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

v. Chicago, St. P. M. & O. R. Co. 108 W 333, 84 NW 446.

A junction at a point where the trains stopped to register and in the vicinity of a large number of buildings and dwelling houses, was a usual stopping place, although no tickets are sold and there is no passenger station or platform. Habeck v. Chicago & Northwestern R. Co. 146 NW 645, 132 NW 618.

192.11 History: 1868 c. 44 s. 1; 1872 c. 119 s. 49; 1878 c. 292; R. S. 1878 s. 1806; Stats. 1898 s. 1806; 1923 c. 291 s. 3; Stats. 1923 s. 192.21; 1929 c. 504 s. 70; Stats. 1929 s. 192.11.

192.12 History: 1909 c. 345; Stats. 1911 s. 1807m; 1923 c. 291 s. 3; Stats. 1923 s. 192.24; 1929 c. 504 s. 71; Stats. 1929 s. 192.12.

192.13 History: 1913 c. 630; Stats. 1913 s. 1636q—10; 1923 c. 291 s. 3; Stats. 1923 s. 192.69; 1925 c. 309; 1929 c. 504 s. 72; Stats. 1929 s. 192.13.

192.14 History: 1909 c. 169; 1911 c. 663 s. 368; Stats. 1911 s. 1806m; 1913 c. 386; 1923 c. 291 s. 3; Stats. 1923 s. 192.22; 1929 c. 504 s. 73; Stats. 1929 s. 192.14; 1935 c. 91; 1937 c. 54.

192.16 History: 1875 c. 119; R. S. 1878 s. 1817; Stats. 1898 s. 1817; 1923 c. 291 s. 3; Stats. 1923 s. 192.61; 1929 c. 504 s. 75; Stats. 1929 s. 192.16.

192.17 History: 1880 c. 29 s. 1; Ann. Stats. 1889 s. 1817a; Stats. 1898 s. 1817a; 1923 c. 291 s. 3; Stats. 1923 s. 192.62; 1929 c. 504 s. 76; Stats. 1929 s. 192.17.

A conductor is not required under 192.17 and 351.55, Stats. 1947, to put an offending passenger off the train at its first usual stopping place, but may exercise some discretion in his choice of the place of ejection. Hotzel v. Simmons, 258 W 234, 45 NW (2d) 683.

192.18 History: 1872 c. 119 s. 46; R. S. 1878 s. 1799; Stats. 1898 s. 1799; 1923 c. 291 s. 3; Stats. 1923 s. 192.06; 1929 c. 504 s. 77; Stats. 1929 s. 192.18.

192.19 History: 1887 c. 487; Ann. Stats. 1889 s. 1799a; 1923 c. 291 s. 3; 1923 c. 449 s. 60; Stats. 1923 s. 192.07; 1927 c. 268; 1929 c. 504 s. 78; Stats. 1929 s. 192.19.

192.20 History: 1919 c. 392; 1919 c. 671 s. 25; Stats. 1919 s. 1819h; 1923 c. 291 s. 3; 1923 c. 426; 1923 c. 449 s. 60; Stats. 1923 s. 192.66; 1929 c. 504 s. 79; Stats. 1929 s. 192.20; 1949 c. 491.

192.21 History: 1919 c. 360; 1919 c. 671 s. 26; Stats. 1919 s. 1819i; 1923 c. 291 s. 3; Stats. 1923 s. 192.67; 1929 c. 504 s. 80; Stats. 1929 s. 192.21.

192.23 History: 1907 c. 477; 1911 c. 663 s. 375; Stats. 1911 s. 1809j; 1923 c. 291 s. 3; Stats. 1923 s. 192.36; 1929 c. 504 s. 82; Stats. 1929 s. 192.23.

192.24 History: 1907 c. 655; 1911 c. 663 s. 376; Stats. 1911 s. 1809L, 1809m, 1809o; 1923 c. 291 s. 3; Stats. 1923 s. 192.37, 192.38, 192.40; 1929 c. 504 s. 83; Stats. 1929 s. 192.24.

192.25 History: 1907 c. 402; Stats. 1911 s. 1809r, 1809s; 1923 c. 291 s. 3; Stats. 1923 s. 192.41, 192.42; 1929 c. 122, 460; 1929 c. 504 s. 84; 1929 c. 529 s. 6; Stats. 1929 s. 192.25; 1931 c. 304; 1935 c. 214; 1937 c. 206; 1955 c. 74; 1959 c. 229.

The number of men to be carried on a locomotive being regulated by sec. 1809r, Stats. 1913, it is not within the province of a jury to say that there was negligence in not having a larger crew. Shaffer v. Minneapolis, St. P. & S. S. M. R. Co. 156 W 485, 145 NW 1086.

The regular detaching of 2 passenger cars from a 5-car west-bound train and adding 2 cars to a 3-car east-bound train at the same station was not a "picking up" of cars between terminals. A station at which 2 passenger cars were regularly detached from a 5-car west-bound train, and at which 2 cars were added to a 3-car east-bound train, was a "terminal" within the terms of the statute requiring an additional brakeman on a train of more than 3 cars. Failure of a railroad company to provide an additional brakeman on the train on the portion of its run between terminals in which it carried more than 3 cars violated the statute. State v. Chicago & Northwestern R. Co. 205 W 252, 237 NW 132.

192.25 (4a), being penal in nature, must be strictly construed, with doubts resolved in favor of the railroad company. "Helper" is not synonymous with "brakeman." 192.25 (4a), as interpreted, is not limited in application to yard operations. State v. Minneapolis, St. P. & S.S.M.R. Co. 12 W (2d) 21, 106 NW (2d) 320.

Congress has not pre-empted the subject of full-crew regulation. Chicago & N. W. R. Co. v. La Follette, 27 W (2d) 505, 135 NW (2d) 269.

See notes to sec. 1, art. I, on equality and on exercises of police power, citing Chicago & N. W. R. Co. v. La Follette, 43 W (2d) 631, 169 NW (2d) 441.

The word "car" includes baggage and express cars. 1 Atty. Gen. 164.

The provisions of sec. 1809r, Stats. 1921, do not apply to trains picking up cars between terminals in this state. 12 Atty. Gen. 370.

A full passenger crew must be carried on a fast mail and express train, even though such train does not carry passengers. 14 Atty. Gen. 258.

192.25 (4a), Stats. 1933, does not set forth full crew requirements applying to operation of engines, cars, etc., therein enumerated on main lines except when switching, or to other than switching operations within the railroad yards. 23 Atty. Gen. 758.

A reasonable construction of 192.25 (4a), Stats. 1949, permits the conclusion that the seniority list of employes on a particular portion of one division may be identical with the seniority list for another division, where the facts establish that such list includes the employes experienced in the particular operation. 38 Atty. Gen. 551.

Weed mowers and weed disks used by railroads to cut weeds along their rights of way are not subject to the provisions of 192.25 (4a). 41 Atty. Gen. 355.

192.25 (4a) does not apply to switching of boxcars by employes of an industrial plant using rubber-tired tractors as motive power on sidetracks located on the employer's premises and crossing a public street, since such

employer is not a "railroad company" and a rubber-tired tractor is not a vehicle covered by the statute. 43 Atty. Gen. 264.

