

# MASON'S MINNESOTA STATUTES

1927

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THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-  
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT  
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED  
BY THE SUBSEQUENT LEGISLATION OF 1925  
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES  
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE  
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

COMPILED AND EDITED BY THE EDITORIAL STAFF OF THE  
CITER-DIGEST COMPANY

WILLIAM H. MASON,  
Editor in Chief.  
MARTIN S. CHANDLER,  
RICHARD O. MASON,  
Assistant Editors.

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1927

purpose of religious worship. But this shall not be so construed as to prevent any person from continuing business where previously located, or from selling such liquors where he had been licensed to sell before the appointment of such meeting. Every person who shall

violate any provision of this section shall be punished by a fine not exceeding thirty dollars, or by imprisonment in a county jail for not more than thirty days, or by both. (4986) [8758]

CHAPTER 99

CRIMES AGAINST PUBLIC HEALTH AND SAFETY

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this act is any itinerant carnival, show, act or exhibition, or any other carnival, show, act or exhibition, which is held in the open or indoors or upon or within any public or private grounds of the state, or of any incorporated municipality thereof at which congregates and assembles with or without payment of an admission fee, a promiscuous gathering of people as spectators or otherwise, and at which lewd or obscene features are a part, or at which any gambling concessions are given or games of chance practiced, or in or about which actors or other persons connected therewith are engaged in immoral pursuits, or at which attractions are exhibited which affect the health or morals of the community. ('23 c. 428 § 2)

10244. Penalties for violation—Any person who shall participate in allowing or conducting any itinerant carnival herein prohibited shall be guilty of a misdemeanor and shall be punishable by a fine of not less than Fifty (\$50.00) Dollars nor exceeding One Hundred (\$100.00) Dollars or imprisonment in the county jail, or the city workhouse not less than thirty days nor more than three months. ('23 c. 428 § 3)

10245. Maintaining or permitting building as a nuisance—Every person who shall commit or maintain a public nuisance, for which no special punishment is prescribed; or who shall wilfully omit or refuse to perform any legal duty relating to the removal of such nuisance; and every person who shall let, or permit to be used, any building or portion thereof, knowing that it is intended to be used for committing or maintaining any such nuisance—shall be guilty of a misdemeanor. (4988) [8760]

126-95, 147+953.  
147-52, 179+566.

10246. Keeping gunpowder unlawfully—Every person who shall make or keep gunpowder, nitroglycerin, or other explosive or combustible material in a city or village, or carry it through the streets thereof in a quantity or manner prohibited by law or by ordinance of such municipality, shall be guilty of a misdemeanor. And every person who by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substance shall injure, or cause injury to, the person or property of another, shall be punished by imprisonment in the county jail for not more than one year. (4989) [8761]

10247. Obstructing health officer—Every person who shall wilfully oppose or obstruct a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, shall be guilty of a misdemeanor. (4990) [8762]

10248. Wilful violation of health laws—Every person who shall wilfully violate any provision of the health laws, the punishment for which is not specially provided for therein, shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than two thousand dollars, or by both. (4991) [8763]

10241. Public nuisance defined—A public nuisance is a crime against the order and economy of the state, and consists in unlawfully doing an act or omitting to perform a duty, which act or omission—

1. Shall annoy, injure, or endanger the safety, health, comfort, or repose of any considerable number of persons;
2. Shall offend public decency;
3. Shall unlawfully interfere with, obstruct, or tend to obstruct or render dangerous for passage, a lake, navigable river, bay, stream, canal, or basin, or a public park, square, street, alley, or highway; or
4. Shall in any way render a considerable number of persons insecure in life or the use of property. (4987) [8759]

Cited (101-197, 112+395). 126-95, 147+953; 126-477, 148+466; 153-229, 190+278.  
157-430, 196+487; 211+328.

10242. Itinerant carnivals prohibited—Itinerant carnivals as defined in Section 2 hereof are hereby declared to be a public nuisance and are prohibited. ('23 c. 428 § 1)

Licenses or permits for street shows, carnivals, etc., within one mile of corporate limits of city of fourth class. See §§ 1929-1 to 1929-5, herein.

10243. Defining itinerant carnival—An itinerant carnival within the meaning and for the purposes of

**10249. Gasoline, benzine, and kerosene cans**—Every manufacturer or vendor who shall sell or cause to be sold, place or cause to be placed, any gasoline or benzine, in quantities of more than one pint and less than six gallons, in any receptacle except one of a bright red color and tagged and labeled in large plain letters with the name of the contents, or who shall sell or cause to be sold, place or cause to be placed, kerosene or other illuminating oils in the same quantities in a receptacle of a red color, shall be guilty of a misdemeanor, and punished by a fine of not more than one hundred dollars. (4992) [8764]

147-52, 179+566.

Action for damages. 210+78.

**10250. Adulteration or imitation of foods, etc.**—Every person who, with intent that the same may be sold as unadulterated or undiluted, shall adulterate or dilute wine, milk, distilled spirits, or malt liquors, or any drug, medicine, food, or drink for man or beast; or shall offer for sale or sell the same as unadulterated or undiluted, or without disclosing to or informing the purchaser that the same has been adulterated or diluted; or shall manufacture, sell, expose, or offer for sale, as such article of food or drink, any substance in imitation thereof, without disclosing the imitation by a suitable and plainly visible mark or brand; or with intent that the same may be used as food, drink, or medicine, shall sell, offer or expose for sale, any article whatsoever which to his knowledge has become spoiled, tainted, or for any cause unfit to be used as food, drink, or medicine, where special provision has not otherwise been made by statute for its punishment, shall be guilty of a misdemeanor, and punished by a fine of not less than twenty-five dollars, or by imprisonment in the county jail for not less than thirty days. (4993) [8765]

Sale of filled milk, see §§ 3788 et seq., 3926 to 3928, herein.

The identity of the butter proven to have contained lard with that sold was sufficiently established. 156-27, 194+17.

The court was justified in finding the analysis of the state's chemist adequate proof of the presence of lard in the butter, and also that the lard reduced the quality and strength of the butter. 156-27, 194+17.

