s. 194.41; 1937 c. 288; 1939 c. 410 s. 2 (110.08); 1955 c. 35, 316, 652; 1957 c. 260 s. 35; 1969 c. 55, 312; 1969 c. 500 s. 30 (3) (g).

The "no-action clause" of the liability bond or policy of a common carrier of passengers did not conflict with the provisions of 194.41, Stats. 1929, requiring such bond and making the insurance carrier directly liable thereon for all damages that may be recovered against the operator of the vehicle; the statute is construed, under the rule that the court may look to the legislative history to ascertain legislative intent if the language is doubtful or ambiguous, as not intended to permit a plaintiff to join the insurance carrier as a party defendant contrary to the provisions of its contract with the insured. Polzin v. Wachtl, 209 W 289, 245 NW 182.

A truck may be released from a fleet policy but a truck so released cannot be operated again until there is a new undertaking given. Madden v. Reeve, 230 W 468, 283 NW 319.

By reason of 194.41 (1), as to a liability policy on a truck or other motor vehicle of a contract motor carrier, provisions in such a policy, issued after the enactment of the statute, limiting the coverage to accidents occurring while the truck was used for the purposes stated in the declarations, were superseded and ineffective. Rusch v. Mielke, 234 W 380, 291 NW 300.

The provisions that the insurance policy or other undertaking required of a contract motor carrier "shall provide that the indemnitor shall be directly liable for * * * all damages for injuries to persons * * * that may be recovered against the owner or operator of each such motor vehicle by reason of the negligent use or operation thereof," governed over an exclusion clause contained in such a policy, and made the policy cover as to injuries sustained by cherry pickers while being transported for hire in a truck of the carrier, although such use of the truck was not within the terms of the carrier's permit and was excluded from coverage by the exclusion clause in the policy. Bentley v. Fayas, 253 W 531, 34 NW (2d) 675.

194.41, Stats. 1947, deals strictly with public-liability insurance, not with collision insurance, and is intended to protect users of the highway against damage from an insured with whom they have no relationship; it does not prohibit in such a policy a clause excluding liability on the part of the insurer for injury to property "owned by, rented to, in charge of, or transported by, the insured," and under such clause the insurer is not liable for damage to a tractor leased to the insured trucker, and damaged in a collision while being operated by the insured. Faust v. Dawes, 257 W 353, 43 NW (2d) 365.

An insurer of the lessee of a truck owned by a partnership and driven by one of the partners, whose policy covers the driver pursuant to 194.41 (1), cannot recover the amount it pays to a third party for the driver's negligence from either the driver or the partnership. Miller v. Kujak, 4 W (2d) 80, 90 NW (2d) 137.

An employe of the insured may recover for injuries received while a passenger in the truck. The policy may not limit coverage as to him. Peterson v. Schmude, 23 W (2d) 9, 126 NW (2d) 500.

Where endorsement upon an automobile liability policy clearly expresses the insurer's intent to afford coverage to a motor carrier, the addition to said endorsement of ambiguous language relating to contingencies under which the insured may in turn be liable to the insurer, but which does not in any manner alter or change the insurer's liability to third persons, does not render the endorsement unacceptable for filing in the motor vehicle department. 42 Atty. Gen. 57.

194.42 History: 1933 c. 488 s. 3; Stats. 1933 s. 194.42; 1939 c. 410 s. 2 (110.08); 1955 c. 660; 1969 c. 500 s. 30 (3) (g), (i).

194.43 History: 1933 c. 488 s. 3; Stats. 1933 s. 194.43; 1937 c. 288; 1939 c. 410 s. 2 (110.08); 1969 c. 500 s. 30 (3) (g).

194.44 History: 1933 c. 488 s. 3; Stats. 1933 s. 194.44; 1937 c. 288; 1939 c. 396; 1939 c. 410 s. 2 (110.08); 1943 c. 78; 1955 c. 452; 1957 c. 260 s. 36; 1959 c. 587; 1969 c. 500 s. 30 (3) (g).

The provisions of 194.44 (2), Stats. 1947, do not apply to a "private motor carrier" as defined by 194.01 (14). 36 Atty. Gen. 510.

194.46 History: 1933 c. 488 s. 3; Stats. 1933 s. 194.46; 1937 c. 288; 1943 c. 78; 1947 c. 565; 1959 c. 587.

194.51 History: 1953 c. 602; Stats. 1953 s. 194.51; 1955 c. 10; 1959 c. 659 s. 79.

CHAPTER 195.

Public Service Commission; Regulation of Railroads, Street Railways, Interurban Railways and Express and Telegraph Companies.

195.01 History: 1905 c. 362 s. 1; Supl. 1906 s. 1797—1; 1907 c. 582; 1907 c. 676 s. 18; 1911 c. 663 s. 337; 1913 c. 772 s. 101, 102; 1917 c. 108; 1919 c. 93 s. 30, 31; 1919 c. 362 s. 19, 28, 32; 1921 c. 590 s. 25; 1923 c. 291 s. 3; Stats. 1923 s. 195.01; 1925 c. 268; 1929 c. 465 s. 3; 1929 c. 504 s. 171; 1929 c. 529 s. 7; 1931 c. 45 s. 1; 1931 c. 183 s. 2; 1937 c. 9; Spl. S. 1937 c. 9; 1939 c. 413; 1943 c. 275 s. 48; 1945 c. 201; 1951 c. 33; 1951 c. 97 s. 43; 1951 c. 247, 712; 1957 c. 97, 263; 1959 c. 659 s. 72; 1963 c. 225; 1965 c. 587; 1969 c. 276.

