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Recommended Citation
Available at: https://repository.law.umich.edu/mlr/vol37/iss1/19

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NEGLIGENCE — WHETHER COMPLIANCE WITH STATUTORY CROSSING REGULATIONS CONSTITUTES DUE CARE ON PART OF RAILROAD — A series of Minnesota statutes, passed from time to time regulating the conduct of railroads, were united in the laws of 1925. Among other things, this act empowers the Railroad and Warehouse Commission to prescribe and order safety devices at crossings. The plaintiff was injured when the car in which he was riding hit defendant's train, which was already over the crossing. The evidence showed that the street sloped steeply toward the track, but the track was somewhat elevated from the street level at the crossing, so that the lights from the automobile could not shine on the train. Nor could the lights penetrate the darkness and fog. The defendant had erected a reflector-type stop sign and cross-arm warnings on the side of the street, in compliance with the order of the Railroad Commission. Held, mere compliance with the order of the commission does not of itself constitute due care, since the act of 1925 was not intended to be a code for the complete regulation of the conduct of railroads. The question of negligence was one for the jury, to be decided from all the evidence pertaining to the crossing, safety-devices, and weather. Licha v. Northern Pac. Ry., 201 Minn. 427, 276 N. W. 813 (1937).

At common law, a railroad is under no duty to maintain a flagman or

\[1\] Minn. Laws (1925), c. 336, Stat. (Mason, 1927), §§ 4743-1 to 4743-17.
install safety devices at crossings. But whether or not the failure to do so in a particular situation constitutes negligence is a jury question which depends on the nature of the crossing. It amounts to a question of due care under all the circumstances of a particular case. When the legislature prescribes certain safety devices, or delegates authority to a commission to prescribe them, and the railroad complies with such orders, the question arises whether or not such compliance amounts to due care of itself, or whether more is required on the part of the railroad. The almost universal rule is that such regulations merely prescribe the minimum of due care, and that they do not absolve the railroad from exercising further diligence at crossings commensurate with the dangers involved to the traveling public. The reason given for the rule is that neither the legislature nor the commission can arbitrarily set a standard of conduct for every conceivable situation. Accordingly, if the commission is empowered to make safety regulations but fails to do so, the railroad must nevertheless exercise the due care and diligence required of it as at common law. Prior to the enactment of the 1925 statute the Minnesota decisions were in accord with the majority view. Thereafter, however, in a case substantially like the one under discussion, the court held that by uniting the prior isolated statutes and adding other provisions in the law of 1925, the legislature intended a code for the complete regulation of railroads and that compliance therewith amounted to due care. The court in the present case, after a full consideration of the statute, reverses its position and again brings that state in line with the majority rule. It is submitted that the decision arrived at was very proper under the circum-

5 Grand Trunk Ry. v. Ives, 144 U. S. 408, 12 S. Ct. 679 (1892); 2 Thompson, Negligence, 2d ed., § 1555 (1901).
7 Shaber v. St. Paul, M. & M. Ry., 28 Minn. 103 at 107-108, 9 N. W. 575 (1881): "The specification by statute that certain precautions are to be taken is not to be construed as a license to the company to omit other precautions that may be necessary. . . ."
8 Olson v. Chicago Great Western Ry., 193 Minn. 533, 259 N. W. 70 (1935).
stances. Unless the legislature makes its intent to the contrary clearly expressed, it is unreasonable to imply that mere regulatory legislation is intended to supplant the complicated law of negligence at crossings, especially since it is a problem involving the peculiarities of each crossing. This question of negligence requires a careful consideration of weather, topography, population and density of travel,—details almost impossible of codification.\(^9\) Unless clearly expressed, it is inconceivable that a study by the commission of every possible situation was intended, with a scheme of prescribed conduct and use of safety devices for each. Moreover, as properly stated by the court, safety statutes and orders of the commission are intended to add to the safety of individuals and not to detract therefrom.\(^10\) Since the statute did not deal at all with the blowing of whistles, lights on locomotive, backing locomotive, etc., which would be expected in a general code, such absence further fortifies the court's position that a complete scheme of conduct abrogating common law rules was not intended.

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\(^{10}\) Principal case, Licha v. Northern Pac. Ry., (Minn. 1937) 276 N. W. 813.