A variance in the name of the person to whom defendant was charged with selling adulterated butter cannot be taken advantage of in this court, unless raised in the court below. 156-27, 194+17.

**10251. Sale of unwholesome poultry, etc.**—Every person who shall offer or expose for sale at retail, for human food, at any public market, store, shop, or house, or in or about any street or other public place, any domestic or wild fowls, or any slaughtered rabbits, squirrels, or other small animals, wild or tame, unless the entrails, crops, and other offensive parts are properly drawn and removed, shall be guilty of a misdemeanor. (4994) [8766]

**10252. Protection of meat, etc.**—Every dealer in slaughtered fresh meats, fish, fowl, or game for human food, at wholesale or retail, at any established place or as a peddler, in the transportation of such food from place to place to customers, shall protect the same from dust, flies, and other vermin or substance which may injuriously affect it, by securely covering it while being so transported. Every violation of the foregoing provision shall be a misdemeanor, punishable by a fine of not less than ten dollars or by imprisonment in the county jail for not less than ten days. (4995) [8767]

**10253. Sale of young veal**—No person, firm or corporation shall sell, offer or expose for sale, or have in possession with intent to sell, the veal of calves

killed when less than four weeks old. ('05 c. 323 § 1) [8768]

**10254. Penalty**—Any person violating any of the provisions of this act shall be guilty of a misdemeanor and shall be fined not less than fifty dollars nor more than one hundred dollars, or by imprisonment for a period not to exceed ninety days. ('05 c. 323 § 2) [8769]

**10255. Deadly weapons**—Every person who shall manufacture, or cause to be manufactured, sell, keep for sale, offer, or dispose of, any instrument or weapon of the kind usually known as a slung-shot, sand-club, or metal knuckles; or who shall attempt to use against another, or with intent so to use, shall carry, conceal, or possess, any of the weapons hereinbefore specified, or any dagger, dirk, knife, pistol, or other dangerous weapon, shall be guilty of a gross misdemeanor. The possession by any person, other than a public officer, of any such weapon concealed or furtively carried on the person shall be presumptive evidence of carrying, concealing, or possessing with intent to use the same. (R. L. '05 § 4996, G. S. '13 § 8770, amended '17 c. 243 § 1)

The statute is directed against the carrying of a concealed weapon with intent to use against others, though the particular ones are not then identified in the mind of the accused. 163-317, 203+988

The burden of proving the intent is upon the state, and the presumption declared by the statute is not controlling nor conclusive. 163-317, 203+989.

**10256. Selling to minors**—No person, in any city in this state, shall sell, give, loan or in any wise furnish any firearm or ammunition to a minor under the age of eighteen years without the written consent of his parents or guardian, or of a police officer or magistrate of such city. ('17 c. 244 § 1)

**10257. Penalty**—Any person who violates any provision of this act is guilty of a misdemeanor. ('17 c. 244 § 1)

**10258. Blank cartridge firearms, certain firecrackers, etc., prohibited**—Every person who shall manufacture, use, sell or keep for sale within this state any blank cartridge pistols, blank cartridge revolver or other blank cartridge firearms, blank cartridges, caps containing dynamite, and firecrackers exceeding three inches in length, and exceeding one-half of an inch in diameter, shall be guilty of a misdemeanor. ('07 c. 28 § 1) [8771]

**10259. Negligence in respect to fire**—Every person who shall negligently or carelessly set on fire, or cause to be set on fire, any woods, prairie, or other combustible material, whether on his own land or not, by means whereof the property of another shall be endangered, or who shall negligently suffer any fire upon his own lands to extend beyond the limits thereof, shall be guilty of a misdemeanor. (4997) [8772]

**10260. Obstructing attempts to extinguish fires**—Every person who, at the burning of any building, shall be guilty of any disobedience to lawful orders of a public officer or fireman, or of resistance to, or interference with, the lawful efforts of any fireman or company of firemen to extinguish the same, or of disorderly conduct likely to prevent the same from being extinguished, or who shall forbid, prevent, or dissuade others from assisting to extinguish the same, shall be guilty of a gross misdemeanor. (4998) [8773]

**10261. Engineers who cannot read**—Every person who, as an officer of a corporation or otherwise, shall knowingly employ, as an engineer or engine driver to run locomotives or trains on any railway, a person who cannot read the time-tables and ordinary handwriting, and every person who, being unable to read

the time-tables of the road and ordinary handwriting, shall act as an engineer or run a locomotive or train on any railway, shall be guilty of a gross misdemeanor. (4999) [8774]

**10262. Intoxication of employees on trains and boats**—Every person who, being employed upon any railway as engineer, conductor, baggage master, brakeman, switch tender, fireman, bridge tender, flagman, or signal man; or person having charge of stations, starting, regulating, or running trains upon a railway; or person employed as captain, engineer, or other officer of a vessel propelled by steam—shall be intoxicated while engaged in the discharge of any such duties, shall be guilty of a gross misdemeanor. (5000) [8775]

**10263. Failure to ring bell, etc.**—Every engineer, driving a locomotive on any railway, who shall fail to ring the bell or sound the whistle upon such locomotive, or cause the same to be rung or sounded, at least eighty rods from any place where such railway crosses a traveled road or street, on the same level (except in cities), or to continue the ringing of such bell or sounding of such whistle at intervals until such locomotive and the train thereto attached shall have completely crossed such road or street, shall be guilty of a misdemeanor. (5001) [8776]

49-245, 51+1044; 59-458, 61+558; 61-78, 63+253; 61-321, 63+742; 68-38, 70+791; 72-47, 74+898, 80+628; 100-309, 111+281; 113-517, 130+8; 191+819.

Record examined in reference to collision between train and automobile at highway crossing and held: Province of jury, on conflicting evidence, to determine whether statutory signals were given. 159-308, 199+3.

The driver of an automobile, approaching a railway crossing under conditions obstructing his view of an approaching train, who omits all precautions for his own safety on the assumption that no train is due, is guilty of contributory negligence as a matter of law. 159-499, 199+562.

