CHAPTER 182

REGULATION OF EQUIPMENT AND PLACES OF EMPLOYMENT.

182.01 DANGEROUS MACHINERY; POWERS OF COMMISSION.

HISTORY. 1893 c. 7 s. 1; G.S. 1894 s. 2248; R.L. 1905 s. 1813; 1911 c. 288 s. 1; 1913 c. 316 s. 1; G.S. 1913 s. 3862; G.S. 1923 s. 4141; M.S. 1927 s. 4141.

A servant has no right to neglect to exercise ordinary care for his own safety against open and patent dangers discoverable by the use of his senses upon the assumption that the master has done his duty; and the evidence in this case proves conclusively either that plantiff was guilty of contributory negligence or that he voluntarily assumed the risks which resulted in his injury. Anderson v Nelson, 67 M 79, 69 NW 630.

The evidence was sufficeint as to defendant's negligence, and that this negligence was the cause of the injury to plaintiff. The question of plaintiff's contributory negligence was for the jury. Truke v South Park Foundry, 68 M 305, 71 NW 276.

The landlord left a wheel hole unguarded. He leased the building, and an employee of the lessee was injured because the wheel hole was not protected. The initial duty rested upon the landlord to guard the wheel hole before using the building or leasing it to another, and he is therefore liable to plaintiff who was injured by his neglect to comply with the statute. Tvedt v Wheeler, 70 M 161, 72 W 1062.

At common law the owner or occupant of a building owed no duty to keep it in a reasonably safe condition for members of a public fire department who might in the exercise of their duties have occasion to enter the building. Hamilton v Mpls. Desk Co. 78 M 3, 80 NW 693.

The hood or blower to a revolving cylinder with knives in a planning machine was worn so it did not fit closely. It was not a proper protection to dangerous machinery as required by statute, and the defendant is liable. Jaroszeski v. Osgood & Blodgett, 80 M 393, 83 NW 389.

Where the claim for personal injuries is based upon the master's promise to guard a defective appliance, and if the defendant, pursuant to its promise, erected a guard a certain time before the action, but the guard so erected was insufficient which fact the plaintiff well kne wyet continued to use the appliance so adjusted without complaint, he voluntarily assumed the risk of operating the appliance. Lally v Crookston Lbr. Co. 82 M 407, 85 NW 157.

If the person charged with the duty of guarding machinery as required by statute omits to do so, he is chargeable with negligence and liable to any employee injured thereby although he could not have reasonably anticipated injury in the precise way it actually occurred. Christianson v Northwestern Compo-Board Co. 83 M 25, 85 NW 826.

The plaintiff employed in a sawmill was guilty of such contributory negligence as to preclude recovery of damages. He took an unnecessary risk. Parker v Pine Tree Lbr. Co. 85 M 13, 88 NW 261.

The question of defendant's negligence in failing to guard certain machinery in its sawmill and of the plaintiff's contributory negligence or assumption of risk were for the jury as was also the question as to whether or not from the nature of the machinery it could have or should have had further protection. Walker v Grand Forks Lbr. Co. 86 M 328, 290 W 573.

In case of an injury to a boy 18 years of age the question of plaintiff's assumption of risk was for the jury under all the circumstances disclosed at the trial. Spoonick v Backus-Brooks Co. 89 M 354, 94 W 1079.

Employment of a person between 14 and 16 years of age in a sawmill, the owner not having procured a certificate, is illegal; and if injury results to the employee from a failure to properly guard dangerous machinery, the facts make a prima facie case for damages. Perry v Tozer, 90 M 431, 97 NW 137; Erickson v N. W. Paper, 95 M 356, 104 NW 291.

The duty to guard dangerous machinery imposed upon the employer has not changed the rules of law as to contributory negligence or assumption of risk. In this case the plaintiff contributed to his own injury received from hazards which he had assumed incidental to the operation of the machine, and the mill owner is not liable. Swenson v Osgood, 91 M 509, 98 NW 645.

Where the party injured was an expert workman and not only knew that a suitable device had been furnished by the master for the purpose of covering such machinery but also understood the risks incident to its use in an unguarded condition, the workman assumes all risk of injury if he neglects to attach the device. McGinty v Waterman, 93 M 242, 101 NW 300.

The evidence does not conclusively prove that the defendants were guilty of negligence in failing to guard certain machinery in their mill. The evidence was not sufficient to show that further safety device was required. Seely v Tennant, 104 M 354, 116 NW 648.

A master is not excused from complying with the statute by the mere fact that such machinery had not been manufactured with a guard or that it had not been customary for owners to use guards on that type of machine. Callopy v Atwood, 105 M 80, 117 NW 238; Johnson v Atwood, 101 M 325, 112 NW 262.

