house in response to an oral order and which had subsequently withdrawn eight of the cars before they were loaded, and this at the request of the striking warehousemen, cannot question the sufficiency of the oral order with which it had complied. Pacific-Gamble-Robinson Co. v Minneapolis & St. Louis Railroad, 105 F Supp 794.

218.55-218.65 Unconstitutional.

NOTE: Laws 1907, Chapter 23, coded in Minnesota Statutes 1941 as sections 218.55 to 218.65, were deleted because of the ruling of the United States Supreme Court in Chicago, Rock Island v Hardwick Elevator, 33 SC 174, 226 US 426, and decision of Minnesota Supreme Court in Chicago, Milwaukee & St. Paul v Interstate Contracting Co., 193 M 71, 257 NW 811.

218.68 TRANSPORTATION OF SHIPPERS

HISTORY. 1899 c 170; RL 1905 s 2026; 1907 c 380 s 1; 1909 c 380 s 1; 1921 c 311 s 1; Mason's 1927 s 4874.

218.71 VIOLATIONS; PENALTIES

HISTORY. Amended, 1949 c 440 s 6.

218.73 FORFEITURES; VIOLATIONS, PENALTIES

The federal power commission lacks power under the National Gas Act to make findings as to the reasonableness of past rates for transportation of natural gas. McClellan v Montana-Dakota Utilities Co., 140 F Supp 46.

CHAPTER 219

COMMON CARRIERS; REGULATIONS, LIABILITIES

219.01 CONSTRUCTION OF RAILROADS

NOTE: See Minnesota Constitution, Article X, Section 4.

Limitation of liability of carriers; released value rates. 33 MLR 774.

Bills of lading, duty of carrier to notify shipper of non-acceptance of goods. 37 MLR 204.

The statute prohibiting the interstate commerce commission from establishing through routes, and joint rates applicable thereto, for the purpose of aiding a financially weak carrier, is not applicable in the instant case, since the order in question did not establish a through route. United States v Great Northern Railway, 72 SC 985.

219.06 SIGNS AT CROSSINGS

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

In an action for injuries sustained when a truck was struck by a train at a crossing the testimony of witnesses that they heard no whistle or bell prior to the collision is admissible, although negative. It was the only type of evidence available for the plaintiff. Polchow v Chicago, St. Paul, Milwaukee & Ohio Ry., 199 M 1, 270 NW 673.

The train crew may properly assume that the driver of a vehicle approaching a railroad crossing will exercise care and stop, and they need not themselves stop or reduce speed of train until it becomes apparent to them that the driver will not stop. Ohrmann v Chicago and Northwestern, 223 M 580, 277 NW(2) 806.

Where a motorist driving at night approaches a railroad crossing with which he is familiar, at a rate of speed which does not permit him to stop within the distance illuminated by his lights and collides with a freight train standing on the crossing, he is guilty of contributory negligence as a matter of law when in his own testimony he admits he could not stop his car within the distance illuminated by his lights. Sections 160.34, 219.383 and 616.01 are in pari materia and should be construed together. Mienik v Fleming, 224 M 38, 27 NW(2d) 801.

Whether the crossing in question is extra hazardous and whether additional signs or signals should be required of the defendant in the exercise of due care is a question for the jury. Koop v Great Northern, 224 M 286, 28 NW(2d) 687.

In an action by the driver and passenger of an automobile for damages sustained in collision with a train where the plaintiffs admitted they were familiar with the track and crossing, that they saw signs warning of the presence of track and came to a complete stop in response thereof, submission to the jury of the question of adequacy of the warning sign was improper. Jorgenson v Minneapolis, St. Paul & SS, 231 M 121, 42 NW(2d) 540.

When a rule violates section 219.06 a presumption of negligence arises. Slawik v CMSTP, 89 F. Supp. 590, 184 F(2d) 920.

In an action for death by wrongful act the driver of the automobile had ample opportunity to see the approaching train in time to avoid the collision and is guilty of contributory negligence. Hicks v Northern Pacific, ... M ....., 58 NW(2d) 750.

219.07 WIDTH OF CROSSINGS AND GRADES; IN MUNICIPALITIES

HISTORY. 1887 c 15 s 1, 5; 1889 c 222 s 1, 5; 1893 c 121 s 1; GS 1894 s 2685, 2689; RL 1905 s 1995; 1913 c 78 s 1; 1919 c 468 s 1; 1921 c 152 s 1; Mason's 1927 s 4734.