High speed may not in itself constitute actionable negligence, but may be such when considered in connection with absence of statutory warnings or safety devices at dangerous and much-used crossings in a village. The evidence justifies findings that negligence of driver of automobile in which decedent was riding was not sole proximate cause of latter's death. The contributory negligence of decedent was a jury question. The driver and decedent were not engaged in a joint enterprise at the time of the accident, so as to impute the driver's negligence to the latter. 160-471, 200+740.

The evidence made a question for the jury as to whether the statutory warnings were given for the crossing. 162-365, 203+47.

**10264. Other violations of duty**—Every engineer, conductor, brakeman, switch tender, train dispatcher, or any other officer, agent, or servant of any railway company, who shall be guilty of any wilful violation or omission of his duty as such officer, agent, or servant, by which human life or safety shall be endangered, for which no punishment is specially prescribed, shall be guilty of a misdemeanor. (5002) [8777]

**10265. Liability of persons handling steamboats or steam boilers**—Every person who shall apply, or cause to be applied, to a steam boiler a higher pressure of steam than is allowed by law, or by the inspector, officer, or person authorized to limit the same; every captain or other person having charge of the machinery or boiler of a steamboat used for the conveyance of passengers in the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of the boat, shall create or cause to be created an undue and unsafe pressure of steam; and every engineer or other person having charge of a steam boiler, steam engine, or other apparatus for generating or employing steam, employed in a railway, manufactory, or other mechanical works, who

shall wilfully, or from ignorance or gross neglect, create, or allow to be created, such an undue quantity of steam as to burst the boiler, engine, or apparatus, or cause any other accident, whereby human life is endangered—shall be guilty of a gross misdemeanor. (5003) [8778]

**10266. Dangerous exhibitions**—Every proprietor, lessee, or occupant of any place of amusement, or any plat of ground, or building, who shall use or allow it to be used for the exhibition of skill in throwing any sharp instrument at or toward any human being, or who shall aim or discharge, or allow to be aimed or discharged, at or toward any human being, any bow-gun, pistol, or firearm of any description, shall be guilty of a misdemeanor. (5004) [8779]

**10267. Acrobatic exhibitions**—Every proprietor, occupant, or lessee of any place where acrobatic exhibitions are held, who shall permit any person to perform on any trapeze, rope, pole, or other acrobatic contrivance, without network, or other sufficient means of protection from falling or other accident, shall be guilty of a gross misdemeanor, and for the first offense punished by a fine of two hundred and fifty dollars, and for each subsequent offense by a fine of two hundred and fifty dollars and imprisonment in the county jail for not less than three months nor more than one year. (5005) [8780]

**10268. Guarding ice cutting**—Every person cutting ice in or upon any waters wholly or partly in the state, for the purpose of removing the ice, at or before the time of commencing such cutting shall surround the cuttings and openings made with fences or guards sufficient to warn all persons of the same, and shall maintain such fence or guard until the ice has again formed in such openings to the thickness of at least six inches. Every such person who shall fail to comply with any requirement of this section shall be guilty of a misdemeanor. (5006) [8781]

147-44, 179+564; 125-168, 145+1078.

**10269. Deposit of unwholesome substances**—Every person who shall deposit, leave, or keep, on or near a highway or route of public travel, on land or water, any noisome or unwholesome substance; or who shall establish, maintain, or carry on, upon or near a highway or route of public travel, on land or water, any business, trade, or manufacture which is noisome or detrimental to the public health; or who shall deposit or cast into any lake, creek, or river wholly or partly in the state, or shall deposit upon the ice of any such lake, creek, or river, the offal from, or the dead body of, any animal—shall be guilty of a gross misdemeanor, and punished by a fine of not less than one hundred dollars, or imprisonment in the county jail for not less than three nor more than six months. (5007) [8782]

**10270. Exposing person with contagious disease**—Every person who shall wilfully expose himself or another affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his necessary removal in a manner not dangerous to the public health, shall be guilty of a misdemeanor. (5008) [8783]

**10271. Diseased sheep**—Every owner or person in charge of sheep, who shall import or drive into the state, or who shall turn out or suffer to run at large, upon any highway or uninclosed lands, or upon any lands adjoining inclosed lands, occupied by any person for pasturing sheep, any sheep having any contagious disease, or who shall sell, let, or dispose of any such sheep, knowing them to be so diseased, without first apprising the purchaser or person taking them of such

disease, shall be guilty of a gross misdemeanor, and punished by a fine of not less than fifty dollars nor more than two hundred dollars. (5009) [8784]

**10272. Glandered animals**—Every owner or person having the care and control of a horse or other animal having the glanders, who shall knowingly permit such animal to run at large, or be driven upon any highway; or who shall sell, or in any manner dispose of, the same to any other person; and every keeper of a public barn, who shall knowingly permit any horse or other animal having such disease to be stabled in such barn—shall be guilty of a misdemeanor, and be punished by a fine of not less than twenty-five dollars, or by imprisonment in the county jail for not less than ten nor more than ninety days. (5010) [8785]

**10273. Carcasses of diseased animals to be disposed of**—Every person owning or having in charge any domestic animal that has died or been killed on account of disease shall immediately bury the carcass thereof at least three feet deep in the ground or cause the same to be consumed by fire. Provided, however, that the livestock sanitary board, through its secretary and executive officer, may issue a permit to owners of rendering plants, provided such rendering plants are operated and conducted as required by law, to remove carcasses of domestic animals and fowl that have died or have been killed on account of disease, over the public highways to their plants for rendering purposes in accordance with the rules and regulations adopted by the livestock sanitary board relative to transportation, rendering, and all other provisions deemed by said board to be necessary to prevent the spread of disease. No person shall sell or offer to sell, or give away such carcass when the animal died or was killed on account of disease, nor convey the same along any public road or upon any land not his own; unless in accordance with a special permit as hereinbefore provided. Nor shall any person negligently or willfull permit diseased

animals owned or controlled by him to escape his control or to run at large. Every violation of any provision of this act shall be a misdemeanor. (R. L. '05, § 5011; G. S. '13, § 8786; amended '21, c. 486, § 1; '27, c. 218)

