

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

commission of an application for leave to build an extension does not disable it to order the construction of a spur track over the same route or a part thereof. *Menasha W. W. Co. v. Railroad Comm.* 167 W 19, 166 NW 435.

**191.07 History:** 1907 c. 454; 1911 c. 663 s. 353; Stats. 1911 s. 1797—45; 1923 c. 291 s. 3; Stats. 1923 s. 191.07; 1929 c. 504 s. 42; 1965 c. 252.

**191.09 History:** 1907 c. 454; 1911 c. 663 s. 355, 356; Stats. 1911 s. 1797—47; 1923 c. 291 s. 3; Stats. 1923 s. 191.09; 1929 c. 504 s. 44; 1943 c. 375 s. 71.

**191.10 History:** 1907 c. 454; 1911 c. 663 s. 353; Stats. 1911 s. 1797—48, 1797—49, 1797—51; 1923 c. 291 s. 3; Stats. 1923 s. 191.10, 191.11, 191.13; 1929 c. 504 s. 45, 46, 47; Stats. 1929 s. 191.10.

The railroad commission is not authorized to refuse a certificate of convenience and necessity, where required for transportation facilities for the general public, because of the inconvenience to individuals along the proposed right of way or because of detriment to municipal zoning plans. *Milwaukee E. R. & L. Co. v. Milwaukee County*, 189 W 96, 206 NW 201.

**191.11 History:** 1907 c. 454; Stats. 1911 s. 1797—52; 1923 c. 291 s. 3; Stats. 1923 s. 191.14; 1929 c. 504 s. 48; Stats. 1929 s. 191.11.

**191.13 History:** 1925 c. 328 s. 2; Stats. 1925 s. 190.34; 1929 c. 504 s. 51; Stats. 1929 s. 191.13; 1959 c. 640.

**191.16 History:** 1907 c. 454; Stats. 1911 s. 1797—54; 1923 c. 291 s. 3; Stats. 1923 s. 191.16; 1929 c. 504 s. 52.

**191.17 History:** 1907 c. 454; Stats. 1911 s. 1797—55; 1917 c. 543; 1923 c. 291 s. 3; Stats. 1923 s. 191.17; 1929 c. 504 s. 53.

**191.18 History:** 1907 c. 454; 1909 c. 475; Stats. 1911 s. 1797—56; 1923 c. 291 s. 3; Stats. 1923 s. 191.18; 1929 c. 504 s. 54; 1969 c. 276 s. 599; 1969 c. 392.

Sec. 1797-56, Stats. 1913, does not apply to the mere widening within a railroad company's right-of-way, of a crossing established before the section was enacted and does not supersede a previous contract between 2 companies respecting the cost of such change. *Chicago & Northwestern R. Co. v. Milwaukee N. R. Co.* 160 W 352, 151 NW 804.

**191.19 History:** 1907 c. 454; 1909 c. 475; Stats. 1911 s. 1797—57; 1923 c. 291 s. 3; Stats. 1923 s. 191.19; 1929 c. 504 s. 55.

**191.20 History:** 1907 c. 454; Stats. 1911 s. 1797—58; 1913 c. 600; 1923 c. 291 s. 3; Stats. 1923 s. 191.20; 1929 c. 504 s. 56.

**191.21 History:** 1907 c. 454; 1911 c. 663 s. 353; Stats. 1911 s. 1797—59; 1923 c. 291 s. 3; Stats. 1923 s. 191.21; 1929 c. 504 s. 57.

## CHAPTER 192.

### Railroads; Regulations and Liabilities.

**192.01 History:** 1874 c. 227; R. S. 1878 s. 1801; Stats. 1898 s. 1801; 1911 c. 483; 1919 c.

697 s. 85; 1923 c. 291 s. 3; Stats. 1923 s. 192.09; 1929 c. 504 s. 60; Stats. 1929 s. 192.01; 1945 c. 324.

It is not necessary for a railroad company to maintain a telegraph office for use of the public. At small stations the company is not obliged to keep the station open at all business hours. 1906 Atty. Gen. 74.

192.01, Stats. 1935, does not apply and cannot be invoked in case of neglect or refusal to stop a train in an incorporated city. 25 Atty. Gen. 195.

**192.03 History:** 1903 c. 63 s. 1; Supl. 1906 s. 1809c; 1911 c. 663 s. 369; 1923 c. 291 s. 3; Stats. 1923 s. 192.29; 1929 c. 504 s. 62; Stats. 1929 s. 192.03.

**192.05 History:** 1907 c. 614; Stats. 1911 s. 1797g—1; 1923 c. 291 s. 3; Stats. 1923 s. 192.76; 1929 c. 504 s. 64; Stats. 1929 s. 192.05.

**192.06 History:** 1911 c. 250; Stats. 1911 s. 1801q; 1923 c. 291 s. 3; Stats. 1923 s. 192.12; 1929 c. 504 s. 65; Stats. 1929 s. 192.06.

**192.07 History:** 1921 c. 480; Stats. 1921 s. 1798bb; 1923 c. 291 s. 3; Stats. 1923 s. 192.03; 1929 c. 504 s. 66; Stats. 1929 s. 192.07.

**192.08 History:** 1911 c. 351; 1911 c. 664 s. 52; Stats. 1911 s. 1798b; 1923 c. 291 s. 3; Stats. 1923 s. 192.02; 1929 c. 504 s. 67; Stats. 1929 s. 192.08.

**192.09 History:** 1872 c. 119 s. 53; R. S. 1878 s. 1818; Stats. 1898 s. 1818; 1923 c. 291 s. 3; Stats. 1923 s. 192.63; 1929 c. 504 s. 68; Stats. 1929 s. 192.09.

On motion for new trial (damages, excessive or inadequate) see notes to 270.49.

Where a railroad ticket which is presented by a passenger does not on its face entitle him to passage he may be ejected if he does not pay the fare, although the form of the ticket may be the fault of the railroad company. *Yorton v. Milwaukee, L. S. & W. R. Co.* 54 W 234, 11 NW 482.

A conductor has no right to eject a passenger who has a round-trip ticket punctured into 2 parts and having on the going part the words "not good for passage" and, on a line therewith, on the returning part, the words "if detached," if the parts have become accidentally separated, and both of them are in good faith shown the conductor on the going trip. *Wightman v. Chicago & Northwestern R. Co.* 73 W 169, 40 NW 689.

A dwelling house may be within sec. 1818, R. S. 1878, if it was at the time the passenger was put off occupied as a residence, notwithstanding the occupant was temporarily absent therefrom and the house closed during the time the ejected person was there. *Patry v. Chicago, St. P., M. & O. R. Co.* 77 W 218, 46 NW 56.

By necessary implication sec. 1818, R. S. 1878, prohibits the expulsion of a passenger from the cars for nonpayment of fare at any place other than at one of the places mentioned in it. *Phettiplace v. Northern P. R. Co.* 84 W 412, 416, 54 NW 1092; *Boehm v. Duluth, S. S. & A. R. Co.* 91 W 592, 65 NW 506.

Sec. 1818, R. S. 1878, has no application to the removal of trespassers from trains. *Bolin*