

CHAPTER 616

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

616.01 PUBLIC NUISANCE.

HISTORY. Penal Code s. 319; G.S. 1894 s. 6613; R.L. 1905 s. 4987; G.S. 1913 s. 8759; G.S. 1923 s. 10241; M.S. 1927 s. 10241.

Section cited as reflecting, in certain instances, on the right to condemn property for public purposes, by a public service corporation. *Minnesota Canal & Power v Pratt*, 101 M 220, 112 NW 395.

Independently of statute, the jurisdiction of equity extended to abatement of nuisances long prior to the enactment of Laws 1913, Chapter 562, relating to abatement of bawdy houses, and the legislature had power, subject only to constitutional limitations, to extend such jurisdiction to the general subject matter of the act. Laws 1913, Chapter 562, is a civil act, intended to supplement the existing penal acts. *State ex rel v Ryder*, 126 M 95, 147 NW 953.

An ordinance, in providing that when three or more persons stand together so as to obstruct free passage, a police officer may arrest if, after request to move on, they neglect to do so, does not confer an arbitrary power. The gravamen of the offense is obstructing free passage and not disobeying the officer. *State v Sugarman*, 126 M 477, 148 NW 466.

It is urged that in moving the elevator before the doors thereto were provided with glass, the defendant was guilty of a criminal act and cannot invoke the compensation statute to escape the common law liability for tort. In the instant case, neither the statute nor the ordinance are applicable. *Gibbons v Gooding*, 153 M 229, 190 NW 256.

Plaintiff constructed the retaining wall and steps without a permit from the city and with notice that the city would not tolerate them. She is not entitled to an injunction against the city restraining their removal upon the ground that the city can abate them only after a judgment in its favor in an action for that purpose. *Kelty v City of Mpls.* 157 M 430, 196 NW 487.

The evidence sustains the finding that the defendant by building a driveway from the street across the sidewalk and into his lot wrongly obstructed the sidewalk. Such obstruction constituted a nuisance and it was subject to abatement by injunction. *City of Marshall v Cook*, 169 M 248, 211 NW 328.

The presence of a properly constructed and maintained logging road across a highway is not incompatible with travel on the highway, and is not a nuisance under the provisions of section 616.01. *Town of Kingherst v International Lbr. Co.* 174 M 310, 219 NW 172.

Equity has jurisdiction to enjoin and abate public nuisances. The legislature may declare publication of a defamatory newspaper a public nuisance. *State ex rel v Guilford*, 174 M 457, 219 NW 770.

A school district is a quasi public corporation; and in maintaining a school building, conducting a school, it exercises governmental as distinguished from proprietary functions. For negligence of a school district (such as exposing a teacher to tuberculosis) in the exercise of governmental functions, there is no remedy unless liability is imposed by statute. *Bang v Ind. School Dist.* 177 M 456, 225 NW 449.

Injunction granted against an owner of land enjoining him from removing rocks from land supporting an embankment for a state highway. The fact that defendant is guilty of a misdemeanor is no bar to civil relief by injunction. *State v Nelson*, 189 M 89, 248 NW 751.

MINNESOTA STATUTES 1945 ANNOTATIONS

4169

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY 616.02

In drafting this statute, the legislature did not intend to define as a nuisance a patch of ice on the sidewalk such as the one in this case. *Mesberg v City of Duluth*, 191 M 398, 254 NW 597.

The statute giving the railroad and warehouse commission authority to require auto transportation companies to maintain suitable depots, does not oust a municipality of jurisdiction to enjoin the maintenance of such depot if the same constitutes a nuisance. The evidence does not sustain a finding of a nuisance. *Village of Wadena v Folkestad*, 194 M 148, 260 NW 221.

Public welfare calls for the abatement as a nuisance that which endangers life and property. Such abatement is not a taking of private property for public use, entitling the owner to compensation. The public takes nothing. It simply causes one who maintains upon his land that which endangers life and property to remove it. *State Fire Marshal v Sherman*, 201 M 599, 277 NW 249.

