

designation by the municipal council of the degree of care which shall be exercised in the operation of railroads within the municipality. To exceed the rate of speed so fixed as proper and safe may be some evidence of negligence; but, as between the railroad company and a person injured or put in danger, it is unlawful only in the sense in which any act of negligence which injures or endangers another is unlawful. And the doctrine of contributory negligence is just as applicable to cases of negligence in respect to ordained rates of speed as to any other species of negligence chargeable to a railroad company. In *Pyle v. Clark*, decided by this court, and already cited, the opinion states that the train which struck the plaintiff's team was running at about 15 miles an hour, in violation of a municipal ordinance which prohibited a speed of more than 8 miles an hour, yet the plaintiff was held guilty of contributory negligence, because, after looking along the track, he allowed a full minute to elapse before driving upon the track without again looking. And in *Blount v. Grand Trunk Ry. Co.*, also above cited, gates at the crossing were established by law to warn travellers, but it was held that the fact that the gates were open when a train was approaching did not excuse a person crossing the tracks for failing to look and listen. The well-settled rule of law is that no reliance upon the exercise of care by a railroad company will excuse a lack of the exercise of proper care by a person going upon a railroad track, or so near as to be in danger from passing trains.

The only other case which we find that seems to hold that running faster than the rate of speed allowed by a municipal ordinance has any bearing upon the matter of contributory negligence is the case of *Smith v. St. Paul City Ry. Co.*, 79 Minn. 254, 82 N. W. Rep. 577, where damages were recovered for running over and killing a dog by defendant's trolley car running 20 miles an hour, in violation of a city ordinance limiting the speed to 10 miles. The court conceded that ordinarily the motor-man need not stop for dogs, who should care for themselves, and get out of the way of the car, yet held that the jury might properly determine whether, but for this improper rate of speed, in violation of the ordinance, the dog would not in that instance probably have escaped. Without further comment on these cases, it is sufficient to say that we adhere to the prior decisions of this court."—*Central Law Journal*.