Movement of railroad cars by means of a locomotive crane in repair yards of a railroad constitutes "switching cars" within 192.25 (4a), and hence requires a full train crew as defined in that statute. 43 Atty. Gen. 273.

192.255 History: 1937 c. 138; Stats. 1937 s. 192.255.

192.26 History: 1913 c. 63; Stats. 1913 s. 1809w; 1923 c. 291 s. 3; Stats. 1923 s. 192.46; 1929 c. 504 s. 85; Stats. 1929 s. 192.26.

192.26, Stats. 1967, a general provision which gives to the public service commission the right and duty to fix reasonable conditions pertaining to or affecting switching crews in yard operations, cannot be construed as superseding and does not conflict with the specific requirement set forth in 192.25 (4a). Chicago & N. W. R. Co. v. LaFollette, 43 W (2d) 631, 169 NW (2d) 441.

192.265 History: 1933 c. 317; Stats. 1933 s. 192.265; 1965 c. 151.

192.266 History: 1949 c. 132; Stats. 1949 s. 192.266.

192.268 History: 1953 c. 552; Stats. 1953 s. 192.268; 1963 c. 272; 1965 c. 64.

192.27 History: 1911 c. 302; 1911 c. 664 s. 42; Stats. 1911 s. 1802c, 1802e; 1913 c. 739; 1923 c. 291 s. 3; Stats. 1923 s. 192.15, 192.17; 1929 c. 504 s. 86; Stats. 1929 s. 192.27.

See note to 195.24, citing Chicago, St. P., M. & O. R. Co. v. Railroad Comm. 178 W 293, 189 NW 150.

192.28 History: 1872 c. 119 s. 37; R. S. 1878 s. 1808; 1887 c. 107; 1889 c. 379; Ann. Stats. 1889 s. 1808; Stats. 1898 s. 1808; 1923 c. 291 s. 3; Stats. 1923 s. 192.25; 1929 c. 504 s. 87; Stats. 1929 s. 192.28.

Trains must come to a full stop somewhere between the 400-foot post and the track of another road. Lockwood v. Chicago & Northwestern R. Co. 55 W 50, 12 NW 401.

The plaintiff, engineer of a railroad company, injured when the engine which he was operating and an engine of the defendant company collided at a crossing of the 2 roads, was not entitled to rely on the presumption that the defendant's engineer would obey 192.28 (1), requiring a full stop before crossing another railroad at grade, when the plaintiff himself was then in the process of violating the statute by merely shutting off the throttle and letting his engine and train drift at 6 miles per hour; and if he did indulge such presumption, he must have observed in the exercise of ordinary care that the defendant would not perform its duty at a time when at the plaintiff's slow speed, there was still time to have avoided the collision. Foulkes v. Chicago, St. P., M. & O. R. Co. 256 W 146, 40 NW (2d) 507.

192.29 History: 1872 c. 119 s. 43; R. S. 1878 s. 1809; Stats. 1898 s. 1809; 1907 c. 595; 1909 c. 332; 1911 c. 653; 1915 c. 338, 437; 1923 c. 291 s. 3; Stats. 1923 s. 192.27; 1925 c. 367; 1929 c. 504 s. 88; Stats. 1929 s. 192.29; 1935 c. 162; 1949 c. 122, 478; 1951 c. 199; 1951 c. 247 s. 44; 1957 c. 97; 1957 c. 260 s. 29; 1969 c. 500 s. 30 (2) (e).

Though the statute does not expressly require that a sign be put up or the whistle be blown before trains cross a private way in a city it may be a question for the jury whether such precautions ought not to have been taken at a dangerous crossing. Winstanley v. Chicago, M. & St. P. R. Co. 72 W 375, 39 NW 856.

It is not unlawful for a locomotive to turn back and recross a highway before going 80 rods beyond it. Cahoon v. Chicago & Northwestern R. Co. 85 W 570, 55 NW 900.

The statute applies only to highway crossings at even grade with the railroad. Barron v. Chicago, St. P., M. & O. R. Co. 89 W 79, 61 NW 303.

It does not follow that, because the statute does not apply to unincorporated villages, an engine may be run across the streets of such a village at any rate of speed the engineer may choose; the question of negligence is for the jury where an unreasonable rate of speed is alleged to have been maintained. Heath v. Stewart, 90 W 418, 63 NW 1051.

A less rate of speed than is allowed by the statute is not unlawful unless by reason of peculiar circumstances. Wickham v. Chicago & Northwestern R. Co. 95 W 23, 69 NW 982.

Sec. 1809, R. S. 1878, applies to all railroads, whether existing at the time of its enactment or subsequently constructed. Chicago, M. & St. P. R. Co. v. Milwaukee, 97 W 418, 72 NW 1118.

One traveling upon a highway parallel with the railroad track was entitled to the benefits of sec. 1809, Stats. 1898, although he did not intend to use the crossing. Where an engine starts less than 80 rods from a crossing, the requirement that the whistle be blown cannot be complied with, but the bell must be rung from the point of starting until the crossing is reached. Kujawa v. Chicago, M. & St. P. R. Co. 135 W 562, 116 NW 249.

The term "gates" means a gate upon each side of the track. Gates having been adopted instead of a flagman, the company may substitute temporarily a flagman during necessary delays in the repair of the gates, or the speed of trains may be temporarily reduced to meet the new situation; and it is the duty of the company to adopt one or the other of these expedients. An efficient electric alarm bell or signal properly installed and in good working order means a bell or gong operated by electricity so long as car or engine is on or within a given distance of a crossing, not a tower bell rung by hand. Jorgenson v. Chicago & Northwestern R. Co. 153 W 108, 140 NW 1088.

Where the plaintiff had seen the smoke and heard the noise of an approaching train, and notwithstanding such warnings went around the end of a string of cars on a side track and proceeded to pass over the main track without looking towards the approaching train and while crossing was injured, his injury was not caused by the omission of warning signals required by sec. 1809 (4), Stats. 1911; and it further appearing that the plaintiff was not traveling on or over a highway but merely crossing the railway track diagonally at a point 400 feet from the highway, sec. 1809 (4) does not apply, it being intended for the protection

of travelers on highways. Jay v. Northern P. R. Co. 162 W 458, 156 NW 626.

The negligence of a railroad company in placing cars on a sidetrack, so that they extended into a street and obstructed the view of the main track, is not within the scope of sec. 1809, Stats. 1919. McMillan v. Chicago, M. & St. P. R. Co. 179 W 323, 191 NW 510.

A railroad company cannot be held to have anticipated that by reason of the failure of an electric wigwag signal to operate, anyone traveling along the highway would collide with a freight train actually passing over a grade crossing, as such signal device is installed not for the purpose of warning travelers of the actual presence of a train on the crossing, but for the purpose of warning them of the approach of a train. Schmidt v. Chicago & Northwestern R. Co. 191 W 184, 210 NW 370.

If a flagman has usually been employed at a crossing his withdrawal without notice may in itself constitute a want of ordinary care. Bluhm v. Byram, 193 W 346, 214 NW 364.

