

MINNESOTA STATUTES 1953 ANNOTATIONS

1501

WRITS OF PROHIBITION 587.01

The evidence established that the relator's delay in bringing a mandamus action to counsel the city attorney in Minneapolis to requisition a first assistant city attorney to fill a vacancy and counsel him to appoint relator to such position pursuant to the certification by the city civil service commission was justified and that relator was not barred by laches from bringing the action. *State ex rel v Mangni*, 231 M 457, 43 NW(2d) 775.

586.09 JUDGMENT FOR PLAINTIFF, APPEAL

A judgment mandamus using the state, as a remedy for condemnation of land omitted in an original condemnation proceeding, involves a final adjudication upon the issue of whether the land has actually been taken and as such it is appealable. Although the judgment herein is appealable it must be vacated for want of jurisdiction to enter a judgment in mandamus on a petition for intervention. *State v Anderson*, M, 58 NW(2d) 257.

586.10 FINES FOR NEGLECT OF DUTY

HISTORY. RS 1851 c 83 s 16; PS 1858 c 73 s 16; 1862 c 18 s 2; GS 1866 c 80 s 11; GS 1878 c 80 s 11; GS 1894 s 5984; RL 1905 s 4565; GS 1913 s 8275.

586.11 JURISDICTION OF DISTRICT AND SUPREME COURTS

The exercise of the power to permit amendments to pleadings rests in the sound discretion of the trial court and as a rule this discretion will not be controlled or disturbed by a higher court, especially where the court's intervention is sought by way of mandamus. *Allum v Fed. Cartridge*, 226 M 363, 32 NW(2d) 589.

Where the council of a city of the first class created a residential district embracing relator's property providing that on petition of 50 per cent of the owners of realty in the district a city may upon condemnation proceedings redistrict the district to residence structures only, and thereafter the city passed a comprehensive zoning ordinance authorizing commercial structures on relator's property, without making any reference to the original zoning provision, the adoption of the ordinance did not remove the earlier restrictions and did not entitle the relator to a building permit to erect a commercial structure. *State ex rel v City of Minneapolis*, 235 M 174, 50 NW(2d) 296.

Under section 586.11 the district court has exclusive original jurisdiction in all cases of mandamus except where such writ is to be directed to a district court or a judge thereof in his official capacity. Where change of venue is sought, a party cannot ask this court for a writ of mandamus to direct the transmission of files and records in an action to another county until the district court or its judge has been requested to act. The refusal of the clerk of the district court to transmit the files when such change is demanded cannot be construed to be the refusal of the court or its judge. *Hassing v Zahalka*, M, 60 NW(2d) 86.

CHAPTER 587

WRITS OF PROHIBITION

587.01 WRITS, ISSUANCE AND CONTENTS

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.

Judicial control of administrative action by means of the writ of prohibition. 36 MLR 434.

Control of administrative action; judicial procedure. 36 MLR 450.

On appeal from orders of the railroad and warehouse commission the court may exercise judicial, but not legislative or administrative, powers. It may not direct the commission as to what orders it must make. A writ of prohibition is a preventive remedy not available to correct errors or to reverse illegal proceedings. When the district court on appeal from the railroad and warehouse commission assumes to direct action which the attorney general regards as in excess of the court's jurisdiction, the state has sufficient interest in the litigation to justify it in asking, through the attorney general, for a writ of prohibition. *Arrowhead Bus Service v Black and White Cab Co.*, 226 M 327, 32 NW(2d) 590.

A writ of prohibition is not available to prevent performance of purely ministerial or administrative acts. It is an extraordinary writ issued to prevent inferior courts or tribunals or other individuals, invested by law with judicial or quasi-judicial authority from going beyond their jurisdiction. The labor conciliator acts in a quasi-judicial capacity and a writ of prohibition will issue to restrain him from acting under the statute if his actions are unauthorized by law and will result in injury for which there is no other adequate remedy at law. *Nemo v Local Joint Executive Board*, 227 M 263, 35 NW(2d) 337.

To justify the issuance of a writ of prohibition, it must appear (1) that the court, officer, or person against whom it issues is about to exercise judicial or quasi-judicial power; (2) that the exercise of such power by such court, officer, or person is unauthorized by law; and (3) that it will result in injury for which there is no other adequate remedy at law. All three prerequisites having been met, writ of prohibition is available and a proper remedy to enjoin labor conciliator from proceeding with an unauthorized election. *Nemo v Local Joint Executive Board*, 227 M 263, 35 NW(2d) 337.