In actions for death by wrongful act against a railroad company and its engineer arising out of a grade crossing collision at night, there was no evidence from which a jury could reasonably infer negligent failure to maintain a proper lookout, or wilful or wanton negligence on the part of the defendants. The crossing was not sufficiently extra hazardous to make it the duty of the railroad company to provide warning signals in addition to the signs and signals prescribed by statute or regulations of the railroad and warehouse commission. The statute requiring railroad companies to keep their grade crossings "free from snow or other obstruction" contemplates the removal of only such substances which if left on the crossing or approaches thereto would form a barrier or obstruction to passage. Before question of train speed at a railroad crossing can be submitted to the jury, evidence either that the speed was greater than usual at that place, or that special circumstances existed which should have been known to the railroad company, which made a lower speed necessary. Cameron v Northern Pacific, 234 M 355, 48 NW(2d) 540.

219.14 RAILROAD CROSSINGS PROTECTED

HISTORY. 1919 c 434 s 1, 2; 1921 c 500 s 1; Mason's 1927 s 4741, 4742.

Whether the crossing in question is extra hazardous and whether additional signs or signals should be required of the defendant in the exercise of due care is a question for the jury. Koop v Great Northern, 224 M 286, 28 NW(2d) 687.

Where litigation involving the railroad and warehouse commission order relative to railroad grades had been pending in the federal courts for 15 years and enforcement of the original order would be impracticable, the commission has jurisdiction to order a new hearing for consideration of a new application conditioned upon dismissal of the federal litigation. OAG April 1, 1948 (371-B-8).

219.15 Renumbered 219.14, subd. 2.

219.16 GRADE CROSSING

Before railroad may escape liability insofar as passengers in an automobile killed at railway crossing are concerned, evidence must establish either that the con-

tributory 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.

A municipality has the right to cross a railroad right-of-way with water mains and sewers on a public street or highway. The easement may be acquired by purchase or condemnation. Railroad rights are subject to assessment for local improvement. OAG July 26, 1950 (831-D).

219.17 UNIFORM WARNING SIGNS; TYPES OF

In an action for injuries to the driver of a vehicle which was struck by defendant's locomotive at a street intersection, the evidence compels a conclusion that plaintiff was guilty of contributory negligence. The application to railroad crossing cases of the law as to contributory negligence, is a harsh rule. It also places the burden of the law on the driver of the vehicle when both he and the railroad operatives are guilty of negligence. Dahlquist v Minneapolis St. L. Ry. Co., 230 M 203, 41 NW(2d) 587.

219.18 RAILROAD TO ERECT SIGNS

HISTORY. 1858 c 70 s 17; GS 1866 c 34 s 33; GS 1878 c 34 s 53; GS 1894 c 26 s 84; RL 1905 s 1994; 1925 c 336 s 3; MS 1927 s 4743-3.

The location of the crossbuck sign against which the car stalled is urged as evidence of negligent maintenance of the crossing. Both crossbuck signs were placed well within 75 feet of the tracks as prescribed, and the role they played in the accident does not indicate lack of due care. That a car would lodge itself between the post and the tracks could not reasonably be anticipated. Cameron v Northern Pacific, 234 M 355, 48 NW(2d) 540.

219.19 ADDITIONAL WARNING SIGNS; RAILROADS TO PROVIDE

When there are extra hazards at any crossing the facts and circumstances may be such that a burden is placed upon the railroad to provide protection beyond those prescribed by statute. Blaske v Northern Pacific Ry., 228 M 444, 37 NW(2d) 758.

219.22 STOP, LOOK, AND LISTEN

The train crew may properly assume that the driver of a vehicle approaching a railroad crossing will exercise care and stop, and they need not themselves stop or reduce speed of train until it becomes apparent to them that the driver will not stop. Ohrmann v Chicago and Northwestern, 223 M 580, 277 NW(2d) 806.

A train crew may properly assume that the driver of a vehicle approaching railroad crossing will exercise care and stop, and they need not themselves stop or reduce speed of train until it becomes apparent to them that the driver will not stop; particularly when, as in the instant case, the highway travelers had a substantially unobstructed view of approaching trains for a distance of upwards of 1,000 feet. Ohrmann v Chicago & N.W. Ry. Co., 223 M 580, 27 NW(2d) 806.