Agents of a labor union have no right to wilfully park cars across the roadway to stop trucks from proceeding. Such acts are a public nuisance. Peaceful picketing on a highway is not a nuisance, nor is the act of signaling; but the acts in the instant case are "unlawful acts". *Hanson v Hall*, 202 M 395, 279 NW 227.

The trap door through which plaintiff fell was not a nuisance, nor so faulty in design or construction that the owner of the building can be responsible for the creation of an unreasonable risk to the patrons of the lessee. *Lyman v Hermann*, 203 M 225, 280 NW 862.

When a small loan company business, catering to necessitous wage earners, is so conducted that in every loan made the usury statute is flagrantly violated, and there is no adequate remedy which the borrowers are able to use to obtain redress for violation, it constitutes a public nuisance. *State ex rel v O'Neil*, 205 M 366, 286 NW 316.

Where there have been continuous and persistent violations of the liquor and gambling statutes and repeated convictions have failed to abate them, an injunction is properly granted. Equity will not enjoin a crime, but where the facts disclose a need for equitable relief, equity will impose its authority nevertheless. *State v Sportsmen's Co. Club*, 214 M 151, 7 NW(2d) 495.

Where brush is cut and is as piled, it causes snow to drift and block a town road and private driveway. The town board may use its discretion as to its removal, being responsible to abuse of discretion. Removal depends on availability of funds over what is needed for absolute essential needs. 1934 OAG 484, Jan. 24, 1934 (377a-5).

Signs on which are printed "Stop, look and listen" for commercial advertising purposes, erected on private property near a railroad crossing, if a nuisance, may be abated and enjoined. 1934 OAG 485, Feb. 7, 1934 (377a-5).

In case of unsafe building, a village may proceed under this section to abate a nuisance or refer it to the state fire marshal. OAG March 23, 1937 (477b-20).

In case of nuisance refuse, on property acquired by the state under forfeited tax sale proceedings, must be abated in proceedings had against the tenant and not the state. OAG May 22, 1937 (133b-2).

A city council has no power to permit an outside stairway over a sidewalk. OAG June 23, 1938 (63b-17).

Where a large sign, obstructing view, and near a street intersection, may be abated as a nuisance, is a question of fact. OAG Aug. 11, 1938 (225j).

The city council has power to prevent encroachments upon or obstructions in the city streets, but there is no statute granting authority to permit encroachments. In the instant case the factory, under certain conditions, may be permitted to encroach upon the street during war time. If there is any objection the matter may be raised in the courts. 1942 OAG 258, Dec. 28, 1942 (396C-3).

Liability of abutting owners and occupants. 21 MLR 713.

Private nuisance statute. 26 MLR 627.

616.02 MAINTAINING OR PERMITTING A NUISANCE.

HISTORY. Penal Code ss. 321, 322; G.S. 1894 s. 6615, 6616; R.L. 1905 s. 4988; G.S. 1913 s. 8760; G.S. 1923 s. 10245; M.S. 1927 s. 10245.

MINNESOTA STATUTES 1945 ANNOTATIONS

616.03 OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

4170

Independently of a statute, the jurisdiction of equity extended to abatement of nuisances long prior to the enactment of Laws 1913, Chapter 562, relating to abatement of bawdy houses. The 1913 act is a civil remedy, and in addition to an already existing criminal prosecution act. State ex rel v Ryder, 126 M 95, 147 NW 953.

The law controlling the sale of gasoline is intended to protect persons from mistaking gasoline for some other liquid. If disobedience to the provisions of the statute results in injury to one for whose protection the law was enacted, liability follows. Farrell v Miller, 147 M 52, 179 NW 566.

616.03 OBSTRUCTING HEALTH OFFICER.

HISTORY. Penal Code s. 324; G.S. 1894 s. 6618; R.L. 1905 s. 4990; G.S. 1913 s. 8762; G.S. 1923 s. 10247; M.S. 1927 s. 10247.

