

MINNESOTA STATUTES 1953 ANNOTATIONS

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INJUNCTIONS 585.01

to pay the taxes. The purchaser in 1942 entered the armed services and was discharged in November 1945 and reinlisted a month later. The buildings have been vacant since 1943. The title to the property will pass on tax forfeiture in 1949. The tax laws will operate as against the state's title. It is the duty of the conservator and he has the power to protect the interest of the state by immediate foreclosure against this veteran, now serving with the United States forces. The proceedings should be by strict foreclosure. On failure of the state to act, the county may proceed to protect its interest. OAG Jan. 28, 1948 (770).

CHAPTER 582

REAL ESTATE MORTGAGES; FORECLOSURE,

GENERAL PROVISIONS

582.01 ATTORNEY'S FEES

HISTORY. Amended, 1953 c 454 s 1.

582.13 STATE OF MINNESOTA MAY BE MADE DEFENDANT IN CERTAIN CASES

Laws 1945, Chapter 2, adds to the list of actions to which the State of Minnesota consents to be sued, the action "to determine the boundary line between any real property of the state and real property contiguous thereto." 32 MLR 390.

Claims against the state. Report of bar committee on immunity of a state from suit. 32 MLR 539.

582.14 LIMITATION ON FORECLOSURE

HISTORY. 1945 c 363 s 1; 1947 c 392 s 1.

Limitation on foreclosure. 33 MLR 48.

REMEDIES CONTROLLING PERSONAL ACTION

CHAPTER 585

INJUNCTIONS

585.01 ISSUANCE; EFFECT ON RUNNING OF TIME

A new automobile dealer's option to repurchase if the buyer decides to sell, rescission of contract of sale for fraud, injunction against buyer and used car dealer. 33 MLR 184.

Judicial control of administrative action by means of extraordinary remedies in Minnesota. 33 MLR 569.

History of the Minnesota statutes pertaining to the extraordinary remedies in general. 33 MLR 571.

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.

Right of taxpayer to enjoin or avoid a contract awarded on competent bidding in a case where an official is financially interested in the contract. 35 MLR 322.

Type of administrative action subject to judicial control through injunction and declaratory judgment. 37 MLR 20.

Conditions for the granting of injunctive or declaratory relief. 37 MLR 24.

Proper, necessary, and indispensable parties in suits to enjoin governmental action. 37 MLR 30.

Homicide; joint and several bank accounts; killing of one co-tenant by the other. 37 MLR 71.

Injunctive relief is a remedy and not in itself a cause of action, and a cause of action must exist before injunctive relief may be granted. Title to public office will not be determined in suit for injunction since the court of equity cannot create a right and then protect it by injunction. *Ryan v Hennepin County*, 224 M 444, 29 NW(2d) 385:

Injunctive relief is available to an adjoining property owner to prevent the violation of a village zoning ordinance. *Newcomb v Teske*, 225 M 223, 30 NW(2d) 354.

In a divorce case the court may issue a temporary injunction restraining the husband from disposing of his property and income during the pendency of the case where it appears that contemplated transfers thereof would defeat wife's claim to alimony and other rights under the final judgment. *Hempel v Hempel*, 225 M 287, 30 NW(2d) 595.

An injunction will be granted against a criminal act on the ground of actual or threatened injury to property rights of an individual only if he clearly shows facts justifying the relief desired. *Miller v Minneapolis Underwriter's Assn.*, 226 M 367, 33 NW(2d) 48.

The supreme court will not interfere upon appeal from an order granting or refusing a temporary injunction where evidence as to facts is conflicting and no refutable injury impends. *Hotel & Restaurant Union v Tzakis*, 227 M 32, 33 NW(2d) 859.

Either a labor union or an employer, under proper circumstances, is entitled to injunctive relief where there is a violation of a collective bargaining agreement by either of the parties to the contract. Granting or refusing a temporary injunction rests so largely in the discretion of the trial court that an appellate court is not justified in interfering unless the action of the trial court is clearly erroneous and will result in an injury which it is the duty of the court to prevent. *Hotel & Restaurant Emp. Union v Tzakis*, 227 M 32, 33 NW(2d) 859.

The constitution and bylaws of unincorporated association, if they are not immoral, contrary to public policy or the law of the land or unreasonable, constitute an enforceable contract between the members by which their rights, duties, powers, and liabilities are measured. The majority of the members may direct the use of the funds of the association with the scope of its declared purposes but the majority cannot against the will of the minority lawfully direct association funds for uses other than those permitted by the constitution and bylaws. In the instant case the majority cannot, contrary to the wishes of the minority, transfer the funds of the local to another organization where members in excess of seven in number continue their allegiance to the parent union and continue to function under the original charter. *Liggett v Koivunen*, 227 M 114, 34 NW(2d) 345.

Injunction lies to protect the owner of an easement in its enjoyment whether the disturbance thereto is actual or threatened. A prescriptive right may be proved and an injunction to protect the same may be granted in a single proceeding for injunctive relief. Open and notorious possession of the premises by a party with full knowledge of the owner, constitutes notice to the owner that such use is under claim

or right and no further notice to such effect is necessary. *Hildebrandt v Hagen*, 228 M 353, 38 NW(2d) 816.

