

REMEDIES CONTROLLING PERSONAL ACTION

CHAPTER 586

MANDAMUS

586.01 TO WHOM ISSUED; JUDICIAL DISCRETION NOT CONTROLLED.

Plaintiffs petitioned for a writ of mandamus requiring the defendants to open up and grade a road, and the defendants demurred. Mandamus will not control discretion, although it will lie to compel its exercise. Where facts pleaded failure to show any excuse for a delay of more than 62 years in bringing suit to enforce a known right, laches appears as a matter of law, for equity aids the vigilant and not the negligent. *Sinell v Town of Sharon*, 206 M 437, 289 NW 44.

In the instant case where plaintiff petitioned for a writ of mandamus against an administrative officer, the petition was properly denied as the plaintiff failed to show a clear and complete right to that which he asked the court to require. *State ex rel v Hoffman*, 209 M 308, 296 NW 24.

Where a justice of the peace denies a jury trial in a civil action to a party who is entitled to it, the party has an adequate remedy by appeal and is not entitled to a writ of mandamus to compel the enforcement of the right. *State ex rel v Delaney*, 213 M 217, 6 NW(2d) 97.

Where this court reverses an order or judgment and remands the case with specific directions as to the order or judgment to be entered, upon remittitur it is the duty of the trial court to execute the mandate of this court precisely according to its terms, without alteration, modification, or change in any respect. New defenses existing and known at the date of an order or judgment so reversed cannot be heard or entertained in opposition to the mandate. *Personal Loan Co. v Personal Finance Co.* 213 M 239, 6 NW(2d) 247.

There is no universal rule by which the directory provisions in a statute may under all circumstances be distinguished from those that are mandatory. Consideration must be given to the legislative history, the language of the statute, its subject matter, the importance of its provisions, their relation to the general object intended to be secured by the act, and whether there is a public or a private right involved. Courts will not control the discretionary power of the trial court, but mandamus will lie to set the officials' discretion in motion. *State ex rel v Pohl*, 214 M 221, 8 NW(2d) 227.

The petitioner must show that the wrong consists of some failure of official duty clearly imposed by law, and that there is no other adequate specific legal remedy. *State ex rel v Hauser*, 219 M 303, 17 NW(2d) 504.

Mandamus will issue only to compel performance by an inferior board, or persons, of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. An applicant for such writ, to be entitled to it, must show more than that there is a public wrong injurious to him. He must show that such wrong consists of some failure of official duty clearly imposed by law, and that there is no other adequate specific legal remedy. The duty must be positive, not discretionary, and the right must be so clear as not to admit of any reasonable controversy. *State ex rel v Hauser*, 219 M 297, 17 NW(2d) 504.

Title to public office cannot be collaterally attacked in a mandamus proceeding. In the instant case, Rodger's authority could be properly questioned only in a direct proceeding by a writ of quo warranto. *State ex rel v Strunk*, 219 M 535, 18 NW(2d) 457.

Mandamus may issue under cartway statute to compel performance by town board of mandatory as distinguished from discretionary duties. *State ex rel v Town of Greenwood*, 220 M 508, 20 NW(2d) 345.

MINNESOTA STATUTES 1947 ANNOTATIONS

586.02 MANDAMUS

1390

Although mandamus lies to set discretion in motion on the part of a quasi-judicial body, it is neither available for the purpose of controlling or guiding such discretion nor for the purpose of reviewing the exercise thereof, even though erroneous, unless arbitrariness and caprice are so clearly manifest therein as to constitute an abuse of discretion. *Zion Church v City of Detroit Lakes*, 221 M 55, 21 NW(2d) 204.

Stockholders of banks and trust companies, the same as those of other corporations, have a right to inspect their books and records at proper times and for proper purposes. But in proceedings in mandamus by a stockholder to compel inspection of corporate books and records where the alternate writ on its face shows that the inspection is set for proper purposes, the burden of establishing an improper purpose of the inspection is on the corporation. *State ex rel v Crookston Trust Co.* 222 M 17, 22 NW(2d) 911.