195.02 History: 1905 c. 362 s. 2; Supl. 1906 s. 1797—2; 1907 c. 582; 1907 c. 676 s. 18; 1911 c. 663 s. 337; 1913 c. 211; 1923 c. 291 s. 3; Stats. 1923 s. 195.02; 1929 c. 504 s. 172; 1933 c. 366.

195.03 History: 1907 c. 499; 1909 c. 248; 1911 c. 663 s. 365; Stats. 1911 s. 1797m—73, 1797m—109; 1923 c. 291 s. 3; Stats. 1923 s. 195.49, 195.79; 1929 c. 504 s. 173, 306, 307; Stats. 1929 s. 195.03; 1943 c. 375 s. 73; 1957 c. 523; 1969 c. 276.

On equality, inherent rights, and exercises of police power see notes to sec. 1, art. I; on legislative power generally and on delegation of power see notes to sec. 1, art. IV; on judicial power generally see notes to sec. 2, art. VII; and on securities of public service corporations see notes to various sections of ch. 184.

The railroad commission is an administrative body empowered to investigate and determine the existence of certain facts. When

it has exercised its power the results contemplated by the statute follow; but it can not make an order conditioned upon conjecture with respect to the happening of a future event. Madison R. Co. v. Railroad Comm. 184 W 164, 198 NW 278.

An order under 195.03, Stats. 1929, requiring that logging cars must be equipped with automatic couplers and air brakes, is in conflict with the regulations of congress. Yawkey-Bissell L. Co. v. Railroad Comm. 204 W 210, 235 NW 424.

The public service commission is an administrative agency and not a court, and the commission never acts in a strictly judicial capacity but only in a quasi-judicial capacity. Muench v. Public Service Comm. 261 W 492, 53 NW (2d) 514, 55 NW (2d) 40.

A rule of the public service commission requiring that a petition for rehearing before the commission be served on all of the parties to the proceeding was sufficiently complied with by the appellants herein where the parties not so served were actually represented by counsel for the appellants. Princeton v. Public Service Comm. 268 W 542, 68 NW (2d) 420.

195.04 History: 1905 c. 362 s. 12; Spl. S. 1905 c. 13 s. 3; Supl. 1906 s. 1797—12; 1911 c. 663 s. 340; 1923 c. 291 s. 3; Stats. 1923 s. 195.17; 1929 c. 504 s. 174; Stats. 1929 s. 195.04.

The railroad commission has authority, under 195.04 and 195.37, Stats. 1923, to investigate, hear, and decide questions relating to overcharges and to make appropriate orders permitting and authorizing, but not attempting to compel, a public utility to refund any amount found to be excessive, unlawful or unreasonable. An order of the commission authorizing a railroad company to refund $140 excess demurrage was not in the nature of a judgment. Such order did not deprive the railroad company of the right to have its claim passed upon by the courts. Chicago, M. & St. P. R. Co. v. Railroad Comm. 194 W 24, 215 NW 442.

195.05 History: 1905 c. 362 s. 14; Spl. S. 1905 c. 17 s. 1; Supl. 1906 s. 1797—14; 1907 c. 582; 1907 c. 676 s. 18; 1909 c. 348; 1911 c. 663 s. 337, 344, 345; 1923 c. 291 s. 3; Stats. 1923 s. 195.30; 1929 c. 504 s. 175; Stats. 1929 s. 195.05; 1933 c. 493 s. 2.

In fixing rates the railroad commission need not observe all the requirements of judicial procedure, but may apply their expert knowledge to facts in evidence. The burden is on the plaintiff to show clearly that an order complained of is unlawful or unreasonable. In a single proceeding the commission may fix a reasonable rate, order it substituted in place of a rate found unreasonable, and find what would have been a reasonable rate and order a refund. Chicago & Northwestern R. Co. v. Railroad Comm. 156 W 47, 145 NW 216.

The railroad commission has no power to change rates unless they are found to be unreasonable or discriminatory. The finding by the commission of a reasonable rate, approved by the trial court, will not be disturbed by the supreme court unless clearly wrong. A valuation of street railway property for taxation purposes is not conclusive as to its value for rate-making purposes but after earning power has been limited it may be that taxation ought not to be increased by enlargement of the basis of taxation. Duluth S. R. Co. v. Railroad Comm. 161 W 245, 152 NW 887.

When the railroad commission has fixed streetcar fares as reasonable and lawful, it cannot 2 years later, upon the application of another party, declare the rates unreasonable and proceed to substitute new rates ab initio; it has power only to fix reasonable rates and cannot reverse its former orders as being erroneous when made. Milwaukee E. R. & L. Co. v. Railroad Comm. 169 W 421, 172 NW 746.

The public service commission's allowance of depreciation of the plant assets based on a transport company's investment cost, instead of the depreciated original (higher) cost to the former owner of such assets, did not result in unreasonable or confiscatory fares, where the fares fixed by the commission would provide a return of 7.35% on the company's net investment cost of the property employed in the business. Milwaukee & S. T. Corp. v. Public Service Comm. 268 W 573, 68 NW (2d) 552.

The public service commission cannot value property on the basis of the portion used where the property consists of shops and yards which cannot be severed and which were when built fully used but are now partly excess. The commission could order a writing off of the excess over a period of years. Milwaukee & S. T. Corp. v. Public Service Comm. 13 W (2d) 384, 108 NW (2d) 729.