Where a legal agreement expressly confirms a prior oral understanding and states exactly what it confirms, is clear, unambiguous, and does not appear incomplete on its face or to vary its terms, it is inadmissible. The evidence sustained the finding that the purpose of labor union representatives in mailing a strike notice to the state labor conciliator was to compel the employer to discharge non-union employees or to compel non-union employees to join labor unions, which would constitute an unfair labor practice on the part of the union unless negotiations pursuant to the statute were first engaged in where the union had no closed shop agreement with the employer and such a strike would be enjoined. *Dayton Co. v Carpet & Floor Decorators Union*, 229 M 87, 39 NW(2d) 183.

Two separate suits for declared judgment and injunctive relief were brought by two separate local unions against the national organizations. In each suit the defendants demurred to the complaint and the district court overruled both demurrers, whereupon the defendant appealed. The supreme court held that plaintiffs were entitled to judgment declaring their right to disaffiliate from the parent union and to retain their assets. A local labor union is a separate and distinct voluntary association which owes its creation and continued existence to the will of its members and upon its disaffiliation from the international union its relationship with international is severed, even though it continues to retain its organization's assets. In the absence of enforceable provisions in the parent union's constitution preventing disaffiliation of local union intact with its property, the local union could by majority sever its relationship with the parent union and take its property with it. *Local United Electrical Workers v United Electrical Workers*, 232 M 217, 45 NW(2d) 408.

Removal of timber already cut under a logging contract will not be enjoined in the absence of an allegation of an insolvency of the defendant and the damages caused by an injunction improvidently granted cannot be recovered by a defendant from the injunction plaintiff independently of the bond or undertaking unless the injunction suit was maliciously instituted without probable cause. *Steller v Thomas*, 232 M 275, 45 NW(2d) 537.

An injunction does not lie to prevent the alleged improper conduct by a village council with respect to the construction of an electric power plant, where there was no showing that such conduct was threatened, or that there would be no adequate remedy should such conduct take place. An injunction should not be granted unless the injury is pressing and delay dangerous, or where the injury might be irreparable. *Otter Tail Power Co. v Village of Wheaton*, 235 M 123, 49 NW(2d) 804.

Whether mandamus or injunction is the proper remedy usually depends upon whether the party demanding relief seeks to counsel the board of regents to do something it is required to do by law or prevent it from doing something which is prohibited by law. *State ex rel v University of Minnesota*, 236 M 452, 54 NW(2d) 122.

Defendant's use of trade-mark "Quickettes" and head of girl in line and to left of such word, on packages of thin-walled, quick-cooking, elbow macaroni constituted unfair competition with and infringement of plaintiff's registered trade-mark "Creamettes" and head of girl in line and to left of such word on packages of thin-walled, quick-cooking, elbow macaroni, and would be enjoined where there was likelihood of confusion. *Creamette Co. v Minnesota Macaroni Co.*, 74 F Supp 224.

An injunction lies to restrain the Minnesota labor conciliator from attempting to exercise jurisdiction in a matter within the jurisdiction of the national labor relations board such as certification of the union for collective bargaining on the ground that submission to state authority would amount to the pursuit of a futile course involving time and expense for which there is no adequate remedy at law and on the ground that irreparable injury might result. *Linde v Johnson*, 77 F Supp 656.

Where an action by the acting housing expediter to enjoin charging of over-ceiling rents and eviction of tenants because of refusal to pay over-ceiling rents presented grave and difficult questions of law and fact, the grant of an interlocutory injunction was not an abuse of discretion. *Benson Hotel Corporation v Wods*, 168 F(2d) 694.

In a proceeding to punish certain persons for contempt for violation of an injunction against trespassing upon described land, the court of appeals held that the federal district court had no jurisdiction to enter a decree enjoining the world at large and that defendants who were not parties to the action in which the injunction was issued and who were not officers, agents, servants, employees or attorneys of the defendants named therein and who did not act in concert, or participate with them could not properly be adjudged in contempt for violating the injunction. *Kean v Hurley*, 179 F(2d) 888.

In an action by a railroad to enjoin an order of the interstate commerce commission, the district court held that the evidence justified the finding that continued operation of a specified railroad which connected with interstate lines of another railroad was justified and justified the interstate commerce commission in establishing joint rates over through routes of such railroads and reapportioning the revenue therefrom between such railroads. The injunction vacated and the complaint dismissed. *Great Northern v United States*, 111 F Supp 450.

585.02 TEMPORARY INJUNCTION, WHEN AUTHORIZED

Threatened injury must be real, substantial, and irreparable, to justify temporary injunction. Unless the action of the trial court is clearly erroneous and will result in an injury which it is the duty of the court to prevent, the appellate court is not justified in interfering with the action of the trial court in granting or refusing a temporary injunction. *Hotel & Restaurant Union v Tzakis*, 227 M 32, 33 NW(2d) 859.