Relief through mandamus will not be granted where it is obvious that the issuance of the writ would be futile, unavailing, and ineffective. *State v Haveland*, 223 M 89, 25 NW(2d) 475.

Reinstatement of university or college student after expulsion, mandamus to compel. 6 MLR 415.

Mandamus to the governor in Minnesota. 9 MLR 21.

Eminent domain, mandamus as remedy where land is taken for public purpose without provision for just compensation. 9 MLR 480.

Attorney general's liability to mandamus in Minnesota. 14 MLR 303.

Clean hands maxim, right of relator as affected by. 14 MLR 420.

Ministerial officer's right to raise defense of unconstitutionality in mandamus proceeding. 15 MLR 340.

Laches, right of relator as affected by the equitable maxim of laches. 24 MLR 877.

Mandamus to review administrative action that involves exercise of discretion. 27 MLR 399.

586.02 ON INFORMATION; REMEDY AT LAW.

In this action arising from the collision of two automobiles the issues of negligence and contributory negligence were for the jury. *Raymond v Kaiser*, 204 M 220, 283 NW 119.

An owner of a portion of a parcel of land sold as a whole for taxes, his portion having a definite geographical boundary, is entitled under sections 281.08, 281.12, to redeem his property by paying his proportionate part of the tax judgment. In the instant case mandamus will lie as against the county auditor. *State ex rel v Erickson*, 212 M 218, 3 NW(2d) 231.

See, *State ex rel v Delaney*, 213 M 217, 6 NW(2d) 97, noted under section 586.01.

The city council having performed its discretionary function without arbitrariness or caprice, mandamus will not lie where petitioner, through application for a writ of certiorari within the statutory period, had another proper and speedy remedy available to secure a full review of the entire matter, inclusive of the possible violation of petitioners legal rights at any stage of the proceeding. Mandamus will lie only where there is no other plain, speedy and adequate remedy available. *Zion Church v City of Detroit Lakes*, 221 M 55, 21 NW(2d) 203.

586.03 ALTERNATIVE OR PEREMPTORY; CONTENTS OF WRIT.

Whether a municipality may be sued elsewhere than in the county in which it is situated is a question of venue rather than jurisdiction. It was error for the city of Austin, without motion or other application to the trial court for a change of venue, to secure from the appellate court an alternate writ of mandamus which it asks to be made absolute so as to change the venue of the case from Olmsted to Mower county. The alternate writ is discharged for the reason that no motion was

MINNESOTA STATUTES 1947 ANNOTATIONS

1391

MANDAMUS, 586.08

made before the trial court to change the venue. *Scaife v Dornack*, 200 M 349, 1 NW(2d) 356.

See, *State ex rel v Crookston Trust*, 222 M 17, 22 NW(2d) 911, noted under section 586.01.

586.04 PEREMPTORY WRIT.

Where defendant was not diligent in asking for a change of venue, there being a proceeding in mandamus directed to the judge of the trial court asking vacation of an order denying a change of venue for lack of diligence, the order of the trial court is sustained and relator's petition is denied. *Roper v Interstate Power Co.* 213 M 597, 6 NW(2d) 625.

See, *Zion Church v City of Detroit Lakes*, 221 M 55, 21 NW(2d) 203, noted under section 586.02.

586.06 ANSWER.

In a proceeding in mandamus in the district court by a school district against a municipality to compel the municipality to abate and cancel assessments against relator's property, the trial court properly struck out defendant's answer as sham and properly granted the peremptory writ. *Independent School District v City of White Bear Lake*, 208 M 29, 292 NW 777.

A motion for a judgment on the pleadings by a respondent in a mandamus proceeding must rest upon the petition and alternate writ since the defensive averments in the answer must be considered denied. *State ex rel v Hoffman*, 209 M 308, 296 NW 24.