A coal shoveler at an elevator was in charge of an engine operating it and went into a small engine room to remedy something "which didn't sound right", and was hurt. Evidence that it was practicable and feasible to have guarded this machinery so as to protect the servant was admissible, and the four walls of the engine house was not sufficient to comply with the statute. Rase v Mpls. St. Paul & S. St. M. Ry. Co. 107 M 260, 120 NW 360.

Whether the feeding trough in front of which the operator stood was sufficient protection to guard the shaft to a wood sawing machine or whether any further guard was necessary to comply with the statute was a question of fact for the jury. Kerling v Van Dusen, 108 M 51, 121 NW 227; Kerling v Van Dusen, 109 M 481, 235 NW 235.

Whether unguarded dangerous machinery is so located as to menace employees in its vicinity and whether an employee having knowledge of the condition assumes the risk of working in its vicinity are generally questions of fact for the jury. Snyder v Waldorf, 110 M 40, 124 NW 450; Falconer v Sherwood, 118 M 357, 136 NW 1039.

Whether the defendant was negligent or the deceased person was guilty of contributory negligence or assumed the risks were made by the evidence questions of fact, and the evidence relating to an unguarded shaft with protruding key thereon, sustains a verdict for the plaintiff. Thomas v Chgo. Gt. Western Ry. 112 M 360, 128 NW 297.

Where a railway track is laid across a traveled public street, a duty arises upon the part of the railroad company using it to exercise ordinary care to discover and avoid injury to persons or property rightfully on such crossing so that where a fire hose in use to extinguish a fire is cut by a railway locomotive thereby interrupting the extinguishment of the fire, it is not necessary for the owner in order to recover damages to plead or prove wanton negligence or that the engineer had actual knowledge of the hose on the crossing. Erickson v G. N. Ry. 117 M 348, 135 NW 1129.

Imposing upon all persons owning or operating dangerous machinery the duty to cover or guard the dangerous parts thereof applies to charitable associations. McInerny v St. Luke's Hospital, 122 M 10, 141 NW 837.

Where planks are used in scaffolding, the duty of the defendant to furnish suitable planks was absolute and could not be delegated. Falkenberg v Bazille, 124 M 19, 144 NW 431.

Plaintiff was not an employee of the defendant but was requested to go down into the engine room and turn off the engine. The stairway leading to the engine

room was not properly protected, and the defendant company is liable in damages. Mitton v Cargill, 124 M 65, 144 NW 434.

Deceased undertook to use a freight elevator which was unenclosed on two sides. He was an experienced man and had frequently used this elevator. He was not required to use it on this occasion but was using it for his own private purpose. He assumed the risk incident to the use of the elevator in the condition in which he found it, and the defendant is not liable. Johnson v N. P. Ry. 125 M 29, 145 NW 628.

The verdict is sustained; and the complaint and evidence examined and held to disclose a right of action for the negligent failure of defendant to warn and instruct plaintiff's intestate, an inexperienced servant, of the dangers incident to his work which were known to defendant and not known to the servant. Daily v St. Anthony Falls, 129 M 432, 152 NW 840.

The injured employee, a minor over 16 years old, was legally permitted "to be employed" and notwithstanding the illegal operation of the elevator in which she received her injury, she is included in the workmen's compensation statute, and cannot maintain an action at common law. Novack v Montgomery Ward & Co. 158 M 495, 198 NW 290.

Both defendants were negligent and liable for the death of plaintiff's intestate; the power company in stringing the wire too closely to where employees in the packing company worked, and the packing company in employing a boy under 16 in an occupation dangerous to life and limb. Weber v Barr, 182 M 486, 234 NW 682.

An employer does not owe the duty of inspecting simple tools and appliances "such as an ordinary wooden crate" handled or used by the employee in his daily work. Hedicke v Highland Springs, 185 M 79, 239 NW 896.

Plaintiff was employed over a period of 12 years by co-partnership defendants within and upon working premises wherein silica dust and other harmful particles reached his lungs causing silicosis, later developing into tuberculosis. The evidence justified the jury in finding liability against those employers who had failed to meet statutory requirements relating to ventilation of premises. Golden v Lerch, 203 M 211, 281 NW 249.

The master is not required to supply the best, newest, or safest appliances nor is he bound to insure the safety of the place or of the machinery he furnishes. His duty is discharged if he exercises ordinary care to furnish a place and appliances reasonably safe and suitable. Glenmont v Roy, 126 F 524.

Simple tool doctrine. 18 MLR 435.

Occupational diseases. 22 MLR 77.

Employer's duty. 22 MLR 85.

182.02 BELT SHIFTERS, LOOSE PULLEYS, EXHAUST FANS.

HISTORY. 1893 c. 7 s. 2; G.S. 1894 s. 2249; R.L. 1905 s. 1814; 1911 c. 288 s. 2; 1913 c. 316 s. 2; G.S. 1913 s. 3863; G.S. 1923 s. 4142; M.S. 1927 s. 4142.