195.06 History: 1905 c. 362 s. 15; Supl. 1906 s. 1797—15; 1911 c. 663 s. 346; 1923 c. 291 s. 3; Stats. 1923 s. 195.31; 1929 c. 504 s. 176; Stats. 1929 s. 195.06; 1943 c. 375 s. 74; 1945 c. 511.

Orders of the public service commission are prima facie valid, and they must be shown to be otherwise by clear and satisfactory evidence. Madison Bus Co. v. Public Service Comm. 264 W 12, 58 NW (2d) 463.

It is not within the province of the reviewing court to determine whether the findings of the public service commission in the instant case are consistent with those made by the commission in another case. Chicago, M., St. P. & P. R. Co. v. Public Service Comm. 267 W 402, 66 NW (2d) 351.

195.07 History: 1905 c. 362 s. 31; Supl. 1906 s. 1797—31; 1911 c. 663 s. 337; 1913 c. 722 s. 101; 1923 c. 291 s. 3; Stats. 1923 s. 195.48; 1925 c. 194; 1929 c. 504 s. 177; Stats. 1929 s. 195.07.

By 195.07, as amended by ch. 194, Laws 1925, the railroad commission was vested with enforcement powers with respect to utilities to the same extent as it was with respect to railroads theretofore. The amendment worked a vital change in the utility statutes and the jurisdiction of the commission became vastly broadened and more inclusive. Commonwealth T. Co. v. Carley, 192 W 464, 213 NW 469.

195.08 History: 1905 c. 362 s. 3, 4, 5, 7, 35; Supl. 1906 s. 1797—3, 1797—4, 1797—5, 1797—7, 1797—35; 1909 c. 335; 1911 c. 160; 1911 c. 663 s. 337, 339, 350; 1915 c. 604 s. 53; 1919 c. 679 s. 82; 1923 c. 291 s. 3; Stats. 1923 s. 195.03, 195.04, 195.05, 195.07, 195.52; 1929 c. 504 s. 178; Stats. 1929 s. 195.08; 1933 c. 493; 1957 c. 523.

An order by the railroad commission that a milk station be established at a specified place is sustained as a reasonable requirement. Chicago M. & St. P. R. Co. v. Railroad Comm. 157 W 287, 146 NW 1129.

Under ch. 362, Laws 1905, railroad rates within the state must be reasonable, just, and nondiscriminating, and must apply to all shippers alike within the territory and for the commodity covered by the tariff rates. Minneapolis, St. P. & S. S. M. R. Co. v. Menasha W. W. Co. 159 W 130, 150 NW 411.

Where a scheduled stock train, in order to reach its destination in time for the early morning market, was obliged to run between 35 and 40 miles per hour, arrived 5 minutes late at the station, it was not the duty of the carrier to wait there for a car which, without its fault, was not ready for shipment. Cohen v. Minneapolis, St. P. & S. S. M. R. Co. 162 W 73, 155 NW 945.

Where a public utility operates both street and interurban lines the reasonableness of a rate fixed by the railroad commission is tested by its effect on the whole system. Milwaukee E. R. & L. Co. v. Railroad Comm. 171 W 297, 177 NW 25.

Sec. 1793-3, Stats. 1921, creates the legislative standard of service required of a streetcar company, even though the general law and a city's special charter gives the common council jurisdiction to pass ordinances regulating them. Hence the railroad commission does not exercise legislative power when it orders the operation of a one-man car service where the council had required every car to be operated by 2 men. Milwaukee v. Railroad Comm. 182 W 498, 196 NW 853.

Where a railroad company contracted to pay a shipper for doing terminal switching on the shipper's tracks, and the company filed a canceling tariff with the public service commission, the shipper's remedy was by suit on the contract and not an action to set aside the order of the commission approving cancellation of tariffs. Nekoosa-Edwards P. Co. v. Public Service Comm. 210 W 644, 246 NW 428.

In general, when a station or other place has inadequate train facilities, a state may compel interstate or mail trains to stop at such station or place to a number necessary to render such station or place adequate train service, although requiring such stopping is a direct interference with interstate commerce; and whether a station or place has reasonable train service is a question of fact to be determined by the situation and general surroundings of the station or place. Chicago, M., St. P. & P. R. Co. v. Public Service Comm. 260 W 212, 50 NW (2d) 416.

As long as a common carrier exercises its privilege of doing business, it has a primary duty of furnishing reasonably adequate service to the public, which duty may be compelled, even if by so doing a pecuniary loss may result. Chicago, M., St. P. & P. R Co. v. Public Service Comm. 267 W 402, 66 NW (2d) 351.

When considering an application for discontinuance of service the public service commission determines the existing and prospective public need for the service, ascertained largely from a consideration of the public use of the service, although other factors are to be taken into account, such as density of traffic in the area, availability of other service, and preference by the public for private transportation. Weighing the railroad's loss against the public need for a passenger service sought to be discontinued is a proper and reasonable test for the commission to use. In balancing the railroad's loss against the public need, the primary loss factor to be taken into account is the loss from the operation of the particular services sought to be discontinued. Princeton v. Public Service Comm. 268 W 542, 68 NW (2d) 420.

The regulation of rates by the railroad commission is a legislative function of the state and while the state may enter into contracts preventing it for given periods from exercising the function of rate making such renunciation must be so clear as to permit no doubt of its construction. No irrevocable contract was created by a municipal ordinance establishing rates of fare of a street car company. Ordinarily time alone can satisfactorily demonstrate whether rates fixed by ordinance are or are not confiscatory. (Milwaukee E. R. & L. Co. v. Railroad Comm. 153 W 592, 142 NW 491, affirmed.) Milwaukee E. R. & L. Co. v. Railroad Comm. 238 US 174.