Three things are essential to justify the issuance of a writ of prohibition: (1) that the court or officer is about to exercise judicial or quasi-judicial power; (2) that the exercise of such power is unauthorized; and (3) that it will result in injury for which there is no other adequate remedy. A writ of prohibition is a preventive rather than a corrective remedy. It is not one of right, but of discretion. A party as a matter of right may disqualify only one judge by filing an affidavit of prejudice. The intervenors, who are not bound by the court's injunction, have suffered no injury which would justify the issuance of a writ of prohibition.

Where the court as a condition to the issuance of a temporary injunction pendente lite required the plaintiff to file a bond in the instant case, the writ of prohibition against enforcement of a temporary injunction with respect to recognition of a union as bargaining representative is denied in order to avoid the chaotic condition which would result from its issuance, and to promote justice by permitting enforcement of the injunction until rights of all parties could be determined after full trial of issues on the merits. *State v Enersen*, 230 M 427, 42 NW(2d) 26.

Prohibition is a writ of prevention, which, in the absence of another legal remedy that is efficient and adequate, may, in the discretion of the court issue to prevent an inferior tribunal from proceeding in a matter over which it is without jurisdiction or in which it is exceeding its legitimate power and authority. Prohibition is not a writ of right nor is it a writ of correction. *Bellows v Ericson*, 233 M 320, 46 NW(2d) 654; *Kienlen v Kienlen*, 227 M 137, 34 NW(2d) 351.

After the death of a party divorced by a judicial decree, an order to show cause or a motion in the original divorce action is not the proper method to determine the right to the custody of minor children as between the surviving parent and a guardian. The district court which granted the divorce and gave the custody of the minor children to the wife, who died, did not have jurisdiction to determine the right of custody as between the father of the children and the guardian of their persons by an order to show cause issued in the original divorce action. A writ of prohibition will lie against the district judge. *State v Rensch*, 229 M 160, 40 NW(2d) 881.

MINNESOTA STATUTES 1953 ANNOTATIONS

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WRITS OF PROHIBITION 587.02

In order for a writ of prohibition to issue, three essentials must exist: (1) the court officer or person against whom it is issued must be about to exercise judicial or quasi-judicial power; (2) the exercise of such power of such court, officer or person must be unauthorized by law; (3) the exercise of such power must result in injury for which there is no other adequate remedy at law. Where the matter involves the taking of a deposition *de bene esse* a remedy by appeal would be inadequate. *Juster v Grossman*, 229 M 280, 38 NW(2d) 832.

Where a hearing on an alternative writ of prohibition relating to enforcement of an order of the district court came before the supreme court on the day after the order of the district court became void by its own terms, question presented by the alternative writ became moot and the writ is discharged. *State ex rel v Weeks*, 229 M 581, 41 NW(2d) 177.

The probate court has no jurisdiction in habeas corpus proceedings. An intervenor has no right to change the issue between the original parties. A petition labeled as a petition to vacate the order of commitment of a person found by the probate court to be a psychopathic personality, and to restore him to capacity, but which contained no allegations applicable to a petition for restoration and merely asked for vacation of commitment order and a warrant of commitment on the ground that the probate court lacked jurisdiction to make the order, was a petition for habeas corpus of which the probate court had no jurisdiction. *State ex rel v Willson*, 230 M 156, 40 NW(2d) 910.

A proceeding in quo warranto by the state, not prohibition, is the proper remedy for testing the title of a judge to his office. *State ex rel v Beaudoin*, 230 M 186, 40 NW(2d) 885.

Prohibition is the proper remedy to restrain a judge from acting in a matter where he is disqualified by an affidavit of prejudice, but there is no statute authorizing the disqualification of a judge of the municipal court of South St. Paul by the mere filing of an affidavit of prejudice. Section 488.16 has no application to a prosecution for a violation of a city ordinance and is applicable only to civil actions. *State ex rel v Beaudoin*, 230 M 186, 40 NW(2d) 885.

In a case within the jurisdiction of The National Labor Relations Board, where a labor organizer, cited for contempt under a void state temporary injunction, had no adequate remedy at law, he was entitled to a writ of prohibition. The purpose of a writ of prohibition is partially to prevent harm before harm is done and the organizer should not be put to an additional burden of defense before a court lacking jurisdiction over the subject matter. *Norris Grain Co. v Nordaas*, 232 M 91, 46 NW(2d) 94.