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.

219.24 ADDITIONAL SAFEGUARDS

In determining whether a railroad was negligent in a case involving a collision between a train and an automobile at a crossing, located in a sparsely settled woods and lake region, over a town road, which ascended 12 feet in a distance of 100 feet before it crossed the tracks and then descended on the other side, on which road there was very little traffic and from which the operator of a motor vehicle had a clear view of the crossing itself when 400 feet therefrom and a view of approaching trains on the tracks for 600 to 700 feet when 50 feet therefrom and for 900 feet when 25 feet therefrom, the trier of fact may not consider, in addition to such factors as compliance with statutory requirements as to installing warning signs and the sounding of the bell and whistle on the locomotive, those of the railroad's omission to take other precautions for the safety of travelers upon the highway such as the maintenance of a flagman, gates, automatic signaling devices, and the like. Leisy v Northern Pacific Ry. Co., 230 M 61, 40 NW(2d) 627.

A village cannot, by ordinance, compel a railroad to install automatic warning signs of the blinker type, but if the crossing is a dangerous one they may apply to the railroad and warehouse commission to prescribe such protection. OAG June 27, 1947 (369-M).

219.26 GRADE CROSSINGS; UNIFORMITY OF DEVICES FOR PROTECTION

Railroad and warehouse commission is vested with the regulation and control of devices and signals which may be used at crossings, and with the installation, and a city (Winona) has no authority to require installation of automatic lighted signal devices at grade crossings within the city. OAG May 18, 1953 (369-M).

219.27 HEARINGS BY COMMISSION

Where the population of a village was equally located on both sides of the railroad tracks and a large number of officers, businessmen, and others together with the layout of adjacent streets indicated that closing of a diagonal grade crossing was not a necessity and would seriously impair normal operation of business and traffic, the order of the railroad and warehouse commission closing the crossing was unlawful and unreasonable. Northern Pacific v Village of Rush City, 230 M 144, 40 NW(2d) 886.

219.28 OVERHEAD OR UNDERGROUND CROSSINGS; SEPARATE GRADES

The charter of the city of Winona is contained in Special Laws 1887, Chapter 5. The city may require, upon approval of the railroad and warehouse commission, installation of signal devices at all grade crossings. It may regulate the speed of trains within the municipality unless and until the commission takes action, as prescribed in section 219.383. OAG May 18, 1953 (369-M).

219.29 OBSTRUCTING SIGNS

In an action for injuries to the driver of a vehicle which was struck by defendant's locomotive at a street intersection, the evidence compels a conclusion that plaintiff was guilty of contributory negligence. The application to railroad crossing cases of the law as to contributory negligence, is a harsh rule. It also places the burden of the law on the driver of the vehicle when both he and the railroad operatives are guilty of negligence. Dahlquist v Minneapolis St. L. Ry. Co., 230 M 201, 203, 41 NW(2d) 587.

219.31 FENCES AND CATTLE GUARDS

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

The lines of the Great Northern and the Soo Line are not parallel and there is no fence on the common boundary between the two rights-of-way that enter the Soo Line right-of-way at a point where the fence was down and the plaintiff, a seven-year-old boy, was injured on the Great Northern track. Whether the Great Northern's failure to fence was the proximate cause of the plaintiff's injury was a question of fact for the jury. The maintenance of a single legal fence properly located between the two adjacent and parallel railroad rights-of-way is sufficient compliance with the fencing statutes. The trial court's refusal to so instruct the jury constituted reversible error. Strand v Great Northern Ry. Co., 233 M 93, 46 NW(2d) 266.

219.32 FAILURE TO FENCE; LIABILITY

In an action by a seven and one-half-year-old boy to recover for injuries sustained by him when he crossed the railroad right-of-way and a railroad car ran over his right foot, the evidence sustained the jury's finding that the plaintiff was so immature as to come within the class of infants protected by sections 219.31 to 219.33. Strand v Great Northern Ry., 233 M 93, 546, 46 NW(2d) 266.