Published rules relating to tariffs of interstate carriers must have a reasonable construction. (Chicago & Northwestern R. Co. v. Menasha P. Co. 159 W 508, 149 NW 751, affirmed.) Menasha P. Co. v. Chicago & N. W. R. Co. 241 US 55.

195.09 History: 1905 c. 362 s. 6; Supl. 1906 s. 1797—6; 1911 c. 663 s. 337; 1923 c. 291 s. 3; Stats. 1923 s. 195.06; 1929 c. 504 s. 179; Stats. 1929 s. 195.09.

The "transit and other special contract rates," mentioned in sec. 1797—6, Stats. 1911, were the rates to be made after the enactment of the section and not the contracts existing when it took effect. Minneapolis, St. P. & S. S. M. R. Co. v. Menasha W. W. Co. 159 W 130, 150 NW 411.

195.10 History: 1905 c. 362 s. 28; Supl. 1906 s. 1797—28; 1923 c. 291 s. 3; Stats. 1923 s. 195.45; 1929 c. 504 s. 180; Stats. 1929 s. 195.10.

An emergency as is contemplated by sec. 1797—28, Stats. 1917, does not arise because a railroad company is not deriving a reasonable return from existing rates, has been in that situation for several years, and has never paid a dividend. A permanent raise of rates was required, and an order of the railroad commission made as an emergency order was sustained as a valid general rate order. Smith v. Railroad Comm. 169 W 547, 173 NW 312.

195.11 History: 1905 c. 362 s. 22; Supl. 1906 s. 1797—22; 1913 c. 57; 1923 c. 291 s. 3; Stats. 1923 s. 195.39; 1929 c. 504 s. 181; Stats. 1929 s. 195.11; 1931 c. 60.

A tariff prescribing the rental to be paid a shipper for the use of its facilities in switching intrastate shipments at its plants is not violative of the statute, the word "facilities," embracing anything which aids the performance of a duty which the carrier was required to perform. The statute intended to provide substantially the same matters provided in the interstate commerce act (36 U. S. Stats. at

Large, ch. 309, p. 551) Nekoosa-Edwards P. Co. v. Railroad Comm. 193 W 538, 213 NW 633.

A contract obligating a railroad company to pay a specified rate for terminal switching performed by a switch engine and crew furnished by shipper was not invalidated by statutory amendment forbidding payment for service incident to origination or determination of carload line haul shipments; the switch engine and crew were a "facility" within the statute authorizing rental thereof by a railroad. Nekoosa-Edwards P. Co. v. Minneapolis, St. P. & S. S. M. R. Co. 217 W 426, 259 NW 618.

195.12 History: 1905 c. 362 s. 23; Supl. 1906 s. 1797—23; 1923 c. 291 s. 3; Stats. 1923 s. 195.40; 1929 c. 504 s. 182; Stats. 1929 s. 195.12.

Where, at the request of a manufacturer, a railroad company ceased furnishing cars to shippers for the transportation of material to such manufacturer because its local tracks were full, such action was an unlawful preference. Chicago & Northwestern R. Co. v. Menasha P. Co. 159 W 508, 149 NW 751.

195.13 History: 1905 c. 362 s. 24; Supl. 1906 s. 1797—24; 1923 c. 291 s. 3; Stats. 1923 s. 195.41; 1929 c. 504 s. 183; Stats. 1929 s. 195.13.

195.14 History: 1905 c. 362 s. 8; Spl. S. 1905 c. 13 s. 1; Supl. 1906 s. 1797—8; 1909 c. 109; 1911 c. 150; 1911 c. 663 s. 337; 1923 c. 205; 1923 c. 291 s. 3; Stats. 1923 s. 195.08; 1929 c. 504 s. 184; Stats. 1929 s. 195.14; 1937 c. 23, 245.

A railroad employe while on furlough may legally be given free transportation by his employer. 26 Atty. Gen. 437.

195.15 History: 1905 c. 362 s. 19; Supl. 1906 s. 1797—19 (intro. par.); 1923 c. 291 s. 3; Stats. 1923 s. 195.36 (1); 1929 c. 504 s. 185; Stats. 1929 s. 195.15.

195.16 History: 1905 c. 362 s. 19; Supl. 1906 s. 1797—19 (a); 1907 c. 582; 1907 c. 676 s. 18; Stats. 1923 s. 195.36 (2); 1923 c. 291 s. 3; 1929 c. 504 s. 186; Stats. 1929 s. 195.16; 1943 c. 67.

195.17 History: 1905 c. 362 s. 21; Supl. 1906 s. 1797—21; 1917 c. 108; 1923 c. 291 s. 3; Stats. 1923 s. 195.38; 1929 c. 504 s. 187; Stats. 1929 s. 195.17; 1961 c. 35.

195.18 History: 1907 c. 614; Stats. 1911 s. 1797g—2; 1923 c. 291 s. 3; Stats. 1923 s. 192.77; 1929 c. 504 s. 188; Stats. 1929 s. 195.18.

195.19 History: 1905 c. 362 s. 9; Supl. 1906 s. 1797—9 sub. 1, 2; 1913 c. 69, 616; 1921 c. 456; 1923 c. 291 s. 3; Stats. 1923 s. 195.09 (1), (2); 1929 c. 504 s. 189; Stats. 1929 s. 195.19; 1947 c. 273.

