CHAPTER 561

ACTION IN DAMAGES FOR NUISANCE, TRESPASS, OR WASTE

561.01 NUISANCE; ACTION.

HISTORY. R.S. 1851 c. 74 s. 15; P.S. 1858 c. 64 s. 15; G.S. 1866 c. 75 s. 25; G.S. 1878 c. 75 s. 44; G.S. 1894 s. 5881; R.L. 1905 s. 4446; G.S. 1913 s. 8085; G.S. 1923 s. 9580; M.S. 1927 s. 9580.

The rule of damages in civil actions for nuisance is the injury sustained up to the commencement of the suit. Dorman v Ames, 12 M 451 (347).

A person charged need not have any interest in the freehold upon which a nuisance is erected; it is sufficient if he is a party to the erection. Dorman v Ames, 12 M 451 (347).

A riparian owner, in the erection of a dam on his own land, may keep it at such height as to swell the water in the stream to the ordinary stage, up to his neighbor's line, and is liable for injury caused by his dam in such rises in the stream as are usual, ordinary and reasonably anticipated in any particular period of the year. The court in its discretion may cut down the height of the dam. Dorman v Ames, 12 M 451 (347); Finch v Green, 16 M 355 (315); Ames v Cannon River Co. 27 M 245, 6 NW 787; Pahl v Long Meadow Club, 182 M 118, 233 NW 836.

In an action for an abatement of a nuisance and an injunction, and damages, the abatement and injunction do not follow of course upon the recovery of damages but rest in the sound discretion of the court. Finch v Green, 16 M 355 (315).

If the fee of the street was in plaintiffs, the city council, or the citizens by vote, could not confer on defendant the right of ways over it, without compensation to plaintiffs. Harrington v St. Paul & Sioux City, 17 M 215 (188); Adams v Hastings & Dakota, 18 M 260 (236).

Plaintiff may recover damages arising from a nuisance, both direct and consequential. If necessary to complete and effectuate abatement, an injunction may be adjudged. Colstrum v M. & St. L. 33 M 516, 24 NW 255.

Surface water is regarded as a common enemy which a land owner, within reason, may appropriate to his own use or may expel from his land as he chooses. Reasonable use is the test of liability. A municipality is legally responsible for constructing a street without making reasonable provision for disposal of surface water. Sheehan v Flynn, 59 M 436, 61 NW 462; Bush v City of Rochester, 191 M 591, 255 NW 256.

A municipality authorized by its charter may maintain an action to abate a nuisance. The nuisance need not be injurious to health. It is enough if it affects the comfort and convenience of the public. (In this instance a slaughterhouse). City of Red Wing v Guptil, 72 M 259; 75 NW 234.

A permanent injunction against operation of a barn. Lead v Inch, 116 M 467, 134 NW 218; Lynch v Shiely, 131 M 346, 155 NW 390.

A private action cannot be maintained to abate a public nuisance unless the injury to the plaintiff is peculiar to himself and not an injury common to himself and the general public. (Obstruction to highway leading to lake.) Painter v Gunderson, 123 M 323, 143 NW 910; Mathias v M. St. P. & S. S. M. 125 M 230, 146 NW 353.

Independently of statute, the jurisdiction of equity extended to abatement of nuisance long prior to the enactment of Laws 1913, Chapter 562, a civil law relating to bawdy houses, and the legislature had power to extend such jurisdiction. State ex rel v Ryder, 126 M 101; 147 NW 953.

Defendant maintained an embankment from which sand was cast on plaintiff's land. Damages were properly allowed and an abatement granted. Heath v M. St. P. & S. S. M. 126 M 474, 148 NW 311.

For a continuing nuisance there is no adequate remedy at law. The invasion of plaintiff's land by the deposit of sewage thereon was a nuisance entitling plaintiff to an injunction against its continuance by the village. Joyce v Village of Janesville, 132 M 121, 155 NW 1067.

If statutory authority is given for the structure (stock yards and pens), it cannot be a public nuisance but it may be a private nuisance. The Legislature cannot authorize the maintenance of a nuisance without compensation to one specially injured thereby. Stuhl v Gt. Northern, 136 M 158, 161 NW 501.

The test of liability for the maintenance of a dangerous appliance or attractive nuisance to children is not so much its location at or near a public place as its easy accessibility to children and the knowledge that they resort to it for play. Applied to manlift in an elevator, plaintiff recovered a verdict. Brandenberg v Equity Coop. 160 M 162, 199 NW 570.

A lawful business should not be destroyed or unreasonably hampered except to the extent imperatively necessary for reasonable protection of another's proper enjoyment of life and property; but noises alone, such as operating an ice-crusher, and loading milk wagons at night, may be of such volume as to constitute an abatable nuisance. Roukovina v Island Cr'y, 160 M 335, 200 NW 350.