**10274. Impure water**—Every owner, agent, manager, operator, or any one having charge of any water-works, furnishing water for public or private use, who knowingly permits the appliances of the same to become in a filthy condition, or in such condition that the purity and healthfulness of the water supplied by reason thereof becomes impaired, shall be guilty of a felony, and punished by imprisonment in the state prison for not more than ten years. (5012) [8787]

**10275. Careless distribution of drugs, etc.**—That no person, or persons, either directly or indirectly, by agent or otherwise, shall scatter, distribute or give away any samples of any medicine, drugs or medical compounds, salve or liniment of any kind unless the same is delivered into the hands of an adult person, or mailed to such persons through the regular mail service. ('05 c. 33 § 1) [8788]

**10276. Penalty**—Any person violating any provision of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail for a term not to exceed ninety days. ('05 c. 33 § 2) [8789]

**10277. Common drinking cups in public places**—In order to prevent the spread of communicable diseases, the use of common drinking cups in public places, public conveyances and public buildings, is hereby prohibited. ('13 c. 61 § 1) [8790]

**10278. Penalty**—Whoever violates the provisions of this act shall be deemed guilty of a misdemeanor and be liable to a fine not exceeding twenty-five dollars (\$25.00) for each offense. ('13 c. 61 § 2) [8791]

CHAPTER 100

CRIMES AGAINST THE PUBLIC PEACE

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punished by a fine of not less than five dollars nor more than fifty dollars. (5013) [8792]

**10280. "Riot" defined**—Whenever three or more persons, having assembled for any purpose, shall disturb the public peace by using force or violence to any other person or to property, or shall threaten or attempt to commit such disturbance, or to do an unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they shall be guilty of a riot. (5014) [8793]

**10281. Riot, how punished**—Every person who shall be guilty of riot, or of participating therein, by being present, or by instigating, promoting, or aiding the same, shall be punished as follows:

1. If the purpose of the assembly, or of the acts done, threatened, or intended by the persons engaged, shall be to resist the enforcement of a statute of this state or of the United States, or to obstruct any public officer of this state or the United States in serving or executing any process or other mandate of a court, or in the performance of any other duty, or if at the time of the riot the offender shall carry firearms or any other dangerous weapon, or shall be disguised, by

**10279. Disturbing meetings—Disorderly conduct**—Every person who, without authority of law, shall willfully disturb any assembly or meeting not unlawful in its character, shall be guilty of a misdemeanor, and

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Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,  
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and  
amendatory, and notes showing repeals, together with annotations from the  
various courts, state and federal, and the opinions of the Attorney  
General, construing the constitution, statutes, charters  
and court rules of Minnesota together with digest  
of all common law decisions.



Edited by  
**William H. Mason**  
*Assisted by*  
**The Publisher's Editorial Staff**

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Coroner possesses considerable discretion in performance of his duties and is the only person that can hold an inquest, though mandamus might lie to compel him to hold an inquest in a proper case. Op. Atty. Gen. (103f), Jan. 29, 1935.

#### SABBATH BREAKING, ETC.

##### 10234. Definitions.

There is no statutory provision prohibiting distribution of campaign cards on Sunday. Op. Atty. Gen. (627f-2), May 11, 1934.

**10235. Things prohibited—Exceptions.**—All horse racing, gaming and shows; all noises disturbing the peace of the day; all trades, manufacturers, and mechanical employments, except works of necessity performed in an orderly manner so as not to interfere with the repose and religious liberty of the community; all public selling or offering for sale of property, and all other labor except works of necessity and charity are prohibited on the Sabbath day:

Provided, that meals to be served upon the premises or elsewhere by caterers, prepared tobacco in places

other than where intoxicating liquors are kept for sale, fruits, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community, including the usual shoe shining service; but keeping open a barber shop or shaving and hair cutting shall not be deemed works of necessity or charity, and nothing in this section shall be construed to permit the selling of uncooked meats, groceries, clothing, boots, or shoes. Provided, however, that the game of baseball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose and comfort of the community, may be played between the hours of one p. m. and six p. m. on the Sabbath day. (R. L. '05, §4981; '09, c. 267, §1; G. S. '13, §8753; Apr. 23, 1929, c. 308, §1; Apr. 5, 1935, c. 129.)

Farmers may sell products on their properties near highways on Sundays. Op. Atty. Gen., Aug. 8, 1933.

## CHAPTER 99

### Crimes Against Public Health and Safety

#### 10241. Public nuisance defined.

Act making possession of foul, offensive or injurious substance, compound or gas with wrongful intent a gross misdemeanor. Laws 1931, c. 86.

Logging railroad over highway under Mason's Minn. Stat. 1927, §25558-1, etc., is not a public nuisance under this section. 174M305, 219NW172.

A newspaper business conducted in violation of §§10123-1 to 10123-3 is a public nuisance. 174M457, 219NW770.

Finding that school district was negligent in exposing school teacher to tuberculosis, sustained by evidence, but there was not sufficient evidence to show that it maintained a nuisance by its failure to make the school building sanitary, and it was not liable for damages under §3098, 177M454, 225NW449.

Landowner removing rock on land supporting embankment for state highway is guilty of maintaining a public nuisance and is guilty of a misdemeanor. State v. Nelson, 189M87, 248NW751. See Dun. Dig. 7240n, 58.

Patch of ice on walk formed by melting of snow on cornice was not a public nuisance, for which building owner would be liable. Mesberg v. C., 191M393, 254NW597. See Dun. Dig. 6845.

Section 5015-4 giving railroad and warehouse commission authority to require auto transportation company to maintain suitable depots, does not oust a city or village of jurisdiction to enjoin maintenance of a depot if it constitutes a nuisance. Village of Wadena v. F., 194M146, 260NW221. See Dun. Dig. 6752.

A truck warehouse and depot, located in Wadena, Minn., a block and a half from main business street and within a block of a public garage, a smiliar truck depot, a large warehouse, a furniture store and undertaking parlor, and on street running directly from railroad depot to main business street, is not a nuisance, either public or private. Id. See Dun. Dig. 7244.

Trap door in lavatory in restaurant held not a nuisance, nor so faulty in design or construction that landlord could be held responsible for creation of an unreasonable risk to patrons of lessee. Lyman v. H., 203M225, 280NW862. See Dun. Dig. 5869(39).

