

It is doubtful whether a subordinate branch of the Modern Woodmen of America, organized under ch. 92, Stats. 1921, is a benevolent society. The fact that the members of a fraternal benefit society are identical with the stockholders of a corporation does not prevent dealings between the 2 bodies. Trustees Onalaska Camp v. Onalaska M. W. H. Asso. 179 W 486, 192 NW 33.

188.02 History: 1850 c. 55 s. 2, 3; R. S. 1858 c. 74 s. 2, 3; 1874 c. 234 s. 2, 3; 1875 c. 108 s. 1; R. S. 1878 s. 2003; Stats. 1898 s. 2003; 1923 c. 291 s. 3; Stats. 1923 s. 188.02.

Where trustees have been wrongfully deprived of the possession of real property belonging to them, in their character as such, an action to recover it is properly brought in the name of the lodge. Chickering Lodge v. McDonald, 16 W 112.

A body organized under ch. 92, Stats. 1911, cannot sue or be sued until after it has elected trustees. Crawley v. American Society of Equity, 153 W 13, 139 NW 734.

Trustees of a fraternal corporation or lodge have no authority to sign a note in settlement of one-half the loss incurred in a "circus" jointly promoted by the lodge and the payee of the note, who had paid the losses. World A. S. Asso. v. Fond du Lac Lodge, 196 W 397, 220 NW 180.

188.03 History: 1850 c. 55 s. 5; R. S. 1858 c. 74 s. 5; 1874 c. 234 s. 5; R. S. 1878 s. 2004; Stats. 1898 s. 2004; 1923 c. 291 s. 3; Stats. 1923 s. 188.03.

A conveyance of realty belonging to a subordinate lodge of a fraternal order by the trustees thereof to a corporation, formed to construct and hold a building to be maintained for the benefit of several lodges, operated as a transfer of title, in view of 188.02, Stats. 1929, and this section, although at common law a corporation could not hold stock of another corporation. Under 188.02, the trustees of such lodges are corporations with limited powers, and are authorized to hold stock in corporations organized to hold buildings for them. Under said statutes, stock in a "Temple" corporation having issued to respective subordinate lodges, title to such stock vested in the trustees of such lodges. Miller v. Milwaukee Odd Fellows Temple, Inc. 206 W 547, 240 NW 193.

188.04 History: 1850 c. 55 s. 4; R. S. 1858 c. 74 s. 4; 1874 c. 234 s. 4, 6; R. S. 1878 s. 2005; Stats. 1898 s. 2005; 1923 c. 291 s. 3; Stats. 1923 s. 188.04.

188.05 History: 1874 c. 234 s. 7; R. S. 1878 s. 2006; Stats. 1898 s. 2006; 1923 c. 291 s. 3; Stats. 1923 s. 188.05.

188.06 History: 1874 c. 234 s. 9, 10; R. S. 1878 s. 2007; Stats. 1898 s. 2007; 1923 c. 291 s. 3; Stats. 1923 s. 188.06.

188.07 History: R. S. 1878 s. 2008; Stats. 1898 s. 2008; 1923 c. 291 s. 3; Stats. 1923 s. 188.07.

188.08 History: 1931 c. 354; Stats. 1931 s. 188.08; 1937 c. 126; 1951 c. 283; 1951 c. 703 s. 2; 1955 c. 661 s. 28; 1969 c. 285 s. 27.

188.085 History: 1939 c. 344; Stats. 1939 s. 188.085; 1947 c. 427; 1955 c. 661 s. 29.

188.09 History: 1937 c. 124; Stats. 1937 s. 188.09; 1941 c. 207; 1947 c. 353; 1951 c. 283; 1951 c. 703 s. 2; 1955 c. 661 s. 28; 1969 c. 285 s. 27.

