It is doubtful whether a subordinate branch of the Modern Woodmen of America, organized under ch. 92, Stats. 1911, 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 of a lodge are corporations with limited powers, and are authorized to hold stock in another corporation.

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. Chickerping Lodge v. McDonald, 14 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.

A body organized under ch. 92, Stats. 1911, cannot sue or be sued until after it has elected trustees. A. S. Asso. v. Fond du Lac Lodge, 196 W 397, 220 NW 180.

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 188.03, 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 statute, stock in a "Fellowship" 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. 208 W 547, 240 NW 193.

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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 R. Co. 124 W. 490, 102 NW 401.

For the meaning of "railroad business," as related to taxability of property, see note to sec. 79.02, citing Lincoln F. & W. Co. v. Milwaukee, 298 W. 241, 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. 298; 1883 c. 180; Ann. Stats. 1889 s. 1828; 1889 s. 1828; 1897 c. 676 s. 1; 1903 c. 571 s. 2; 1913 c. 261 s. 3; 1917 c. 919.12; 1929 c. 359 s. 4; 1929 s. 190.02; 1941 c. 190; 1965 s. 131.

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. 375.

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. 603, 158 NW 343.

3. Cross Highways.

Secs. 1828 (5) and 1838, R. S. 1878, are intended 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. Busian 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 1096.

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. 164, 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." Simont v. Chicago & N. R. R. Co. 61 W. 95, 95 NW 1099.

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 R. Co. 124 W. 490, 122 NW 401.

By virtue of sec. 1828 (5), Stats. 1911, a railroad 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. Fabel B. Co. v. Milwaukee, 157 W. 158, 147 NW 46.

Sec. 1828 (6), Stats. 1913, authorized the construction of a railroad track along one side of a street in the city. Peters v. Chicago & Northwestern R. Co. 165 W. 529, 162 NW 816.

4. Railroad Intersections.

Under ch. 454, Laws 1897, 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. 149 W. 745, 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. 131, Laws 1888, the latter is not liable for the debts of the former. Vilas
A railroad company cannot by its own act transfer its franchise to a corporation; this can only be done by virtue of an express statute. Pennison v. Chicago & St. P. R. R. Co. 93 W 344, 67 NW 702.

190.07 History: 1872 c. 119 s. 38; R. S. 1878 s. 1834; Stats. 1888 s. 1834; 1923 c. 591 s. 3; Stats. 1923 s. 190.20; 1929 c. 504 s. 19; Stats. 1929 s. 190.67.

190.08 History: 1872 c. 119 s. 11 sub. 5; 1872 c. 119 s. 54; R. S. 1878 s. 1836; 1891 c. 322; 1893 c. 119; 1895 c. 176; Stats. 1888 s. 1836; 1923 c. 291 s. 3; Stats. 1923 s. 190.23; 1929 c. 504 s. 21; Stats. 1929 s. 190.95.

Under sec. 11, ch. 78, R. S. 1855, 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. 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. 43 W 338.

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. R. 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, & P. R. R. Co. 52 W 258, 6 NW 287.

Sec. 1828 (5) and 1836, R. S. 1878, do not contemplate that highways shall be used for the purpose of switching cars. Russian 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. Jemseg v. Chicago, B. & N. R. R. Co. 69 W 648, 34 NW 723.

Sec. 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 lands lying 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 thereon by the track. Buchner v. Chicago, M. & N. R. R. Co. 56 W 403, 14 NW 327; 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 364.

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 public 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: 1869 c. 349; Stats. 1911 s. 1896m; 1923 c. 291 s. 4; 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. 120; R. S. 1876 s. 1830; Stats. 1896 s. 1830; 1923 c. 291 s. 3; Stats. 1923 s. 190.25; 1929 c. 504 s. 24; Stats. 1929 s. 190.10; 1946 c. 167.

190.11 History: 1872 c. 119 s. 40; 1874 c. 69; R. S. 1878 s. 1859; Stats. 1896 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. 5.

190.12 History: 1929 c. 264; 1929 c. 529 s. 3; Stats. 1929 s. 190.12; 1953 c. 159 s. 20; 1955 c. 183.

190.13 History: 1872 c. 119 s. 44; R. S. 1878 s. 1843; Stats. 1896 s. 1843; 1923 c. 291 s. 3; Stats. 1923 s. 190.30; 1929 c. 504 s. 30; Stats. 1929 s. 190.13.