Sec. 1797—9 (1), Stats. 1913, requiring railroad companies to open their passenger stations for not less than 20 minutes before the scheduled time for arrivals of passenger trains and until they depart, is entitled to considerable weight, but is not controlling in determining what constitutes a reasonable time within the rule that one who goes to a railway station within a reasonable time before the scheduled arrival with the intention of taking the train becomes a passenger. Tarczek v. Chicago & Northwestern R. Co. 162 W 438, 156 NW 473.

195.20 History: 1919 c. 214; Stats. 1919 s. 1797—9 sub. 2a; 1923 c. 291 s. 3; Stats. 1923 s. 195.09 (3); 1929 c. 504 s. 190; Stats. 1929 s. 195.20.

195.20, Stats. 1945, did not apply in determining the validity of its order authorizing an urban street-railway company to establish motorbus service which would be in competition with an existing streetcar service over a certain street and viaduct in Milwaukee, since it relates to the joint use of physical property by railroads, and the company's bus operation did not constitute the operation of a railroad nor an operation described in such section, and it was not by its bus operation making any use of the physical property of any other company; and the section, which is substantive in character, was not made applicable by 194.14, incorporating procedural provisions of ch. 195 into ch. 194 by reference. Chicago & M. E. R. Co. v. Public Service Comm. 254 W 551, 37 NW (2d) 42.

195.21 History: 1905 c. 479; Supl. 1906 s. 1802a; 1917 c. 559; Stats. 1917 s. 1797—9 sub. 3; 1923 c. 291 s. 3; Stats. 1923 s. 195.09 (4); 1929 c. 504 s. 191; Stats. 1929 s. 195.21.

Editor's Note: 195.09 (5), Stats. 1925, relating to sites for private elevators or warehouses, was held void in Chicago & Northwestern R. Co. v. Railroad Comm. 197 W 59, 221 NW 399.

195.22 History: 1905 c. 362 s. 10; Supl. 1906 s. 1797—10 (intro. par.), (a); 1907 c. 582; 1907 c. 676 s. 18; 1923 c. 291 s. 3; Stats. 1923 s. 195.13 (1), (2); 1929 c. 504 s. 192; Stats. 1929 s. 195.22; 1951 c. 712.

Where, at the request of a manufacturer, a railroad ceased furnishing cars to shippers for the transportation of material to such manufacturer because its local tracks were already full, such action was an unlawful discrimination. Chicago & Northwestern R. Co. v. Menasha P. Co. 159 W 508, 149 NW 751 affirmed Menasha P. Co. v. Chicago & Northwestern R. Co. 241 US 55.

A common carrier is bound to furnish shippers, upon reasonable notice, suitable and sufficient cars when with reasonable diligence it can do so without injury to its other business. A finding by a jury that a carrier could, in the exercise of reasonable diligence, have furnished cars without jeopardizing its other business was not warranted where the undisputed evidence as to the cause of failure to furnish cars upon request was that it was caused by an unusual demand for cars after a switchmen's strike. The carrier should, after request, give a shipper timely notice of its inability to furnish cars; but, if failure to give such notice was not the cause of any loss to the shipper, it was immaterial whether the notice was given. Richland E. S. Asso. v. Chicago, M. & St. P. R. Co. 177 W 530, 188 NW 625.

195.23 History: 1905 c. 362 s. 10; Supl. 1906 s. 1797—10 (b), (c); 1907 c. 582; 1907 c. 676 s. 18; 1921 c. 370; 1923 c. 291 s. 3; Stats. 1923 s. 195.13 (3), (4); 1929 c. 504 s. 193; Stats. 1929 s. 195.23.

195.24 History: 1905 c. 362 s. 11; Spl. S. 1905 c. 13 s. 2; Supl. 1906 s. 1797—11; 1923

c. 291 s. 3; Stats. 1923 s. 195.15; 1929 c. 504 s. 194; Stats. 1929 s. 195.24.

Where the railroad commission, after a hearing, made an order directing railroad companies to connect their tracks, which were not at grade, it acted under sec. 1797—11 and not under sec. 1802c, Stats. 1917, the latter section being applicable to grade crossings. Sec. 1797—11 confers jurisdiction to order a connecting track at a crossing not at grade where such connection is necessary and its construction not unreasonable. Chicago, St. P., M. & O. R. Co. v. Railroad Comm. 178 W 293, 189 NW 150.

195.25 History: 1913 c. 469; Stats. 1913 s. 1797—10f; 1923 c. 291 s. 3; Stats. 1923 s. 195.14; 1925 c. 309; 1929 c. 504 s. 195; Stats. 1929 s. 195.25.

195.26 History: 1911 c. 297; Stats. 1911 s. 1797—9a; 1923 c. 291 s. 3; Stats. 1923 s. 195.10; 1929 c. 504 s. 196; Stats. 1929 s. 195.26.

195.27 History: 1913 c. 453; Stats. 1913 s. 1797—9c; 1923 c. 291 s. 3; Stats. 1923 s. 195.12; 1929 c. 504 s. 197; Stats. 1929 s. 195.27; 1935 c. 123; 1953 c. 81.

195.28 History: Spl. S. 1905 c. 13 s. 3; Supl. 1906 s. 1797—12 (d); 1911 c. 663 s. 340; 1913 c. 523; 1923 c. 291 s. 3; Stats. 1923 s. 195.17 (5); 1929 c. 504 s. 198; Stats. 1929 s. 195.28; 1949 c. 478, 643; 1963 c. 358; 1965 c. 432 s. 6; 1967 c. 291 s. 14; 1969 c. 154 s. 377.

