

CHAPTER 623

UNLAWFUL BUSINESS PRACTICES

623.01 TRUSTS AND COMBINATIONS IN RESTRAINT OF TRADE, PROHIBITED.

HISTORY. 1891 c. 10 ss. 1, 2; 1893 c. 125 s. 1; G.S. 1894 ss. 6955, 6956; 1899 c. 359; 1901 c. 194; R.L. 1905 s. 5168; G.S. 1913 s. 8973; 1923 c. 251 s. 1; G.S. 1923 s. 10463; M.S. 1927 s. 10463.

The constitution and by-laws of a corporation regulated the credit to be allowed its members, discriminated in the price to be paid for produce against persons not members, controlled the delivery of goods, and provided a penalty by fine and suspension for offending and defaulting members. Such organization is a combination in restraint of trade and prohibited by Laws 1899, Chapter 359 (section 623.01). *Ertz v Produce Exchange*, 82 M 173, 84 NW 743.

A contract not to engage in the same business in the same territory, entered into by the seller as part consideration is not void as being in restraint of trade under Laws 1899, Chapter 359, and plaintiff may recover for the breach of contract. *Espenson v Koepke*, 93 M 278, 101 NW 168.

A combination, contract, or understanding, the direct and necessary effect of which is to stifle or restrict competition in trade or business, violates the anti-trust statute, Laws 1899, Chapter 359, whatever may have been the intention of the parties; but, as in the instant case, a combination, the main purposes and effects of which are to foster the trade and increase the business of those who make and operate it, and which only indirectly and remotely restricts competition in trade or business, is not a "combination and conspiracy in restraint of trade" within the meaning of the statute. *State v Duluth Board of Trade*, 107 M 506, 121 NW 395.

Where competitive corporations transfer the title of their properties to one of the companies, the transferee corporation agreeing to divide its stock pro-rata according to capital value of the plants, but subsequently carrying the business in the name of the old concern, and the respective travelers for the corporations pretending to compete, but in fact secretly agreeing on prices, it is the evident intention of the contracting parties to form a combination in restraint of trade. *State v Creamery Package Co.* 110 M 416, 126 NW 126, 623; *State v Creamery Package Co.* 115 M 207, 132 NW 268.

The laws of competition do not countenance misrepresentation of the business or goods of a competitor. *Virtue v Creamery Package Co.* 123 M 18, 142 NW 930.

The original statute, Laws 1899, Chapter 359, imposed both fine and forfeiture of charter, but the Revision of 1905 (sections 5168, 5169), changed the statute. For a violation of Revised Laws 1905, Sections 5168, 5169 (sections 623.01, 623.02), by entering into a combination with others to raise the price of commodities offered for sale by those forming the combination, the domestic corporation is not subject to the penalty imposed by section 623.01, but only to the penalty of forfeiture of its charter as prescribed by section 623.01. *State v Mpls. Milk Co.* 124 M 34, 144 NW 417.

A covenant by the vendor of a business "not to start a bus line in Granite Falls, or drive a bus therein" is not unlawful and the covenants are enforceable by injunction, and is construed to include not to bring their names and influence to the aid of any competitor. *Holliston v Ernston*, 124 M 49, 144 NW 415.

Defendant, a foreign corporation, was indicted under this section, plead guilty, and paid its fine. About six months later an appeal was taken. The appeal was dismissed. *State v Peoples Ice Co.* 127 M 253, 149 NW 286.

It was not the intent of General Statutes 1913, Sections 8595, 8973 (sections 613.70, 623.01), to prohibit members of labor unions who have a bona fide dispute

MINNESOTA STATUTES 1945 ANNOTATIONS

4269

UNLAWFUL BUSINESS PRACTICES 623.01

with a building contractor from cooperating to withhold their services from such contractor or his subcontractors until the dispute is settled. *Grant v St. Paul Trades Council*, 136 M 167, 161 NW 1055.

The contract merely gives the defendant the right to this advertising medium as against certain other parties. It in no way effects price or production, and is not in restraint of trade. *Newton v Kiewel Co.* 137 M 81, 162 NW 887.