Right to use a highway extends only to its use for communication or travel, and members of a labor union have no right to park an automobile on highway in night time for the purpose of signaling and stopping trucks, and such conduct constitutes a public nuisance and is a crime against order and economy of the state. Hanson v. H., 202M381, 279NW227. See Dun. Dig. 4168.

Violation of statute does not give a private individual a cause of action unless he has suffered some special damage. Id. See Dun. Dig. 7285.

Jury might reasonably find that violation of plaintiff's rights was proximate cause of damage where evidence would support findings that plaintiff was traveling at a lawful speed, turned into left lane of highway to pass a truck ahead of him in a lawful manner, was compelled to turn back into right lane because of defendant's obstruction of highway, and that as a result his truck collided with other truck and was damaged. Id. See Dun. Dig. 4168, 7002.

Where injury complained of is caused by defendant's intentional invasion of plaintiff's right of unobstructed travel on a public highway, plaintiff's contributory negligence is no defense. Id. See Dun. Dig. 4168.

When a small loan business, catering to the large class of the poor and necessitous wage earners, is so conducted

that in every loan made usury statute is flagrantly and intentionally violated, and there is no adequate or effective remedy which borrowers are willing or able to use to obtain redress for violation, it constitutes a public nuisance which may be enjoined. State v. O'Neil, 286NW316. See Dun. Dig. 7240.

Owner of private lake cannot construct and maintain a channel to a public lake if it injuriously affects the public lake. Op. Atty. Gen., Sept. 26, 1929.

A misdemeanor. Op. Atty. Gen., June 20, 1930. Villages may refer buildings which are life and limb hazards to persons on sidewalks to state fire marshal or deal with owners thereof under nuisance statute. Op. Atty. Gen. (477b-20), Mar. 23, 1937.

Nuisance maintained by tenants by throwing of refuse on property forfeited to state for delinquent taxes may not be abated in proceedings against the state or tax commission, but may be corrected by criminal or civil proceedings against tenants. Op. Atty. Gen. (133b-2), May 22, 1937.

Council of Belle Plaine has no authority to enact ordinance requiring filling stations to close at night. Op. Atty. Gen. (477b-20), Aug. 25, 1937.

Automobile or general junk yards within a village are not a nuisance per se and may not be prohibited, though they may be regulated. Op. Atty. Gen. (477b-20), May 11, 1938.

Where walls of a vault under sidewalk are in such condition as to necessitate filling to protect new walk, doorways and window frames below sidewalk level may be declared a nuisance and property owners be compelled to fill them to protect inside of building and support walk. Op. Atty. Gen. (480), Aug. 4, 1938.

Whether a large sign on a small parcel of land at intersection of street constitutes a public nuisance is a question of fact. Op. Atty. Gen. (396c), Aug. 11, 1938.

If a hog feeding ranch is dangerous to health and constitutes a nuisance, nuisance may be abated and criminal proceedings instituted. Op. Atty. Gen. (225j), Dec. 31, 1938.

(3).

Op. Atty. Gen., Jan. 24, 1934; note under §2615(1).

City council may not grant a permit to erect a permanent outside stairway over a sidewalk. Op. Atty. Gen. (63b-17), June 23, 1938.

#### 10242. Itinerant carnivals prohibited.

174M457, 219NW770.

**10245. Maintaining or permitting building as a nuisance.**

Owner of private lake cannot construct and maintain a channel to a public lake if it injuriously affects the public lake. Op. Atty. Gen., Sept. 26, 1929.

#### 10250. Adulteration or imitation of foods, etc.

Whether milk was free from adulteration held question for jury. 174M320, 219NW159.

#### 10255. Deadly weapons.

There was no fatal variance where information charged carrying of a revolver and proof showed weapon to be an automatic pistol. 176M238, 222NW925.

There was no error in refusing to hold that weapon was not loaded nor admitting it in evidence against objection that, because the prosecuting witness had by force taken it from defendant, it would virtually be com-

elling defendant to furnish evidence against himself. 176M238, 222NW925.

The question of criminal intent of defendant in carrying automatic pistol, held so far doubtful as to require new trial. 176M238, 222NW925.

Does not prohibit the use or possession of a pistol in the absence of an intent to use it against another. *Clarine v. A.*, 182M310, 234NW295. See Dun. Dig. 10200a (2).

A father who furnished him with the pistol cannot be held liable for an accidental shooting by his son, in the absence of evidence that, because of youth, mental deficiency, recklessness, or other cause, it was unsafe to intrust the son with the weapon, and that the father was chargeable with knowledge of that fact. *Clarine v. A.*, 182M310, 234NW295. See Dun. Dig. 10200a.

A village constable has right to carry firearm. *Op. Atty. Gen.*, Feb. 10, 1933.

Agent of Minnesota society for the prevention of cruelty is a public officer who may carry a concealed weapon. *Op. Atty. Gen.* (201a-2), July 6, 1934.

There is no provision of law providing for permit to motor express service to carry guns for protection of cargo. *Op. Atty. Gen.* (201a-1), Aug. 2, 1934.

**10255-1. Definitions.**—(a) Any firearm capable of loading or firing automatically, the magazine of which is capable of holding more than twelve cartridges, shall be a machine gun within the provisions of this Act.

(b) Any firearm capable of automatically reloading after each shot is fired, whether firing singly by separate trigger pressure or firing continuously by continuous trigger pressure; which said firearm shall have been changed, altered or modified to increase the magazine capacity from the original design as manufactured by the manufacturers thereof, or by the addition thereto of extra and/or longer grips or stocks to accommodate such extra capacity, or by the addition, modification and/or attachment thereto of any other device capable of increasing the magazine capacity thereof, shall be a machine gun within the provisions of this Act.

(c) A twenty-two caliber light sporting rifle, capable of firing continuously by continuous trigger pressure, shall be a machine gun within the provisions of this Act. But a twenty-two caliber light sporting rifle, capable of automatically reloading but firing separately by separate trigger pressure for each shot, shall not be a machine gun within the provisions of this Act and shall not be prohibited hereunder, whether having a magazine capacity of twelve cartridges or more. But if the same shall have been changed, altered, or modified, as prohibited in section one (b) hereof, then the same shall be a machine gun within the provisions of this Act. (Act Apr. 10, 1933, c. 190, §1.)