The power given to cities by 192.29 (3) (b), Stats. 1929, was not abrogated by 195.28. Clark v. Chicago, M., St. P. & P. R. Co. 214 W 295, 252 NW 685.

An order of the public service commission, authorizing a railroad company to install and maintain automatic signals in lieu of flagman protection at certain grade crossings, is not ineffective on the ground that the petition by the company was not authorized to invoke the jurisdiction of the commission to proceed under 195.29 (1), since in any event, under 195.03 (2) authorizing it to proceed on its own motion in every case which it is authorized to investigate or hear on complaint or petition under 195.28 and others enumerated, the commission had jurisdiction of the subject matter, and its proceedings, including the order in question, were tantamount to an investigation, hearing, and determination of the subject matter on the commission's own motion, as authorized by 195.03 (2). Thomson v. Racine, 242 W 591, 9 NW (2d) 91.

See note to 192.29, citing Schulz v. Chicago, M., St. P. & P. R. Co. 260 W 541, 51 NW (2d) 542.

Under 195.28 (1) the public service commission must make a finding as to public safety of all crossings, existing or new, and as to new crossings must also find as to advisability of allowing them. The commission is not required to order the type of crossing protection which is most safe, but only such as is reasonably necessary to promote public safety. Green Bay & W. R. Co. v. Public Service Comm. 269 W 178, 68 NW (2d) 828.

In a proceeding by a city to compel a railroad company at its own expense to move previously installed automatic signals which were outside the traveled portion of an old road, but inside the traveled portion of a proposed widened road, the public service commission had no power to grant relief under 195.28, Stats. 1965. Chicago & N. W. R. Co. v. Public Service Comm. 42 W (2d) 274, 166 NW (2d) 143.

195.29 History: 1909 c. 540; 1911 c. 191; Stats. 1911 s. 1797—12e; 1915 c. 136, 608; 1917 c. 452, 522; 1919 c. 255, 467; 1923 c. 291 s. 3; 1923 c. 344; 1923 c. 449 s. 45; Stats. 1923 s. 195.19; 1929 c. 504 s. 199; Stats. 1929 s. 195.29; 1931 c. 419; 1937 c. 192; 1943 c. 334 s. 166; 1945 c. 199; 1963 c. 506 s. 8; 1969 c. 500 s. 30 (2) (e).

1. Petition, hearing and order.
2. Apportionment of expense.
3. Restoration of spur tracks.
4. Milwaukee county.
5. View at crossings.

1. Petition, Hearing and Order.

The supreme court cannot reverse an order of the railroad commission issued under sec. 1797—12c, Stats. 1913, and confirmed by the circuit court unless it is clearly unreasonable. An order of the commission, requiring a railroad to improve the approaches of an overhead bridge and to close a crossing to vehicular traffic, was reasonable, where the commission did not deem the order final, but contemplated further consideration in the future as the necessities of public safety should require. Enactment of this section was a valid exercise of the police power and did not unlawfully delegate legislative power to an administrative body. The intent of the legislature was to make a uniform and exclusive system for the regulation of highway railway crossings applicable to all municipalities and to amend all previous provisions on the subject whether contained in city charters, railroad charters or the general statutes of the state. Milwaukee v. Railroad Comm. 162 W 127, 155 NW 948.

Authorizing the "closing of a highway crossing and the substitution of another therefor not at grade," does not require a separate new crossing not at grade in place of each grade crossing closed, but contemplates that one reasonably convenient crossing not at grade may take the place of several near-by grade crossings. Chicago & Northwestern R. Co. v. Railroad Comm. 167 W 185, 167 NW 266.

An order of the railroad commission placing on a railroad company the extra cost of relocating a highway in order to divert a large part of public travel from 2 grade crossings, which diversion benefited the railroad, was a valid exercise of the police power, and not an attempt to assess benefits in the ordinary sense as in special assessments. Such an order does not preclude a subsequent requirement by law that the company separate the grades at crossings. Chicago & Northwestern R. Co. v. Railroad Comm. 178 W 485, 188 NW 86.

The shifting of a street railway track to the center of a village street is not a relocation of the railroad, nor is making the grade conform to that of the street a change of grade, within 195.19, Stats. 1921, so as to confer jurisdiction on the railroad commission, such statute applying only where railroads and streets cross each other. Walworth v. Chicago, H. & G. L. R. Co. 190 W 379, 208 NW 877.

Under 195.19, Stats. 1923, an order of the railroad commission requiring a railroad company to improve the approaches of an overhead bridge on one street and to close the next parallel street to vehicular traffic, but to retain the automatic bell at the closed street and to keep the street open for the use of pedestrians, entered on the petition of a city for an order for the elimination of a dangerous condition at the crossing at the street closed, was not unreasonable. Hudson v. Railroad Comm. 192 W 226, 212 NW 293.

An order directing a railroad company to construct a viaduct "as necessary for public convenience" was not authorized by 195.22, Stats. 1923, which conferred power on the railroad commission to order alterations of grade crossings "required for public safety." This is so notwithstanding the blanket power conferred on the commission to enforce the provisions of this chapter. Chicago & Northwestern R. Co. v. Railroad Comm. 205 W 506, 238 NW 365.

195.29 (1), Stats. 1953, requires that as to all crossings, existing or new, the public service commission must make a finding as to public safety, and in case of a new crossing in addition to safety, as to the advisability of allowing such crossing. Green Bay & W. R. Co. v. Public Service Comm. 269 W 178, 68 NW (2d) 828.