The statute requiring "every such railroad company or corporation" to maintain a warning sign 100 feet from a highway or street crossing, is applicable to a private logging railroad. Weitzman v. Bissell L. Co. 193 W 561, 214 NW 353.

A road which was entirely within a railroad company's right-of-way lines, and which was used by farmers with the permission of the railroad company in connection with a depot, and which was not worked as a public highway, was not a public highway so as to render the railroad company, whose train struck an automobile at the road crossing, negligent for failure to maintain warning signs or to sound the whistle. Langer v. Chicago, M., St. P. & P. R. Co. 220 W 571, 265 NW 851.

In an action for damages sustained by a motorist in a collision with a train, the evidence is held insufficient to support the jury's finding that the automatic wigwag signal device at the railroad crossing failed to operate, in view of undisputed physical facts that the signal device had been thoroughly inspected on the day before the accident and found to be in perfect condition, and that the device operated properly one-half hour after the accident without having been repaired or again inspected. Bergner v. Chicago & N. W. R. Co. 221 W 606, 267 NW 288.

Where an ordinance requiring the installation of signals at railroad crossings was enacted under the authorization of the statute, a question as to the effect of the ordinance involves the construction of the statute as well as the ordinance. McCaffrey v. Minneapolis, St. P. & S. S. M. R. Co. 222 W 311, 267 NW 326, 268 NW 872.

A railroad company operating a train at an unlawful rate of speed within the limits of a city is guilty of negligence per se but not necessarily actionable negligence. Umlauft v. Chicago, M., St. P. & P. R. Co. 233 W 391, 289 NW 623.

A city ordinance enacted under 192.29 (3) (b), requiring a railroad company to maintain flagmen at grade crossings, is in conflict with a prior order of the public service commission, issued under 195.03 (2) and 195.28, authorizing the discontinuance of existing flagman protection at such crossings on the installation of automatic signals thereat; and the commission's order is controlling as to the type of protection required to be furnished at the crossings in question, in view of the rule that orders issued by the commission within its jurisdiction have the effect of public law. Thomson v. Racine, 242 W 591, 9 NW (2d) 91.

If the engineer saw the automobile approaching the crossing and about to go on the track, and believed that the driver was unaware of the train's approach, it was the engineer's duty to sound the whistle as well as to take every other reasonable precaution to prevent the collision, although the statute did not require that a whistle be blown at a grade crossing in a municipality. Webster v. Roth, 246 W 535, 18 NW (2d) 1.

An engine crew was under no duty to blow the whistle as the train approached a crossing within city limits. Keegan v. Chicago, M., St. P. & P. R. Co. 251 W 7, 27 NW (2d) 739.

Giving adequate warning of the approach of a train does not relieve a railroad company from responsibility for illegal speed. Negligent speed is not necessarily a cause of an accident, but there are many instances where it can be a cause. Reinke v. Chicago, M., St. P. & P. R. Co. 252 W 1, 30 NW (2d) 201.

The requirement that the locomotive whistle be blown on the approach of a train to a public-traveled grade crossing "outside" the limits of a municipality was intended to apply to railroad crossings in the country, and thereunder trainmen were under no duty to blow the whistle at a crossing which was partly inside and partly outside a municipality. Riley v. Chicago & N. W. R. Co. 255 W 172, 38 NW (2d) 522.

In an action for the death of the driver of a truck in a collision with a train at a grade crossing in a village, evidence as to the unlawful speed of the train, and as to buildings obstructing the truck driver's view for some distance of the track on which the train was approaching, and evidence that, at the points of observation, a train coming at a lawful rate of speed would not interfere with or prevent an adequate calculation of the speed of the train by the traveler on the highway, raised a jury question as to the causal connection between the excessive speed of the train and the accident. DeRousseau v. Chicago, St. P., M. & O. R. Co. 256 W 19, 39 NW (2d) 764.

The physical features surrounding the intersection — including buildings which obstructed the motorist's view along the railroad tracks at intervals, and the angle at which the tracks and the street met—were factors which, in combination with the speed of the train at 3 times the legal rate, made the causal connection between the prohibited speed and the collision a question for the jury. The question of comparative negligence should be submitted in railroad cases as in other negligence actions whenever the plaintiff's contributory negligence is a question for the jury. A question in the special verdict asking whether the want of ordinary care on the part of the person injured or killed was more than slight serves no purpose since the enactment of the comparative-negligence statute. Carr v. Chicago & N. W. R. Co. 257 W 315, 43 NW (2d) 461.

A motorist has an absolute duty to look and listen before crossing a railway track, to give vigilant attention in all directions from which a train may come, and he is not absolved from such duty by the existence of safety measures or devices maintained by the railroad at the crossing, although such measures and devices are to be considered in determining whether the person exercised ordinary care under the circumstances and conditions then present. Reuling v. Chicago St. P., M. & O. R. Co. 257 W 485, 44 NW (2d) 253.

A road situated on land leased from the railroad company, not a recorded highway nor worked as a public highway, and permissively used for purposes associated with railroad property, was not a public highway. Employers Mut. v. Minneapolis, St. P. & S. S. M. R. Co. 258 W 133, 44 NW (2d) 912.

The purpose of a light, bell or moving signal device at a railroad crossing is to herald the approach of a train, not to show where the tracks are located. The railroad company was not causally negligent in the matter of giving warning, where it maintained the statutory railroad-crossing sign, as to a motorist who was unsure of the location of the tracks and did not see the sign due to weather conditions causing bad visibility. Compliance with 192.29 (5) does not relieve the railroad company of the duty to exercise due care in guarding a crossing, but if the commission has directed that a crossing be guarded in a particular manner, and this is done, a jury may not require more. Schulz v. Chicago, M., St. P. & P. R. Co. 260 W 541, 51 NW (2d) 542.

The declaration of a person that he performed his duty to look and listen before attempting to cross a railroad track, and yet failed to perceive an approaching train when one was in plain sight or hearing, does not present a jury question. The operators of a locomotive have the right to assume that the driver of an automobile traveling at a comparatively slow rate of speed toward a grade crossing will stop his car in a place of safety. Odgers v. Minneapolis, St. P. & S. S. M. R. Co. 261 W 363, 52 NW (2d) 917.

The causal negligence of the driver of an automobile, approaching an intersecting arterial highway without even stopping for the stop sign and colliding with an interurban train approaching on tracks which paralleled the arterial highway, was at least as great, as a matter of law, as the causal negligence of the motorman failing to give adequate warning of the approach of the train in open country and not in violation of any speed statute or ordinance. Ligman v. Bitker, 270 W 556, 72 NW (2d) 340.

Considering that the southbound truck driver was unfamiliar with the railroad crossing in question, and that there was evidence that in sight and sound he was at a disadvantage by no fault of his own, and evidence that the automatic flashing signals at the crossing failed to operate at the crucial moment when he was beginning his progress across the track, so that he was led to believe that the crossing was clear after the passage of a westbound train, the question of the comparative negligence of the truck driver and the locomotive crew of the eastbound train could not be determined as a matter of law but was for the jury, which could attribute 40 per cent of the total aggregate causal negligence to the truck driver and 60 per cent to the railroad. The evidence sustained the jury's finding of the railroad company's causal negligence as to lookout and speed. McLuckie v. Chicago, M., St. P. & P. R. Co. 5 W (2d) 652, 94 NW (2d) 182.

