

MINNESOTA STATUTES 1947 ANNOTATIONS

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ACTION IN DAMAGES FOR NUISANCE, ETC. 561.01

CHAPTER 561

ACTION IN DAMAGES FOR NUISANCE, TRESPASS, OR WASTE

561.01 NUISANCE; ACTION.

In determining the amount of damages to be awarded for personal discomfort and annoyance, there is no fixed measure, and the jury has large discretion in assessing them. Regard should be had for the severity and duration of the nuisance. *Krueger v City of Faribault*, 220 M 89, 18 NW(2d) 777.

A municipality has the same rights and is subject to the same liabilities as an individual similarly situated. If a municipality closes the natural outlet of a lake and substitutes one of its own creation which causes the overflow from the lake to back upon and injure the land of riparian owners, it is liable in an action in tort to the same extent as any individual would be liable for doing the same act. *Greenwood v Evergreen Mines*, 220 M 296, 19 NW(2d) 726.

Evidence that the tenant over a long period permitted accumulation of ashes, papers, rubbish, and garbage to such extent as to constitute a fire hazard and produce offensive odors, so that roaches and rats infested the property, sustained the finding that a "nuisance" existed within the meaning of the statute so as to entitle purchasers of premises to obtain possession of the premises on the ground that the tenant was guilty under the price administration regulations of committing or permitting a nuisance thereon. The tenant is a wrongdoer and not entitled to preliminary notice to abate. The price administration regulations have no application to a proceeding for a termination of a tenancy on the ground of nuisance. *Cohen v Steinke*, 223 M 292, 26 NW(2d) 843.

As to what is a nuisance is a question of fact. No duty rests on a school district or upon the county superintendent to protect the safety of children from an open well across the street from a schoolhouse. OAG Aug. 1, 1946 (913-E).

Minnesota state agricultural society is a department of state and immune from suit. But if its officers engage in activities not governmental in character, such acts may be restrained under the provisions of section 561.01 OAG Aug. 5, 1947 (4).

The power of the state to restrict the use of real property. 1 MLR 135.

Right of private individual to damages for public nuisance. 2 MLR 210.

Damages, injunction, effect of balance of injury. 9 MLR 290.

Discretion to deny injunction against trespass and nuisance. 12 MLR 565.

Injunction against operation of gasoline filling station in residence district as being a nuisance. 12 MLR 669.

Liability of grantee of land for non-abatable nuisance. 13 MLR 625.

Aeronautics, flight as nuisance. 15 MLR 318, 337.

Power of state to enjoin publication of newspaper as public nuisance. 16 MLR 97.

Liability of landowner for nuisance of licensees. 17 MLR 679.

Public contractors' right to share sovereign's immunity from liability for damages to third parties from a nuisance. 19 MLR 129.

Nuisance; contributory negligence as a defense for damages. 19 MLR 249.

Nuisances, remedies, prospective damages. 21 MLR 339.

Nuisance, damages, impairment of another's use and enjoyment of his premises. 21 MLR 611.

Distinction between nuisance and negligence. 21 MLR 755.

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Appointment of receiver ex parte as method of abating a public nuisance as being in excess of jurisdiction warranting issuance of a writ of prohibition. 23 MLR 843.

Summary abatement of public nuisance. Liability for creation of nuisance. 25 MLR 115.

Invasions of private property. 26 MLR 623.

Construction or operation of airports as a nuisance. 29 MLR 38.

Under federal tort claims act, U. S. Code ss. 921-946, the United States waives immunity from general tort claim liability. Recovery under the act. 31 MLR 456.

561.02 MALICIOUSLY MAINTAINED STRUCTURE.

The evidence sustains the finding of the trial court that defendant maliciously erected buildings so close to plaintiff's dwelling for the purpose of shutting off the light and annoying defendant. The trial court properly directed a removal of the structures and awarded damages to plaintiff. *Vojdich v Jedelski*, 140 M 520, 168 NW 95.

Torts; effect of motive. 12 MLR 147, 164.

561.03 REMEDIES.

See, *Greenwood v Evergreen Mines*, 220 M 296, 19 NW(2d) 726, under section 561.01.

561.11 CULTIVATION OF LANDS SOLD UNDER MORTGAGE FORECLOSURES OR EXECUTION; PETITIONS.

Right of purchaser to crops growing on mortgaged land at time of foreclosure and sale. 15 MLR 717.

Measure of vendor's damages where vendee wrongfully remains in possession after cancelation of executory contract. 16 MLR 725.

Purpose of L. 1927, c. 190, amending section 558.17, relating to sale of real property in an action for partition. 22 MLR 242.

561.17 ACTION FOR WASTE.

Defendant laundry company owned and operated a steamboiler on the premises of the plaintiff of which premises it was the lessee. It had exclusive control of the operation of the boiler which exploded and damaged plaintiff's property. The doctrine of *res ipsa loquitur* applies. The boiler did not have a fusible plug in the crown sheet. The water was 16 inches above the cast iron plug used. The failure to provide a fusible plug had no causal connection with the explosion. *Kleinman v Banner Laundry*, 150 M 515, 186 NW 123.

Where a life estate is given coupled with power of disposition and right to use the proceeds for the necessary comfort and support of the life tenant, the life tenant has the power to sell the property and use so much of the proceeds as may be necessary for her comfort and support, but she has no power to grant or devise the property or to waste it. *Beliveau v Beliveau*, 217 M 235, 14 NW(2d) 360.

A cotenant may retain the use and appropriate the benefits of land, but this extends only to the products of its proper use and not to that which is part of the land. Drainage of a portion of a lake by a mining company which would destroy riparian rights of its cotenant was an improper exercise of such right. *Petraborg v Zontelli*, 217 M 536, 15 NW(2d) 174.

Liability of mortgagor or grantee for waste. 27 MLR 407.