

gence on the part of the company or its agents; provided, however, that no such presumption of negligence on the part of Railroad Companies shall arise in any case of fire occurring in or about water front or other railroad terminals used for receiving, delivering or transshipping freight, in the handling of which and the ordinary conduct of business therein, persons not in the employ or under the control of such Railroad Companies, their servants and agents, are engaged in and about such premises, and where negligence on the part of such persons, their servants or agents, may have caused or contributed to the origin of such fire.

Application and effect of this section.

This section changes the recognized burden of proof, but makes no other change either in the general law or the law regulating the burden of proof in other cases. This section held to have no application. *Belt R. R. Co. v. Sattler*, 100 Md. 324. And see *Annapolis, etc., R. R. Co. v. Pumphrey*, 72 Md. 87; *Annapolis, etc., R. R. Co. v. Gantt*, 39 Md. 115; *Baltimore, etc., R. R. Co. v. Woodruff*, 4 Md. 256.

History and object of this section; its operation will not be extended by equitable construction. It has no application in a suit by a passenger for personal injuries nor did it apply to cases of the killing or injuring of slaves. *Scaggs v. Baltimore, etc., Ry. Co.*, 10 Md. 275.

This section applies where live stock are astray upon the track, and not where horses are caught in a trestle, and the injury is inflicted while the servants of the owner are present endeavoring to release animals. *Northern Central Ry. Co. v. Green*, 112 Md. 499; *Annapolis, etc., R. R. Co. v. Pumphrey*, 72 Md. 87.

This section applied in a suit for the negligent killing of stock. Effect and operation of this section. *Northern Central Ry. Co. v. Ward*, 63 Md. 367; *Norfolk, etc., R. R. Co. v. Smith*, 104 Md. 74; *Western Md. R. R. Co. v. Carter*, 59 Md. 308; *Keech v. Baltimore, etc., R. R. Co.*, 17 Md. 45; *B. & O. R. R. Co. v. Lamborn*, 12 Md. 261. And see *B. & O. R. R. Co. v. Mulligan*, 45 Md. 493.

This section applied in a suit for damages resulting from a fire communicated by the defendant's engine. *Green Ridge R. R. Co. v. Brinkman*, 64 Md. 60; *B. & O. R. R. Co. v. Shipley*, 39 Md. 254.

Generally.

This section is to be construed in reference to the principles of the common law. By this section, it was not intended to interfere with the time tables of the railroad company, or to limit the rate of speed for trains. Proper prayers. *Keech v. Baltimore, etc., R. R. Co.*, 17 Md. 45.

A fire is occasioned by an engine, if it originates from coals thrown from it along the side of the road by those having charge of it when in use. *B. & O. R. R. Co. v. Dorsey*, 37 Md. 23. And see *Annapolis, etc., Co. v. Gantt*, 39 Md. 141; *Philadelphia, etc., R. R. Co. v. Constable*, 39 Md. 157.

The words "without negligence," defined. *B. & O. R. R. Co. v. Shipley*, 39 Md. 254; *Baltimore, etc., R. R. Co. v. Woodruff*, 4 Md. 256. And see *Northern Central Ry. Co. v. Green*, 112 Md. 500.

This section does not alter the doctrine of the common law as to contributory negligence. *Northern Central Ry. Co. v. Green*, 112 Md. 499; *Western Md. R. R. Co. v. Carter*, 59 Md. 308; *Keech v. Baltimore, etc., R. R. Co.*, 17 Md. 45; *B. & O. R. R. Co. v. Lamborn*, 12 Md. 261. And see *B. & O. R. R. Co. v. Mulligan*, 45 Md. 493.

This section referred to in discussing the burden of proof in a suit under art. 67, "Negligence Causing Death." *Tucker v. State*, use *Johnson*, 89 Md. 490 (dissenting opinion).

Cited but not construed in *State v. Baltimore, etc., Co.*, 13 Md. 189.

As to fire prevention along railroad tracks and the duty of the department of forestry, railroad companies and owners in connection therewith, see art. 39A, sec. 34, *et seq.*

An. Code, 1924, sec. 245. 1912, sec. 308. 1904, sec. 288. 1888, sec. 199. 1838, ch. 244, sec. 1.

247. The damages caused by such injuries may be sued for and recovered by the owner of such stock, or the person injured by fire, before a justice of the peace, when the damages claimed shall not be over one hundred dollars, and in the circuit court for the county or the courts having civil jurisdiction over the amount claimed in the city of Baltimore, when the amount claimed exceeds one hundred dollars.

A mortgagor, being the substantial owner, may sue for injuries to property under this section. *Annapolis, etc., R. R. Co. v. Gantt*, 39 Md. 141; *Arnd v. Amling*, 53 Md. 200.