A village ordinance prohibiting maintenance of a pound for dogs or the boarding of or conducting a place for care or sale of dogs, is invalid because in the absence of proof or finding of a nuisance, the ordinance is arbitrary and unreasonable. Claesgens v Animal Rescue League, 173 M 61, 216 NW 535.

The evidence is sufficient to sustain a finding that defendant school district was negligent in exposing plaintiff, a teacher, to tuberculosis; but not sufficient to sustain a finding that it maintained a nuisance. For the negligence of a school district in the exercise of governmental functions there is no remedy unless liability is imposed by statute. Bang v Ind. School Dist. 177 M 454, 225 NW 449.

An easement by prescription for the flooding of land may be acquired for limited or seasonable purposes only. In this case there was a beneficial user of the servient estate, and the findings do not show that the obstruction of the water was of such character as to constitute a nuisance. Pahl v Long Meadow Club, 182 M 118, 233 NW 836.

Dust containing lead oxide blown onto residences by an enameling plant was a nuisance to be abated by discontinuance, or use of some contrivance to abate it. Heller v Amer. Range, 182 M 286, 234 NW 316.

Locality not being strictly residential, the establishment of a funeral home was not abated. O'Malley v Macken, 182 M 297, 234 NW 323.

Evidence is sufficient to sustain a finding that discharge of sewage from city, and from canning factory, into creek running through plaintiff's farm was a nuisance and compensable; but acts of independent tortfeasors may not be combined to create a joint liability at law for damages. Johnson v Fairmont et al, 188 M 451, 247 NW 572.

The fact that plaintiff offered to sell her home for establishment of a funeral home does not estop her from bringing this action to restrain the establishment on a nearby location. Gunderson v Anderson, 190 M 245, 251 NW 515.

A statute defining a private nuisance has no effect against the state or its agents engaged in lawful undertaking under state authority; so that, a contractor proceeding in a lawful way in lawful performance of a contractual duty in building a bridge committed no tort. Nelson v McKenzie, 192 M 180, 256 NW 96.

A bridge was replaced by a tile culvert and a ditch was also replaced by tile. The court properly refused to require the village to rebuild the bridge and reestablish the ditch. Nichols v Village of Morristown, 192 M 510, 257 NW 82.

The statute giving the railroad and warehouse commission authority to require auto transportation companies to maintain suitable depots, does not oust a city or village of jurisdiction to enjoin the maintenance of such depot if the same constitutes a nuisance. Village of Wadena v Folkestad, 194 M 146, 260 NW 221.

While it is the duty of the municipality to keep its streets safe, including protection from falling objects, the municipality is not an insurer and in the instant case the city was not held liable for an injury caused by a falling cornice. Heidemann v City of Sleepy Eye, 195 M 614, 264 NW 212.

A cheese factory being a lawful business, and it being in common with other riparian owners entitled to use of a creek, the court can only enjoin that use which is found productive of nuisance. The discharge of whey is enjoined. Satren v Hader Cheese Factory, 202 M 553, 279 NW 361.

A wire cable, used to lower a mast arm holding a light bulb, was so negligently attached to a pole, which carried a high tension transmission wire, that the cable could and did contact the wire, the cable being in easy reach of school children. The jury properly found the defendant guilty of negligence. Ekdahl v Minn. Utilities, 203 M 374, 281 NW 517.

Plaintiff's easements for light and air and for view were not invaded by the erection of a viaduct on a street adjacent to their property. McCarthy v City of Mpls. 203 M 427, 281 NW 759.

A verdict of damages was sustained because of substantial contribution of pollution by defendant to a stream running through plaintiff's farm. Shuster v City of Chisholm, 203 M 518, 282 NW 135.

In an action against the city and the property owner because of injury resulting from a fall on an icy sidewalk, there was no recovery. Johnson v City of Redwood, 204 M 115, 282 NW 693.

A contractor, while lawfully engaged in constructing a sewage tunnel may be held liable to adjacent property owner for creating a private nuisance, if by blasting the soil is so shaken as to do damage. Jones v Johnson, 211 M 123, 300 NW 447.

In an area zoned for industrial use, whether operation of a particular industry is a nuisance must be determined by whether that industry is being operated under conditions best calculated to remove or minimize the interference. Jedneak v Mpls. Gen'l Elec. 212 M 226, 4 NW(2d) 326.

Defendant's drainage from his creamery was a nuisance when drained upon plaintiff's farm. As to defendant's claim to a prescriptive right, even if he had such right, the greater increase in the amount deposited might abrogate the prescriptive right. Herrman v Larson, 214 M 46, 7 NW(2d) 330.