188.095 History: 1941 c. 208; Stats. 1941 s. 188.095; 1947 c. 353.

188.10 History: 1937 c. 109; Stats. 1937 s. 188.10.

188.11 History: 1937 c. 125; Stats. 1937 s. 188.11; 1945 c. 379; 1951 c. 283; 1951 c. 703 s. 2; 1955 c. 661 s. 30; 1969 c. 285 s. 27.

188.115 History: 1943 c. 30; Stats. 1943 s. 188.115.

188.12 History: 1937 c. 33; Stats. 1937 s. 188.12; 1951 c. 283; 1967 c. 268.

188.13 History: 1939 c. 18; Stats. 1939 s. 188.13; 1945 c. 15; 1951 c. 283; 1955 c. 661 s. 30.

188.14 History: 1939 c. 188; Stats. 1939 s. 188.14; 1951 c. 283; 1953 c. 393.

188.15 History: 1941 c. 167; Stats. 1941 s. 188.15; 1943 c. 275 s. 46; 1951 c. 283; 1951 c. 703 s. 2; 1955 c. 661 s. 30; 1969 c. 285 s. 27.

188.16 History: 1943 c. 19; Stats. 1943 s. 188.16; 1945 c. 140; 1951 c. 283; 1951 c. 703 s. 2; 1955 c. 661 s. 28; 1969 c. 285 s. 27.

188.17 History: 1943 c. 31, 169; Stats. 1943 s. 188.17; 1951 c. 283; 1951 c. 703 s. 2; 1955 c. 661 s. 28; 1969 c. 285 s. 27.

188.18 History: 1947 c. 479; Stats. 1947 s. 188.18; 1951 c. 283; 1955 c. 661 s. 28.

188.19 History: 1949 c. 50; Stats. 1949 s. 188.19; 1951 c. 283; 1951 c. 703 s. 2; 1955 c. 661 s. 28; 1969 c. 285 s. 27.

188.20 History: 1949 c. 50; Stats. 1949 s. 188.20; 1955 c. 661 s. 29.

188.21 History: 1961 c. 34; Stats. 1961 s. 188.21; 1969 c. 285 s. 27.

188.22 History: 1967 c. 150; Stats. 1967 s. 188.22; 1969 c. 285 s. 27.

188.23 History: 1967 c. 15; Stats. 1967 s. 188.23; 1969 c. 285 s. 27.

188.235 History: 1967 c. 150; Stats. 1967 s. 188.235; 1969 c. 285 s. 27.

188.24 History: 1967 c. 150; Stats. 1967 s. 188.24; 1969 c. 285 s. 27.

188.25 History: 1951 c. 283; Stats. 1951 s. 188.25.

188.26 History: 1945 c. 404; Stats. 1945 s. 180.025; 1947 c. 143; 1951 c. 731 s. 3; Stats. 1951 s. 182.0025; 1955 c. 661 s. 10; Stats. 1955 s. 188.26.

CHAPTER 190.

Railroads; Organization and Management.

190.01 History: 1872 c. 119 s. 1; R. S. 1878

s. 1820; Stats. 1898 s. 1820; 1923 c. 291 s. 3; Stats. 1923 s. 190.01; 1929 c. 504 s. 2; 1929 c. 529 s. 1, 2; 1941 c. 190; 1955 c. 153.

On taking private property for public use see notes to sec. 13, art. I; on legislative power generally see notes to sec. 1, art. IV; on special and private laws prohibited (private corporations) see notes to sec. 31, art. IV; and on formation of corporations see notes to sec. 1, art. XI.

Sec. 1820, Stats. 1898, does not authorize the incorporation of a railroad for carrying of persons only. *Chicago & Northwestern R. Co. v. Oshkosh A. & B. W. R. Co.* 107 W 192, 83 NW 294.

A commercial railroad organized under sec. 1820, Stats. 1898, cannot accept a street railway franchise. *State ex rel. Vilter M. Co. v. Milwaukee B. & L. G. R. Co.* 116 W 142, 92 NW 546.