The plaintiff's arm was broken while he was attempting to throw by hand a moving belt in the defendant's grain elevator. The question of the defendant's negligence, the plaintiff's contributory negligence, and whether the plaintiff assumed the risk was for the jury. Hahn v Plymouth Elevator, 101 M 58, 111 NW 841.

Plaintiff, employee in the grain elevator, was injured by his hand being caught between a belt and pulley while attempting with his hands to place the belt upon the pulley. Held, that the defendant is liable because he had not furnished a belt shifter, or other appliance for shifting the belt. Sorseleil v Red Lake Falls Milling Co. 111 M 275, 126 NW 903.

The fact that it is inconvenient, involves expense, and necessitates additional space to provide and use belt shifters or loose pulleys does not conclusively show that it is not practicable to do so. Skarpmoen v Cloquet Box, 114 M 278, 130 NW 1106.

182.03 COMPULSORY COMMUNICATION BETWEEN WORKROOMS.

HISTORY. 1913 c. 316 s. 3; G.S. 1913 s. 3864; 1919 c. 107 s. 1; G.S. 1923 s. 4143; M.S. 1927 s. 4143.

182.04 PRIME MOVER, DISTANCE FROM FLOOR.

HISTORY. 1913 c. 316 s. 4; G.S. 1913 s. 3865; G.S. 1923 s. 4144; M.S. 1927 s. 4144.

182.05 MANUFACTURE AND SALE OF UNGUARDED MACHINES PROHIBITED.

HISTORY. 1913 c. 316 s. 5; G.S. 1913 s. 3866; G.S. 1923 s. 4145; M.S. 1927 s. 4145.

Assuming that there was sufficient evidence to go to the jury upon the question whether respondent sold a corn husker which did not comply with the statute, the court is sustained in that it dismissed the action, for it clearly appears that the violation of the statute, if such there were, was not the proximate cause of the injury. The plaintiff was guilty of contributory negligence. Curwen v Appleton Mfg. Co. 133 M 28, 157 NW 899.

The modern tendency is away from holding as a matter of law that an employee is guilty of contributory negligence when the employer, as in this case, disobeyed a statutory command, and the employer's negligence is in this case the proximate cause of the injury. Nelson v Ziegler, 190 M 313, 251 NW 534.

182.06 RAILS AND FOOT GUARDS; STAIRWAYS.

HISTORY. 1913 c. 316 s. 6; G.S. 1913 s. 3867; G.S. 1923 s. 4146; M.S. 1927 s. 4146.

182.07 WHAT PLACES LIGHTED.

HISTORY. 1913 c. 316 s. 7; G.S. 1913 s. 3868; G.S. 1923 s. 4147; M.S. 1927 s. 4147.

The word "hatchway" has reference to openings in a floor, sidewalk, or deck, and not to the head of a stairway. Peterson v Shapiro, 171 M 408, 214 NW 269.

This section is not applicable to domestic service or agricultural labor. Dahlen v Polinsky, 195 M 470, 263 NW 602.

182.08 REMOVING SAFETY APPLIANCES.

HISTORY. 1893 c. 7 s. 8; G.S. 1894 s. 2255; R.L. 1905 s. 1820; 1913 c. 316 s. 8; G.S. 1913 s. 3869; G.S. 1923 s. 4148; M.S. 1927 s. 4148.

182.09 CHILDREN UNDER 16 NOT TO BE EMPLOYED IN CERTAIN OCCUPATIONS.

HISTORY. 1895 c. 171 s. 12; R.L. 1905 s. 1811; 1913 c. 316 ss. 9, 10; G.S. 1913 ss. 3870, 3871; G.S. 1923 ss. 4149, 4150; M.S. 1927 ss. 4149; 4150.

The plaintiff, employed as a student elevator operator working with a regular operator, was at the moment of injury operating the elevator alone. The circumstances were such that the workmen's compensation act is applicable, and the trial court did not err in dismissing the action. Pettee v Noyes, 133 M 109, 157 NW 995.

Minors whose employment is prohibited by law are not covered by the workmen's compensation act and have a remedy at common law. Westerlund v Kettle River Co. 137 M 24, 162 NW 680.

The plaintiff, a minor under 16, was injured while working at a grinder with an unguarded intake gear. His employment was not within the class "legally permitted," and he could therefore maintain this common law action. Gutmann v Anderson, 142 M 141, 171 NW 303.

Employer used elevator without guards, as provided by law, and the employee, a minor over 16 years old, was injured thereon. Held, that the language "minors who are legally permitted to work under the laws of the state" excludes from the act minors whose employment is prohibited by law. Novack v Montgomery Ward & Co. 158 M 495, 198 NW 290.