195.29, Stats. 1961, concerns itself with the establishment of a crossing and the type of crossing, while 195.28 more properly is concerned with the question of whether crossing warnings in existence are adequate. Berrotte v. Chicago & N. W. Ry. 40 W (2d) 20, 161 NW (2d) 264.

2. Apportionment of Expense.

The railroad commission has power to order the construction of a viaduct by a railroad company over its tracks and such company has the right to construct it pursuant to the order. The extension and use of street railway tracks over such viaduct do not constitute an additional burden entitling abutting property owners to damages. Such commission may also by its order require the city in which the improvement is made to stand responsible for any alleged damage to adjacent property or business caused by the construction of the viaduct. Henry v. La Crosse, 165 W 625, 162 NW 174.

Damages for the vacation of a part of a highway by proceedings under secs. 1797—12e and 1797—12f, Stats. 1915, must be assessed in condemnation proceedings, and must be limited to the value of the land actually taken and to the injury resulting to adjacent lots from changes in grade. The "special damages" provided for in 1797—12e (2) do not include more consequential damages to the owners of lots not physically affected. Chicago & Northwestern R. Co. v. Railroad Comm. 167 W 185, 167 NW 266.

A change in the level of a city street, pursuant to an order of the railroad commission under sec. 1797—12e, Stats. 1911, which directs separation of the railroad and street grades, constitutes a taking of land for railroad purposes, whether the grade of the street has been previously established and worked up to, or not; and, notwithstanding a direction in the order of the commission that the city be responsible for damage to adjacent property, the city is not liable for damage to adjacent property belonging to the railroad company. Chicago, M. & St. P. R. Co. v. Milwaukee, 170 W 77, 174 NW 719.

Where no notice was given to a railroad company and it had no opportunity to be heard on the question of the relocation of a highway to avoid grade crossings over the railroad tracks, the railroad commission had no authority to assess the railroad for any proportion of the cost of the relocation. Chicago, M. & St. P. R. Co. v. Railroad Comm. 197 W 640, 222 NW 816.

See note to 84.05, citing Ullrich v. County of Kenosha, 219 W 65, 261 NW 747.

See note to sec. 13, art. I, on just compensation, citing Green Bay & W. R. Co. v. Public Service Comm. 269 W 178, 68 NW (2d) 828.

In a proceeding by a railroad company to procure an apportionment by the public service commission of the cost incurred by the company in moving previously installed automatic electric wigwag crossing signals, at the request of a city and not by any order of the commission, outside of the new curb lines of a street after the widening of the street by the city, the commission lacked jurisdiction to apportion the cost thus incurred. Chicago & N. W. R. Co. v. Public Service Comm. 273 W 654, 79 NW (2d) 110.

In 195.29 (1), Stats. 1965, use of the term "alteration" contemplates any substantial change in a crossing, its approaches, etc., under the circumstances set forth in the statute which public safety or public convenience requires. Chicago & N. W. R. Co. v. Public Service Comm. 42 W (2d) 274, 166 NW (2d) 143.

See notes to 84.05, citing Chicago & N. W. R. Co. v. Public Service Comm. 43 W (2d) 570, 169 NW (2d) 65.

3. Restoration of Spur Tracks.

Under 195.19 (3), Stats. 1927, jurisdiction of the railroad commission to apportion the cost of restoration of an industrial track is incidental to and dependent on the power to require restoration of the track, and, where the railroad, without awaiting the commission's action on petition for restoration, voluntarily proceeded to restore the track, the commission could not order apportionment of the cost and refuse petitioner's request to withdraw the petition. Wisconsin G. & E. Co. v. Railroad Comm. 199 W 511, 227 NW 8.

4. Milwaukee County.

Ch. 540, Laws 1909, did not operate as a repeal of ch. 51, Laws 1878, requiring the defendant to erect and maintain a viaduct in Milwaukee county, there being no necessary conflict between the 2 enactments. State ex rel. Boddenhagen v. Chicago, M. & St. P. R. Co. 164 W 304, 159 NW 919.

5. View at Crossings.

The provision of 195.29 (6), requiring every railroad company to keep its right of way clear of brush or trees in each direction from the center of its intersection at grade with any public highway for such distance as is necessary to provide an adequate view of approaching trains from "such" highway, pro-

tects the interests of travelers on a highway crossing the railroad, but not the interests of travelers on a highway not crossing the railroad. Hence, the presence of brush and shrubbery along a railroad right of way, which obstructs the view of occupants of an automobile traveling on a highway not crossing the railroad, but which did not obstruct their view on their turning onto a highway crossing the railroad, was not a violation of the statute which could be assigned as actionable negligence on the part of the railroad company with reference to the ensuing collision with a train. Wilmet v. Chicago & N. W. R. Co. 233 W 335, 289 NW 815.

A city may be held liable if an accident results from the obstruction of view of a railroad crossing by untrimmed trees which the city has an obligation to trim. The defense of sovereign immunity is not available. Bosin v. M. St. P. & S. S. M. R. Co. 183 F Supp. 820.

195.291 History: 1951 c. 712; Stats. 1951 s. 195.291.

195.30 History: 1909 c. 540; Stats. 1911 s. 1797—12h, 1797—12j; 1915 c. 136; 1923 c. 291 s. 3; Stats. 1923 s. 195.22, 195.24; 1929 c. 504 s. 200; Stats. 1929 s. 195.30.