Men, either singly or in combination, may use any lawful means to accomplish a lawful purpose, although the means adopted may cause injury to another; but they may not intentionally injure or destroy the business of another to accomplish an unlawful purpose. *Roraback v Motion Picture Union*, 140 M 481, 168 NW 766.

Plaintiff was conducting a retail millinery business in defendant's store ostensibly in the name of a department of defendant. Defendant gave notice of cancellation when it learned that plaintiff had a like contract with defendant's competitor. Neither the contract, nor plaintiff's manner of doing business, nor the entry into a like contract with defendant's competitor were in violation of General Statutes 1913, Sections 8595, 8903, 8973 or 8974 (sections 613.70, 620.52, 623.01, 623.02). *Stronge v Choate*, 149 M 31, 182 NW 712.

A private party may maintain a suit for injunction to restrain a violation of General Statutes 1913, Section 8973 (section 623.01), if necessary to prevent irreparable injury to property for which there is no adequate remedy at law. The fact that the acts complained of is a crime is no bar to injunctive relief. *Campbell v Motion Picture Operators*, 151 M 220, 186 NW 781.

Covenant by assistant not to compete with physician employer, in case assistant leaves employ is a reasonable and legal covenant and may be enforced by injunction. *Granger v Craven*, 159 M 296, 199 NW 10.

A contract between an association formed under the co-operative marketing act and a member is construed as containing a mutual and valid consideration and not unilateral. As liquidated damages for a breach of the membership contract does not give an adequate remedy, an injunction will lie against a member breaching the contract. *Minn. Assn. v Huggins*, 162 M 471, 203 NW 420.

The sale of the stock and the execution of the contract were contemporaneous and parts of one transaction and the price paid was a sufficient consideration for the contract not to compete with the corporation. *Peoples Co. v Share*, 168 M 474, 210 NW 397.

A patent pooling agreement between two manufacturers is not a contract in restraint of trade. *Dial Toaster Corporation v Waters-Genter*, 181 M 606, 233 NW 870.

General Statutes 1923, Section 10463 (section 623.01), should be construed in the light of reason; and, so construed, the contract in the instant case, which restrained trade and limited competition in a limited way only, was not obnoxious to the statute. *Pittsburg v Paine*, 182 M 159, 234 NW 453.

All the newspapers in Crow Wing County agreed that only one would bid for county printing. The bidder was awarded the contract at the highest legal rate. The board knew of the agreement. The work being done, payment was refused, and the bidder brought suit. The lower court properly directed a verdict for plaintiff. *Brainerd Dispatch v Co. of Crow Wing*, 196 M 198, 264 NW 779.

A tying agreement which requires the lessee or purchaser of such equipment to purchase repair parts from the maker of the equipment is not necessarily unreasonable restraint of trade since it may reasonably be necessary in order to effect satisfactory service to the lessee or buyer. *General Talking Pictures v DeMarce*, 203 M 28, 279 NW 750.

A state cannot maintain an action in equity to restrain a corporation from violating the provisions of the federal act of July 2, 1890, on the ground that such violations by decreasing competition would depreciate the value of its public lands and enhance the cost of maintaining its public institutions. *Minn. v Northern Securities Co.* 194 US 49.

Even though there may have been a conspiracy to violate the anti-trust act, complainant suffered no diminution of profits, and there can be no recovery. *Clark v Phillips*, 56 F. Supp. 569.

MINNESOTA STATUTES 1945 ANNOTATIONS

623.02 UNLAWFUL BUSINESS PRACTICES

4270

A corporation engaged in the creamery business may not become a stockholder in a cooperative marketing association; but a cooperative marketing association organized under the laws of another state may become a member. A creamery corporation may not enter into an agreement to fix the price of milk. 1934 OAG 183, Sept. 15, 1934 (93a-14).

Labor injunctions. 24 MLR 759.

Strikes and boycotts; scope of peaceful picketing. 28 MLR 198.

623.02 DOMESTIC CORPORATIONS TO FORFEIT FRANCHISES; FOREIGN CORPORATIONS.

HISTORY. 1899 c. 359; 1901 c. 194; R.L. 1905 s. 5169; G.S. 1913 s. 8974; G.S. 1923 s. 10468; M.S. 1927 s. 10468.

