

CHAPTER 616

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

616.01 PUBLIC NUISANCE.

The duty of keeping its streets and sidewalks reasonably safe for travel is placed upon a city, and it may not shift that duty to abutting owners or tenants. *O'Hara v Morris Produce Co.* 203 M 541, 282 NW 274.

In actions to recover damages from a fall on an ice patch upon a sidewalk, the abutting owner was not liable as a matter of law; and as the ice patch formed the day of the accident, the city is not liable. *Johnson v City of Redwood Falls*, 204 M 115, 282 NW 693.

Holes placed in a retaining wall did not, as a matter of law, present a link in the chain of negligent causation. *Kooreny v Dampier*, 207 M 367, 291 NW 611.

Regardless of whether it was guilty of common-law negligence, defendant is liable as a matter of law for intentional violation of a statute proximately resulting in injuries to the plaintiff. Three statutes, sections 160.34, 616.01, and 616.31, denounce the obstruction of a highway as a misdemeanor. *Flaherty v Great Northern*, 218 M 492, 16 NW(2d) 553.

Where a municipality constructs a culvert for the passage of the waters of a watercourse, it will be liable in damages for negligent construction which is the proximate cause of the flooding of lands appurtenant to the watercourse. Failure to remove obstructions from a culvert constructed by a municipality for passage of waters of a watercourse to the damage of riparian owners is a nuisance. *Greenwood v Evergreen Mines*, 220 M 296, 19 NW(2d) 726.

This is an action by a pedestrian against the owner of abutting building for injuries from a fall on the city sidewalk caused by a defective cement patch on the sidewalk for the convenience of the building. No error is found in the submission to the jury of the public nuisance statute. *Shepstedt v Hayes*, 221 M 74, 21 NW(2d) 200.

Sections 160.34, 219.383, and 616.01, are in pari materia and should be construed together; and there can be no violation of section 160.34 and section 616.01 by stopping a train across a public highway unless the stop exceeds ten minutes, in violation of section 219.383; and where the ten minutes is exceeded all three statutes are violated. *Mlenek v Fleming*, 224 M 38, 27 NW(2d) 800.

Where a property owner permitted beavers to erect a dam in a stream on his property to the damage of property up-stream the only remedy is an action to abate a nuisance brought by the state or by some one suffering special damage. OAG June 4, 1946 (211-D-7).

If the placing of buoys near the short line constitutes a nuisance action may be taken under this section. OAG Aug. 20, 1946 (273a-14).

Liability of municipality and of abutting owners and occupants. 21 MLR 703, 713.

Government tort liability; private nuisance statute. 26 MLR 613, 627.

616.02 MAINTAINING OR PERMITTING A NUISANCE.

Failure to remove obstructions from a culvert constructed by a municipality for passage of waters of a watercourse to the damage of riparian owners, is a nuisance. *Greenwood v Evergreen Mines*, 220 M 296, 19 NW(2d) 728.

While under section 412.19 the right is given by statute to certain municipalities to change the natural course of a watercourse to a new one of its own construction,

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the power so given is subject to the requirements and limitations stated in sections 616.01 and 616.02. *Greenwood v Evergreen Mines*, 220 M 296, 19 NW(2d) 728.

Degree of damages; and degree of difficulty of removal of the danger as factors in "attractive nuisance" cases. 16 MLR 523; 18 MLR 523.

616.14 BATHING BEACHES.

Governmental responsibility for torts; responsibility of municipalities operating beaches. 26 MLR 293, 328.

616.23 DOORS OF PUBLIC BUILDING TO SWING OUTWARD.

Amended by L. 1947 c. 23 s. 1.

Ordinarily this section would not apply to taverns. OAG Dec. 3, 1946 (59-a-9).

616.26 KEEPING GUNPOWDER UNLAWFULLY.

It is not a misdemeanor to make, keep or transport explosives unless prohibited by law, or by ordinance of such municipality. OAG July 14, 1947 (201-a-4).

616.31 [Repealed by L. 1945 c. 220 s. 6. A similar provision is found in section 219.383.]

In the instant case, the conduct of the motorist, constituted a "superseding intervening cause" insulating prior negligence of defendant in parking truck in violation of the statute. *Medved v Doolittle*, 220 M 352, 19 NW(2d) 788.

616.34 FAILURE TO RING BELL.

The testimony of a passenger in a crowded Ford being driven at a speed of 35 miles an hour that he did not hear the crossing whistle sounded or the locomotive bell rung, it not appearing that such passenger was listening for sounds, or that the windows of the Ford were open, or that he heard the rumbling of the freight train running at 25 miles an hour at any moment prior to the Ford's collision with the nineteenth car from the front, is of no probative value as against the positive testimony of several witnesses in a position to know that the whistle was sounded and the bell rung. Hence it was error to deny the defendant engineer's motion for judgment notwithstanding the verdicts. The evidence as to the situation of the grade crossing involved in these five actions is such that no jury could justly find it extra-hazardous; nor find defendant railway negligent because of failure to protect those in the Ford from running into its passing freight train by any other methods than those maintained at the time of the accident. *Krause v Chgo. St. Paul, Mpls. & Omaha Ry. Co.* 207 M 175, 290 NW 294.

Ordinance requiring traffic signal. 6 MLR 250.

616.41 DEADLY WEAPONS.

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

616.42 SALE OF ARMS OR AMMUNITION.

Game wardens, not being peace officers, do not enforce the provisions of this section. OAG March 18, 1943 (201-A-8).

A village may legally enact and enforce an ordinance containing provisions similar to section 616.42. OAG Nov. 13, 1946 (477-B).

Liability of dealer to a third person injured by a firearm sold to minor. 13 MLR 275.

616.433 FIREWORKS.

Certain devices simulating a fire cracker and producing whistling sound, report, and smoke is prohibited by sections 616.433, 616.434. OAG March 27, 1947 (201-B).

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616.435 PUBLIC DISPLAYS OF FIREWORKS BY MUNICIPALITIES EXCEPTED.

Liability of municipal corporations for failure to prevent explosion of fireworks in city streets. 15 MLR 248.

616.44 SETTING SPRING GUNS.

Homicide; right to kill or injure in defense of property. 18 MLR 77.