192.291 History: 1867 c. 163; 1871 c. 40 s. 1 to 3; 1872 c. 119 s. 52; R. S. 1878 s. 4393; Stats. 1898 s. 4393; 1923 c. 231 s. 7; 1925 c. 4; Stats. 1925 s. 340.64; 1955 c. 696 s. 71; Stats. 1955 s. 192.291.

192.292 History: 1907 c. 70; 1911 c. 663 s. 152; Stats. 1911 s. 1326m, 1326n; 1923 c. 108 s. 213; Stats. 1923 s. 4446g; 1925 c. 4; Stats. 1925 s. 343.487; 1955 c. 696 s. 127; Stats. 1955 s. 192.292.

A passenger in an automobile colliding with a train standing on a crossing could not recover because the railroad company violated the statute. Hendley v. Chicago & Northwestern R. Co. 198 W 569, 225 NW 205.

192.295 History: 1868 c. 44 s. 1, 2; R. S. 1878 s. 4392; Stats. 1898 s. 4392; 1925 c. 4; Stats. 1925 s. 340.63; 1955 c. 696 s. 70; Stats. 1955 s. 192.295; 1957 c. 135.

The evidence was sufficient to authorize the submission to the jury of the question as to whether the signals required by secs. 1809 and 4392, Stats. 1898, were given. Roedler v. Chicago, M. & St. P. R. Co. 129 W 270, 109 NW 88.

192.30 History: 1889 c. 123; Ann. Stats. 1889 s. 1809a; Stats. 1898 s. 1809b; 1923 c. 291 s. 3; Stats. 1923 s. 192.28; 1925 c. 309; 1927 c. 203; 1929 c. 504 s. 89; Stats. 1929 s. 192.30.

At common law leaving a railroad frog unguarded is not such negligence as renders the railroad company liable for injuries resulting therefrom regardless of the contributory negligence of the person injured. That rule is not changed by ch. 123, Laws 1889. Holum v. Chicago, M. & St. P. R. Co. 80 W 299, 50 NW 99.

192.31 History: 1905 c. 348 s. 1 to 5; Supl. 1906 s. 1809e to 1809i; 1911 c. 663 s. 371, 373, 374; 1921 c. 590 s. 26; 1923 c. 291 s. 3; Stats. 1923 s. 192.31 to 192.35; 1929 c. 504 s. 90; Stats. 1929 s. 192.31; 1949 c. 319; 1951 c. 57.

192.32 History: 1915 c. 551; Stats. 1915 s. 1811 sub. 2, 3; 1923 c. 291 s. 3; Stats. 1923 s. 192.49 (2), (3); 1929 c. 504 s. 91; Stats. 1929 s. 192.32.

192.49 (2), Stats. 1925, should be construed to permit it to accomplish its purpose to save life, even though it may seem to work a hardship to the individual pedestrian who is injured while on the right of way. A license will not be implied from the fact that the children of 2 families going to and from school, a school teacher and occasional pedestrians walked along the right of way using no well-defined track. Sorenson v. Chicago, M. & St. P. R. Co. 192 W 231, 212 NW 273, 522.

In an action for the death of a child struck by unattended freight cars in a railroad yard, the evidence supports a finding of the existence of a footpath there, and of knowledge by the railway employes that it was commonly used by pedestrians. Under such cir-

cumstances the child was not a trespasser, but a licensee. Haecker v. Chicago, M. & St. P. R. Co. 194 W 358, 216 NW 528.

192.321 History: 1879 c. 183; Ann. Stats. 1889 s. 4575b; Stats. 1898 s. 4397b; 1925 c. 4; Stats. 1925 s. 340.71; 1955 c. 696 s. 76; Stats. 1955 s. 192.321.

192.324 History: 1935 c. 200; Stats. 1935 s. 192.324.

192.327 History: 1969 c. 343; Stats. 1969 s. 192.327.

192.33 History: 1872 c. 119 s. 30, 32; 1878 c. 328; R. S. 1878 s. 1810; 1881 c. 193; Ann. Stats. 1889 s. 1810; Stats. 1898 s. 1810; 1911 c. 402; 1913 c. 383; 1915 c. 435; 1923 c. 291 s. 3; Stats. 1923 s. 192.48; 1929 c. 504 s. 92; Stats. 1929 s. 192.33.

If a railroad company permits its cattle guards to remain filled with snow so that the animals upon the highway may pass over them and onto the track it is guilty of negligence. Dunnigan v. Chicago & N. W. R. Co. 18 W 28.

If the fence is destroyed by sudden and unavoidable accident the railroad company will not be liable as for a defective fence if it takes immediate steps to rebuild. Brown v. Milwaukee & P. du C. R. Co. 21 W 39.

Permitting a gate to remain open for a long time is an insufficiency or a failure to fence. Laude v. Chicago & N. W. R. Co. 33 W 640.

Where a railroad company agrees to maintain 2 farm crossings on a single farm its obligation in respect to both is the same as it would be in case of a single crossing. Grasse v. Milwaukee, L. S. & W. R. Co. 36 W 582.

Knowledge of the plaintiff who turns a horse into a pasture inclosed by a defective railroad fence that he is unruly and accustomed to jump or break lawful fences, is not negligence as a matter of law, but should go to the jury. Jones v. Sheboygan & F. du L. R. Co. 42 W 306.

Railroad companies are liable to occupants as well as to owners of adjoining lands whose cattle are injured by reason of neglect to comply with the statute. Veerhusen v. Chicago & Northwestern R. Co. 53 W 689, 11 NW 433.

Where a fence had been destroyed by a flood which was at its height 8 days before the injury, and when the latter occurred had not so subsided so as to leave the entire fence at the place in question uncovered, the railroad company was not liable. Goddard v. Chicago & N. W. Co. 54 W 548, 11 NW 593.

It is only required that ordinary diligence should be exercised in repairing fences. If, with knowledge that there had been a severe storm on Saturday which prostrated fences, one turns his cattle upon uninclosed lands, without inquiring as to the condition of railroad fences abutting thereon, he cannot recover for injuries sustained by them on the track. Carey v. Chicago, M. & St. P. R. Co. 61 W 71, 20 NW 648.

There can be no recovery unless it is shown that the animals injured got upon the track at a place where the railroad company was bound to fence and had neglected to do so. Bremer v. Green Bay, S. P. & N. R. Co. 61 W 114, 20 NW 687.

A switch or side track 2½ miles from a town, used for the convenience of shippers only, there being no depot building or platform, no scales, water tank or agent located there, is not depot grounds. Jaeger v. Chicago, M. & St. P. R. Co. 75 W 130, 43 NW 732.

Depot grounds may be defined as "the place where passengers get on and off trains and where goods are loaded and unloaded, and all ground necessary and convenient and actually used for such purpose by the public and the railroad company." Plunkett v. Minneapolis, S. S. M. & A. R. Co. 79 W 222, 48 NW 519.

The duty to make suitable and convenient farm crossings is absolute, and its performance may be compelled by mandamus unless a valid excuse can be shown for not performing it. State ex rel. Grady v. Chicago, M. & N. R. Co. 79 W 259, 48 NW 243.