The requirement of sec. 1820, Stats. 1898, that the articles of organization of a railroad corporation shall state "the place from and to which such railroad is to be constructed or maintained and operated," does not refer necessarily to places within the state, but is complied with by the designation of termini without the state. *In re Milwaukee S. R. Co.* 124 W 490, 102 NW 401.

For the meaning of "railroad business," as related to taxability of property, see note to 76.02, citing *Lincoln F. W. Co. v. Milwaukee*, 208 W 70, 241 NW 623.

190.015 History: 1929 c. 504 s. 4a; Stats. 1929 s. 190.015.

190.016 History: 1929 c. 504 s. 4b; Stats. 1929 s. 190.016; 1955 c. 153; 1965 c. 252.

190.02 History: 1872 c. 119 s. 11; 1873 c. 291 s. 1; 1877 c. 144; R. S. 1878 s. 1828; 1882 c. 286; 1883 c. 185; Ann. Stats. 1889 s. 1828, 1828a; Stats. 1898 s. 1828; 1907 c. 613; 1907 c. 676 s. 20; 1919 c. 571 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 190.12; 1929 c. 201, 203; 1929 c. 504 s. 12; 1929 c. 529 s. 4, 5; Stats. 1929 s. 190.02; 1941 c. 190; 1955 c. 153.

1. Acquire property.
2. Acquire lands.
3. Cross highways.
4. Railroad intersections.
5. Borrowing.

1. Acquire Property.

A railroad corporation cannot buy and hold lands, situated at a distance from its road, which it does not need and cannot use in construction. *Waldo v. Chicago, St. P. & F. du L. R. Co.* 14 W 575.

2. Acquire Lands.

Power conferred upon railroads by sec. 1828 (4), Stats. 1913, to cut down trees in danger of falling on their tracks was not abrogated by the federal employers' liability act. It is more in the nature of an amendment to their charters. But the duty to remove such trees is obligatory without any statutory requirement. *O'Connor v. Chicago, M. & St. P. R. Co.* 163 W 653, 158 NW 343.

3. Cross Highways.

Secs. 1828 (5) and 1836, R. S. 1878, are in-

tended to give railroad companies the right to use highways for passage with their cars and engines, but not for depot purposes. If a switch is extended into the highway the company must use it in such a manner as not to interfere unnecessarily with the public rights. *Bussian v. Milwaukee, L. S. & W. R. Co.* 56 W 325, 14 NW 452.

Sec. 1828 (5), Stats. 1878, prevails over any city ordinance governing the use of streets by railroad companies for the purpose of laying tracks therein. *Trustees, First Congregational Church v. Milwaukee & L. W. R. Co.* 77 W. 158, 164, 45 NW 1086.

After the enactment of sec. 11, ch. 119, Laws 1872, the legislature gave the common council of Milwaukee power to "direct and control the location of railroad tracks" within the city. This law (ch. 184, Laws 1874) "was not intended to empower the council arbitrarily to compel a railroad company which had before the passage of the act built a railroad along the street of the city under legislative authority to tear up its tracks, and thus be deprived of a continuous passage through the city." *Sinnott v. Chicago & N. R. Co.* 81 W 95, 50 NW 1097.

The power to construct tracks on streets is in no way superseded or taken away by the power given to a city "to regulate and prohibit the use of locomotive engines within the city, and control the location of railroad tracks." *In re Milwaukee S. R. Co.* 124 W 490, 102 NW 401.

By virtue of sec. 1828 (5), Stats. 1911, a railway company, and not a city, has the power to lower the grade of a street in order to pass it under its railway tracks, subject to the obligation to restore the usable condition of the street, and make compensation for lands taken and injury done. Such lowering of a street, beyond the boundaries of its right of way, is a taking of land for railroad purposes, affording the lot owner the right to compensation. The power of eminent domain under this section is a continuing power to be used successively at the same locality to meet exigencies as they arise. The lot owner, knowing of the taking of his property, who makes no objection until the work is completed waives the trespass, and if the city participated in such trespass the waiver extends to the city also, leaving the lot owner his remedy by condemnation. *Pabst B. Co. v. Milwaukee*, 157 W 158, 147 NW 46.