**10255-2. Application.**—This Act shall not apply to sheriffs, coroners, constables, policemen or other peace officers, or to any warden, superintendent or head keeper of any prison, penitentiary, county jail or other institution for retention of any person convicted of or accused of crime, while engaged in the discharge of official duties, or to any public official engaged in the enforcement of law; nor to any person or association possessing a machine gun not useable as a weapon and possessed as a curiosity, ornament or keepsake; when such officers and persons and associations so excepted shall make and file with the Bureau of Criminal Apprehension of this state within 30 days after the passage of this Act, a written report showing the name and address of such person or association and the official title and position of such officers and showing a particular description of such machine gun now owned or possessed by them or shall make such report as to hereinafter acquired machine guns within 10 days of the acquisition thereof; nor to any person legally summoned to assist in making arrests or preserving peace, while said person so summoned is engaged in assisting such officer; nor shall this Act apply to the armed forces of the United States or of the State of Minnesota. (Act Apr. 10, 1933, c. 190, §2.)

**10255-3. Machine guns prohibited.**—Any person who shall own, control, use, possess, sell or transport

a machine gun, as herein defined, in violation of this Act, shall be guilty of a felony. (Act Apr. 10, 1933, c. 190, §3.)

**10256. Selling to minors.**

There is no prohibition against sale of firearms except to minors. *Op. Atty. Gen.*, Jan. 25, 1934.

Person selling ammunition to one over age of 18 years need not secure written consent of parents or guardian. *Op. Atty. Gen.* (201a-3), Dec. 1, 1938.

**10259. Negligence in respect to fire.**

For civil liability, see §4031-28.

**10263. Failure to ring bell, etc.**

Liabilities for death resulting from failure to give signals. 173M7, 216NW245.

Failure to give crossing signal as proximate cause of collision at crossing. 173M322, 227NW45.

Evidence of failure to give signal. 179M480, 229NW 797.

Statutory signals for trains approaching crossing are immaterial when and where train is actually occupying crossing when automobile runs into side thereof. *Crosby v. G.*, 187M263, 245NW31. See Dun. Dig. 8175.

An ordinance prohibiting unnecessary ringing of bells and blowing of whistles on locomotives within corporate limits of a city is reasonable and valid. *Larson v. L.*, 204M80, 282NW669. See Dun. Dig. 8117.

Under a city ordinance providing that a railroad shall not ring bell or blow a whistle except against immediate threatened danger, a railroad is not negligent because of failure alone to blow a whistle or ring a bell, but it is a question of fact whether, in exercise of due care, it is duty of railroad to give such warning against such danger. *Id.* See Dun. Dig. 8175.

Where a freight train of 86 cars is passing over a highway crossing in night time and an automobile, traveling from 35 to 45 miles per hour, runs into nineteenth car from the end, failure to sound statutory bell and whistle signals cannot be considered a proximate cause of collision. *Sullivan v. B.*, 286NW350. See Dun. Dig. 8197.

**10267-1. Walkathons, etc., prohibited.**—It shall be unlawful for any person or persons, firm or corporation, to advertise, operate, maintain, attend, promote or aid in the advertising, operating, maintaining or promoting any mental or physical endurance contest exhibition, performance or show in the nature of a "marathon," "walkathon," "skatathon," or any other such endurance contest of a like or similar character or nature, whether under that or other names, whether or not an admission is charged, for a period longer than 24 hours. Nothing in this Act shall apply to the continuance of bicycle riding contests of no longer duration than six days, the ordinary amateur or professional athletic events or contests, or high school, college, and intercollegiate athletic sports. (Act Apr. 22, 1935, c. 228, §1.)

Whether or not endurance contest violates act is question of fact. *Op. Atty. Gen.* (802a-24), June 24, 1936.

"Roller Derby" in which prizes are based upon distance, speed and skill rather than upon actual endurance are not prohibited. *Op. Atty. Gen.* (802c), June 11, 1937.

**10267-2. Violations a misdemeanor.**—Any person or persons, firm or corporation participating in, attending or promoting any such contest and violating any of the provisions of this Act, shall be guilty of a misdemeanor. (Act Apr. 22, 1935, c. 228, §2.)

**10269-1. Throwing or scattering garbage; powers of municipalities.**—It shall be unlawful for any person to cause or permit garbage or tin cans to be thrown or scattered upon any street, alley, highway, parkway, boulevard, or upon any vacant or occupied real estate, or to fail, neglect or refuse to remove the same from any such real estate. The term "garbage" shall be construed to mean kitchen offal and all other refuse matter composed of either animal or vegetable substance. The governing body of any county, city, village or town shall have authority by ordinance, resolution or by-law to prohibit any such acts and to prescribe penalties for violation thereof as herein provided. (Apr. 21, 1937, c. 325, §1; July 14, 1937, Sp. Ses., c. 46, §1.)

**10269-2. Same; municipal powers not limited; misdemeanor.**—Nothing in this act shall limit or abrogate any of the existing powers of the governing body or board of any county, city, village or town. Any person violating any of the provisions hereof

shall be guilty of a misdemeanor. (Apr. 21, 1937, c. 325, §2; July 14, 1937, Sp. Ses., c. 46, §2.)

Sec. 3 of act July 14, 1937, cited, provides that the act shall take effect from its passage.

There is no express power granted towns to regulate nuisances such as radio interference, but towns have authority to make by-laws respecting nuisances endangering public health. Op. Atty. Gen. (434B-18), March 3, 1939.