195.31 History: 1909 c. 540; 1911 c. 590; Stats. 1911 s. 1797—12k; 1923 c. 291 s. 3; Stats. 1923 s. 195.25; 1929 c. 504 s. 201; Stats. 1929 s. 195.31; 1943 c. 275 s. 49.

195.32 History: 1913 c. 518; Stats. 1913 s. 1325h; 1923 c. 108 s. 260; Stats. 1923 s. 87.15; 1933 c. 159 s. 19; 1943 c. 275 s. 38; 1943 c. 334 s. 167; Stats. 1943 s. 195.32; 1945 c. 22.

195.33 History: 1905 c. 362 s. 20; Supl. 1906 s. 1797—20; 1923 c. 291 s. 3; Stats. 1923 s. 195.37; 1929 c. 504 s. 203; Stats. 1929 s. 195.33; 1961 c. 33; 1969 c. 276 s. 590 (1).

195.34 History: 1905 c. 362 s. 30; Supl. 1906 s. 1797—30; 1911 c. 472; 1913 c. 772 s. 101; 1923 c. 291 s. 3; Stats. 1923 s. 195.47; 1929 c. 504 s. 204; Stats. 1929 s. 195.34.

195.35 History: 1905 c. 362 s. 25; Supl. 1906 s. 1797—25; 1923 c. 291 s. 3; Stats. 1923 s. 195.42; 1929 c. 504 s. 205; Stats. 1929 s. 195.35.

195.35, Stats. 1947, applies only to wilful breaches of duty. A complaint against a railroad company for injuries sustained in a train-automobile collision at a grade crossing, which did not charge that the watchman's faulty manipulation of the crossing gates was wilful or wanton, did not state a cause of action for treble damages because of the watchman's failure to operate the gates properly. Reuling v. Chicago, St. P., M. & O. R. Co. 257 W 485, 44 NW (2d) 253.

195.36 History: 1905 c. 362 s. 27; Supl. 1906 s. 1797—27; 1911 c. 663 s. 337; 1923 c. 291 s. 3; Stats. 1923 s. 195.44; 1929 c. 504 s. 206; Stats. 1929 s. 195.36.

195.37 History: 1907 c. 582; 1909 c. 136; 1911 c. 28; 1911 c. 664 s. 3; Stats. 1911 s. 1797—37m; 1913 c. 66; 1923 c. 291 s. 3; Stats. 1923 s. 195.54; 1927 c. 344 s. 2, 3; 1929 c. 504 s. 207; Stats. 1929 s. 195.37; 1951 c. 712.

The proper refund may be ordered if the rate be found to be either erroneous, illegal, unusual or exorbitant. Any rate not reasonable and just may be found to be erroneous or illegal. Chicago & Northwestern R. Co. v. Railroad Comm. 156 W 47, 145 NW 216.

The railroad commission had power to authorize a refund of charges on the basis of local rates for carriage as to which a joint rate had not been fixed, after establishing joint rates lower than the rates theretofore prevailing. Although a rate fixed by the commission may be charged until changed in a lawful manner, if it becomes an unreasonable rate through change of conditions, the railroad company may not retain the overcharge collected by it between the time when the rate becomes unreasonable and the time when a new reasonable rate has been determined. Marinette, T. & W. R. Co. v. Railroad Comm. 195 W 462, 218 NW 724.

195.38 History: 1913 c. 59; Stats. 1913 s. 1797—12a; 1915 c. 428; 1923 c. 291 s. 3; Stats. 1923 s. 195.18; 1927 c. 344 s. 1; 1929 c. 504 s. 208; Stats. 1929 s. 195.38.

Secs. 1797—37m and 1797—12a, Stats. 1921, do not deprive the courts of jurisdiction to hear an action or a counterclaim based upon the failure of a public utility to perform its contract duty of adequate service. Waukesha G. & E. Co. v. Waukesha M. Co. 175 W 420, 184 NW 702.

In an action by a railroad company to recover freight charges on intrastate shipments of sand and gravel, the defendant consignee, claiming loss of material in transit, could not assert any rights under 195.38 where the defendant had never sought to avail himself of any rights which he might have had under such statute. Chicago, St. P., M. & O. R. Co. v. Kileen, 243 W 161, 9 NW (2d) 616.

195.39 History: 1929 c. 504 s. 209; Stats. 1929 s. 195.39.

195.40 History: 1953 c. 14; Stats. 1953 s. 195.40; 1959 c. 441.

195.45 History: 1969 c. 402; Stats. 1969 s. 195.45.

CHAPTER 196.

Regulation of Public Utilities.

196.01 History: 1907 c. 499; 1911 c. 48; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—1; 1917 c. 386; 1921 c. 248; 1923 c. 291 s. 3; Stats. 1923 s. 196.01; 1929 c. 504 s. 227; 1937 c. 365; 1943 c. 380; 1947 c. 420; 1961 c. 60; 1969 c. 104.

Where the owner of a building installed a plant for the heating and lighting of the building and furnished the surplus power to persons adjoining such building, such plant was not thereupon constituted a public utility. Cawker v. Meyer, 147 W 320, 133 NW 157.

A corporation securing authority from the legislature to build a dam across a river for the improvement of navigation and the development of power to be furnished under contract to a village is a public utility. Kilbourn v. Southern W. P. Co. 149 W 168, 135 NW 499.

Individuals who undertook to render no public service, but constructed a private line by which they were able to secure electric current, are not a "public utility," and the railroad commission is without jurisdiction to order