

MINNESOTA STATUTES 1953 ANNOTATIONS

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NUISANCE, TRESPASS, WASTE; DAMAGES 561.01

instant case, brought under section 559.01, and attempt therein to amend or elaborate a judgment rendered in an action under section 559.23 is a collateral attack and cannot be entertained. *Hodson v Hammer*, 229 M 389, 39 NW(2d) 601.

The supreme court interferes with findings of the trial court only where evidence taken as a whole furnishes no substantial support for them or where it is manifestly or palpably contrary to findings; and in an action to determine a boundary line and adverse claims to land the evidence sustained findings of the trial court as to the location of the boundary line. *Bjerketvedt v Jacobson*, 232 M 152, 44 NW(2d) 775.

The evidence to establish a boundary line by practical location must be clear, positive, and unequivocal. In this suit to define and locate the boundary between the farms of plaintiff and defendant where it appeared that plaintiff's predecessor in title in consultation with defendant's predecessor in title had jointly ordered construction of a fence on the west boundary line of plaintiff's land, the evidence warranted a finding that it was the intention of the parties to establish a practical boundary between the farms now owned by plaintiff and defendant, and that the parties and their predecessors in title were satisfied with the location of the boundary and had acquiesced therein, and this established a practical boundary line. *Fishman v Nielsen*, 237 M 1, 53 NW(2d) 553.

The survey based upon obliterated corners was sufficient to support the court's findings locating a disputed boundary line. *Minneapolis and St. Louis Railway Company v Ellsworth*, 237 M 439, 54 NW(2d) 800.

Evidence that a ridge had been recognized and acquiesced in by adjoining land-owners and their predecessors in interest as location of boundary line for more than twenty years, during which time they had occupied and cultivated the land to such ridge under claim of right, was sufficiently clear, positive and unequivocal to justify establishing boundary line by practical location. *Vogel v Gruenhagen*, M, 56 NW(2d) 427.

Where a Missouri corporation claiming an option to purchase realty brought a specific performance action against grantors who were residents of Minnesota and against a Minnesota corporation which claimed the right by cross-bill to the same relief under the same option, and the pleading sought no relief against the Minnesota corporation, and the relief to be granted to the claimants under the option would be identical, the court would realign the Minnesota corporation on the plaintiff's side and dismiss the action for lack of jurisdiction on the ground that diversity of citizenship was absent. *Knaus Truck Lines v Mair*, 85 F Supp 101.

CHAPTER 561

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561.01 NUISANCE, ACTION

Attractive nuisance doctrine in Minnesota as compared with restatement of the law. 32 MLR 526.

Intentional multi-state torts. 36 MLR 1.

To justify a finding that a tenant is committing or permitting a nuisance under the Price Administration Rent Regulation Act, justifying the eviction of a tenant, the nuisance must be such as to justify abatement proceedings. *Cohen v Steinke*, 223 M 292, 26 NW(2d) 843.

The rights of habitation in residential districts are superior to the rights of trade or business therein, particularly where the business, such as a riding academy, is nonessential and not dependent upon a fixed location. The appellate court is not at liberty to speculate on what might develop in the future if defendants change the

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mode of operation of their business. The function of the appellate court is to determine on the facts submitted at the trial whether or not there was sufficient evidence to justify the trial court's findings of a nuisance. *Robinson v Westman*, 224 M 105, 29 NW(2d) 1.

A person injuriously affected by a nuisance may bring action to abate the same. If a public nuisance affects private rights distinct from its general effect on the public, an action to abate the same may be instituted by the party whose rights are thus affected. *Robinson v Westman*, 224 M 105, 29 NW(2d) 1.

A legitimate business, such as a riding academy, located in a residential district, operated so as to pollute or contaminate the air through noxious odors created by it, or which disturbs the peace and quiet of the neighborhood because of noises or which otherwise endangers the safety and security of residents of the district or unreasonably interferes with their property rights, is a nuisance in fact against which an injunction will lie; and this is particularly true where the rights of others in the use of the public highway is involved. *Robinson v Westman*, 224 M 105, 29 NW(2d) 1.