616.04 WILFUL VIOLATION OF HEALTH LAWS.

HISTORY. Penal Code s. 325; G.S. 1894 s. 6619; R.L. 1905 s. 4991; G.S. 1913 s. 8763; G.S. 1923 s. 10248; M.S. 1927 s. 10248.

616.05 ADULTERATION OR IMITATION OF FOODS.

HISTORY. Penal Code ss. 331, 332, 347; G.S. 1894 ss. 6625, 6626, 6641; 1901 c. 117; R.L. 1905 s. 4993; G.S. 1913 s. 8765; G.S. 1923 s. 10250; M.S. 1927 s. 10250.

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. State v Eidsvold, 156 M 27, 194 NW 17.

In this action for the agreed price of milk, the defense was adulteration, and a counter-claim for damage to defendant's business. Plaintiff admits certain deliveries of milk were watered and waives any charge as to them. There was no proof to sustain the counter-claim. The jury believed the plaintiff, and he recovered a verdict which the appellate court did not disturb. Gustafson v Trocke Co. 174 M 320, 219 NW 159.

616.06 SALE OF UNWHOLESOME POULTRY OR GAME.

HISTORY. 1895 c. 201; R.L. 1905 s. 4994; G.S. 1913 s. 8766; G.S. 1923 s. 10251; M.S. 1927 s. 10251.

616.07 PROTECTION OF MEAT AND FISH.

HISTORY. 1895 c. 200; R.L. 1905 s. 4995; G.S. 1913 s. 8767; G.S. 1923 s. 10252; M.S. 1927 s. 10252.

616.08 SALE OF YOUNG VEAL.

HISTORY. 1905 c. 323 ss. 1, 2; G.S. 1913 ss. 8768, 8769; G.S. 1923 ss. 10253, 10254; M.S. 1927 ss. 10253, 10254.

616.09 IMPURE WATER.

HISTORY. 1897 c. 64; R.L. 1905 s. 5012; G.S. 1913 s. 8787; G.S. 1923 s. 10274; M.S. 1927 s. 10274.

616.10 COMMON DRINKING CUP IN PUBLIC PLACES.

HISTORY. 1913 c. 61 ss. 1, 2; G.S. 1913 ss. 8790, 8791; G.S. 1923 ss. 10277, 10278; M.S. 1927 ss. 10277, 10278.

616.11 CARELESS DISTRIBUTION OF DRUGS.

HISTORY. 1905 c. 33 ss. 1, 2; G.S. 1913 ss. 8788, 8789; G.S. 1923 ss. 10275, 10276; M.S. 1927 ss. 10275, 10276.

MINNESOTA STATUTES 1945 ANNOTATIONS

4171

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY 616.22

616.12 SALE OF PEYOTE ILLEGAL.

HISTORY. 1933 c. 333 ss. 1, 2; M. Supp. ss. 10278-1, 10278-2.

616.13 POSSESSION OF CERTAIN DRUGS.

HISTORY. 1935 c. 321 ss. 1, 3, 4; M. Supp. ss. 10278-2a to 10278-2c.

616.14 BATHING BEACHES.

HISTORY. 1933 c. 364 ss. 1 to 5, 7; M. Supp. ss. 10278-3 to 10278-7, 10278-9.
Responsibility of municipalities operating beaches. 26 MLR 328.

616.15 THROWING OR SCATTERING GARBAGE.

HISTORY. 1937 c. 325 ss. 1, 2; Ex. 1937 c. 46 ss. 1, 2; M. Supp. ss. 10269-1, 10269-2.

Towns have authority to make by-laws relating to nuisances affecting the public health. OAG March 3, 1939 (424B-18).

616.16 DEPOSIT OF UNWHOLESOME SUBSTANCES.

HISTORY. Penal Code s. 348; G.S. 1894 s. 6642; R.L. 1905 s. 5007; G.S. 1913 s. 8782; G.S. 1923 s. 10269; M.S. 1927 s. 10269.