Where there have been continual and persistent violations of the liquor statutes and repeated convictions have failed to abate them, an injunction is properly granted. State v Preuss, 217 M 100, 13 NW(2d) 774.

Application of criminal statutes to those creating a nuisance by depositing refuse on the highway. 1934 OAG 463, May 24, 1933 (154).

Whether keeping of bees in a city is a nuisance is a question of fact in each particular case. OAG May 23, 1934 (59a-32).

Keeping of cows in a village may or may not be a nuisance. It depends on the location. OAG July 31, 1936 (477b-20).

Places selling liquor illegally may be enjoined as a nuisance. OAG April 30, 1936 (494b-21).

Municipality may by ordinance prohibit establishment of undertaking parlors in residential districts. OAG June 21, 1937 (477b-20).

The establishment of a theater next door to a church may be a nuisance. OAG April 25, 1938 (471e).

A hog feeding farm may be abated as a nuisance. OAG Dec. 31, 1938 (225j).

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

Invasions of private property. 26 MLR 623.

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

561.02 MALICIOUSLY MAINTAINED STRUCTURE.

HISTORY. 1907 c. 387 s. 1; G.S. 1913 s. 8086; G.S. 1923 s. 9581; M.S. 1927 s. 9581.

The inherent business of regularly publishing and circulating a malicious, scandalous and defamatory newspaper bears such relation to the social and moral welfare that the legislature, in the legitimate exercise of the police power, may declare it to be a public nuisance; and a newspaper business conducted in viola-

tion of Laws 1925, Chapter 285, is a public nuisance. State ex rel v Guilford, 174 M 457, 219 NW 770.

Interference with contract; effect of motive. 12 MLR 164.

561.03 REMEDIES.

HISTORY. 1907 c. 387 s. 2; G.S. 1913 s. 8087; G.S. 1923 s. 9582; M.S. 1927 s. 9582.

561.04 TRESPASS; TREBLE DAMAGES.

HISTORY. R.S. 1851 c. 74 ss. 18 to 20; P.S. 1858 c. 64 ss. 18 to 20; G.S. 1866 c. 75 ss. 28 to 30; G.S. 1878 c. 75 ss. 47 to 49; G.S. 1894 ss. 5884 to 5886; R.L. 1905 s. 4449; G.S. 1913 s. 8090; G.S. 1923 s. 9585; M.S. 1927 s. 9585.

In an action for trespass, in which treble damages may be allowed, and a general verdict is returned, the presumption is that it includes all the damages that the plaintiff is entitled to. Tait v Thomas, 22 M 537.

The mortgagor is entitled to recover by action of the holder of the mortgage, foreclosing the same, three times the amount of any costs and disbursements of the foreclosure charged as paid which have not in fact been paid. Hobe v Swift, 58 M 84, 59 NW 831.

A wilful trespass upon land, committed by a servant within scope of his employment, warrants treble damages against the master, even though the act was without the master's knowledge. Helppie v N. W. Drainage, 127 M 360, 149 NW 461.

Sums paid to surveyor and timber cruiser are not taxable as disbursements. Shterk v Veitch, 135 M 349, 160 NW 863.

Where there has been a wrongful cutting and appropriation of growing trees, the owner may recover from the wrongdoer the value of the trees in the form into which the latter's labor has changed them. Sittauer v Alwin, 151 M 509, 187 NW 611.

Written contract for cutting of timber did not extend to the following season. Egerdahl v Larson, 160 M 49, 199 NW 889.

The question of plaintiff's contributory negligence was properly submitted to the jury. Johnson v Elmborg, 165 M 70, 205 NW 628.

As the trespass was not wilful, the intervenor is chargeable with actual damages only. Walker v Patterson, 166 M 219, 208 NW 7.

The gravel removal contract, as an incident to which the trees were removed, did not excuse the taking of the trees, and the contractor is liable in treble damages. Hansen v Moore, 182 M 322, 234 NW 462.

Vendee in possession under a contract for the purchase of land may recover treble damages in trespass; and all persons participating in the tort are liable as tortfeasors. Lawrenz v Langford, 206 M 315, 288 NW 727.

The policy did not cover intentional and wilful trespass by the insured in cutting trees upon land it had no right or license to enter. Langford v Employers' Mutual, 210 M 296, 297 NW 843.

Trees growing upon the boundary line between adjoining tracts of land are the common property of the landowners, and one party must have the consent of the other to cut or destroy such trees. There must be an assessment of actual damages or there can be no treble damages. Meixner v Buecksler, 216 M 586, 13 NW(2d) 754.

561.05 DOMESTIC ANIMALS SHALL NOT RUN AT LARGE; TRESPASS.

HISTORY. 1921 c. 319 s. 1; G.S. 1923 s. 1386; M.S. 1927 s. 1386.