190.14 History: 1872 c. 119 s. 38; R. S. 1878 s. 1844; Stats. 1896 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 c. 1837; Stats. 1896 s. 1837; 1903 c. 370 s. 1; Supl. 1906 s. 1837; 1923 c. 291 s. 3; Stats. 1923 s. 190.33; 1929 c. 504 s. 30; Stats. 1929 s. 190.15.

190.16 History: 1872 c. 119 s. 47; 1878 c. 297; R. S. 1878 s. 1892; 1898 c. 278; Ann. Stats. 1899 s. 1802, 1851a; 1899 s. 188; Stats. 1899 s. 1802, 1851a; 1899 s. 306; Supl. 1899 s. 1803; 1907 c. 302; 305; 1910 c. 391; 1911 c. 391; Stats. 1911 s. 1797–11m, 1802, 1831a; 1923 c. 291 s. 3; 1923 c. 207; 1923 c. 448 s. 30; Stats. 1923 s. 190.17, 195.14, 195.16; 1925 c. 329 s. 1; 1929 c. 504 s. 292; 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, St. P. & R. Co. v. Richardson, 96
W 154, 66 NW 741.
A complaint which does not show who con­
structed 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 with­
out consideration. Bartlett v. Chicago &
Northwestern R. Co. 96 W 625, 71 NW 586.
Where a railroad company extends a track
upon land to which it has acquired no title
by condemnation and afterwards removes
such track and makes no claim thereto, the
owner of a warehouse has no right to main­
tain a track over the strip thus abandoned in
order to connect his warehouse with the rail­
road. Schneider v. Knickerbocker L. Co. 119
W 171, 66 NW 543.
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, 146 NW 346, affirmed Union
L. Co. v. Chicago & Northwestern R. Co. 238
US 311.
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 determina­
tion of a pure question of fact that may be
delegated to the commission, its action there­
on involving no judicial or legislative func­
tions. (Union L. Co. v. Railroad Comm. 114
W 523, 120 NW 605, followed.) Chicago &
Northwestern R. Co. v. Wisconsin Z. Co. 172
W 497, 179 NW 586.
The railroad commission is without juris­
diction to order a restoration of a spur track,
built originally by a railroad at its own ex­
 pense, upon easements which it had acquired.
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 Chi­
cago, M. St. P. & P. R. Co. 197 W 569, 222
NW 770.
Under 191.16, Stats. 1927, requiring spur
tracks where indispensable to industry, a rail­
road company cannot be compelled to take
over and maintain a lumber company's log­
ingen railway as a spur track. Chicago, M.
St. P. & R. Co. v. Railroad Comm. 199 W
255, 222 NW 402.
A railroad company cannot be released from
serving the owner of an industry having the
right to a spur track, except on order of the
public service commission. A quitclaim deed
by which the grantor purported to sur­
rrendet to the grantee his easement in the
grantor's spur track did not operate to sur­
rrendet 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. 236 W 614,
276 NW 632, 277 NW 573.
If a railroad company has no spur tracks
within one-half mile of any elevator, ware­
house, 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. 1908 Atty. Gen. 598.
A spur track maintained by a railroad com­
mon carrier is part of its system of railway
and a public facility. A municipal corpora­
tion has no authority to restrict the use of such
facility and require shippers to obtain permis­
sion of and make payment to the municipality
in order to load and unload cars on such spur
track. 2 Atty. Gen. 894.

CHAPTER 191.

Railroads: Construction.

191.01 History: 1907 c. 454; 1911 c. 683 s.
335; Stats. 1911 s. 1797—39, 1797—55; 1923
c. 291 s. 3; Stats. 1923 s. 191.01, 191.16, 1929
s. 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

191.02 History: 1907 c. 454; Stats. 1911 s.
1797—40; 1923 c. 291 s. 3; Stats. 1923 s. 191.02;
1929 c. 594 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. 594 s. 38; 1965 c. 252.

191.05 History: 1907 c. 454; 1911 c. 683 s.
354; Stats. 1911 s. 1797—43; 1923 c. 291 s. 3;
Stats. 1923 s. 191.05; 1929 c. 594 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. 594 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.
1397—11m. The extension must be operated
by the railroad company as a common car­
rrier for the general public and without dis­
 crimination; while a spur track serves only
one or a few shippers who contribute to its
construction. The denial by the railroad