The facts in each particular case of disposal of sewage and similar determines whether or not it is noisome or unwholesome under the provisions of the act. 1934 OAG 463, May 24, 1933 (154).

The dumping, burying or burning of garbage on private premises may be a violation of this section. It is a question of fact. OAG March 6, 1944 (913a).

616.17 DISPOSITION OF CARCASSES.

HISTORY. 1897 c. 47; R.L. 1905 s. 5011; G.S. 1913 s. 8786; 1921 c. 486 s. 1; G.S. 1923 s. 10273; 1927 c. 218; M.S. 1927 s. 10273; 1939 c. 104.

616.18 GLANDERED ANIMALS.

HISTORY. 1868 c. 59 s. 1; G.S. 1878 c. 101 s. 13; 1879 c. 46 s. 1; G.S. 1894 s. 6978; R.L. 1905 s. 5010; G.S. 1913 s. 8785; G.S. 1923 s. 10272; M.S. 1927 s. 10272.

616.19 DISEASED SHEEP.

HISTORY. 1866 c. 42 s. 1; G.S. 1878 c. 101 s. 11; G.S. 1894 s. 6976; R.L. 1905 s. 5009; G.S. 1913 s. 8784; G.S. 1923 s. 10271; M.S. 1927 s. 10271.

616.20 EXPOSING PERSON WITH CONTAGIOUS DISEASE.

HISTORY. Ex. 1881 c. 78 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 98 s. 16; G.S. 1894 s. 6643; R.L. 1905 s. 5008; G.S. 1913 s. 8783; G.S. 1923 s. 10270; M.S. 1927 s. 10270.

616.21 WILFULLY POISONING FOOD OR BEVERAGES.

HISTORY. Penal Code s. 310; G.S. 1894 s. 6604; R.L. 1905 s. 5175; G.S. 1913 s. 9007; G.S. 1923 s. 10504; M.S. 1927 s. 10504.

616.22 GUARDING ICE-CUTTING.

HISTORY. Penal Code s. 346; G.S. 1894 s. 6640; R.L. 1905 s. 5006; G.S. 1913 s. 8781; G.S. 1923 s. 10268; M.S. 1927 s. 10268.

The lack of a fence or guard around a place where ice is being cut spells negligence. *Chapman v Peoples Ice Co.* 125 M 168, 145 NW 1073; *Guhl v Warroad Co.* 147 M 44, 179 NW 564.

MINNESOTA STATUTES 1945 ANNOTATIONS

616.23 OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

4172

616.23 DOORS OF PUBLIC BUILDING TO SWING OUTWARD.

HISTORY. 1875 c. 92 ss. 1, 2; G.S. 1878 c. 94 ss. 65, 66; G.S. 1894 ss. 6860, 6861; R.L. 1905 s. 5179; G.S. 1913 s. 9011; G.S. 1923 s. 10508; M.S. 1927 s. 10508.

616.24 FAST DRIVING ON BRIDGE.

HISTORY. 1873 c. 5 ss. 68, 71; G.S. 1878 c. 13 ss. 68, 71; G.S. 1894 ss. 1870, 1873; R.L. 1905 s. 5193; G.S. 1913 s. 9027; G.S. 1923 s. 10531; M.S. 1927 s. 10531.

616.25 NEGLIGENCE IN RESPECT TO FIRE.

HISTORY. Penal Code s. 336; G.S. 1894 s. 6630; R.L. 1905 s. 4997; G.S. 1913 s. 8772; G.S. 1923 s. 10259; M.S. 1927 s. 10259.

See section 88.75 as to civil liability.

616.26 KEEPING GUNPOWDER UNLAWFULLY.

HISTORY. Penal Code s. 323; G.S. 1894 s. 6617; R.L. 1905 s. 4989; G.S. 1913 s. 8761; G.S. 1923 s. 10246; M.S. 1927 s. 10246.