219.33 FENCES; CROSSINGS; CATTLE GUARDS

The lines of the Great Northern and the Soo Line are not parallel and there is no fence on the common boundary between the two rights-of-way that enter the Soo Line right-of-way at a point where the fence was down and the plaintiff, a seven-year-old boy, was injured on the Great Northern track. Whether the Great Northern's failure to fence was the proximate cause of the plaintiff's injury was a question of fact for the jury. The maintenance of a single legal fence properly located between the two adjacent and parallel railroad rights-of-way is sufficient compliance with the fencing statutes. The trial court's refusal to so instruct the jury constituted reversible error. Strand v Great Northern Ry. Co., 233 M 93, 46 NW(2d) 266.

219.35 FARM CROSSINGS AND DRAINS

An owner of land not abutting on a railroad does not have the rights described in section 219.35, and as a town road lies between petitioner's land and the railroad, the instant case does not come under section 219.35. OAG Sept. 1, 1950 (379-C-9).

219.37 DITCHES AND CULVERTS

If for its own benefit a railroad constructs a ditch, it must pay the cost of construction for a bridge on a state aid road which crosses the ditch. OAG May 28, 1948 (642-B-9).

219.38 EMPTY CARS KEPT CLOSED

HISTORY. 1895 c 271; RL 1905 s 2024; MS 1927 s 4871.

Where personal injuries were sustained when an automobile collided with a freight train at a crossing, the evidence was insufficient to justify the jury's conclusion that the train had obstructed the highway crossing for more than ten minutes in violation of the statute. Mlenek v Fleming, 224 M 38, 27 NW(2d) 800.

219.383 SAFE OPERATION OF TRAINS OVER STREETS AND HIGHWAYS

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

A person finding standing cars blocking the street is presumed to know that they are liable to be moved at any time. Olin v Minnesota Transfer Ry., 164 M 512, 205 NW 440.

Where a train standing across the street was concealed because of smoke and fog, the jury was warranted in finding that such obstruction was the proximate cause of a collision where the motorist ran into the side of the train. Flaherty v Great Northern Ry. Co., 218 M 488, 16 NW(2d) 553; Munkel v Chicago, Milwaukee Co., 202 M 264, 278 NW 41.

A railroad company is civilly liable to any person sustaining a harm separate and distinct from interference with the public right of travel caused by its intentional obstruction of a street in violation of section 616.31. Flaherty v Great Northern, 218 M 488, 16 NW(2d) 553.

Where injury is sustained as the result of intentional obstruction of a highway in violation of the statute, contributory negligence of the person injured is no defense. Flaherty v Great Northern, 218 M 488, 16 NW(2) 553.

Sections 160.34, 616.01 and 219.383 deal with prohibition of obstructions or closing the public highway and are in pari materia. Meinek v Fleming, 224 M 38, 27 NW(2d) 800.

Subdivision 4 of section 219.383 relating to closing of traffic by trains does not apply to cities of the first class which have by ordinance provided for regulation of the operation of trains within the municipality. OAG Jan. 7, 1949 (369-D).

The charter of the city of Winona is contained in Special Laws 1887, Chapter 5, a special law. The city may require upon approval of the railroad and warehouse commission, installation of signal devices at all grade crossings. The city may regulate speed of trains within the municipality unless and until the railroad and warehouse commission takes action as prescribed in section 219.383. OAG May 18, 1953 (369-M).

219.39 DANGEROUS CROSSINGS; COMPLAINTS; HEARINGS

Where a village sought to compel the installation of automatic warning signs of the blinker-type at a hazardous blind grade crossing, it should proceed by application to the railroad and warehouse commission rather than by the adoption of an ordinance. OAG June 27, 1947 (369-M).

Bridges are parts of streets and highways and it is the duty of municipalities to use ordinary care in the maintenance of a highway bridge. If the circumstances are such that a new bridge is required to replace the old one, the village council may contract with the railroad company for reconstruction after having first obtained permission from the railroad and warehouse commission as provided in section 219.39. OAG May 2, 1951 (642-B-9).

219.40 COMMISSION REPORT; ORDER; FLAGMEN, SAFETY DEVICES

HISTORY. 1911 c 243 s 2; 1913 c 294 s 1; 1923 c 134 s 2; Mason's Supp s 4663; 1951 c 179 s 2.

A village cannot, by ordinance, compel a railroad to install automatic warning signs of the blinker type, but if the crossing is a dangerous one they may apply to the railroad and warehouse commission to prescribe such protection. OAG June 27, 1947 (369-M).