Sec. 1828 (5), Stats. 1913, authorized the construction of a railroad track along one side of a street in a city. *Peters v. Chicago & Northwestern R. Co.* 165 W 529, 162 NW 916.

4. Railroad Intersections.

Under ch. 454, Laws 1907, the railroad commission rather than the commissioners in condemnation proceedings are to determine the point of crossing. *State ex rel. Northern P. R. Co. v. Railroad Comm.* 140 W 145, 121 NW 919.

5. Borrowing.

Where the property and franchises of a railroad company have been sold under a mortgage and a new company organized in pursuance of ch. 121, Laws 1856, the latter is not liable for the debts of the former. *Vilas*

v. Milwaukee & P. du C. R. Co. 17 W 497; Smith v. Chicago & Northwestern R. Co. 18 W 17.

An express power to mortgage the corporate property and franchises to secure its bonds does not negative other modes of security. Under power to make contracts convenient for the purpose of constructing a railway the company may sell or pledge a note and mortgage executed to it. *Uncas Nat. Bank v. Rith*, 23 W 339.

A company formed with power to purchase the property and franchises of a former company is not, by virtue of such purchase, such an assignee of such company as to be liable for its contracts except such as are a lien upon its property. *Menasha v. Milwaukee & N. R. Co.* 52 W 414, 9 NW 396.

190.03 History: 1955 c. 153; Stats. 1955 s. 190.03.

190.04 History: 1872 c. 119 s. 55; 1874 c. 285; 1874 c. 292 s. 2; R. S. 1878 s. 1829; Stats. 1898 s. 1829; 1923 c. 291 s. 3; Stats. 1923 s. 190.14; 1929 c. 504 s. 15; Stats. 1929 s. 190.04.

190.05 History: 1872 c. 119 s. 51; R. S. 1878 s. 1830; Stats. 1898 s. 1830; 1923 c. 291 s. 3; Stats. 1923 s. 190.15; 1929 c. 504 s. 16; Stats. 1929 s. 190.05.

190.051 History: 1872 c. 119 s. 12; 1876 c. 66; R. S. 1878 s. 1831; Stats. 1898 s. 1831; 1923 c. 291 s. 3; Stats. 1923 s. 190.16; 1929 c. 504 s. 16a; Stats. 1929 s. 190.051.

The authority to extend a road or to build branch roads implies a main line of road, centrally located, probably constructed. The provision can hardly be so construed as to authorize a company to abandon its chartered line and wander through the state by extensions and branches from any fraction constructed of such line. *Platteville v. Galena & S. W. R. Co.* 43 W 493.

The provision of sec. 1831, Stats. 1898, requiring the route to be designated by resolution of the board of directors was not done away with by the enactment of ch. 454, Laws 1907, providing for the obtaining of a certificate of convenience and necessity from the railroad commission. *Eastern R. Co. v. McCord*, 136 W 249, 116 NW 841.

The building of switching and storage tracks does not require the procuring of a certificate of convenience and necessity from the railroad commission. *In re Chicago, M. St. P. & P. R. Co.* 197 W 503, 222 NW 776.

190.06 History: R. S. 1858 c. 79 s. 1 to 5, 7; 1864 c. 49; 1874 c. 292 s. 1; 1875 c. 280; 1876 c. 57 s. 8; R. S. 1878 s. 1833; 1880 c. 260; 1882 c. 268; 1883 c. 293; Ann. Stats. 1889 s. 1833; Stats. 1898 s. 1833; 1899 c. 191 s. 1; Supl. 1906 s. 1833; 1923 c. 291 s. 3; Stats. 1923 s. 190.19; 1929 c. 504 s. 18; Stats. 1929 s. 190.06.