SEE: State v Creamery Package Co. 115 M 207, 132 NW 268; State v Mpls. Milk Co. 124 M 34, 144 NW 417; Stronge v Choate, 149 M 30, 182 NW 712.

623.03 FOREIGN CORPORATIONS, HOW READMITTED.

HISTORY. 1913 c. 378 s. 1; G.S. 1913 s. 8975; G.S. 1923 s. 10469; M.S. 1927 s. 10469.

623.04 AFFIDAVIT.

HISTORY. 1913 c. 378 s. 2; G.S. 1913 s. 8976; G.S. 1923 s. 10470; M.S. 1927 s. 10470.

623.05 APPLICATION TO FIX FINE.

HISTORY. 1913 c. 378 s. 3; G.S. 1913 s. 8977; G.S. 1923 s. 10471; M.S. 1927 s. 10471.

623.06 APPLICABLE ONLY TO FIRST JUDGMENT.

HISTORY. 1913 c. 378 s. 4; G.S. 1913 s. 8978; G.S. 1923 s. 10472; M.S. 1927 s. 10472.

623.07 VACATION OF RIGHTS; MOTION BY ATTORNEY GENERAL.

HISTORY. 1913 c. 378 s. 5; G.S. 1913 s. 8979; G.S. 1923 s. 10473; M.S. 1927 s. 10473.

623.08 PETROLEUM; DISCRIMINATION BETWEEN LOCALITIES PROHIBITED.

HISTORY. 1907 c. 269 s. 1; G.S. 1913 s. 8980; G.S. 1923 s. 10474; M.S. 1927 s. 10474.

Laws 1907, Chapter 269, forbidding discriminations in the prices charged for petroleum or any of its products, as relied upon in this action; wherein defendant is charged with discriminating in the selling price of kerosene oil is a valid police regulation, and not unconstitutional. State ex rel v Standard Oil Co. 111 M 86, 126 NW 527; State v Fairmont Creamery, 162 M 149, 202 NW 714; State v Northwest Poultry & Egg Co. 203 M 438, 281 NW 753.

623.09 PENALTY.

HISTORY. 1907 c. 269 s. 2; G.S. 1913 s. 8981; G.S. 1923 s. 10475; M.S. 1927 s. 10475.

623.10 CONTRACTS VOID; RECOVERY.

HISTORY. 1907 c. 269 s. 3; G.S. 1913 s. 8982; G.S. 1923 s. 10476; M.S. 1927 s. 10476.

623.11 DUTY OF COUNTY ATTORNEY.

HISTORY. 1907 c. 269 s. 4; G.S. 1913 s. 8983; G.S. 1923 s. 10477; M.S. 1927 s. 10477.

623.12 DUTY OF SECRETARY OF STATE.

HISTORY. 1907 c. 269 s. 5; G.S. 1913 s. 8984; G.S. 1923 s. 10478; M.S. 1927 s. 10478.

623.13 REVOCATION OF PERMIT.

HISTORY. 1907 c. 269 c. 6; G.S. 1913 s. 8985; G.S. 1923 s. 10479; M.S. 1927 s. 10479.

623.14 CONTINUANCE IN BUSINESS; OUSTER.

HISTORY. 1907 c. 269 s. 7; G.S. 1913 s. 8986; G.S. 1923 s. 10480; M.S. 1927 s. 10480.

Procedure allowed by Laws 1907, Chapter 269, for the revocation of the license of a foreign corporation, is not exclusive, and under the direction vested in him, the attorney general of the state may in the name of the state institute proceedings to have such license adjudged forfeited. *State ex rel v Standard Oil Co.* 111 M 86, 126 NW 527.

623.15 REMEDIES CUMULATIVE.

HISTORY. 1907 c. 269 s. 8; G.S. 1913 s. 8987; G.S. 1923 s. 10481; M.S. 1927 s. 10481.

623.19 MONOPOLIZATION OF FOOD PRODUCTS.

HISTORY. 1917 c. 381 ss. 1, 2; G.S. 1923 ss. 10485, 10486; M.S. 1927 s. 10485, 10486.