In order for the recovery of the parent to be barred because of negligence in connection with the supervision of a trespassing child who has suffered injury from an artificial condition maintained on land entered upon, evidence must establish that parent had some knowledge that child was frequenting dangerous area and failed to warn with reference thereto or, to otherwise take adequate precautions to prevent child from going into such area. *Doren v Northwestern Baptist Hospital Assn.*, M, 60 NW(2d) 361.

If the action of a village in dumping sewage into a drain constitutes a nuisance, a person damaged may ask the court to enjoin or abate the nuisance and damages are recoverable against the village. OAG July 28, 1949 (844-B-7).

The blowing of a siren as a curfew at eight o'clock in the evening is not a private or public nuisance. OAG Sept. 26, 1949 (913-F).

561.03 REMEDIES

If a nuisance exists by reason of the installation of certain drain tile, the village officers may take steps to abandon the nuisance. If the nuisance exists the village officers may use their own discretion as to whether or not notice must be given. The persons who installed the drain tile or are benefited by the installation have no easement that would serve as a defense against action to abandon a nuisance. OAG Nov. 28, 1949 (273-A-23).

561.04 TRESPASS, TREBLE DAMAGES

The statutes relating to civil judicial remedies for certain kinds of trespass to realty and to certain acts therein specified, contains no authorization for collection of treble damages against a municipal corporation under statute providing punishment for trespass to realty. *Desforge v City of West St. Paul*, 231 M 205, 42 NW(2d) 633.

Laws 1885, an Act to Establish a Penal Code, approved March 9, 1885, effective Jan. 1, 1886, abolished the common law as it relates to crimes, and from and since Jan. 1, 1886, no act or omission is deemed criminal or punishable except as prescribed by statute. Sections 622.05 to 622.07 define and designate the degrees and prescribe the punishment for larceny. A wilful trespass performed in the unlawful entry and cutting and removing standing timber from the land is deemed larceny Section 90.35 prohibits the unlawful taking of timber from the lands of the state. Section 621.25 defines the crime of unlawful taking of timber and prescribes a punishment. Apparently prosecution may be had under any of the above quoted sections. Treble damages are now provided for the cutting and carrying out of timber from the lands of another under sections 548.05 and 561.04. OAG April 5, 1948 (133-B-64).

561.05 DOMESTIC ANIMALS, TRESPASS

An owner who allows his cattle to run at large is liable in treble damages and is also liable for criminal prosecution. OAG May 26, 1952 (228-D).

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CLAIM AND DELIVERY 565.04

NOTE: Sections 561.11 to 561.15, are excepted from Rules of Civil Procedure insofar as they are inconsistent or in conflict therewith.

561.17 ACTION FOR WASTE

Liability of tenant for fire losses caused by negligence where the tenant covenants to surrender the premises in good condition; effect of "loss by fire." 35 MLR 603.

REMEDIES FOR POSSESSION OF PROPERTY

CHAPTER 565

CLAIM AND DELIVERY

565.01 POSSESSION OF PERSONAL PROPERTY, HOW CLAIMED

Plaintiff's right to possession; plea of property in a stranger. 32 MLR 84.

Return of specific chattels. The courts have been traditionally reluctant to issue mandatory injunctions for the specific restitution of personalty wrongfully withheld, or for the specific performance of contracts relating to personalty. 34 MLR 147.

The action of replevin has been replaced with the statutory action for claim and delivery of pursuant property, the gist of which is to determine the right of possession of personal property or the title thereto. *A & A Credit Co. v Burquist*, 230 M 303, 41 NW(2d) 582.

565.02 AFFIDAVIT

In claim and delivery where the original acquisition of possession by defendant is lawful, the subsequent demand and refusal by defendant to return the property, amounts, in the eyes of the law, to a wrongful taking, and the plaintiff has an election under section 542.06 to bring and maintain action in the county in which he resides. *A & A Credit Co. v Burquist*, 230 M 303, 41 NW(2d) 582.

565.03 BONDS AND SURETIES

Obligation to mitigate damages by posting bond. 31 MLR 378.

565.04 REQUISITION TO SHERIFF, SERVICE AND RETURN

In an action in replevin or claim and delivery the sheriff as such has authority only in his own county and has no authority to serve a requisition in a county other than his own and to take thereunder personal property located in a county other than his own. OAG Dec. 13, 1949 (390-A-21).