Sec. 1833, R. S. 1878, evinces an intention to allow the corporation to operate several lines of railroad, provided they are not parallel and competing lines, but are capable of being connected so as to constitute one continuous main line, or when the road or roads so leased or purchased will constitute branches or feeders of the purchasing corporation operating the same. *State ex rel. Chicago, M. & St. P. R. Co. v. McFetridge*, 56 W 256, 14 NW 185.

A railroad company cannot by its own act transfer its franchise to be a corporation; this can only be done by virtue of an express statute. *Pennison v. Chicago, M. & St. P. R. Co.* 93 W 344, 67 NW 702.

190.07 History: 1872 c. 119 s. 36; R. S. 1878 s. 1834; Stats. 1898 s. 1834; 1923 c. 291 s. 3; Stats. 1923 s. 190.20; 1929 c. 504 s. 19; Stats. 1929 s. 190.07.

190.08 History: 1872 c. 119 s. 11 sub. 5; 1872 c. 119 s. 24; R. S. 1878 s. 1836; 1891 c. 282; 1893 c. 119; 1893 c. 167; Stats. 1898 s. 1836; 1923 c. 291 s. 3; Stats. 1923 s. 190.22; 1929 c. 504 s. 21; Stats. 1929 s. 190.08.

Under sec. 11, ch. 79, R. S. 1858, providing that a highway should be restored "to its former usefulness," the company must so restore it that its use by the public should not be materially interfered with, nor the highway be rendered less safe and convenient to persons and animals using it except so far as diminished safety and convenience were inseparable from any crossing of the highway by a railroad. *Roberts v. Chicago, M. & St. P. R. Co.* 35 W 679.

Proof that a railroad is built across a cranberry marsh, without a culvert, and that in consequence the marsh on one side has become dry, has no tendency to show that the road is improperly constructed. *Lyon v. Green Bay & M. R. Co.* 42 W 538.

In case of failure by the railroad company to restore a street to its former condition the city may do so and recover the expense thereof from it. *Oconto v. Chicago & Northwestern R. Co.* 44 W 231.

No action lies against a railroad company for turning surface water back upon plaintiff's premises. *O'Connor v. Fond du Lac, A. & P. R. Co.* 52 W 526, 9 NW 287.

Sec. 1828 (5) and 1836, R. S. 1878, do not contemplate that highways shall be used for the purpose of switching cars. *Bussian v. Milwaukee, L. S. & W. R. Co.* 56 W 325, 14 NW 452.

A town which is charged with the duty of maintaining a highway may bring an action to compel a company to restore it to its former usefulness, if it has neglected for an unreasonable time to do so. *Jamestown v. Chicago, B. & N. R. Co.* 69 W 648, 34 NW 728.

Secs. 1828 (5) and 1836, R. S. 1878, are applicable to the lowering of the grade of a highway by a company in order to adjust such grade to the grade of its road. And such lowering is a taking of the property of the owners of the lots abutting on such highway for which compensation must be made. After the grade has been so changed an injunction will not be granted at the suit of the owner of the land injured by the change, there being no actual encroachment thereupon by the track. *Buchner v. Chicago, M. & N. R. Co.* 56 W 403, 14 NW 273; *Shealy v. Chicago, M. & N. R. Co.* 72 W 471, 40 NW 145.

It is not sufficient reason for refusing a mandatory injunction to restore a street, the usefulness of which has been impaired by a company, that the city can repair the injury and collect the expense from the company; nor that the city has not established a permanent grade for the street before it called upon the company to repair it. *Oshkosh v.*

Milwaukee & L. W. R. Co. 74 W 534, 43 NW 489.

Secs. 1828 (5) and 1836, R. S. 1878, do not authorize the construction and maintenance of a railroad along a street in such a way as to entirely destroy its use as a public highway. *Evans v. Chicago, M. & St. P. R. Co.* 86 W 597, 57 NW 354.

The clause requiring railroad companies to maintain highways does not subject them to liability for local assessments for the improvement of streets. *Oshkosh City R. Co. v. Winnebago County*, 89 W 435, 61 NW 1107.