Under sec. 1810, R. S. 1878, as amended by ch. 193, Laws 1881, a more extended liability is imposed upon companies which fail to fence or construct cattle guards than they were subject to under the original section. Liability for the killing of horses when on the unfenced track can only be escaped by showing that their owner drove them upon the right of way or abandoned them in a place where it was certain that they would go upon the track. Heller v. Abbot, 79 W 409, 48 NW 598.

It is probable that the term "farm crossing," in sec. 1810, R. S. 1878, as amended, includes an opening made in a railway fence by the crossing of a private logging railroad. Except as to depot grounds and lands adjacent thereto no openings can be left in railroad fences without providing gates, bars or cattle guards. Caldon v. Chicago, St. P., M. & O. R. Co. 85 W 527, 55 NW 955.

As to cattle guards sec. 1810 applies to all railroads without regard to whether they were constructed at the time of its enactment or thereafter. Chicago, M. & St. P. R. Co. v. Milwaukee, 97 W 418, 72 NW 1118.

The failure to fence must have been the cause of animals going upon the track in order to recover under sec. 1810, and where animals were let loose on account of a fire which was sufficient to have destroyed any fence which the railroad might have had, there could be no recovery because of the killing of the animals after straying upon the track. Cook v. Minneapolis, St. P. & S. S. M. R. Co. 98 W 624, 74 NW 561.

Where it is claimed that railroad company has violated sec. 1810, and damages are claimed because of the failure to perform the duty, the plaintiffs must prove the existence of the highway, and where it appears that no notice of the proceedings for laying out highway was ever given to the company and that no damages were ever awarded or paid, and that there was no release of damages, there can be no recovery. Hunter v. Chicago, St. P., M. & O. R. Co. 99 W 613, 75 NW 977.

The failure of a sectionman to close a gate in a fence along that part of the road where he was employed does not relieve the railroad company from liability for killing animals belonging to such sectionman, in the absence of proof that it was his duty to close the gate. May v. Chicago & Northwestern R. Co. 102 W 673, 79 NW 31.

Where animals go upon the right of way of

a railroad over a defective cattle guard, the fact that they were trespassers upon the highway does not exempt the company from liability. Herrell v. Chicago, M. & St. P. R. Co. 114 W 605, 90 NW 1071.

The sufficiency of a fence is a question of fact to be determined by a jury. Perrault v. Minneapolis, St. P. & S. S. M. R. Co. 117 W 520, 94 NW 348.

A crossing under the track may in some cases be required and the maintenance of such a crossing will be compelled when the railroad has before constructed it and it appears that a grade crossing would be inconvenient and expensive to the landowner. State ex rel. Jacquith v. Wisconsin C. R. Co. 123 W 551, 102 NW 16.

The words "farm crossings" are descriptive of the kinds of crossings required for the use of occupants of adjoining lands as distinguished from highway crossings. They are not confined to crossings from lands used for agricultural purposes. Where a railroad crosses lands which were used for clay for the making of bricks, the company was required to put in crossings for that use. Manitowoc C. Co. v. Manitowoc, G. B. & N. W. R. Co. 135 W 94, 115 NW 390.

Sec. 1810, Stats. 1898, does not apply to a railway track wholly within the limits of a public highway. Henke v. Milwaukee E. R. & L. Co. 147 W 661, 133 NW 1107.

A railroad company commenced to operate its road when it commenced to transport freight or passengers as a common carrier. The operation of trains in construction work cannot be taken as the period of commencement. Nordeau v. Minneapolis, S. P. & S. S. M. R. Co. 148 W 627, 135 NW 150.

An embankment will not constitute a substitute for a railroad fence unless it furnishes practically complete protection; and whether it does that or not and whether any substitute complies with the law, are questions for the jury. Every new right of way fence in the place of an old one must comply with the statute. Ulicke v. Chicago & Northwestern R. Co. 152 W 236, 139 NW 189.

Where one railroad crosses another by an overhead trestle there are in law and in fact, at the crossing, 2 distinct and independent rights of way, and the company owning the upper right of way is charged with no duty respecting the fences required by sec. 1810, Stats. 1911, for the protection of the lower right of way. Neither is the owner of such upper right of way charged with the duty of maintaining a fence across its own right of way up and down the embankment or trestle, as the case may be, along the line marking the sides of its right of way where they cross the lower right of way; nor within the limits of a city is the upper road bound to maintain cattle guards or wing fences. The duty of maintaining fences being purely statutory the court cannot, simply because a fence is needed, require one to be erected in a place not mentioned in the statute. Bejma v. Chicago & M. E. R. Co. 160 W 527, 149 NW 588, 152 NW 180.

The failure of a railroad company to put up a wing fence where required by sec. 1810, Stats. 1911, renders it liable for a death resulting proximately therefrom to a person who entered upon the right of way at a street crossing, along a footpath used daily by many pedestrians. Under the circumstances the deceased was not a trespasser, and even if he was violating sec. 1811, that fact did not defeat the right to recover damages for his death, each of the 2 sections being independent of the other. Trojanowski v. Chicago & Northwestern R. Co. 163 W 76, 157 NW 536.

The death of a boy 16 years of age, who entered a railroad right of way where it should have been but was not fenced, boarded a moving freight train and after traveling several miles was killed in jumping from the train while it was in motion, was not "occasioned * * * in whole or in part" by the want of a fence. Vaillant v. Chicago & Northwestern R. Co. 163 W 548, 158 NW 311.

The absolute duty of fencing imposed by sec. 1810, Stats. 1911, is for the benefit of employes as well as the general public, and an employe of the railroad company continuing in such employment with knowledge of the fact that the road is not fenced does not thereby assume the risk or waive his right to recover for injuries occasioned by a failure to fence. But this section does not require a fence between a main track and a parallel side track and 10 feet distant therefrom, the side track being used for the storage of cars removed thereto from a repair shop and to be taken therefrom whenever needed in the regular business of the company. Jacoby v. Chicago, M. & St. P. R. Co. 165 W 610, 161 NW 751, 164 NW 88.

Failure to provide cattle guards was not the proximate cause of an injury to a boy who entered a railroad right of way as a licensee, but departed from the footpath where his license permitted him to be and as a trespasser climbed upon standing freight cars and was injured when the cars were moved by employes of the railroad company without any knowledge of the boy's presence. A train of cars cannot be classed as objects alluring and attractive to children, like turntables, requiring careful guarding against danger. Wendorf v. Director General of Railroads, 173 W 53, 180 NW 128.

The liability of a railroad company is made absolute by sec. 1810, Stats. 1917, for any injury "occasioned in whole or in part by the want of a fence"; and an instruction that the quoted words meant that the injury followed incidentally or indirectly from the want of a fence, did not conflict with a finding by the jury that the injury was the direct result of such want. But one who, after commencing to walk along an unfenced track, exercises no care for his own safety is reckless, and his conduct becomes a new and independent cause of the injury adequate to stand as the sole cause. A person injured upon an unfenced railroad track is not required to prove that a fence would have prevented his entrance thereon. And the railroad company may be liable even though the person injured was not one who might lawfully go upon its tracks. Berndl v. Director General of Railroads, 177 W 210, 188 NW 81.