A village council is not authorized to contract with a railroad company for reconstruction of a project without first securing the consent of the railroad and warehouse commission. OAG May 2, 1951 (642-B-9).

219.403 NOT TO AFFECT EXISTING LAWS RELATING TO MUNICIPALITIES

HISTORY. 1951 c 179 s 3.

219.41 APPEAL; ORDER, HOW ENFORCED

Where the population of Rush City was located equally on both sides of the railroad tracks, and the village officers and businessmen testified and the general layout of the adjacent streets indicated that the closing of a diagonal grade crossing was not a necessity and would seriously impair normal operation of business and interfere with traffic of the village, the order of the railroad and warehouse commission closing the crossing was unlawful and unreasonable. Northern Pacific v Village of Rush City, 230 M 144, 40 NW(2d) 886.

219.44 Repealed, 1925 c 336.

219.48, 219.49 Repealed, 1943 c 390 s 9.

219.50 OBSTRUCTING SPACE BETWEEN TRACKS; EXCEPTIONS

HISTORY. 1913 c 307 s 6; 1913 c 448 s 1; GS 1913 s 4277; GS 1923 s 4758; MS 1927 s 4758; 1939 c 222 s 1.

Under a contract by which the manufacturer agreed to save the railroad harmless from all claims for damages arising out of the manufacturer's failure to keep the tracks clear, such manufacturer assumed the liability and was liable even though its act was only a remote cause of the claimed damages. This law contravenes no public policy of the state. Minneapolis Moline Co. v Chicago, Milwaukee, St. Paul & Pacific, 199 F(2d) 725.

219.51 VIOLATION, PENALTY; DUTIES OF ATTORNEY GENERAL AND COMMISSION

HISTORY. 1913 c 307 s 7; GS 1913 s 4278; GS 1923 s 4759; MS 1927 s 4759; 1937 c 238 s 4; M Supp s 4759; 1939 c 222 s 2.

219.55 LOADING PLATFORMS

A railroad may in leasing its own property, insert terms exempting it from liability for loss to leased premises from fires caused by its own or its employee's negligence. Leases by a railroad permitting tenants to place a building on the right-of-way involve an ordinary contractural matter in which public welfare is not concerned. Speltz Grain & Coal Co. v Rush, 236 M 1, 51 NW(2d) 651.

219.561 TRACK MOTOR CARS LIGHTED

HISTORY. 1949 c 680 s 1, 2.

219.57 PREVENTION OF FIRE

NOTE: Probably superseded by sections 88.20 and 88.21.

A provision in a lease of part of a right-of-way is valid which exempts the lessor from liability for damages to or destruction by fire of the lessee's property, on the leased premises. Pettit v Northern Pacific, 227 M 225, 35 NW(2d) 127.

A bargain which tends to the violation of law is invalid as against public policy. Where a bargain for exemption from liability by a common carrier does not relate to duties imposed on carrier by law independent of contract, a contract for indemnity against the exempted liability is lawful, and so also is one for exemption from liability. Public policy permits railroads to procure insurance to protect themselves against losses which may be sustained in negligent operation of their business. Pettit Grain Co. v Northern Pacific Ry. Co., 227 M 225, 35 NW(2) 127.

It is the duty of the fire department to protect property within the city even though the property owner is not a taxpayer. OAG March 12, 1951 (688-K).

219.60 TRAIN BRAKE SYSTEM

The federal safety appliance act has no application to a car removed from a train and placed on a track for the specific purpose of having repairs made thereto, though the car is loaded with merchandise consigned out of the state, but it would apply to accidents which occurred while the car was being switched in the yards, or while it was in process of being removed to a repair track, or while it had been placed on a siding as distinguished from a repair track. Netzer v Northern Pacific Ry., ... M ....., 57 NW(2d) 247.

219.681 REMOVAL OF TRACKS; APPROVED

HISTORY. 1945 c 21 s 1.

The legislature clearly intended to repeal sections 219.68 and 219.74, and to supersede them by Laws 1945, Chapter 21. State v Chicago and Great Western, 222 M 504. 25 NW(2) 295.

219.691 VIOLATION; FORFEITURE

HISTORY. 1945 c 21 s 5.

219.692 TREBLE DAMAGES

HISTORY. 1945 c 21 s 6.