In a personal injury action against both the owner and the driver of an automobile which struck plaintiff, where defendants moved for a continuance on the ground that the driver was in service, the trial court has discretionary power to determine whether the ability of the driver to conduct his defense is materially affected by his absence. This discretion should be exercised cautiously with the object in mind to give effect to the purposes of the Soldiers and Sailors Civil Relief Act and to protect the civil rights of a person who, because of his presence in the armed forces, cannot be present at the trial. A writ of prohibition may issue as well to restrain a court from exceeding its legitimate powers in a matter over which it has jurisdiction as to restrain it from proceeding in a matter over which it has no jurisdiction. Such writ may lie to prevent an abuse of discretion where there is no other adequate remedy at law. *State ex rel v Wilson*, 234 M 570, 48 NW(2d) 513.

Ordinarily, a writ of prohibition will not issue from the Supreme Court to a trial court unless the trial court is about to exceed its jurisdiction; but the writ may issue to restrain the trial court from abusing discretionary power in a matter over which it has jurisdiction, in the absence of any other adequate remedy at law. *State ex rel v District Court*, 237 M 456, 54 NW(2d) 5.

587.02 SERVICE AND RETURN OF WRIT

HISTORY. RS 1851c 83 s 19; 1852 Amend p 16 s 65; PS 1858 c 73 s 19; GS 1866 c 80 s 15; GS 1878 c 80 s 16; GS 1894 s 5989; RL 1905 s 4569; GS 1913 s 8279.

Procedural aspects in control of administrative action by writ of prohibition. 36 MLR 450.

587.05 JUDGMENT, WRIT OF CONSULTATION ABOLISHED

On appeal from orders of the railroad and warehouse commission, the court may exercise judicial, but not legislative or administrative powers. It may not direct the commission as to what orders it must make. A writ of prohibition is a preventive remedy not available to correct errors or reverse illegal proceedings. When the district court on appeal from the railroad and warehouse commission assumes to direct action which the attorney general regards as in excess of the court's jurisdiction, the state has sufficient litigation to justify it in asking, through the attorney general, for a writ of prohibition. *Arrowhead Bus Service v Black & White Cab Co.*, 226 M 327, 32 NW(2d) 590.

"Prohibition" is not a writ of right but is issued under the discretionary power of the court for the purpose of preventing an inferior tribunal from proceeding with the jurisdiction or in excess of its legitimate authority; and the father of a minor child, where the custody of the child had been awarded to the mother by divorce decree, is entitled to a writ of prohibition against further action in district court of an order issued on the application of the child's maternal grandparents, relating to the custody of the child. *Kienlen v Kienlen*, 227 M 137, 34 NW(2d) 351.

Under a writ of prohibition to restrain the state labor conciliator from holding the election to determine whether relator was the bargaining representative for the employees of Nemo, the labor conciliator was acting in a governmental capacity; there being no express statutory provision so declaring, he is not liable for costs and disbursements. The petition in this case was tried against both Nemo and the conciliator. Both appeared and filed briefs. Both presented oral arguments. Under such circumstances, the court could if justice required it, order costs and disbursements taxed against Nemo. *Nemo v Local Joint Executive Board*, 227 M 263, 35 NW(2d) 811.

Where the alleged employers, in an employee's widow's compensation proceeding, appeared specially to object to the jurisdiction of the industrial commission over their persons, but the commission set the proceeding for hearing on the merits, special appearance would not be waived by hearing on the merits, and the alleged employers would have adequate remedy to review all matters involved by certiorari after determination on the merits, and a writ of prohibition to restrain the commission from proceeding with the hearing on the merits would not issue. *State ex rel v Industrial Commission*, 234 M 567, 48 NW(2d) 42.

Where petitioners' fear of waiver of the special appearance by proceeding with a hearing on the merits and the expense of hearing, were not sufficient ground for a writ of prohibition, an alternate writ was quashed and in order to show cause was discharged without cost or disbursements. *State ex rel v Industrial Commission*, 234 M 567, 48 NW(2d) 42.

Where an application for a writ was justifiable when made but issue thereafter became null, no costs or disbursements are allowed to either party. *State ex rel v Wilson*, 234 M 570, 48 NW(2d) 513.