The question whether a place is or is not depot grounds is ordinarily a question of fact. Wolf v. Chicago, M. & St. P. R. Co. 184 W 193, 199 NW 142.

A railroad company which met the requirements of this section by supplying a certain type of farm crossing for nearly 40 years cannot close it or materially change it. Henbest v. Chicago, M. & St. P. R. Co. 189 W 141, 207 NW 303.

The words excluding depot grounds from the necessity of fencing constitute a true "exception," so that the burden is on a plaintiff, basing his action on the defendant's failure to fence, to negative the exception in fact. Garcia v. Chicago & N. W. R. Co. 256 W 633, 42 NW (2d) 288.

A railroad company will not be required to maintain a farm crossing when the use is changed from occasional use by occupants of the land to frequent use by dump trucks in the course of commercial dump operations. Weiss v. Chicago, N. S. & M. Railroad, 9 W (2d) 581, 101 NW (2d) 688.

192.34 History: 1913 c. 383; Stats. 1913 s. 1797—12o; 1923 c. 291 s. 3; Stats. 1923 s. 195.28; 1929 c. 504 s. 93; Stats. 1929 s. 192.34.

192.35 History: 1872 c. 119 s. 31, 32; 1878 c. 292; R. S. 1878 s. 1811; Stats. 1898 s. 1811; 1915 c. 551; Stats. 1915 s. 1811 sub. 1; 1923 c. 291 s. 3; Stats. 1923 s. 192.49 (1); 1929 c. 504 s. 94; Stats. 1929 s. 192.35.

One whose cattle have escaped upon a railroad and been killed by a train cannot recover from the person by whose fault the bars or gate through which they escaped were left open, if he negligently suffered them to escape from his own premises to the farm of another, whence they got upon the railroad. Pitzner v. Shinnick, 39 W 129.

The fact that many persons had for years habitually passed along the track, daily and hourly, tends to show license. Townley v. Chicago, M. & St. P. R. Co. 53 W 626, 11 NW 55.

Sec. 1811, R. S. 1878, does not change the rule that a railroad company is liable for the result of its negligent acts or omissions to a licensee on its right of way. Acquiescence in the constant use of its right of way for purposes of travel for 20 years or more justifies a finding that such use was authorized. Davis v. Chicago & Northwestern R. Co. 58 W 646, 17 NW 406.

One who gets upon a railroad track in the night at a highway crossing and who purposely or voluntarily continues to drive his team along the track for a distance of nearly 2 miles is guilty of negligence, although the negligence of the railroad company induced the deceased to drive upon the track in the first instance. His negligence in continuing to drive thereon is not excused because he was intoxicated. McDonald v. Chicago, M. & St. P. R. Co. 75 W 121, 43 NW 744.

A person who walks over a railroad trestle which is distant from any station, depot grounds or yard, and is so built as to repel rather than invite travel over it, is a trespasser. There could be no license that would be of any avail to him. Sec. 1811, R. S. 1878, forbids such use of a railroad track, and makes an alleged implied license nugatory. Anderson v. Chicago, St. P., M. & O. R. Co. 87 W 195, 58 NW 79.

Sec. 1811, R. S. 1878, does not apply to a licensed path in and about depot grounds. Matson v. Chicago, St. P., M. & O. R. Co. 89 W 151, 61 NW 300.

That clause imposing liability upon a person who opens a fence and leaves it open is to be strictly construed. It has no application to one who neglects to replace a gate at his farm crossing, which has been accidentally destroyed by his runaway team, so as to make him liable for the death of a horse which strayed from the highway upon his land and thence through the opening upon the railroad track, where it was killed by a locomotive. Oeflein v. Zautcke, 92 W 176, 66 NW 108.

The fact that a track protected by fences and cattle guards was frequently used by pedestrians does not show that such use was licensed by the railroad company in the absence of evidence that it acquiesced in or invited the trespass. Schug v. Chicago, M. & St. P. R. Co. 102 W 515, 78 NW 1090.

Sec. 1811, Stats. 1898, will not prevent a recovery for the death of a boy caused in whole or in part by the want of a lawful fence. Ulicke v. Chicago & Northwestern R. Co. 152 W 236, 139 NW 189.

The forfeiture for trespass does not preclude a recovery for failure by a railroad company to fence its track as required by sec. 1811, Stats. 1911, unless the entry upon the unfenced right of way was made wilfully or was continued when continuance was avoidable. Alexander v. Minneapolis, S. P. & S. S. M. R. Co. 156 W 477, 146 NW 510.

192.355 History: 1955 c. 696 s. 45; Stats. 1955 s. 192.355.

192.36 History: 1872 c. 119 s. 34, 35; R. S. 1878 s. 1812; Stats. 1898 s. 1812; 1923 c. 291 s. 3; Stats. 1923 s. 192.50; 1929 c. 504 s. 95; Stats. 1929 s. 192.36.

192.37 History: 1875 c. 248; 1876 c. 169; R. S. 1878 s. 1813; Stats. 1898 s. 1813; 1907 c. 623; 1923 c. 291 s. 3; Stats. 1923 s. 192.51; 1929 c. 504 s. 96; Stats. 1929 s. 192.37.

The imposition of the penalty prescribed by sec. 1813, R. S. 1878, will not secure the erection of farm crossings, nor afford an adequate remedy, nor make it improper to grant a mandamus for their erection. State ex rel. Grady v. Chicago, M. & N. R. Co. 79 W 259, 48 NW 243.

Inclosed lands within the meaning of sec. 1813, R. S. 1878, are those shut in on all sides of all other land by a fence or barrier. An inclosure in common with adjoining lands by permission of the owner of the latter is not sufficient. Miller v. Chicago & Northwestern R. Co. 133 W 183, 113 NW 384.

192.38 History: 1872 c. 119 s. 33; R. S. 1878 s. 1814; Stats. 1898 s. 1814; 1923 c. 291 s. 3; Stats. 1923 s. 192.52; 1929 c. 504 s. 97; Stats. 1929 s. 192.38.

192.39 History: 1872 c. 119 s. 10; 1873 c. 246; R. S. 1878 s. 1815; 1881 c. 318; Ann. Stats. 1889 s. 1815; Stats. 1898 s. 1815; 1923 c. 291 s. 3; Stats. 1923 s. 192.53; 1929 c. 504 s. 98; Stats. 1929 s. 192.39.

The laborer's lien accrues for work performed for any contractor, whether a principal or subcontractor. Where it was customary to pay the laborers on a certain day of each

month, their claim did not accrue till such pay day and notice within 30 days thereafter was sufficient. Mundt v. Sheboygan & F. du L. R. Co. 31 W 451.

The relation of a railroad company to a person employed by its contractor to perform work in the construction of its road is that of a guarantor of payment for such work by such contractor. The term "contractor" includes subcontractors in the second degree. Redmond v. Galena & S. W. R. Co. 39 W 426.