If a railroad is constructed across a street which at that point has not been prepared for use, the city's right to have the street restored will not be lost by mere delay in opening it for travel. *Racine v. Chicago & N. W. R. Co.* 92 W 118, 65 NW 857.

The failure of a company to remove that part of a hill which lay between the cut made for its track and the highway but on its right of way was not a failure to restore the latter. *Leitch v. Chicago & Northwestern R. Co.* 93 W 79, 67 NW 21.

Where a new highway is laid out and opened across a railway track the railway company is entitled to compensation for the resulting diminished value of its easement in the land and the cost of making and maintaining such structural changes in its road-bed and track as become necessary in order to protect and preserve its track for the old use, notwithstanding the new use, except such changes as are required by law under the police power or the power to amend or alter charters. *Chicago, M. & St. P. R. Co. v. Milwaukee*, 97 W 418, 72 NW 1118.

Evidence of user of a highway is sufficient to establish its prima facie existence, and it was not necessary to introduce the record of the laying out of the road in the absence of any testimony to the contrary. *Sutton v. Chicago, St. P. M. & O. R. Co.* 98 W 157, 73 NW 993.

Secs. 1828 (5) and 1836, Stats. 1898, do not apply to a private lane, though frequently used by the public. *Vant v. Chicago & N. W. R. Co.* 101 W 363, 77 NW 713.

The taking of a street railroad right of way over a street does not vest any exclusive use. Other public uses remain impaired only so far as absolutely necessary. *Marsh v. Milwaukee L., H. & T. Co.* 134 W 384, 114 NW 804.

Sec. 1836, Stats. 1911, may be considered in aid of the interpretation of a city charter relating to bridges, viaducts, tunnels, etc., at the intersection of railroads with public streets and in determining upon whom the burden of such construction should rest where the street was in existence first. *Superior v. Roemer*, 154 W 345, 141 NW 250.

The remedy of a landowner for the faulty construction and maintenance of a railroad bridge by which a stream of water is dammed up and thrown back upon and injures his land, is not limited by sec. 1836, Stats. 1913, to condemnation proceedings. *Verbeck v. Minneapolis, St. P. & S. S. M. R. Co.* 159 W 51, 149 NW 764.

Under secs. 1836 and 1299h-1, Stats. 1921, it is not necessary for a railroad company to maintain a planked crossing any wider than the portion of the highway used by the pub-

lic for travel; and such company is not liable for injuries where an automobile, in consequence of a broken steering gear, bumped against uncovered rails outside of such traveled part and was overturned. *Schuenemann v. Director General of Railroads*, 177 W 218, 187 NW 983.

Where a railroad company made a deep cut under the highway and then built and maintained an overhead bridge which carried the highway over the cut and the railroad tracks so as to restore the highway to usefulness, the company had a statutory duty to restore the bridge after it burned through no fault of the company, and the circuit court had jurisdiction to enforce performance of such duty by a mandatory injunction in an action brought by the town for that purpose. The company could not avoid its statutory duty by failing to restore the overhead bridge and then petitioning the public service commission to close the unbridged highway in the interest of public safety. *Janesville v. Chicago & N. W. R. Co.* 258 W 547, 46 NW (2d) 847.

190.09 History: 1909 c. 349; Stats. 1911 s. 1836m; 1923 c. 291 s. 3; Stats. 1923 s. 190.23; 1929 c. 504 s. 22; Stats. 1929 s. 190.09.

190.10 History: 1872 c. 119 s. 49; 1876 c. 126; R. S. 1878 s. 1838; Stats. 1898 s. 1838; 1923 c. 291 s. 3; Stats. 1923 s. 190.25; 1929 c. 504 s. 24; Stats. 1929 s. 190.10; 1945 c. 187.

190.11 History: 1872 c. 119 s. 39, 40; 1874 c. 59; R. S. 1878 s. 1839; Stats. 1898 s. 1839; 1923 c. 291 s. 3; Stats. 1923 s. 190.26; 1929 c. 504 s. 25; Stats. 1929 s. 190.11; 1951 c. 279.