561.06 VIOLATIONS.

HISTORY. 1921 c. 319 s. 2; G.S. 1923 s. 1387; M.S. 1927 s. 1387.

561.07 ANIMALS MAY BE IMPOUNDED.

HISTORY. 1921 c. 319 s. 3; G.S. 1923 s. 1388; M.S. 1927 s. 1388.

561.08 OWNER OF PROPERTY MAY DISTRAIN.

HISTORY. 1921 c. 319 s. 4; G.S. 1923 s. 1389; M.S. 1927 s. 1389.

561.09 OWNER OF ANIMALS LIABLE FOR TRESPASS.

HISTORY. 1921 c. 319 s. 5; G.S. 1923 s. 1390; M.S. 1927 s. 1390.

561.10 TRESPASS AFTER EXECUTION OR FORECLOSURE SALE.

HISTORY. R.S. 1851 c. 74 s. 12; P.S. 1858 c. 64 s. 12; G.S. 1866 c. 75 s. 12; G.S. 1878 c. 75 s. 30; G.S. 1894 s. 5862; R.L. 1905 s. 4450; G.S. 1913 s. 8091; G.S. 1923 s. 9586; M.S. 1927 s. 9586.

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

HISTORY. 1937 c. 408 s. 1; M. Supp. s. 9584-1.

561.12 SERVICE OF NOTICE OF PETITION; HEARING.

HISTORY. 1937 c. 408 s. 2; M. Supp. s. 9584-2.

561.13 DISTRICT COURT TO HAVE JURISDICTION.

HISTORY. 1937 c. 408 s. 3; M. Supp. s. 9584-3.

561.14 COURT TO DETERMINE FAIR RENTAL VALUE.

HISTORY. 1937 c. 408 s. 4; M. Supp. s. 9584-4.

561.15 COURT MAY GRANT CERTAIN RIGHTS; PLOWING.

HISTORY. 1937 c. 408 s. 5; M. Supp. s. 9584-5.

561.16 APPLICATION OF SECTIONS 561.11 TO 561.15.

HISTORY. 1937 c. 408 s. 6; M. Supp. s. 9584-6.

561.17 ACTION FOR WASTE.

HISTORY. R.S. 1851 c. 74 ss. 16, 17; P.S. 1858 c. 64 ss. 16, 17; G.S. 1866 c. 75 ss. 26, 27; G.S. 1878 c. 75 ss. 45, 46; G.S. 1894 ss. 5882, 5883; R.L. 1905 s. 4447; G.S. 1913 s. 8088; G.S. 1923 s. 9583; M.S. 1927 s. 9583.

The lease designated no time within which the new wheel and flume, corn stone, or new bolting were to be put in or materials provided, and a reasonable time will be presumed. The findings were for the owner because of default by the lessee. Hall v Smith, 16 M 58 (46).

An action for waste may be maintained against the assignee of a life-estate by the reversioner. Curtiss v Livingston, 36 M 380, 31 NW 357.

Where a lease contains no provision for the termination thereof, or for re-entry for breach of covenant therein, a mere breach of the covenant or the commission of waste does not work a forfeiture or give a right to re-entry. Bauer v Knoble, 51 M 358, 53 NW 805.

Where the tenant in a homestead estate neglected for several years to make repairs and pay taxes, the administrator with will annexed may apply to the court to have a receiver appointed to take charge of, and if necessary to sell the premises. St. P. Trust v Mintzer, 65 M 124, 67 NW 657.

In an action for waste in which treble damages may be allowed, the proper basis for damages is the depreciation in the value of the premises. Evans v Kohn, 113 M 45, 128 NW 1006.

Waste; liability of mortgagor or his grantee to mortgagee for impairment of mortgage security. 27 MLR 408.

561.18 WASTE PENDING YEAR OF REDEMPTION; INJUNCTION.

HISTORY. R.S. 1851 c. 71 s. 118; P.S. 1858 c. 61 s. 119; G.S. 1866 c. 66 s. 296; G.S. 1878 c. 66 s. 328; G.S. 1894 s. 5477; R.L. 1905 s. 4448; G.S. 1913 s. 8089; G.S. 1923 s. 9584; M.S. 1927 s. 9584.

Where trees were standing on the land at the time of the execution sale were cut and removed during the year for redemption, the purchaser may after his title becomes absolute, maintain an action for conversion of the logs into which such trees have been cut. Whitney v Huntington, 34 M 458, 26 NW 631.

It is waste for the mortgagor in possession of an apartment building during the year for redemption not to use the current rents to an extent to keep the premises tenantable; but an injunction will not lie unless the waste is of such character as to impair the value of the property so as to render it insufficient as security. Gardner v Prindle, 185 M 147, 240 NW 351.