v Guerin, 228 M 211, 36 NW(2d) 598.

If automobile was so close to intersection that collision was eminent if the streetcar proceeded in the intersection it was the duty of the streetcar motorman to yield the right-of-way to the automobile; and the fact that the motorist in attempting to avoid collision with the streetcar ran up into the curb and struck the pedestrian did not relieve the motorman and streetcar company from liability for the pedestrian's injuries even though the motorist might have been more negligent than the motorman. Carlson v Fredsall, 228 M 461, 37 NW(2d) 744.

Where automobile was loaned by owner to his brother who in turn loaned it to third person who ran into pedestrian, it was error to hold in pedestrian's injury action that, as a matter of law, negligence of third person was imputable to owner, in absence of express consent granted by owner to third person to use automobile. Carlson v Fredsall, 228 M 461, 37 NW(2d) 744.

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

The essential element of express or implied consent under section 170.54 relates to the motor vehicle being operated upon a public highway, and not to the particular driver thereof; and if a car owner, without qualification or limitation, has given his bailee possession of, and the right to operate his automobile upon a public highway, he is liable in damages for the negligent operation thereof when such bailee, who remains in possession and control of the vehicle, permits a third person to do the actual driving. Foster v Bock, 229 M 428, 39 NW(2d) 862.

Where an automobile involved in an accident was driven by a person not the owner, a prima facie case for plaintiff arises under this section from proof of ownership, and the prima facie case disappears when evidence is presented negativing the consent of the owner for the other person to drive the automobile. The owner is liable for damages upon negligent operation of the automobile when the bailee remains in possession and control of the automobile and permits a third person to drive. Foster v Bock, 229 M 428, 39 NW(2d) 862.

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 using the automobile. Ristau v Riley, 230 M 341, 41 NW(2d) 772.

Where the evidence conclusively shows that a colliding train must have been visible from a point where an automobile driver should have looked, a conclusive presumption arises that he either failed to look or that, having looked, he disregarded the knowledge thus obtained and negligently encountered obvious danger.

An automobile driver must exercise care commensurate with the circumstances in which he finds himself, and if there are obstructions to his view of a railroad track in either direction from which a train might approach he must look and listen with extra care.

Where a car owner admits that he does not drive for himself and that the driver of his car was performing a service for him at his request and according to his

direction when an accident occurred, the contributory negligence of such driver is imputed to him as a matter of law. Rogge v Great Northern Railway Co., 233 M 255, 47 NW(2d) 475.

Where a plaintiff bailor has proved a bailment and damaged the bailed property, defendant bailee has the two-fold burden of going forward with the evidence and establishing before the jury that his negligence did not cause the damage. If defendant does not admit and assume the burdens, plaintiff is entitled to recover fully for the damage done; but where the agreement under which a bailment is made specifies that the bailor will carry adequate collision, fire and theft insurance on the truck which is the subject of the bailment, and that the bailee will carry liability, property damage and cargo insurance, the agreement will be interpreted as giving each party the benefit of the other party's insurance, and the bailor will have no cause of action to recover from the bailee for that portion of the damage which results from a risk against which the bailor has agreed to carry adequate insurance. Since the damage which plaintiff suffered by losing the use of his truck while it was being repaired was not at a loss against which he agreed to carry insurance the trial court properly awarded damages on that basis. Buckey v Indianhead Truck Line, 234 M 379, 48 NW(2d) 534.

Although pursuant to section 170.54 any person who operates a motor vehicle upon a public street or highway, with the consent of the owner of the vehicle, is deemed the agent of the owner in case of an accident for the sole purpose of holding the owner liable to persons injured by reason of the driver's negligence, such negligence of the driver, when his relation with the owner is only that of bailor and bailee, is not imputable to the owner in an action by the latter against a third party.

On the basis of an agency relationship, the negligence of an agent is imputed to his principal as a bar to the latter's right of recovery, in an action which he brings against a third party, only when the nature of the agency relationship is such that the principal would be subject to a vicarious liability as a defendant to another who may have been injured by the agent's negligence.

A master is barred from recovery against a negligent defendant by the contributory negligence of his servant acting within the scope of his employment.

A servant is a person employed by a master to perform service in his affairs whose physical conduct in the performance of such service is controlled or is subject to the right of control by the master.

The right of control, and not necessarily the exercise of that right, is the test of the relation of master and servant.