Where the employer violated the statute by failing to provide safety appliances, assumption of risk is not a defense when violation of the statute is a proximate cause of the injury. Suess v Arrowhead, 180 M 21, 230 NW 125.

182.10 CROWDING OF FLOOR SPACE PROHIBITED.

HISTORY. 1913 c. 316 s. 11; G. S. 1913 s. 3872; G.S. 1923 s. 4151; M.S. 1927 s. 4151.

182.11 PROTECTION OF HOISTWAYS, ELEVATORS.

HISTORY. 1893 c. 7 s. 4; G.S. 1894 s. 2250; 1903 c. 397; R.L. 1905 s. 1815; 1911 c. 288 s. 3; 1913 c. 316 s. 12; G.S. 1913 s. 3873; G.S. 1923 s. 4152; M.S. 1927 s. 4152.

The initial duty rested upon the defendant, the owner of the building, to guard the wheel hole of the elevator cable before using the building himself, or leasing it to another; and the owner is therefore liable to the plaintiff who was injured by his negligence to comply with the statute. Tvedt v Wheeler, 70 M 161, 72 NW 1062.

At common law the owner or occupant of a building owed no duty to keep it in a reasonably safe condition in the protection of public fire department personnel, and our statute is exclusively for the protection of employees. Hamilton v Mpls. Desk Co. 78 M 3, 80 NW 693.

The violation of a statutory duty may constitute negligence per se, but statutes imposing such duties are not to be construed so as to abrogate the ordinary rules of contributory negligence unless so worded as to leave no doubt that the legislature intended to exclude the defense. Schutt v Adair, 99 M 7, 108 NW 811.

The lessee of a building containing an elevator or hoist is charged with the statutory duty of maintaining the same with the safety device required although no such duty is imposed by the terms of the lease. Welker v Anheuser-Busch, 103 M 189, 114 NW 765.

Failure of the contractor to properly guard the hoisting apparatus in the building and non-compliance with the statute is negligence per se, but because of the evidence in this case it is for the jury to say whether defendant was guilty of negligence and plaintiff of contributory negligence. Healy v Hoy, 112 M 138, 127 NW 482.

The undisputed evidence conclusively shows that plaintiff was guilty of contributory negligence and assumed the risks. Tostason v Mpls. Threshing Machine Co. 113 M 394, 129 NW 593.

Openings left in the second floor of a barn in the process of construction, to be used for putting down hay, are not within the provisions of the statute requiring hoisting apparatus used in the construction of a building to be guarded. Johnson v Klarquist, 114 M 165, 130 NW 943.

The statute which requires the protection of hoists by the erection of barriers at each floor includes hoists erected on the outside and adjacent to a building in the process of erection. Security Trust v St. Paul Building, 116 M 295, 133 NW 861.

Failure of the defendant to furnish a proper brake for holding the freight elevator in a position for loading or failure to supply suitable means or appliances for stopping or controlling the elevator when in motion was negligence on the part of the owner, and the evidence was sufficient to sustain a verdict in favor of plaintiff. Carver v Luverne Brick Co. 121 M 388, 141 NW 488.

Plaintiff's decedent undertook to use a freight elevator which was unenclosed on two sides. He was an experienced man and had frequently used this elevator. He used it in the instant case for his own private purpose. He assumed the risk

incident to the use of the elevator in the condition in which he found it. Johnson v N. P. Ry. Co. 125 M 29, 145 NW 628.

The evidence was sufficient to justify the jury in finding that an automatic gate used in connection with an elevator shaft had been out of order for some time and failed automatically to close with the movements of the elevator, and plaintiff who fell into the shaft, received injuries resulting in his death. Plaintiff was entitled to judgment. Diebel v Wolpert Davis, 129 M 77, 151 NW 541.

A building occupied as a saloon is a store within the meaning of the statute, and the statute relating to a hatchway or trapdoor applies; but in this case the proprietor of the saloon was injured by falling into a trapdoor which should have been guarded as required by statute, the door being raised and left open by a third person. Plaintiff is not entitled to recover against such person, though the act of leaving the door open was one of negligence for the failure of compliance with the statute and is the proximate cause of the injury. Kelly v Hamm, 140 M 371, 168 NW 131.

A servant may not proceed with a common law action for negligence against the owner when it appears that he rightfully sought and obtained compensation from his employers' insurer under the workmen's compensation act. Gibbons v Gooding, 153 M 225, 190 NW 256.

The owner of the grain elevator is not liable for injuries suffered by a visitor while riding on a manlift on a Sunday when the building was not open to the public and when the servant who invited the injured person was acting beyond the scope of his authority. Holmgren v Red Lake Falls Milling Co. 169 M 268, 210 NW 1000.