The original, and not certified copies of deeds, mortgages, etc., must be recorded in the office of secretary of state. 4 Atty. Gen. 8.

190.12 History: 1929 c. 264; 1929 c. 529 s. 3; Stats. 1929 s. 190.12; 1933 c. 159 s. 28; 1955 c. 153.

190.13 History: 1872 c. 119 s. 44; R. S. 1878 s. 1843; Stats. 1898 s. 1843; 1923 c. 291 s. 3; Stats. 1923 s. 190.30; 1929 c. 504 s. 28; Stats. 1929 s. 190.13.

190.14 History: 1872 c. 119 s. 38; R. S. 1878 s. 1844; Stats. 1898 s. 1844; 1923 c. 291 s. 3; Stats. 1923 s. 190.31; 1929 c. 504 s. 29; Stats. 1929 s. 190.14.

190.15 History: 1872 c. 119 s. 27 to 29; R. S. 1878 s. 1857; Stats. 1898 s. 1857; 1903 c. 370 s. 1; Supl. 1906 s. 1857; 1923 c. 291 s. 3; Stats. 1923 s. 190.32; 1929 c. 504 s. 30; Stats. 1929 s. 190.15.

190.16 History: 1872 c. 119 s. 47; 1875 c. 207; R. S. 1878 s. 1802; 1883 c. 276; Ann. Stats. 1889 s. 1802, 1831a; 1893 c. 188; Stats. 1898 s. 1802, 1831a; 1905 c. 386; Supl. 1906 s. 1802; 1907 c. 262, 265, 352; 1909 c. 481; 1911 c. 193; Stats. 1911 s. 1797—11m, 1802, 1831a; 1923 c. 291 s. 3; 1923 c. 297; 1923 c. 449 s. 36; Stats. 1923 s. 190.17, 192.14, 195.16; 1925 c. 328 s. 1, 2; 1929 c. 504 s. 202; Stats. 1929 s. 190.16; 1953 c. 80; 1957 c. 191.

The statutes make no distinction between the power of a railroad company to condemn a part of a manufacturing plant or a water

power for the purpose of a branch or side track and the condemnation thereof for the main track. If such a distinction exists the right to deny the power in the case of a side track is waived by consent and acquiescence of the landowner in the laying of such a track on his land without condemnation thereof. *Chicago, M. & St. P. R. Co. v. Richardson*, 86 W 154, 56 NW 741.

A complaint which does not show who constructed or who owns the track does not state a cause of action; and unless plaintiff owned it a promise by railroad to operate it is without consideration. *Bartlett v. Chicago & Northwestern R. Co.* 96 W 335, 71 NW 598.

Where a railroad company extends a track upon land to which it has acquired no title by condemnation and afterwards removed such track and makes no claim thereto, the owner of a warehouse has no right to maintain a track over the strip thus abandoned in order to connect his warehouse with the railroad. *Schneider v. Knickerbocker I. Co.* 119 W 171, 96 NW 542.

Where the acquisition of a right of way for a spur track to the plant of a lime company through an exercise of the power of eminent domain by a railroad company was resisted by another lime company over whose land the proposed right of way must pass upon the ground that the taking would be for a private and not a public use, and contrary to the 14th amendment, the contention was overruled. *Chicago & Northwestern R. Co. v. Union L. Co.* 152 W 633, 140 NW 346, affirmed *Union L. Co. v. Chicago & Northwestern R. Co.* 233 US 211.

A railroad company cannot recover the cost of a spur track which it has constructed for an industry without first having the railroad commission determine the same in separate items. Such determination is the determination of a pure question of fact that may be delegated to the commission, its action thereon involving no judicial or legislative functions. (*Union L. Co. v. Railroad Comm.* 114 W 523, 129 NW 605, followed.) *Chicago & Northwestern R. Co. v. Wisconsin Z. Co.* 172 W 407, 179 NW 588.