616.28 OBSTRUCTING ATTEMPTS TO EXTINGUISH FIRES.

HISTORY. Penal Code s. 337; G.S. 1894 s. 6631; R.L. 1905 s. 4998; G.S. 1913 s. 8773; G.S. 1923 s. 10260; M.S. 1927 s. 10260.

616.29 BOARDING MOVING ENGINES OR CARS.

HISTORY. 1879 c. 81 ss. 1 to 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 94 ss. 39 to 41; G.S. 1894 ss. 6857 to 6859; 1899 c. 91 s. 1; R.L. 1905 s. 5178; G.S. 1913 s. 9010; G.S. 1923 s. 10507; M.S. 1927 s. 10507.

One entering a railway train for the purpose of assisting an outgoing passenger is neither a trespasser nor passenger; and the extent of the company's duty, having notice of his presence is to exercise ordinary care which does not include any duty to hold the train for him to alight. He is under the protection of the statute requiring the company to give sufficient time to safely discharge passengers, but section 616.29 does not apply. Whether defendant violated its duty, and whether or not plaintiff was guilty of contributory negligence, is for the jury. *Street v Chicago, Milwaukee, 124 M 517, 145 NW 746.*

The industrial commission properly denied compensation where decedent was killed while boarding a moving train. *Brokmeier v Lamb, 170 M 143, 212 NW 187.*

Relator was within the scope of his employment, and attempting to further the interests of his employer when he was injured; and the mere fact that in attempting to board a moving train relator violated a statute and an ordinance does not defeat his right to recover compensation. *Moore v McNulty, 171 M 75, 213 NW 546.*

616.30 OBSTRUCTING ENGINES ON RAILWAYS.

HISTORY. 1868 c. 57 ss. 2, 3; G.S. 1878 c. 94 ss. 63, 64; G.S. 1894 ss. 6855, 6856; R.L. 1905 s. 5177; G.S. 1913 s. 9009; G.S. 1923 s. 10506; M.S. 1927 s. 10506.

616.31 RAILWAY CARS OBSTRUCTING ROADS AND STREETS.

HISTORY. 1883 c. 116 ss. 1 to 3; G.S. 1878 Vol 2 (1888 Supp.) c. 13 ss. 65b to 65d; G.S. 1894 ss. 1866 to 1868; R.L. 1905 s. 5192; G.S. 1913 s. 9026; G.S. 1923 s. 10530; M.S. 1927 s. 10530. [Repealed 1945 c. 220 s. 6.]

In assessing the civil liability of defendant the placing of a locomotive on a track leading from the roundhouse with its front at the edge of the street was not actionable negligence; although it obstructed the view of the main track to some extent. *Lawson v M. & St. P. 174 M 404, 219 NW 554.*

The general power of a village to lay out streets authorizes by implication an extension of a street across a railroad right of way when such extension does

MINNESOTA STATUTES 1945 ANNOTATIONS

4173

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY 616.34

not essentially impair the right of way for railroad purposes. The necessity for the taking is a legislative question not subject to judicial review. The easement here taken does not impair the property for railroad purposes. *Village of Lamber-ton v Chgo-N.W.* 196 M 597, 205 NW 801.

A railroad company is civilly liable to any person sustaining a harm separate and distinct from interference with the public right of travel caused by its intentional obstruction of a street in violation of section 616.31. See, Sections 616.01, 616.31, 616.34. *Flaherty v Gt. Northern*, 218 M 492, 16 NW(2d) 553.

616.32 ENGINEERS WHO CANNOT READ.

HISTORY. Penal Code ss. 340, 341; G.S. 1894 ss. 6634, 6635; R.L. 1905 s. 4999; G.S. 1913 s. 8774; G.S. 1923 s. 10261; M.S. 1927 s. 10261.