Where a new statute, not in the form of amendments to prior statutes, is complete in itself and shows that the legislature intended to supersede its provisions for those previously in force, and intended the new statute to state the only rules governing the legislation, it supersedes all prior legislation in respect to such matter and repeals all prior laws as they apply thereto. The legislature clearly intended to repeal sections 219.68 and 219.74 of M.S. 1941, and supersedes them by Laws 1945, Chapter 21, coded as sections 219.681, 219.741, 219.743, 219.691, 219.751, 219.755. State v Chicago & Great Western, 222 M 504, 25 NW(2d) 294.

219.695 TERMINAL, SHOP

HISTORY. 1931 c 64 s 2; Mason's Supp s 4926-2.

219.72-219.74 Repealed, 1945 c 21 s 8.

219.741 APPLICATION FOR REMOVAL

The legislature clearly intended to repeal sections 219.68 and 219.74, and to supersede them by Laws 1945, Chapter 21. State v Chicago & Great Western, 222 M 504, 25 NW(2d) 295,

The railroad and warehouse commission is without authority to permit abandonment of a railroad line or any portion thereof in the absence of statutory authority; whether a railroad company may effect an abandonment of its lines or portions thereof involves the consideration of many factors including the absence or presence thereof determining the applicable rule of law. OAG Oct. 25, 1951 (365-B-12).

219.75 Repealed, 1945 c 21 s 8.

219.76 FIRE CAUSED BY ENGINE; INSURABLE INTEREST

Contributory negligence as a defense to a statute. 32 MLR 105.

A bargain which tends to the violation of law is invalid as against public policy. Where a bargain for exemption from liability by a common carrier does not relate to duties imposed on carrier by law independent of contract, a contract for indemnity against the exempted liability is lawful, and so also is one for exemption from liability. Public policy permits railroads to procure insurance to protect themselves against losses which may be sustained in negligent operation of their business. Pettit Grain Co. v Northern Pacific Ry. Co., 227 M 225, 35 NW(2d) 127.

Provision in lease by railroad of part of its right-of-way exempting railroad company from liability for damage to or destruction by fire of lessee's property on leased premises, whether caused by negligence or misconduct of railroad or by defective appliances, is valid and not against public policy, notwithstanding statutes imposing criminal liability on a railroad for failure to use safety appliances and absolute liability for fires set by locomotives, and authorizing a railroad to insure property of third persons along railroad's route. Pettit Grain Co. v Northern Pacific Ry. Co., 227 M 225, 35 NW(2d) 128.

A railroad may in leasing its own property, insert terms exempting it from liability for loss to leased premises from fires caused by its own or its employee's neg-

ligence. Leases by a railroad permitting tenants to place a building on the right-of-way involve an ordinary contractural matter in which public welfare is not concerned. Speltz Grain & Coal Co. v Rush, 236 M 1, 51 NW(2d) 641.

219.77 LIABILITY OF CORPORATIONS FOR EMPLOYEE'S INJURY OR DEATH

HISTORY. 1887 c 13; GS 1878 Vol 2 (1888 Supp) c 34 s 60(d); GS 1894 s 2701; RL 1905 s 2042; 1915 c 187 s 1; 1923 c 333 s 1; MS 1927 s 4933; 1951 c 51 s 1.

Illegality of contracts restricting venue under the Federal Employers Liability Act. 34 MLR 342.

Admissibility of evidence of domestic relations in wrongful death actions and relevancy of such actions to the measure of damages. 36 MLR 165.

Forum non conveniens; claims instituted in state courts under the Federal Employers Liability Act. 35 MLR 496.

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 a railroad car consigned to an out-of-state consignee had been removed from an interstate train and placed on a repair track, which was separate from other tracks, the railroad car had been withdrawn from use and the Federal Safety Appliance Act had no application in determining whether railroad was liable to repairman injured when defective hand brake caused him to fall from the car. Netzer v Northern Pacific Ry. Co., ... M ....., 57 NW(2d) 247.

In an employee's personal injury action, it was error for the court to refuse defendant's requested instruction presenting its defense that the derailment of the train on which plaintiff was riding was due solely to development of a fissure in a rail and that such fissure could not have been discovered by reasonable care, either in its tendered form or in a restatement of its material substance. Chicago Northwestern v Green, 164 F(2d) 55.