The word "hatchway" has reference to openings in a floor, sidewalk, or deck, and not to the head of a stairway. Peterson v Shapiro, 171 M 408, 214 NW 269.

The elevator shaft was so located that as to an invitee it was defendant's duty to guard it. The evidence was sufficient to justify the jury in finding the defendant negligent. While section 182.11 deals exclusively with the protection of employees, defendant may still be held in a common law action. Landy v Olson, 171 M 440, 214 NW 659.

Building of special walkways along a revolving shaft for use of employees is insufficient compliance with the statute requiring guarding of machinery. Contributory negligence of grain company's employee, injured when his clothing was caught while oiling machinery on grain elevator platform, is a question for the jury in an action against the landlord as owner of the grain elevator for breach of statutory duty. Chicago v Booten, 57 F(2d) 790.

Passenger elevator owners as common carriers. 16 MLR 585.

Contributory negligence. 19 MLR 693.

182.12 SCAFFOLDS, HOISTS; DUTY OF INSPECTOR; OVERHEAD WALKS.

HISTORY. 1893 c. 7 s. 4; G.S. 1894 s. 2250; 1903 c. 397; R.L. 1905 s. 1815; 1911 c. 288 s. 3; 1913 c. 316 s. 1B; G.S. 1913 s. 3874; G.S. 1923 s. 4153; M.S. 1927 s. 4153.

Plaintiff was working on a staging while constructing a silo for the defendant. The timber which was not defective, broke. The silo and staging were built under the supervision and direction of defendant's foreman. As this accident occurred prior to the passage of Laws 1913, Chapter 316, Section 13, defendant did not owe the plaintiff the absolute duty of attempting a proper plan of construction of the staging, and having furnished the proper material was not negligent. Block v Minn. Farmers Brick Co. 128 M 71, 149 NW 954.

Plaintiff, a bricklayer employed by defendant, was injured by the collapse of a scaffold upon which he was working. The scaffold was a completed appliance furnished by the defendant. The evidence was sufficient to justify the jury in finding that the negligence of the defendant was the proximate cause of the injuries. Burch v Hoy, 131 M 475, 155 NW 767.

Plaintiff, the servant of the contractors in the erection of a building, was injured through the negligence of one of the owners of the building, and may

not proceed with a common law action but must obtain compensation through the provisions of the workmen's compensation act. Gibbons v Gooding, 153 M 225, 190 NW 256.

Where the plaintiff was injured on account of the unsafe condition of a scaffold, the burden is on the plaintiff for establishing a causal connection between the negligence and the injury but is not required to establish it by direct evidence. Dushaw v G. N. Ry. Co. 157 M 171, 195 NW 893.

Plaintiff had a right to act on the assumption that defendant would furnish safe scaffolding and remedy any unsafe condition that might arise as the building progressed. Dushaw v G. N. Ry. Co. 157 M 171, 195 NW 893.

An ordinary stepladder is a simple appliance and comes within the simple tool doctrine, relieving the employer who furnishes it from the duty of inspection. Mozey v Erickson, 18 M 419, 234 NW 687.

The middle bracket supporting the scaffold tore loose, and the evidence made it an issue for the jury. Whether the bracket was negligently spiked to the wall, and whether the scaffold was negligently permitted to be overloaded, the negligence of the foreman and servant of the owner was the negligence of the owner. Gilbert v Megears, 192 M 495, 257 NW 73.

182.13 SUBSTANTIAL CONSTRUCTION, REPAIR.

HISTORY. 1913 c. 316 s. 14; G.S. 1913 s. 3875; G.S. 1923 s. 4154; M.S. 1927 s. 4154.

182.14 BUILDINGS OF THREE STORIES IN CONSTRUCTION; PLANKING IRON OR STEEL BEAMS.

HISTORY. 1913 c. 316 s. 15; G.S. 1913 s. 3876; G.S. 1923 s. 4155; M.S. 1927 s. 4155.

182.15 WARNING NOTICES.

HISTORY. 1913 c. 316 s. 16; G.S. 1913 s. 3877; G.S. 1923 s. 4156; M.S. 1927 s. 4156.

182.16 FIRE-ESCAPES; DOORS; HAND RAILS.

HISTORY. 1893 c. 7 s. 5; G.S. 1894 s. 2252; R.L. 1905 s. 1816; 1911 c. 288 s. 4; 1913 c. 316 s. 17; G.S. 1913 s. 3878; G.S. 1923 s. 4157; M.S. 1927 s. 4157.

Section 182.16 is not applicable to domestic service or agricultural labor. Dahlen v Polinsky, 195 M 470, 263 NW 602.