616.33 INTOXICATION OF EMPLOYEES ON TRAINS AND BOATS.

HISTORY. Penal Code s. 342; G.S. 1894 s. 6636; R.L. 1905 s. 5000; G.S. 1913 s. 8775; G.S. 1923 s. 10262; M.S. 1927 s. 10262.

616.34 FAILURE TO RING BELL.

HISTORY. Penal Code s. 343; G.S. 1894 s. 6637; R.L. 1905 s. 5001; G.S. 1913 s. 8776; G.S. 1923 s. 10263; M.S. 1927 s. 10263.

When, by reason of an omission or a neglect to sound the whistle or ring the bell of a locomotive as it is approaching a dangerous crossing, the vigilance of a traveller upon the wagon road is allayed, and he is led into a position or situation in which his life is jeopardized and finally lost, his lack of vigilance cannot be held to amount to culpable or concurring negligence, as a matter of law. *Hendrickson v Gt. Northern*, 49 M 245, 51 NW 1044; *Newstrom v St. P. & Duluth*, 61 M 78, 63 NW 253.

The engineer sounded his whistle within 40 paces of a road crossing. Plaintiff on horseback was injured when the horse, frightened by the whistle, ran into the side of the train. Held, that defendant was not negligent and there should be no recovery. *Heininger v Gt. Northern*, 59 M 458, 61 NW 558.

Failure to give the statutory signals at the highway crossing as required by statute was competent evidence tending to establish the negligence of the defendant in killing a colt. *Hohl v C. M. & St. P.* 61 M 321, 63 NW 742; *Libraire v M. & St. L.* 113 M 517, 130 NW 8.

The provisions of section 616.34 do not apply to private farm crossings. *Czech v Gt. Northern*, 68 M 38, 70 NW 791.

When defendant killed a cow at a crossing the verdict for the plaintiff is sustained by the evidence. No bell or whistle was sounded and there are no signal boards. *Croft v C. & G. W.* 72 M 47, 74 NW 898, 80 NW 628.

The violation of a statutory duty is the foundation of an action in favor of such persons only as belong to the class intended by the legislature to be protected by such statute. A railway company is not under duty to give the signal for the benefit of a person who is driving a team along a street parallel to the track, but who does not intend to use the nearby crossing. *Everett v Gt. Northern*, 100 M 309, 111 NW 281.

Defendant having sounded no signal, the plaintiff had right to go to the jury on the matter of his alleged contributory negligence. *McCarty v C. M. & St. P.* 154 M 350, 194 NW 819.

It is the province of the jury, on conflicting evidence, to determine whether statutory signals were given. The court properly permitted the jury to determine from the character of the crossing and the physical conditions surrounding it that the defendant did not perform its whole duty by merely giving the statutory signals. *Peterson v Gt. Northern*, 159 M 308, 199 NW 3.

The driver who omits precautions for his own safety under the assumption that no train is due, is guilty of contributory negligence. Where the noise made by plaintiff's own vehicle drowns the sound of an approaching train and its statu-

MINNESOTA STATUTES 1945 ANNOTATIONS

616.34 OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

4174

tory signals, it is the duty of the driver to come to a full stop and look and listen. *Rintala v Dul. & Winnipeg*, 159 M 499, 199 NW 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. *Molden v M. & St. P.* 160 M 471, 200 NW 740.

The evidence did not justify a finding that defendant ran its train at a negligent rate of speed or failed to keep a proper lookout, but made a question for the jury, as to whether the statutory warnings were given for the crossing. *Fink v Northern Pacific*, 162 M 365, 203 NW 47.

Whether the signals were given as required by statute was for the jury. *Setosky v Dul. South Shore*, 173 M 7, 216 NW 245; *Jones v Gt. Northern*, 178 M 322, 227 NW 45; *Franklin v M. & St. P.* 179 M 480, 229 NW 797.

The question of the giving of the statutory signals is immaterial when the automobile runs into the side of a train presently occupying the crossing. *Crosby v Gt. Northern*, 187 M 263, 245 NW 31; *Ansen v M. & St. P.* 193 M 316, 258 NW 511; *Olson v C. & G.W.* 193 M 533, 259 NW 70; *Flagg v C. & G.W.* 143 F(2d) 90; *Roth v Swanson*, 145 Fed(2d) 263.

