

REMEDIES CONTROLLING PERSONAL ACTION

CHAPTER 585

INJUNCTIONS

585.01 ISSUANCE; EFFECT ON RUNNING OF TIME.

Where an established business has been sold with its good will, and there is a valid covenant not to compete in certain territories, the breach is regarded as the controlling factor and relief follows almost as a matter of course. The law looks with disfavor upon any attempt to avoid the consequences of the contract deliberately made to accomplish lawful purpose. Injunction will lie if the court can by its decree assure parties that the injunction's operative effect will be wholly without prejudice or oppression to either party. A valid covenant not to compete may be assigned unless by its peculiar nature it cannot be. The covenant where involved was entered into for the mutual business advantages of the parties thereto. Such a covenant adds to the good will of the business and may be transferred without and as a part thereof; and the contract is not part of the estate of a business in bankruptcy. *Peterson v Johnson*, 204 M 300, 283 NW 561.

In a suit on an injunction bond it was held as a matter of law, that in light of all the circumstances of the case it was not reversible error for the trial court to permit the jury to assess damages for increased construction costs incurred because of the injunction. *Detroit Lakes Co. v McKenzie*, 204 M 490, 284 NW 60.

It was decided upon the former appeal that the mutual covenant not to compete in certain territory was valid and binding and followed the assignment of the contract by plaintiff Peterson to The Peterson Nut Company No. 2; that the involuntary bankruptcy of the latter did not end or affect the covenant; that the insolvency and adjudication of bankruptcy was not an anticipatory breach of the covenant; that it passed by the sale of the trustee in bankruptcy of the assets and good will of the bankrupt's business; that the right and title there vested in the plaintiff corporation. The rights to the contract are an asset of the corporation and pass to the trustee and may be included in his inventory and sold. *Peterson v Johnson*, 209 M 470, 297 NW 178.

Since it was within the city council's power to enact the ordinance in question it was for it to declare what accounts it deemed inimical to the public welfare and to prescribe the term of punishment for its violation. Courts interfere in cases of this type only when as in the instant case there has been a clear departure from the fundamental law. On the question of defendant's guilt or innocence the trial court properly refused to grant a jury trial. *State ex rel v Parks*, 199 M 622, 273 NW 233; *State v Hope*, 212 M 319, 3 NW(2d) 499.

Alleged contractual rights based upon a school board's resolution approving and adopting as the exclusive system of shorthand, a certain shorthand system did not create a contract or other obligation, the resolution being merely a statement of policy. Ordinarily, where no rights of third party have attached, a municipal body has the power to reconsider or rescind any action theretofore taken. *Cafon v Board of Education*, 213 M 165, 6 NW(2d) 266.

Where there have been continuous and persistent violations of the liquor and gambling statutes and repeated convictions have failed to abate them, an injunction is properly granted. *State v Sportmen's Country Club*, 214 M 151, 7 NW(2d) 495.

Where sections 278.01 and 429.16 afford a taxpayer an adequate remedy at law to contest assessment proceedings or the collection of the assessment the taxpayer is not entitled to maintain a suit in equity to enjoin the collection of the assessment. *Rosso v Village of Brooklyn Center*, 214 M 364, 8 NW(2d) 219.

Where, as here, a permanent easement provides for travel "by foot or wagon" the word wagon is to be used in the generic sense and is broad enough to cover vehicular transportation of gravel by vehicles at present in common use; and the equity court was justified in entertaining a suit for an injunction against interference by the owner of the fee with the use of the right of way by the person enjoying the easement. *Giles v Luker*, 215 M 256, 9 NW(2d) 716.

The granting of or refusal of a trial court to restrain the breach of a contract is largely in the discretion of the trial court; and refusal of the trial court to grant an injunction restraining violation of, or interference with, the contract did not in effect determine or deny the legality or obligation of the contract so as to render issues relative thereto res judicata upon dismissal of the appeal from the judgment denying such injunctive relief. *McDonald v Brewery & Beverage Drivers Union*, 215 M 274, 9 NW(2d) 770.

Where the original owners of an addition to a city incorporated into the instrument of conveyance of every lot in the addition a restrictive covenant as to the style and cost of a building to be erected on the lot, the restriction applies not only to the kind of building to be erected but also to the use of the property. In the instant case the trial court properly restrained the defendants from altering a residence making it suitable for the conducting of religious services and from conducting services on the premises. *Strauss v Ginzberg*, 218 M 57, 15 NW(2d) 130.

In an ordinance, the restriction of customary uses incidental to residential establishments to a single lot according to a plat is unreasonable and arbitrary; and erection of such radio poles and wires as those involved in the instant case, is a use customarily incident to a residential establishment. *Village of St. Louis Park v Casey*, 218 M 394, 16 NW(2d) 459.

Where a labor union or other private organization proceeds against its members or subordinate groups in violation of its constitution or by-laws, its actions in this respect are void for want of jurisdiction, and redress therefor may be had in the courts by such members or subordinate groups whose rights have been thus violated, provided intra-union or intra-organization remedies have been first exhausted or that such remedies have been circumvented or denied. *Minnesota Council v American Federation*, 220 M 179, 19 NW(2d) 414.