In an action under the Federal Employers Liability Act an interstate rail carrier has the duty of exercising ordinary care to avoid injury to employees on tracks by operation of the trains. Chicago and Northwestern v Garwood, 167 F(2d) 848.

The validity of a release relied on as defense in an action under the Federal Employers Liability Act is a question of federal law. In order to establish mutual mistake as to the extent of plaintiff's injury in execution of a release fatal to its validity it was sufficient that plaintiff produced evidence which read in a light most favorable to her support of finding that at the time of the release plaintiff was suffering from a substantial and severe injury from which at best recovery was doubtful and that the release was given in a mistaken belief on the part of the plaintiff and defendant honestly but erroneously held that plaintiff's injury was of a minor character from which his complete and early recovery was certain. Chicago & Northwestern Ry. Co. v Curl, 178 F(2d) 497.

It is the duty of the employer to use ordinary care to ascertain the whereabouts of a missing employee who is employed on a moving train, so that care may be given

to such employee in the event that he is injured. Anderson v Atchison, Topeka & Sante Fe Ry. Co., 68 S Ct 854.

In a case where a railroad embankment gave way causing an accident, the issue of negligence was properly submitted to the jury. Propper v Chicago, Rock Island & Pacific Ry., 237 M 386, 54 NW(2d) 840.

In an action by a locomotive fireman where blindness was caused by a diabetic condition, or a blow on the head, was a question for the jury. Briggs v Chicago & Great Western Ry. Co., ... M ....., 57 NW(2d) 572.

In an action under the Federal Employers Liability Act for injuries resulting from plaintiff being struck by a timber which fell from a bridge over the tracks, wherein the railway filed a third party action against the construction party doing work on the bridge, the evidence sustains the finding that the timber which caused the injury had fallen as the proximate result of negligence of the construction company. Lawrence v Great Northern Ry., 109 F Supp 552.

219.78 Repealed, 1951 c 51 s 2.

219.79 CONTRIBUTORY NEGLIGENCE NOT TO BAR

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

Imputed contributory negligence; effect of statute making motor car owner liable for the acts of his bailee. 34 MLR 57.

Where defendant placed an automobile in a parking lot in a highly congested area of the city on an extra windy day, and the hood of the automobile, which was allegedly unlatched or not latched securely, blew off, and pedestrian was injured when he ducked or stooped in an effort to get out of way of flying hood and fell, in an action for resulting injuries evidence of negligence on the part of the defendant was sufficient for the jury; and where the pedestrian fell as he ducked or stooped, to avoid the hood, and was injured, the pedestrian was not guilty of contributory negligence. Swanson v La Fontaine, ... M ....., 57 NW(2d) 262.

An "act of God" as related to actions for negligently caused injuries, is one against which ordinary skill and foresight is not expected to provide. Every strong wind cannot legally be termed an "act of God." Swanson v La Fontaine, ... M ....., 57 NW(2d) 262.

Contributory negligence involves two essential elements, namely, negligence and proximate cause. Donovan v Ogston, ... M ....., 59 NW(2d) 672.

219.85 CERTAIN DEPOTS TO BE KEPT OPEN

HISTORY. 1885 c 190 s 1; GS 1878 Vol 2 (1888 Supp) c 34 s 61a; 1891 c 105 s 1; GS 1894 s 2702; 1897 c 94 s 1; 1901 c 270 s 1; 1903 c 319; RL 1905 s 2029; GS 1913 s 4391; GS 1923 s 4887; MS 1927 s 4887.

The railroad company is obligated to provide facilities needful to a reasonable conduct of the business of a public carrier at any place that it holds out to the public as a station. Station agency service cannot be reduced from six to five days without approval of the railroad and warehouse commission. OAG June 14, 1949 (365-A-1).

The railroad and warehouse commission has authority to curtail agency service on Saturdays. OAG Aug. 24, 1949 (371-B-9).

219.93 STOPPING TRAINS AT CROSSINGS

HISTORY. 1858 c 70 s 20; PS 1858 c 17 s 262; GS 1866 c 34 s 34; GS 1878 c 34 s 61; 1885 c 85 s 1; 1891 c 69 s 1; GS 1894 s 2706; RL 1905 s 2033; GS 1913 s 4406; GS 1923 s 4905; MS 1927 s 4905.

219.96 FIRE EXTINGUISHERS AND TOOLS

HISTORY. Amended, 1949 c 392 s 1.