**10273. Carcasses of diseased animals to be disposed of.**—Every person owning or having in charge any domestic animal that has died or been killed on account of disease shall immediately bury the carcass thereof at least three feet deep in the ground or cause the same to be consumed by fire. Provided, however, that the livestock sanitary board, through its secretary and executive officer, may issue a permit to owners of rendering plants, located within the boundaries of Minnesota, provided such rendering plants are operated and conducted as required by law, to remove carcasses of domestic animals and fowl that have died or have been killed on account of disease, over the public highways to their plants for rendering purposes in accordance with the rules and regulations adopted by the livestock sanitary board relative to transportation, rendering, and all other provisions deemed by said board to be necessary to prevent the spread of disease. No person shall sell or offer to sell, or give away such carcass when the animal died or was killed on account of disease, nor convey the same along any public road or upon any land not his own; unless in accordance with a special permit as hereinbefore provided. Nor shall any person negligently or willfully permit diseased animals owned or controlled by him to escape his control or to run at large. Every violation of any provision of this act shall be a misdemeanor. (As amended Mar. 31, 1939, c. 104.)

**10278-1. Peyote declared illegal.**—No person shall use, sell, transport or have in possession any peyote or preparation of peyote. (Act Apr. 20, 1933, c. 333, §1.)

**10278-2. Violation a misdemeanor.**—The violation of this act shall be a misdemeanor. (Act Apr. 20, 1933, c. 333, §2.)

Sec. 3 of Act Apr. 20, 1933, cited, provides that the Act shall take effect from its passage.

**10278-2a. Possession of certain drugs prohibited (Cannabin, Marijuana, Hashish).**—No person shall in the state of Minnesota produce or possess the drug Cannabin, otherwise commonly known as Marijuana, Hashish, and other colloquial names, or sell or have in possession for sale or distribution, or manufacture, or cause to be prepared or manufactured, any compound, salt, derivative, or mixture thereof for use in cigarettes, cigars, liquid, confection, or in any other manner, or use or induce any person to use any such product or preparation so manufactured or prepared, or have the drug Cannabin in his possession or control for use or distribution for such purposes.

Nothing herein contained shall prohibit a duly licensed pharmacist from having Cannabis or any compound, salt, derivative, or mixture thereof, in his possession and from selling and distributing the same for medicinal purposes only; nor shall anything herein contained prohibit a wholesale dealer of drugs from having in his or its possession, and from selling and distributing, Cannabis, or any compound, salt, derivative, or mixture thereof, provided that such sale and distribution shall be made to duly licensed pharmacists only. (Act Apr. 29, 1935, c. 321, §1.)

Saved from repeal by §10455-28.

**10278-2b. Violation a gross misdemeanor.**—Any person who shall violate any provision hereof shall be guilty of a gross misdemeanor and upon conviction shall be punished as follows: for the first offense, by a fine not exceeding \$1,000.00, or by imprisonment for not exceeding one year, or by both such fine and imprisonment, and for any subsequent offense, by imprisonment for not less than one year. (Act Apr. 29, 1935, c. 321, §3.)

**10278-2c. Who may enforce act.**—Sheriffs, constables, and other police officers shall enforce the provisions of this act with or without the cooperation of the Department of Agriculture, Dairy and Food, and the Departments of Health of Cities of the First Class. (Act Apr. 29, 1935, c. 321, §4.)

Sec. 5 of Act Apr. 29, 1935, cited, provides that the act shall take effect from its passage.

**10278-3. Definitions.**—A public bathing beach as the term is used in this act, shall be taken to mean any public land, road or highway adjoining public waters, which have been or may be used for bathing or swimming, or any privately owned place which the public is permitted to frequent or use for bathing. (Act Apr. 21, 1933, c. 364, §1.)

**10278-4. Unlawful to bathe at public beaches at certain times.**—In all counties which now have or shall hereafter have a population of 450,000 or more, it shall be unlawful for any person to frequent a public bathing beach or public waters upon which the same immediately borders for the purpose of swimming or bathing, or congregating with others, or to swim or bathe or congregate thereat, between the hours of 10:30 p. m. and 5:00 a. m. of the day following. (Act Apr. 21, 1933, c. 364, §2.)

**10278-5. Ordinances to regulate beaches.**—The governing bodies or boards of all counties having a population of more than 450,000, and all cities, villages and towns situated within such counties, shall have authority by ordinance, resolution or by-law, to regulate the use of public bathing beaches and public waters immediately bordering thereon for the purpose of bathing or swimming or congregating with the others thereat, within their respective territorial limits not inconsistent herewith. (Act Apr. 21, 1933, c. 364, §3.)

**10278-6. May close beaches.**—If any such body or board shall reasonably determine that the safety, health, morals or general welfare of the public shall so require, it may by ordinance, resolution or by-law, provide that any such public bathing beach shall be closed to bathing, swimming and congregating after the hour of 9:00 p. m. or after any time between 9:00 p. m. and 10:30 p. m. of any day. (Act Apr. 21, 1933, c. 364, §4.)

**10278-7. Act not restrictive.**—Nothing in this act shall limit or abrogate any of the existing powers of any body or governing board of any county, city, village or town. (Act Apr. 21, 1933, c. 364, §5.)

**10278-8. Provisions separable.**—If any part or section of this act shall be held to be invalid, it shall not invalidate any of the other provisions hereof. (Act Apr. 21, 1933, c. 364, §6.)

**10278-9. Violation a misdemeanor.**—Any person violating any of the provisions hereof shall be guilty of a misdemeanor. (Act Apr. 21, 1933, c. 364, §7.)

**10278-11. Eradication of Indian hemp.**—The growing of Indian hemp (*cannabis sativa* L.) or Indian hemp weeds from which marihuana is derived, is hereby declared to be and the same is a public nuisance and the existence thereof is a menace to the public welfare and the growth, maintenance and propagation thereof is forbidden, except as hereinafter provided for commercial uses and by licenses issued by the commissioner of agriculture. It shall be the duty of every person owning, occupying or having charge of any premises on which such Indian hemp or Indian hemp weeds are grown or are found growing, to forthwith destroy such Indian hemp or Indian hemp weeds, except as the same may be permitted for commercial uses and by licenses hereafter issued by the commissioner of agriculture. (Act Apr. 22, 1939, c. 405, §1.)