Great caution and deliberation should be exercised by the trial court in granting an interlocutory injunction, since the injunctive process is the strong arm of equity. The granting or refusal of an injunction lies largely within the discretion of the trial court, whose action will not be disturbed on appeal unless from the whole record it appears that there has been an abuse of such discretion. *General Minn. Co. v Carlton County Coop.* 221 M 510, 22 NW(2d) 673.

The propriety of and need for an injunction against violation of economic stabilization regulations is discretionary with the court; and where the violation was unintentional and was discontinued as soon as defendant was informed his act was a violation there was no error in denying the injunction. *Bowles v Floodwood*, 62 F. Supp. 709.

The injunction procedure prescribed by the emergency price control act is equitable in nature, and these provisions do not conflict in any way with other equitable jurisdiction of the court. The special provision authorizing suits for damages provides a distinct and exclusive remedy relative to damages. *Porter v Warner Holding Co.* 66 SCR 1086.

Remedy at law for the removal of encroachments. 2 MLR 229.

Protection against inducing competitor's employee to disclose information. 2 MLR 305.

Equity jurisdiction to restrain repeated trespasses; inadequacy of legal remedy. 7 MLR 593.

Right of the court to restrain the executive department from calling special elections. 8 MLR 62.

Jurisdiction of a court of equity over persons to compel the doing of acts outside the territorial limits of the state. 14 MLR 494.

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Comparative injury as a basis for denying relief under restrictive covenants. 15 MLR 118.

Implied covenant to a contract of sale of business and good will, not to solicit old customers. 16 MLR 106.

Adequacy of remedy of self-help where injunction is asked for against trespasses. 16 MLR 210.

Injunction against action at law because of plaintiff's laches. 18 MLR 82.

Invalidity of injunction issued by state court to restrain employee from prosecuting an action in a federal court. 26 MLR 404.

Power of federal courts to enjoin proceedings in state courts under section 265 of the judicial code. 26 MLR 558.

585.02 TEMPORARY INJUNCTION, WHEN AUTHORIZED.

The issuing of a temporary restraining order pending trial rests largely in judicial discretion. *McFadden, Lambert Co. v Winston*, 209 M 242, 296 NW 18.

In an action in the district court of Hennepin county to restrain picketing the plaintiff's place of business, the matter in controversy being the "closed shop" issue, the trial court in its discretion denied the plaintiff's application for an injunction, which holding the appellate court did not disturb. *East Lake Drug Co. v Pharmacists' Union*, 210 M 433, 298 NW 722.

A contract is sufficiently certain to be enforced if it can be made certain by reformation, and where the vendee hesitated to complete his part of the contract until certain judgments were made and the vendor's attorney threatened cancelation of the contract, the contract may be reformed, and the purchaser is entitled to an order restraining the vendor from canceling the contract during the pendency of the procedure for reformation. *Pettyjohn v Bowler*, 219 M 55, 17 NW(2d) 82.

Where a labor union or other private organization proceeds against its members or subordinate groups in violation of its constitution or bylaws, its actions in this respect are void for want of jurisdiction, and redress therefor may be had in the courts by such members or subordinate groups whose rights have been thus violated, provided intra-union or intra-organization remedies have been first exhausted or that such remedies have been circumvented or denied. *Minn. Council of State Employees, No. 19 v Amer. Fed. of State, County and Municipal Employees*, 220 M 179, 19 NW(2d) 414.

Great caution and deliberation should be exercised by the trial court in the granting of an interlocutory injunction, since the injunctive process is the strong arm of equity. The right to and the necessity for the granting or refusal of such an injunction lies largely within the discretion of the trial court, whose action will not be disturbed on appeal unless from the whole record it appears that there has been an abuse of such discretion. *General Minn. Utilities Co. v Carlton Co. Cooperative Power Assn.* 221 M 511, 22 NW(2d) 673.

A complaint seeking to enjoin village and its officers from enforcing zoning ordinance insofar as ordinance prevented plaintiff from using strip of shore land within village for business of renting boats, on ground that ordinance deprived plaintiffs of property without due process of law in violation of fourteenth amendment, stated a claim on which relief could be granted and asked for an appropriate remedy, and therefore dismissal of the complaint was improper. *Dennis v Village of Tonka Bay*, 151 F(2d) 411.

Injunctive relief under uniform fraudulent conveyance act. 7 MLR 542.

Rights of creditors whose claims have not matured. 7 MLR 548.

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

Labor injunctions in Minnesota. 24 MLR 796.

585.04 BOND REQUIRED; DAMAGES, HOW ASCERTAINED.

Injunction bond, attorney's fees. 5 MLR 79.

Defenses to action on injunction bond. 17 MLR 445.

Restitution as remedy for loss caused by erroneous injunctions. 24 MLR 994.