Defendant's servants testified the signals were given, but three occupants of the automobile and one other witness testified otherwise. It was for the jury to determine. *Doll v Scandrett*, 201 M 316, 276 NW 281.

An instruction that under a city ordinance which provides that a railroad shall not ring a bell or blow a whistle except against immediate threatened danger, a railroad is not negligent because of the failure alone to blow a whistle or ring a bell, but that it is a question of fact whether, in the exercise of due care in the operation of the train, it is the duty of the railroad to give such warning against danger, correctly applies the ordinance. *Larson v Lowden*, 204 M 80, 282 NW 669.

Where a freight train is passing over a highway crossing at night and an automobile traveling at from 35 to 45 miles per hour runs into the nineteenth car from the end of an 86-car train, the failure to sound the statutory signal is not the proximate cause of the injury. *Sullivan v Boone*, 205 M 437, 286 NW 350; *Krause v C. St. P. & O.* 207 M 175, 290 NW 294; *Rhine v Duluth & Missabe*, 210 M 281, 297 NW 852.

The jury could reasonably conclude that defendant was negligent because (a) neither whistles nor bells were sounded, (b) the automatic signal system was not working, but plaintiff cannot recover because the negligent acts of defendant were not the proximate cause of the accident. *Krtinich v Duluth & Missabe*, 206 M 106, 287 NW 870.

A level and open crossing, protected by the "sawbuck," and automatic electric signals, is not to be considered extra hazardous so as to permit a jury to say that additional warnings were required. *Engberg v Gt. Northern*, 207 M 194, 290 NW 579.

Testimony of two witnesses riding in an automobile some distance from a railroad track with a strong wind blowing from them toward the approaching train, that they did not hear a crossing signal from the train, while the trainmen and passengers testified the signal was given, is insufficient to require submission to the jury of the question of defendant's negligence in failing to give the signal. *Bergman v Northern Pacific*, 14 F(2d) 586.

Signals required by Minnesota statute to be given by trains approaching a highway crossing are solely for the benefit of travelers on the highway, and are immaterial where the train is actually on and occupying the crossing when the traveler arrives at the crossing. Warnings are not required to prevent automobile drivers from running into sides of trains. *Flagg v Chgo. Gt. Western*, 143 F(2d) 90.

Where persons who were in a position to hear the signals, and who under the circumstances should have heard them if they had been given, testify that they did not hear them, their evidence is proper for the jury. *Roth v Swanson*, 145 F(2d) 262.

Ordinance requiring traffic signal. 6 MLR 250.

MINNESOTA STATUTES 1945 ANNOTATIONS

4175

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY 616.42

616.35 OTHER VIOLATIONS OF DUTY.

HISTORY Penal Code s. 344; G.S. 1894 s. 6638; R.L. 1905 s. 5002; G.S. 1913 s. 8777; G.S. 1923 s. 10264; M.S. 1927 s. 10264.

616.36 LIABILITY OF PERSONS HANDLING STEAMBOATS OR STEAM BOILERS; PENALTY.

HISTORY. Penal Code ss. 312 to 314; G.S. 1894 ss. 6606 to 6608; R.L. 1905 s. 5003; G.S. 1913 s. 8778; G.S. 1923 s. 10265; M.S. 1927 s. 10265.

616.37 DANGEROUS EXHIBITIONS.

HISTORY. Penal Code s. 345; G.S. 1894 s. 6639; R.L. 1905 s. 5004; G.S. 1913 s. 8779; G.S. 1923 s. 10266; M.S. 1927 s. 10266.

616.38 ACROBATIC EXHIBITIONS.

HISTORY. Penal Code s. 318; G.S. 1894 s. 6612; R.L. 1905 s. 5005; G.S. 1913 s. 8780; G.S. 1923 s. 10267; M.S. 1927 s. 10267.