The railroad commission is without jurisdiction to order a restoration of a spur track, built originally by a railroad at its own expense, upon easements which it had acquired. *Chicago & Northwestern R. Co. v. Railroad Comm.* 181 W 91, 193 NW 981.

The requirement of the statute that a bona fide effort be made by a railroad to purchase before condemnation proceedings against land are begun was satisfied when the agent of the railroad delivered to each landowner an offer in writing, one of which offers was signed by the agent in his capacity as such while the others were unsigned. A railroad company has the right to condemn more than 100 feet of land for sidetracks, storage tracks, switch yard and car storage yards. In re *Chicago, M. St. P. & P. R. Co.* 197 W 503, 222 NW 776.

Under 195.16, Stats. 1927, requiring spur tracks where indispensable to industry, a railroad company cannot be compelled to take over and maintain a lumber company's logging railway as a spur track. *Chicago, M.,*

St. P. & P. R. Co. v. Railroad Comm. 199 W 252, 222 NW 402.

A railroad company cannot be released from serving the owner of an industry having the right to use a spur track, except on order of the public service commission. A quitclaim deed by which the grantor purported to surrender to the grantee his easement in the grantee's spur track did not operate to surrender the easement, where the grantor's right to the service secured to him by the easement continued in him by virtue of the statute after the purported surrender. *New Dells L. Co. v. Chicago, St. P. M. & O. R. Co.* 226 W 614, 276 NW 632, 277 NW 673.

If a railroad company has no spur tracks within one-half mile of any elevator, warehouse, manufacturing plant, mill or lumber, coal or wood yard, it must connect the tracks constructed by the owner thereof with the main tracks. The railroad commission has no power to compel a railroad company to permit the connection before the elevator or shed is actually built. If a railroad company refuses to make the connection after the coal shed or elevator is built, the railroad commission may compel it to do so. 1906 Atty. Gen. 508.

A spur track maintained by a railroad common carrier is part of its system of railway and a public facility. A municipal corporation has no authority to restrict the use of such facility and require shippers to obtain permission of and make payment to the municipality in order to load and unload cars on such spur track. 2 Atty. Gen. 804.

CHAPTER 191.

Railroads; Construction.

191.01 History: 1907 c. 454; 1911 c. 663 s. 353; Stats. 1911 s. 1797—39, 1797—53; 1923 c. 291 s. 3; Stats. 1923 s. 191.01, 191.15; 1929 c. 504 s. 35, 36; Stats. 1929 s. 191.01.

The enactment of ch. 454, Laws 1907, did not supersede the provisions of sec. 1831, Stats. 1898, requiring that an extension be designated by resolution of the board of directors. *Eastern R. Co. v. McCord*, 136 W 249, 116 NW 841.

191.02 History: 1907 c. 454; Stats. 1911 s. 1797—40; 1923 c. 291 s. 3; Stats. 1923 s. 191.02; 1929 c. 504 s. 37.

191.03 History: 1907 c. 454; Stats. 1911 s. 1797—41; 1923 c. 291 s. 3; Stats. 1923 s. 191.03; 1929 c. 504 s. 38; 1965 c. 252.

191.05 History: 1907 c. 454; 1911 c. 663 s. 354; Stats. 1911 s. 1797—43; 1923 c. 291 s. 3; Stats. 1923 s. 191.05; 1929 c. 504 s. 40.

191.06 History: 1907 c. 454; Stats. 1911 s. 1797—44; 1923 c. 291 s. 3; Stats. 1923 s. 191.06; 1929 c. 504 s. 41.

The "extension" of the line of a railroad under sec. 1797-44, Stats. 1915, differs from a "spur track" constructed by authority of sec. 1797-11m. The extension must be operated by the railroad company as a common carrier for the general public and without discrimination; while a spur track serves only one or a few shippers who contribute to its construction. The denial by the railroad