182.17 FIRE-ESCAPES; COUNTERBALANCE STAIRS.

HISTORY. 1883 c. 133 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 124 s. 200; 1893 c. 7 s. 6; G.S. 1894 ss. 2253, 8007; 1895 c. 123 s. 1; R.L. 1905 s. 1817; 1911 c. 288 s. 5; 1913 c. 316 s. 18; G.S. 1913 s. 3879; 1919 c. 108 s. 1; G.S. 1923 s. 4158; M.S. 1927 s. 4158.

The plaintiff was a minor whose employment was prohibited by law, consequently is not within the provisions of the workmen's compensation act. Westerlund v Kettle River Co. 137 M 24, 162 NW 680.

182.18 NOTICES; LIABILITY OF OWNERS.

HISTORY. 1913 c. 316 s. 19; G.S. 1913 s. 3880; G.S. 1923 s. 4159; M.S. 1927 s. 4159.

182.19 PROSECUTIONS FOR VIOLATIONS; WHEN COMMENCED.

HISTORY. 1893 c. 7 s. 16; G.S. 1894 s. 2263; R.L. 1905 s. 1824; 1911 c. 288 s. 7; 1913 c. 316 s. 20; G.S. 1913 s. 3881; G.S. 1923 s. 4160; M.S. 1927 s. 4160.

The owner was not violating any ordinance or statute in doing the act which caused the injury to plaintiff. Plaintiff was in the regular employ of the defendant, and the workmen's compensation act applies. Gibbons v Gooding, 153 M 225, 190 NW 256.

182.20 INTERPRETATION AND DEFINITION OF TERMS.

HISTORY. 1913 c. 316 s. 21; G.S. 1913 s. 3882; G.S. 1923 s. 4161; M.S. 1927 s. 4161.

The evidence sustains the finding of the jury that the failure to guard machinery, an electric coal conveyor, as required by section 182.20, was the proximate cause of the injury to plaintiff, and there was no contributory negligence. Nelson v Ziegler, 190 M 313, 251 NW 534.

182.21 CORN SHREDDERS; SAFETY DEVICES TO BE APPROVED BY COMMISSION; PROHIBITING SALE.

HISTORY. 1911 c. 354 s. 1; G.S. 1913 s. 3884; G.S. 1923 s. 4163; M.S. 1927 s. 4163.

Assuming there was sufficient evidence to go to the jury upon whether respondent sold a cornhusker that did not comply with section 182.21, the court nevertheless did not err in dismissing the case, for it clearly appears that the violation of the statute, if such there were, was not the proximate cause of the injury. Curwen v Appleton, 133 M 28, 157 NW 899.

182.22 MACHINES PURCHASED PRIOR TO ACT.

HISTORY. 1911 c. 354 s. 2; G.S. 1913 s. 3885; G.S. 1923 s. 4164; M.S. 1927 s. 4164.

182.23 VIOLATIONS; PENALTIES.

HISTORY. 1911 c. 354 s. 3; G.S. 1913 s. 3886; G.S. 1923 s. 4165; M.S. 1927 s. 4165.

182.24 EMPLOYER MUST FURNISH HELMETS.

HISTORY. 1921 c. 113 s. 1; G.S. 1923 s. 4166; M.S. 1927 s. 4166.

182.25 EMPLOYEE MUST WEAR HELMET.

HISTORY. 1921 c. 113 s. 2; G.S. 1923 s. 4167; M.S. 1927 s. 4167.

182.26 APPLICATION OF SECTIONS 182.24 TO 182.28.

HISTORY. 1921 c. 113 s. 2½; G.S. 1923 s. 4168; M.S. 1927 s. 4168.

182.27 COMMISSION TO APPROVE DEVICES.

HISTORY. 1921 c. 113 s. 3; G.S. 1923 s. 4169; M.S. 1927 s. 4169.

182.28 FAILURE TO FURNISH HELMETS.

HISTORY. 1921 c. 113 s. 4; G.S. 1923 s. 4170; M.S. 1927 s. 4170.

The defendant was negligent in failing to provide a railing on a stairway leading to an engine room and in failing to guard dangerous machinery, and there was no proof of contributory negligence on the part of plaintiff. Mitton v Cargill, 124 M 65, 144 NW 434.

182.29 ALL PLACES OF EMPLOYMENT.

HISTORY. 1919 c. 491 s. 1; G.S. 1923 s. 4171; M.S. 1927 s. 4171.

Plaintiff charged that he contracted a disease caused by fumes from dynamite used in blasting a tunnel and negligence of the defendant in failing to install adequate ventilation. It was error for the trial court to strike from the answer the defense relied upon by the defendant. There should have been a hearing. There is grave doubt as to whether or not sections 182.29 and 182.32 apply to this case. Wickstrom v Thornton, 191 M 327, 254 NW 1.