When a city and its contractor intended, unless enjoined, to consummate a plan to use a major part of land dedicated as a public square for a high school athletic field and playground, the proposed use was unlawful and a temporary injunction should have issued as of course at the instance of persons who are the owners of property abutting on the public square. *Headley v City of Northfield*, 227 M 458, 35 NW(2d) 606.

Restricted covenants in furtherance of a general plan are recognized under certain circumstances. Where the owners of a tract of land have platted same into many lots and formed and carried out a plan to sell the lots subject to covenants restricting them to the construction of homes of a certain character, equity will protect the rights of other grantees who accepted deeds in the same locality with similar restrictions. The burden of proving a general plan of improvement is upon the plaintiff. The existence of the plan is determined by examining and appraising the conditions of the platting, the sale of the lots, and all surrounding circumstances as indicated verbally or in writing. The intentions of the original owners in platting the district is germane. It was not the intention of the owners to include defendant's lots in such general plan and the plaintiffs are not permitted, in this case, to obtain a restraining order and enjoining the defendant from erecting a building to be used exclusively for religious purposes. *Rose v Kenneseth Israel Congregation*, 228 M 240, 36 NW(2d) 791.

Where the court granting a temporary injunction had no jurisdiction over the subject matter, and that fact appears from the face of the record, its orders are a nullity. *Norris Grain Co. v Nordaas*, 232 M 91, 46 NW(2d) 94.

An order of the district court requiring the defendant to return certain property to plaintiff, or in lieu thereof, to post bond to be an alternative temporary mandatory injunction, is appealable. Where defendant, during pendency of an equitable action, wrongfully, by self-help, gained possession of property which was the subject of the action, in violation of plaintiff's rights therein, and where it was shown that otherwise a judgment for plaintiff in the main action would be ineffectual because of defendant's insolvency, district court had jurisdiction under section 585.02 to grant an alternative temporary mandatory injunction to restore the status quo ante. *Bellows v Ericson*, 233 M 320, 46 NW(2d) 654.

To justify the issuance of a writ of prohibition it must appear: that the court, officer, or person against whom it issues is about to exercise a judicial or quasi judicial power; that the exercise of such power of such court, officer, or person is un-

authorized by law; and that it will result in injury for which there is no other adequate remedy at law. *Bellows v Ericson*, 233 M 320, 46 NW(2d) 654.

Reasonable setback lines may be adopted as a part of zoning ordinances, or separately in the absence of a general zoning ordinance, and the violation of an ordinance by others than the defendant does not preclude its enforcement against the defendant. Where the defendant has knowingly and wilfully violated a city ordinance, plaintiffs will not be denied a mandatory injunction to compel the undoing of defendant's wrong merely because it will cause defendant hardship or expense. *McCavic v De Luca*, 233 M 372, 46 NW(2d) 873.

585.03 NOTICE OF APPLICATION; RESTRAINING ORDER

Nationality Act of 1940 not an exclusive procedure for vacating naturalization orders. 35 MLR 483.

Where a public drainage ditch system has been established and constructed and thereafter lands not assessed for benefits caused by the construction are drained into this system, thereby imposing a burden upon the system not contemplating, if damage or injury result to private landowners they may bring action in their own name as parties in interest; and the county attorney on behalf of the public may bring action if the public health is endangered or the public roads flooded. The circumstances may warrant injunction proceedings. OAG Dec. 20, 1948 (361-B).

Jurisdiction of the court to issue a restraining order, ex parte, must be tested by the complaint and record made at the time of the issuance, and where it appeared that the court lacked jurisdiction, subsequent proceedings could not validate the void restraining order. *Norris Grain Co. v Nordaas*, 232 M 91, 46 NW(2d) 94.

585.04 BOND REQUIRED; DAMAGES, HOW ASCERTAINED

Prohibition is not a writ of right, but, in the absence of another legal remedy which is reasonably efficient and adequate, issues in the discretion of the court to prevent an inferior tribunal from proceeding in a matter in which it is exceeding its legitimate power and authority. The district court did not have jurisdiction to issue temporary mandatory injunction where plaintiff failed to give a bond as required by section 585.04. *Bellows v Ericson*, 233 M 320, 46 NW(2d) 654.

CHAPTER 586

MANDAMUS

586.01 TO WHOM ISSUED, JUDICIAL DISCRETION NOT CONTROLLED

Judicial control of administrative action. 33 MLR 569.

Judicial control of administrative action by means of extraordinary remedies in Minnesota. 33 MLR 569.

History of the Minnesota statutes pertaining to the extraordinary remedies in general. 33 MLR 571.

Type of administrative action subject to control by mandamus. 33 MLR 575.

Unavailability of mandamus in the presence of another adequate remedy. 33 MLR 595.

Powers of the court in mandamus proceedings. 33 MLR 601.

Procedural aspects of mandamus proceedings. 33 MLR 604.

Statutory mandamus. 33 MLR 607.