**10278-12. Commissioner of agriculture to enforce act.**—The commissioner of agriculture is authorized and it is hereby made his duty to cause all such Indian

hemp or Indian hemp weeds within the state of Minnesota, to be eradicated, except such as are licensed in accordance with the provisions hereinafter for commercial uses. The commissioner of agriculture shall make rules and regulations relating to the most convenient and expedient method of eradicating and destroying such Indian hemp or Indian hemp weeds; and the agents and employes of his department shall have power to enforce the provisions of this act and the regulations issued hereunder, and the commissioner of agriculture or his agents and employes shall have free access at all reasonable hours to any premises to determine whether such Indian hemp or Indian hemp weeds are growing thereon, and to require reports from the owners or occupants as to the presence of such Indian hemp or Indian hemp weeds. (Act Apr. 22, 1939, c. 405, §2.)

**10278-13. To notify owner of premises.**—In pursuance of the powers hereby granted, whenever the commissioner of agriculture or his agents or employes shall have found Indian hemp or Indian hemp weeds on any premises, it shall be the duty of the commissioner of agriculture, his agents or employes as the case may be, to immediately notify or cause to be notified the owner or occupant of the premises, on which such Indian hemp or Indian hemp weeds are growing to eradicate and destroy such Indian hemp or Indian hemp weeds; such notice to be sent to such owner or occupant in such form as the commissioner of agriculture shall prescribe, and if such Indian hemp or Indian hemp weeds are not destroyed within twenty days after the mailing of such notice, if sent by registered mail, or within twenty days after delivery of such notice, if delivered by messenger, the commissioner of agriculture, his agents or employes, shall destroy or cause to be destroyed such Indian hemp or Indian hemp weeds. Whenever any owner or occupant of land to whom such a notice has been mailed or upon whom a notice has been served, fails and omits to eradicate and destroy any Indian hemp or Indian hemp weeds within the time required by this act, and such eradication and destruction of the Indian hemp or Indian hemp weeds is undertaken or caused by the commissioner of agriculture, his agents or employes, the commissioner of agriculture shall file a verified and itemized statement of the costs of all services rendered in connection with the mailing or serving of the notice and the eradication and destruction of such Indian hemp or Indian hemp weeds on each separate tract or lot of land with the county auditor or with the clerk of the city or the village in which such lands are located; and such statement shall be authority for immediate issuance by such county auditor or clerk of proper warrants to the persons named therein for the amount specified. The amount of such expenses shall constitute and be a lien in favor of the county, the village, or the city as the case may be, against the land involved, and shall be

certified to by the county auditor, the village or the city clerk, and entered by the county auditor on his tax books as a tax upon such land, and shall be collected in the same manner as other real estate taxes are collected. The amount of such expenses, when collected, shall be used to reimburse the county, the village, or the city for its expenditures in this regard. Where the lands involved are located in unorganized territory, the expense of eradicating or destroying such weeds shall be paid by the county auditor out of the general revenue fund of said county, upon the verified and itemized statement of the commissioner of agriculture, and the amount of such payment shall be entered by him on the tax books as a tax on such lands and shall constitute and be a lien in favor of such county against the lands involved, and shall be collected in the same manner as other real estate taxes are collected. (Act Apr. 22, 1939, c. 405, §3.)

**10278-14. Growing for commercial purpose—Licenses.**—Growing or maintenance of Indian hemp or Indian hemp weeds is permitted only for commercial uses as hereinafter defined. Commercial uses are such adaptations of Indian hemp or Indian hemp weeds as are necessary and proper for the manufacture of rope, sacks, and other sisal hemp products and such other non-injurious commercial products, including the manufacture of batts, yarn, thread, cordage, merchandise, cloth, and such other products as may be made from linen fiber, as have been or may be developed; submitted to the commissioner, and approved by him. The commissioner of agriculture is hereby authorized and it shall be his duty to license and authorize the growing of Indian hemp or Indian hemp weeds when the derivatives thereof are to be used solely for the commercial uses herein defined. Any person desiring to grow Indian hemp or Indian hemp weeds for commercial purposes as herein defined, shall file an application for a license therefor with the commissioner of agriculture, giving a description and the area of land intended to be so used. The commissioner shall issue a license to the applicant for the growing of such Indian hemp or Indian hemp weeds for such commercial uses as are specified in the application and license, and the growing of Indian hemp or Indian hemp weeds, pursuant to the terms of the license issued by the commissioner of agriculture shall be lawful to the extent granted by said license. (Act Apr. 22, 1939, c. 405, §4.)

**10278-15. Licensee to notify commissioner.**—Any person to whom a license for commercial growing of Indian hemp or Indian hemp weeds, shall notify the commissioner of the sale or distribution thereof, and the names of the persons to whom such Indian hemp or Indian hemp weeds are sold or distributed. (Act Apr. 22, 1939, c. 405, §5.)

**10278-16. Violation a misdemeanor.**—Any person who shall violate any provision hereof, shall be guilty of a misdemeanor. (Act Apr. 22, 1939, c. 405, §6.)

## CHAPTER 100

### Crimes Against The Public Peace

#### 10279. Disturbing meetings—Disorderly conduct.

Person picketing residence of foreman of an employer whose employees were on strike, carrying a banner, "A scab lives here" constituted disorderly conduct under city ordinance. *State v. Perry*, 196M481, 265NW302. See Dun. Dig. 2751a.

Conviction of disorderly conduct held sustained by evidence of attempt to pick up girls. *State v. Birdseye*, 198 M231, 269NW459. See Dun. Dig. 2751a.

Conduct is disorderly when it is of such nature as to affect peace and quiet of persons who may witness same and who may be disturbed or provoked to resentment thereby, probable and natural consequences of conduct being important element. *State v. Cooper*, 285NW903. See Dun. Dig. 2751a.

Defendant's conduct in carrying a large banner, some three feet in length, on each side of which was printed the words: "Unfair to Private Chauffeurs and Helpers Union," immediately in front of a private home located in an exclusive residential district, held to justify finding of disorderly conduct in that it was likely to arouse anger, disturbance or violence. *Id.* See Dun. Dig. 2751a.

#### 10280. "Riot" defined.

*Strutwear Knitting Co. v. O.*, (USDC-Minn), 13FSupp 384.

Essential elements of crime of riot are: an assemblage of three or more persons for any purpose; use of force or violence against property or persons, or an attempt or threat to use force or violence or to do any other unlawful act coupled with power of immediate execution;