An underground miner who became afflicted with a disabling ailment not covered by the compensation act through negligence of his employer in failing to properly ventilate an underground mine, an omission of a statutory duty, has an action at law for damages. Applequist v Oliver Iron Mining Co. 209 M 230, 296 NW 13.

182.30 DUTY OF EMPLOYER.

HISTORY. 1893 c. 7 ss. 4, 7; G.S. 1894 ss. 2251, 2254; R.L. 1905 s. 1818; 1911 c. 288 s. 6; G.S. 1913 s. 3887; 1919 c. 491 s. 2; G.S. 1923 s. 4172; M.S. 1927 s. 4172.

The complaint shows upon its face that plaintiff as a matter of law assumed the risk of working in ice-cold water in defendant's mine. Jurovich v Interstate Iron Co. 181 M 588, 233 NW 465.

Plaintiff sought damages for pulmonary tuberculosis alleged to have been contracted while in defendant's employ, the basis of her claim being a violation of sections 182.30, 182.31, 182.32, and 182.35. It was held that the cause of her condition was wholly within the field of speculation and conjecture, and she is not entitled to recover. O'Connor v Pillsbury Flour Mills, 197 M 534, 267 NW 507.

The evidence is sufficient to sustain a finding by the jury based upon medical testimony that the defendant violated sections 182.30 and 182.35, and the wet condition of the floor not adequately drained, and the lack of heat, was a cause of the injury. Fredrickson v Arrowhead, 202 M 12, 277 NW 345.

182.31 ARRANGEMENTS AND CONDITIONS OF INTERIOR OF BUILDINGS.

HISTORY. 1893 c. 7 s. 4; G.S. 1894 s. 2251; 1895 c. 199 s. 2; 1897 c. 278; R.L. 1905 s. 1819; G.S. 1913 s. 3890; 1919 c. 491 s. 3; G.S. 1923 s. 4173; M.S. 1927 s. 4173.

182.32 VENTILATION.

HISTORY. 1913 c. 581 s. 4; G.S. 1913 s. 3854; 1919 c. 491 s. 4; G.S. 1923 s. 4174; M.S. 1927 s. 4174.

So far as it covers rights and remedies in the field of industrial accident and occupational disease, the workmen's compensation act is exclusive of all common law remedies. But inasmuch as the act allows compensation only for occupational diseases expressly enumerated, an employee who contracts a disabling ailment not so enumerated, through negligence of the employer amounting to the omission of a statutory duty, has an action at law. Donnelly v Mpls. Mfg. Co. 161 M 240, 201 NW 305.

Assumption of risk is not a defense when violation of the statute is a proximate cause of the injury. Suess v Arrowhead, 180 M 21, 230 NW 125.

It was error for the trial court to strike the defense as frivolous. There is also grave doubt as to whether sections 182.29 and 182.32 apply as to fumes created in blasting a tunnel. Wickstrom v Thornton, 191 M 327, 254 NW 1.

Grain elevators come within the provisions of section 182.32 requiring ventilation to remove fumes and vapors where employees are required to work. A common law action will lie, there being no evidence that plaintiff's injury resulted from a compensable occupational disease. Clark v Banner, 195 M 44, 261 NW 596.

Plaintiff cannot recover where she contracted pulmonary tuberculosis because, under the conditions in this case, whether or not her condition was caused by the condition of the mill was wholly within the field of speculation and conjecture. O'Conner v Pillsbury Flour Mills, 197 M 534, 267 NW 507.

The workmen's compensation act is a substitute for the common law on the subject which it covers, and so far as it goes. It does not affect rights and wrongs

not within its purvue, or which by implication or negation are excluded. Where the injury does not fall within the workmen's compensation act, the common law remedy is not affected. Rosenfield v Matthews, 201 M 113, 275 NW 698.

The employers were liable in failing to meet statutory requirements relating to ventilation of the place where the employee was required to do his work and where the employee became ill from silicosis and tuberculosis. Golden v Lerch, 203 M 211, 281 NW 249.

An underground miner who became afflicted with a disabling disease not covered by the compensation act through negligence of his employer through omission of a statutory duty, and in failing to properly ventilate the underground mine, has an action at law for damages. Applequist v Oliver Iron Mining Co. 209 M 230, 296 NW 13.

Fatal disease of employee not having been sustained by reason of accident within coverage of employers' liability policies, the employer who paid the judgment and garnished the insurers cannot recover indemnity against said insurers. Golden v Lerch, 211 M 30, 300 NW 207.

Enforcement in Michigan of a Minnesota statute, requiring sufficient ventilation of places where workmen are employed, would conform to the "public policy" of Michigan, since the Minnesota statute is in consonance with Michigan laws of like character. Maki v Cooke, 124 F(2d) 663.

Assumption of risk as a defense where the master violates statutory duty. 15 MLR 121.