Sec. 1815, R. S. 1878, as amended, makes the railroad company absolutely liable, at least to the aggregate amount of the contract price, to laborers. Any payments made to laborers serving notices necessarily operate as payments made pro tanto to the company's contractor. The company has the right to withhold so much of its indebtedness to its contractor as was necessary to pay such laborers as had served notices, and it cannot be deprived of that right either by his act or by garnishment proceedings against him. As garnishee of its contractor, the company is liable only for so much as shall remain due him after the determination of its contingent liability to his laborers who have complied with the statute. Vollmer v. Chicago & Northwestern R. Co. 86 W 305, 56 NW 919.

Sec. 1815, Stats. 1898, does not require notice to be given to the particular employe in charge of the construction work in the doing of which the laborer has earned his unpaid wages; the requirement that it shall be given to "an engineer, agent or superintendent" in the employment of the company, "having charge of that part of the road on which such labor was performed" was intended to make it likely that the company will receive prompt notice of the existence of the claim. A claim under this section is not defeated by the delivery of the claimant's time check to another person for collection, writing his name on the back thereof as evidence of his agent's authority, and borrowing a small sum from such agent to be reimbursed out of the collection. Matzewitz v. Wisconsin C. R. Co. 140 W 643, 143 NW 121.

The evidence was sufficient to show that the person named in the notice as a contractor from whom the money was had was in fact the contractor with whom the claimant was dealing. Bailley v. Wisconsin C. R. Co. 142 W 102, 124 NW 1059.

192.40 History: 1885 c. 85; Ann. Stats. 1889 s. 1815a; Stats. 1898 s. 1815a; 1923 c. 291 s. 3; Stats. 1923 s. 192.54; 1929 c. 504 s. 99; Stats. 1929 s. 192.40.

192.41 History: 1851 c. 92 s. 11; 1853 c. 68 s. 25; R. S. 1858 c. 73 s. 25; R. S. 1858 c. 76 s. 11; 1878 c. 316; R. S. 1878 s. 1769; Ann. Stats. 1889 s. 1769; Stats. 1898 s. 1769; 1915 c. 604 s. 33; Stats. 1915 s. 1798c; 1923 c. 291 s. 3; Stats. 1923 s. 192.04; 1929 c. 504 s. 100; Stats. 1929 s. 192.41.

192.42 History: 1913 c. 326; Stats. 1913 s. 1816c; 1923 c. 291 s. 3; Stats. 1923 s. 192.58; 1929 c. 504 s. 101; Stats. 1929 s. 192.42.

A provision, in a uniform railroad bill of lading, that a written claim for loss or damage must be filed within 9 months after delivery of the property as a condition precedent to recovery, is not in contravention of 192.42 (1), Stats. 1941. Chicago, St. P., M. & O. R. Co. v. Kileen, 243 W 161, 9 NW (2d) 616.

192.43 History: 1913 c. 326; Stats. 1913 s. 1816e; 1923 c. 291 s. 3; Stats. 1923 s. 192.60; 1929 c. 504 s. 102; Stats. 1929 s. 192.43.

192.44 History: 1911 c. 245; Stats. 1911 s. 1816a; 1923 c. 291 s. 3; Stats. 1923 s. 192.56; 1929 c. 504 s. 103; Stats. 1929 s. 192.44; 1947 c. 43.

The nonexistence of a fire before a locomotive passed, and the existence of a fire shortly thereafter upon the right of way, supports a finding of the railroad company's responsibility. Suts v. Chicago & Northwestern R. Co. 203 W 532, 234 NW 715; Hicks v. Chicago & N. W. R. Co. 215 W 462, 255 NW 73.

A railroad corporation is responsible for the costs of fire suppression for all fires either wilfully or negligently set on its right of way. 45 Atty. Gen. 17.

192.45 History: 1911 c. 29; Stats. 1911 s. 1309v; 1923 c. 291 s. 3; Stats. 1923 s. 192.45; 1925 c. 290; 1929 c. 504 s. 120.

Editor's Note: This section was in effect abrogated, as to all interstate commerce, by the decision of the U. S. supreme court in Chicago & Northwestern R. Co. v. Railroad Comm. 272 US 605.

192.455 History: 1923 c. 56; Stats. 1923 s. 192.455; 1929 c. 504 s. 120.

192.456 History: 1923 c. 154; Stats. 1923 s. 192.456; 1929 c. 504 s. 120.

192.457 History: 1925 c. 409; Stats. 1925 s. 192.457; 1929 c. 504 s. 120.

192.46 History: 1919 c. 370; 1919 c. 671 s. 24; Stats. 1919 s. 1819g; 1923 c. 291 s. 3; Stats. 1923 s. 192.65; 1929 c. 504 s. 105; Stats. 1929 s. 192.46.

192.465 History: 1911 c. 416; 1911 c. 664 s. 67; Stats. 1911 s. 1798m; 1923 c. 291 s. 3; Stats. 1923 s. 192.05; 1929 c. 504 s. 104; Stats. 1929 s. 192.45; 1953 c. 61; Stats. 1953 s. 192.465.

192.47 History: 1887 c. 258; Ann. Stats. 1889 s. 1861a; Stats. 1898 s. 1861a; 1923 c. 291 s. 3; 1923 c. 428; 1923 c. 449 s. 57; Stats. 1923 s. 192.75; 1929 c. 504 s. 106; Stats. 1929 s. 192.47; 1969 c. 255.

A detective employed by a railroad company under sec. 1861a, Stats. 1921, requires no state license. 10 Atty. Gen. 899.

192.48 History: 1917 c. 533; Stats. 1917 s. 1808a; 1923 c. 291 s. 3; Stats. 1923 s. 192.26; 1927 c. 478 s. 2; 1929 c. 504 s. 107; Stats. 1929 s. 192.48; 1939 c. 171, 464; 1943 c. 275 s. 47; 1963 c. 30; 1969 c. 500 s. 30 (2) (e).

The state highway commission is charged with the duty of erecting and maintaining special warning signs at railroad grade crossings on the state trunk highway system. The county highway commissioner is charged with the duty of erecting and maintaining special warning signs at railroad grade crossings on county trunk and town highways. 18 Atty. Gen. 186.

192.49 History: 1876 c. 57 s. 8, 9; R. S. 1878 s. 1804; Stats. 1898 s. 1804; 1923 c. 291 s. 3; Stats. 1923 s. 192.19; 1929 c. 504 s. 108; Stats. 1929 s. 192.49.

192.50 History: 1875 c. 173; R. S. 1878 s. 1816; 1880 c. 232; 1889 c. 438; Ann. Stats. 1889 s. 1816a; 1893 c. 220; Stats. 1898 s. 1816; 1903 c. 448 s. 1; Supl. 1906 s. 1816; 1907 c. 254; 1911 c. 663 s. 379; 1913 c. 644; 1923 c. 291 s. 3; Stats. 1923 s. 192.55; 1929 c. 504 s. 120; 1931 c. 79 s. 22; Stats. 1931 s. 192.50; 1953 c. 540.

Editor's Note: Sec. 1816, Stats. 1911, was cited in Minneapolis, St. P. & S. S. M. R. Co. 153 W 552, 141 NW 1119, and in Salus v. Great Northern R. Co. 157 W 546, 147 NW 1070.