616.39 ITINERANT CARNIVALS.

HISTORY. 1923 c. 428 ss. 1 to 3; G.S. 1923 ss. 10242 to 10244; M.S. 1927 ss. 10242 to 10244.

As to police powers of municipalities. Sections 437.07 to 437.11.

616.40 ENDURANCE CONTESTS.

HISTORY. 1935 c. 228 ss. 1, 2; M. Supp. ss. 10267-1, 10267-2.

Whether a contest violates this section is a question of fact for the jury. OAG June 24, 1936 (802a-24).

Contest based on speed and skill and not on endurance are not prohibited. OAG June 11, 1937 (802c).

616.41 DEADLY WEAPONS.

HISTORY. Penal Code ss. 333 to 335; G.S. 1894 ss. 6627 to 6629; R.L. 1905 s. 4996; G.S. 1913 s. 8770; 1917 c. 243 s. 1; G.S. 1923 s. 10255; M.S. 1927 s. 10255.

The statute is directed against carrying a concealed weapon with intent to use against others, though the particular ones are not then identified in the mind of the accused. The burden is on the state to establish the intent essential to the crime, and the presumption declared by the statute is not controlling nor conclusive. *State v Simon*, 163 M 618, 203 NW 989.

The information charged defendant with carrying a revolver with criminal intent to use against another. The proof showed the weapon to be an automatic pistol. There was no fatal variance. *State v Nyhus*, 176 M 238, 222 NW 925.

Does not prohibit the use or possession of a pistol in the absence of an intent to use it against another. *Clarine v Addison*, 182 M 310, 234 NW 295.

Agent of Minnesota society for the prevention of cruelty as a public officer may carry concealed weapons. OAG July 6, 1934 (201a-2).

Degree of proximity of overt acts necessary to constitute attempt. 12 MLR 659.

616.42 SALE OF ARMS OR AMMUNITION.

HISTORY. 1917 c. 244 ss. 1, 2; G.S. 1923 ss. 10256, 10257; M.S. 1927 ss. 10256, 10257.

The sale to minors is the only prohibition on sale of firearms. OAG Jan. 25, 1934.

The written consent of parents or guardian is not required for those over 18 years. OAG Dec. 1, 1938 (201a-8).

MINNESOTA STATUTES 1945 ANNOTATIONS

616.43 OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

4176

616.43 BLANK CARTRIDGE FIREARMS, CERTAIN FIRECRACKERS, PROHIBITED.

HISTORY. 1907 c. 28 s. 1; G.S. 1913 s. 8771; G.S. 1923 s. 10258; M.S. 1927 s. 10258.

616.433 FIREWORKS.

HISTORY. 1941 c. 125 s. 1.

616.434 SALE OF FIREWORKS PROHIBITED.

HISTORY. 1941 c. 125 s. 2.

616.435 PUBLIC DISPLAYS OF FIREWORKS BY MUNICIPALITIES EXCEPTED.

HISTORY. 1941 c. 125 s. 3.

616.436 CONSTRUCTION OF SECTIONS 616.433 to 616.438.

HISTORY. 1941 c. 125 s. 4.

616.437 OFFICERS MAY SEIZE ILLEGAL FIREWORKS.

HISTORY. 1941 c. 125 s. 5.

616.438 VIOLATION.

HISTORY. 1941 c. 125 s. 6.

616.44 SETTING SPRING GUNS.

HISTORY. 1869 c. 39 ss. 1, 2; G.S. 1878 c. 94 ss. 61, 62; G.S. 1894 ss. 6853, 6854; R.L. 1905 s. 5176; G.S. 1913 s. 9008; G.S. 1923 s. 10505; M.S. 1927 s. 10505.

616.45 MACHINE GUNS.

HISTORY. 1933 c. 190 ss. 1 to 3; M. Supp. ss. 10255-1 to 10255-3.