182.33 LIMITATION OF EMPLOYEES IN ROOM.

HISTORY. 1913 c. 581 s. 3; G.S. 1913 s. 3853; 1919 c. 491 s. 5; G.S. 1923 s. 4175; M.S. 1927 s. 4175.

182.34 HEAT AND VENTILATION.

HISTORY. 1919 c. 491 s. 6; G.S. 1923 s. 4176; M.S. 1927 s. 4176.

The plaintiff was wholly within the field of speculation and conjecture in her claim that because of the conditions as to heating and ventilation she had contracted pulmonary tuberculosis. She is not entitled to recover. O'Connor v Pillsbury Flour Mills, 197 M 534, 267 NW 507.

The evidence sustains the finding that the creamery violated the statutes in leaving water on the floors without draining and in failing to heat the office. There was a causal connection between such violations and tuberculosis contracted by employees. Fredrickson v Arrowhead, 202 M 12, 277 NW 345.

182.35 TOILET FACILITIES.

HISTORY. 1893 c. 7 ss. 4, 7; G.S. 1894 ss. 2251, 2254; R.L. 1905 s. 1818; 1913 c. 581 s. 5; G.S. 1913 s. 3855; 1919 c. 491 s. 7; G.S. 1923 s. 4177; M.S. 1927 s. 4177.

Violation of a statute resulting as approximate cause in injury to one for whose benefit the law was enacted results in liability unless excusable or justifiable; and the burden of proving justification is on the person who violated the law. Christopherson v Custom Laundry, 179 M 325, 229 NW 136.

182.36 SANITATION.

HISTORY. 1893 c. 7 ss. 4, 7; G.S. 1894 ss. 2251, 2254; R.L. 1905 s. 1818; 1913 c. 581 s. 5; G.S. 1913 s. 3855; 1919 c. 491 s. 7; G.S. 1923 s. 4178; M.S. 1927 s. 4178.

182.37 SEPARATE TOILETS.

HISTORY. 1893 c. 7 ss. 4, 7; G.S. 1894 ss. 2251, 2254; R.L. 1905 s. 1818; 1913 c. 581 s. 5; G.S. 1913 s. 3855; 1919 c. 491 s. 7; G.S. 1923 s. 4179; M.S. 1927 s. 4179.

182.38 CONSTRUCTION OF TOILETS.

HISTORY. 1919 c. 491 s. 10; G.S. 1923 s. 4180; M.S. 1927 s. 4180.

182.39 TOILETS IN PERFECT CONDITION.

HISTORY. 1919 c. 491 s. 11; G.S. 1923 s. 4181; M.S. 1927 s. 4181.

182.40 RATIO OF TOILETS.

HISTORY. 1919 c. 491 s. 12; G.S. 1923 s. 4182; M.S. 1927 s. 4182.

182.41 WASHING BASINS AND INDIVIDUAL TOWELS.

HISTORY. 1919 c. 491 s. 13; G.S. 1923 s. 4183; M.S. 1927 s. 4183.

182.42 DRESSING ROOMS.

HISTORY. 1893 c. 7 ss. 4, 7; G.S. 1894 ss. 2251, 2254; R.L. 1905 s. 1818; 1913 c. 581 s. 5; G.S. 1913 s. 3855; 1919 c. 491 s. 14; G.S. 1923 s. 4184; M.S. 1927 s. 4184.

182.43 EATING OF FOOD.

HISTORY. 1919 c. 491 s. 15; G.S. 1923 s. 4185; M.S. 1927 s. 4185.

182.44 SEATING CAPACITY.

HISTORY. 1889 c. 10 s. 1; G.S. 1894 s. 2244; R.L. 1905 s. 1802; G.S. 1913 s. 3837; 1919 c. 491 s. 16; G.S. 1923 s. 4186; M.S. 1927 s. 4186.

182.45 DRINKING WATER.

HISTORY. 1919 c. 491 s. 17; G.S. 1923 s. 4187; M.S. 1927 s. 4187.

182.46 WHEN OWNER RESPONSIBLE.

HISTORY. 1919 c. 491 s. 18; G.S. 1923 s. 4188; M.S. 1927 s. 4188.

182.47 ENFORCEMENT OF SECTIONS 182.29 TO 182.47.

HISTORY. 1919 c. 491 s. 19; G.S. 1923 s. 4189; M.S. 1927 s. 4189.

182.48 UNDERGROUND APARTMENTS.

HISTORY. 1909 c. 289 s. 1; G.S. 1913 s. 3888; G.S. 1923 s. 4191; M.S. 1927 s. 4191.

182.49 VIOLATIONS OF SECTION 182.48.

HISTORY. 1909 c. 289 s. 2; G.S. 1913 s. 3889; G.S. 1923 s. 4192; M.S. 1927 s. 4192.