An ordinance which requires "transient merchants" selling or displaying for sale "natural products" of the farm, to be licensed and file a bond, and exempts from its provisions, and exempts certain classes of persons, is violative of the state and federal constitutional prohibitions against class legislation. *State v Pehrson*, 205 M 573, 287 NW 313.

623.20 POOL-SELLING AND BOOK-MAKING.

HISTORY. 1895 c. 218; R.L. 1905 s. 5170; G.S. 1913 s. 8990; G.S. 1923 s. 10487; M.S. 1927 s. 10487.

623.21 BUCKET SHOP; CRIME, WHEN COMPLETE.

HISTORY. 1905 c. 133 s. 1; G.S. 1913 s. 8991; G.S. 1923 s. 10488; M.S. 1927 s. 10488.

Where a check or money is delivered by the loser to the winner in payment of a bet, by placing the same on the table, and the winner takes it, the loser cannot recover either the money or the check. *Gilbert v Berkheiser*, 157 M 491, 196 NW 653.

Failure of a grain merchant to furnish the statutory confirmation makes a prima facie case of an illegal transaction. The word "option" in ordinary parlance has no application to a hedge, but is understood to mean a speculative contract. Hedging is legitimate, but no recovery can be had upon illegal transactions in futures. *Fraser v Farmers Co-Operative Co.* 167 M 369, 209 NW 33, 913.

Complaint alleging that orders placed by persons acting in good faith with local brokerage association were bucketed with knowledge of copartnerships engaged in brokerage business which furnished association with stock exchange information in violation of sections 623.21, 623.23 states a cause of action against

'MINNESOTA STATUTES 1945 ANNOTATIONS

623.22 UNLAWFUL BUSINESS PRACTICES

4272

association and copartnerships for damages caused by violation of the statute. *Kaiser v Butchart*, 200 M 545, 274 NW 680.

Dealings in commodity futures. 18 MLR 544.

623.22 BUCKET SHOP PROHIBITED; PENALTIES.

HISTORY. 1905 c. 133 s. 2; G.S. 1913 s. 8992; G.S. 1923 s. 10489; M.S. 1927 s. 10489.

623.23 ACCESSORIES.

HISTORY. 1905 c. 133 s. 3; G.S. 1913 s. 8993; G.S. 1923 s. 10490; M.S. 1927 s. 10490.

623.24 DUTY OF COMMISSION MERCHANTS AND BROKERS.

HISTORY. 1905 c. 133 s. 4; G.S. 1913 s. 8994; G.S. 1923 s. 10491; M.S. 1927 s. 10491.

Failure to comply with the statute makes a prima facie case of an illegal transaction. *Banner Grain Co. v Burr Elevator Co.* 162 M 338, 202 NW 740; *Fraser v Farmer Co-Operative Co.* 167 M 369, 209 NW 33, 913.

Dealings in commodity futures. 18 MLR 544.

623.25 GIFT ENTERPRISES; MERCHANDISE PREMIUMS.

HISTORY. 1909 c. 142 ss. 1 to 4; G.S. 1913 ss. 8995 to 8998; G.S. 1923 ss. 10492 to 10495; M.S. 1927 s. 10492 to 10495.

So far as Laws 1909, Chapter 142, prohibits companies or parties from issuing and redeeming trading stamps under contracts which in practice depends on chance the law is a proper exercise of police power; that the business of issuing and redeeming trading stamps as conducted by the respondents, is not attended with such elements of chance, uncertainty, and contingency as to come within the provisions of the act; and the writ of quo warranto is therefore discharged. *State ex rel v Sperry*, 110 M 378, 126 NW 120.

623.26 GIFT ENTERPRISES; PUBLICATIONS.

HISTORY. 1913 s. 374 ss. 1 to 4; G.S. 1913 ss. 8999 to 9002; G.S. 1923 ss. 10496 to 10499; M.S. 1927 ss. 10496 to 10499.

The word contest in the instant case was not the sort of gift enterprise defined in General Statutes 1923, Section 10497 (section 623.26).