192.51 History: 1872 c. 185; R. S. 1878 s. 1860; Stats. 1898 s. 1860; 1923 c. 291 s. 3; Stats. 1923 s. 192.73; 1929 c. 504 s. 110; Stats. 1929 s. 192.51; 1957 c. 523.

192.52 History: 1925 c. 312; Stats. 1925 s. 192.81; 1929 c. 504 s. 111; Stats. 1929 s. 192.52; 1937 c. 83; 1969 c. 276 s. 599.

Sec. 192.52, Stats. 1939, does not contemplate that the public service commission shall hold a hearing and make a finding upon a complaint that there has been abandonment of railroad shops in violation of the section. 29 Atty. Gen. 52.

192.53 History: 1927 c. 303; Stats. 1927 s. 192.90; 1929 c. 268; 1929 c. 504 s. 112; Stats. 1929 s. 192.53; 1931 c. 410; 1935 c. 220; 1939 c. 513 s. 41; 1943 c. 198; 1945 c. 92; 1949 c. 163, 176.

192.54 History: 1872 c. 119 s. 54; R. S. 1878 s. 1819; Stats. 1898 s. 1819; 1907 c. 622; 1919 c. 702 s. 72; 1923 c. 291 s. 3; Stats. 1923 s. 192.64; 1929 c. 504 s. 113; Stats. 1929 s. 192.54.

By the express terms of the statute cumulative penalties are imposed, and a penalty for each violation may be recovered in the one action. State v. Wisconsin C. R. Co. 133 W 478, 113 NW 952.

192.55 History: 1929 c. 504 s. 113a; Stats. 1929 s. 192.55; 1947 c. 601.

192.56 History: 1935 c. 237; Stats. 1935 s. 192.56; 1953 c. 60; 1961 c. 35.

Where a railroad proposes to abandon stations or withdraw agency service and notice is properly posted in the places affected, new notices need not be posted for every continuance of the hearing. Cobb v. Public Service Comm. 12 W (2d) 441, 107 NW (2d) 595.

192.71 History: 1872 c. 160; R. S. 1878 s. 1858; 1882 c. 266; Ann. Stats. 1889 s. 1858; Stats. 1898 s. 1858; 1923 c. 291 s. 3; Stats. 1923 s. 192.71; 1929 c. 504 s. 128.

192.72 History: 1874 c. 303; 1876 c. 158; R. S. 1878 s. 1859; Ann. Stats. 1889 s. 1859; Stats. 1898 s. 1859; 1923 c. 291 s. 3; Stats. 1923 s. 192.72; 1929 c. 504 s. 128.

CHAPTER 193.

Street and Interurban Railways.

193.01 History: 1860 c. 313 s. 1, 3, 4; R. S. 1878 s. 1862; 1881 c. 219; Ann. Stats. 1889 s. 1862; Stats. 1898 s. 1862; 1911 c. 39; 1923 c. 182; 1923 c. 291 s. 3; Stats. 1923 s. 193.01; 1927 c. 108; 1929 c. 504 s. 130; 1933 c. 171; 1943 c. 501; 1955 c. 661; 1957 c. 260 s. 30.

Editor's Note: Notes of decisions construing 193.01 and various other sections of ch. 193 are contained in Wis. Annotations, 1960.

193.02 History: 1891 c. 234; Stats. 1898 s. 1862a; 1913 c. 773 s. 61; 1923 c. 291 s. 3; Stats. 1923 s. 193.02; 1927 c. 43; 1929 c. 504 s. 131.

193.05 History: 1909 c. 353; 1911 c. 366; Stats. 1911 s. 1862g sub. 1; 1923 c. 291 s. 3; Stats. 1923 s. 193.05; 1929 c. 504 s. 133.

193.06 History: 1909 c. 353; Stats. 1911 s. 1862g sub. 2; 1923 c. 291 s. 3; Stats. 1923 s. 193.06; 1929 c. 504 s. 134.

193.08 History: 1911 c. 528; Stats. 1911 s. 1862h; 1923 c. 291 s. 3; Stats. 1923 s. 193.08; 1929 c. 504 s. 136.

193.09 History: 1909 c. 311; Stats. 1911 s. 1862m; 1923 c. 291 s. 3; Stats. 1923 s. 193.09; 1929 c. 504 s. 137.

193.10 History: 1860 c. 313 s. 2; R. S. 1878 s. 1863; 1880 c. 221; Ann. Stats. 1889 s. 1863; 1891 c. 387; Stats. 1898 s. 1863; 1901 c. 424 s. 2; Supl. 1906 s. 1863; 1911 c. 274; 1917 c. 565; 1923 c. 291 s. 3; Stats. 1923 s. 193.10; 1929 c. 504 s. 138.

193.11 History: 1897 c. 175; Stats. 1898 s. 1863a; 1899 c. 306 s. 1; 1901 c. 465 s. 1; 1905 c. 266 s. 1; 1905 c. 497 s. 1; Supl. 1906 s. 1863a; 1907 c. 580; 1909 c. 90; 1909 c. 516 s. 3; Stats. 1911 s. 1863a sub. 1; 1919 c. 571 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 193.11; 1929 c. 504 s. 139.

193.12 History: 1897 c. 175; Stats. 1898 s. 1863a; 1899 c. 306 s. 1; 1901 c. 465 s. 1; 1905 c. 266 s. 1; 1905 c. 497 s. 1; Supl. 1906 s. 1863a; 1907 c. 580; 1909 c. 90; 1909 c. 516 s. 3; Stats. 1911 s. 1863a sub 2; 1919 c. 571 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 193.12; 1927 c. 71; 1929 c. 504 s. 140.

193.13 History: 1897 c. 175; Stats. 1898 s. 1863a; 1899 c. 306 s. 1; 1901 c. 465 s. 1; 1905 c. 266 s. 1; 1905 c. 497 s. 1; Supl. 1906 s. 1863a; 1907 c. 580; 1909 c. 90; 1909 c. 516 s. 3; Stats. 1911 s. 1863a sub. 3; 1919 c. 571 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 193.13; 1929 c. 504 s. 141.

193.14 History: 1897 c. 175; Stats. 1898 s. 1863a; 1899 c. 306 s. 1; 1901 c. 465 s. 1; 1905 c. 266 s. 1; 1905 c. 497 s. 1; Supl. 1906 s. 1863a; 1907 c. 580; 1909 c. 90; 1909 c. 516 s. 3; Stats. 1911 s. 1863a sub. 4; 1919 c. 571 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 193.14; 1929 c. 504 s. 142.

193.15 History: 1897 c. 175; Stats. 1898 s. 1863a; 1899 c. 306 s.1; 1901 c. 465 s. 1; 1905 c. 266 s. 1; 1905 c. 497 s. 1; Supl. 1906 s. 1863a; 1907 c. 580; 1909 c. 90; 1909 c. 516 s. 3; Stats. 1911 s. 1863a sub. 5; 1913 c. 58; 1915 c. 280; 1919 c. 571 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 193.15; 1929 c. 504 s. 143.

193.17 History: 1903 c. 347 s. 1 to 5; Supl. 1906 s. 1863b to 1863f; 1923 c. 291 s. 3; Stats. 1923 s. 193.17 to 193.21; 1929 c. 504 s. 145; Stats. 1929 s. 193.17.