The existence of a mutual agreement controlling the time, destination, and purpose of the trip is a significant factor upon the issue of the right of control.

As a basis for an inference that a right of control exists, the jury may take into consideration (1) that the automobile was owned by plaintiff, (2) that by the very nature of motor vehicle driving it would have been impractical to exercise any direct supervision of the car's operation, and (3) that it is the custom to permit a chauffeur, whenever convenience so dictates, to proceed unaccompanied by the owner.

Where the evidence as to the existence of the relationship of master and servant is conflicting or admits of more than one inference, the question thereby raised is one of fact for the jury. Frankle v Twedt, 234 M 42, 47 NW(2d) 482.

Negligence of the owner's daughter driving an automobile with the father's consent was chargeable to the owner under the owner's responsibility statute. Rugg v Rugg, 235 M 238, 50 NW(2d) 486.

In a suit by a pedestrian to collect damages for injuries received when plaintiff was struck by a United States Army automobile driven by a soldier, the driver was not an agent of the United States under the statutes of Minnesota where the employee was using the motor for a purpose outside the scope of his employment. Clemens v United States, 88 F. Supp. 971.

In a declaratory judgment action by an insurer against an insured to have an automobile liability policy declared void on the ground of misrepresentation of ownership of the insured's automobile or in the alternative, lack of insurable interest in the insured at the time of the accident, it is held that where the insured had no insurable interest in the insured's automobile at the time of the accident, the insurer did not have any obligation under the policy to pay injuries resulting from the accident involving the automobile or to defend insured in any action arising out of such accident. Northwestern National Casualty Co. v Bettinger, 111 F. Supp. 511.

170.55 SERVICE OF PROCESS; RESIDENTS; NONRESIDENTS; COMMISSIONER OF HIGHWAYS AS AGENT

HISTORY. 1945 c 285 s 35; 1949 c 582 s 1; 1953 c 395 s 1.

Federal venue of privilege not waived under nonresident motorist statute. 35 MLR 404.

In an action arising out of an automobile accident occurring in Becker county, and where the action was brought by a resident of Hennepin county against a resident of Fargo, North Dakota, in the district court of Washington county, the denial of the defendant's application for a change of venue to the county in which the accident occurred was abuse of discretion, where numerous witnesses who would be called resided in or near the vicinity of the accident. A writ of mandamus is issued to compel the change of venue as applied for. King v Schultz, 231 M 569, 43 NW(2d) 278.

The object of allowing constructive service upon a nonresident motorist is to relieve local citizens from the inconvenience of resorting to other jurisdiction for relief for injuries resulting from the operation of automobiles by nonresidents and when the words of the law are not explicit, the intention of the legislature may be ascertained by considering among other matters the mischief to be remedied, the subject to be attained, and the consequences of a particular interpretation. Chapman v Davis, 233 M 62, 45 NW(2d) 822.

The 1949 amendment to the Safety Responsibility Act so as to provide not only local remedy against the nonresident motorists but also against resident motorist who subsequent to an accident abandoned their residence before jurisdiction is acquired and thereafter remains outside the state for six months or more is not retroactive. Hughes v Lucker, 233 M 207, 46 NW(2d) 497.

In the light of the purpose of the statute, a person must be deemed a nonresident within the meaning of section 170.55 when he has no actual residence, as distinguished from the concepts of legal domicile and temporary abode within the state. Constructively, actual residence as distinguished from the mere temporary place of abode of a sojourner, involves a connotation of permanency in the sense of the establishment of a usual place of abode without necessarily involving that greater degree of permanency which is characteristic of a legal domicile. Defendant's military service, without regard to where he was stationed from time to time, did not effect any change of residence. Hughes v Lucker, 233 M 207, 46 NW(2d) 497.

Section 170.55 providing for service upon the commissioner of highways in actions against nonresidents causing damage or loss to persons or property by the use of the motor vehicle upon the state's highway, is not applicable to defendants who had resided within the state for twenty years prior to the date of the automobile accident in which they were involved and who continued such residence at the time of the accident and for some time thereafter, even though prior to the accident they had formed an intention of leaving the state at some future date. Hinton v Peter, ... M ....., 55 NW(2d) 442.

Being free from all ambiguity section 170.55 is liberally construed. Wittman v Hanson, 100 F. Supp. 747.