See, *State ex rel v Crookston Trust*, 222 M 17, 22 NW(2d) 911, noted under section 586.01.

586.07 DEFAULT; NEW MATTER IN ANSWER; DEMURRER.

In a mandamus proceeding the allegations of the answer stand as if denied without a reply. *State ex rel v Youngquist*, 178 M 442, 227 NW 891.

586.08 PLEADINGS, ISSUES, TRIAL.

Laches in equity is unreasonable delay in seeking relief or asserting one's right. It is strictly an equitable defense as distinguished from the absolute defense afforded by the statute of limitations. Where facts pleaded failed to show any excuse for a delay of more than 62 years in bringing suit to enforce a known right, laches appears as a matter of law. *Sinell v Town of Sharon*, 206 M 437, 289 NW 44.

In a proceeding in mandamus by a veteran to compel a municipality to reinstate him coupled with a proceeding in certiorari to review the sufficiency of the evidence before the city council resulting in the relator's discharge, there being evidence from which the city council could find incompetency, its action in discharging respondent cannot be overturned by a court even though the motives of the triers of fact may be subject to suspicion. *State ex rel v Bemidji*, 209 M 91, 295 NW 514.

A motion for judgment on the pleadings by a respondent in a mandamus proceeding must rest upon the petition and alternate writ since the defensive averments in the answer must be considered denied. So considered the petition and writ do show that appellant has not, under the provisions of the state civil service act, a clear and complete legal right to the moneys he asks the court to command respondent to pay him. *State ex rel v Hoffman*, 209 M 308, 296 NW 24.

Relator sought by a writ of mandamus to compel an administrative officer to restore him to his former position. After the alternate writ was issued but before the hearing thereon, the civil service act under which he claimed was repealed and was superseded by L. 1939, c. 441. The right to a writ of mandamus is determined

MINNESOTA STATUTES 1947 ANNOTATIONS

586.09 MANDAMUS

1392

as to the time of the hearing and not as of the time of the application. The writ was properly quashed. *Reed v Trovatten*, 209 M 348, 296 NW 535.

In the instant case, where the city of Austin was brought in as an additional defendant and appeared specially and objected to the jurisdiction of the court on the ground that a municipality may not be sued elsewhere than in the county in which it is situated, the question is one of venue rather than jurisdiction. Mandamus to compel a change of venue from Olmsted to Mower county will not lie for the reason that no motion was made before the trial court for a change of venue. *Scaife v Dornack*, 211 M 349, 1 NW(2d) 356.

In the instant case, where plaintiffs clearly were entitled to no relief, the error of the trial court in ordering the mandamus dismissed after the testimony was closed and the jury withdrawn instead of filing findings of fact and conclusions of law was harmless, and the action of the district court is affirmed. *Adams v Atkinson*, 212 M 131, 2 NW(2d) 818.

The owner of a portion of a parcel of land sold as a whole for taxes, his portion having a definite geographical boundary, is entitled under section 281.08 to redeem his property by paying his proportionate part of the tax judgment, but in a mandamus proceeding the court may order the county auditor to properly apportion the tax judgment and receive from the relator payment of his proportion of the tax. *State ex rel v Erickson*, 212 M 218, 3 NW(2d) 231.

The civil service act imposes upon the director of civil service the duty of classifying "all offices, employments, and positions in the classified service" and of allocating "each office, position, or employment in the classified civil service." In proceedings in mandamus to compel the director to classify and allocate relator's position in accordance with the civil service act, the trial court was in error in quashing the writ. *State ex rel v Pennebaker*, 215 M 75, 9 NW(2d) 257.

A petition and alternate writ of mandamus to compel a town board to establish a cartway is not insufficient for lack of allegations that the town has funds available to pay for the road where there are allegations that the relator, pursuant to the provisions of section 163.15, subd. 2, offers to pay the damages arising from establishing the cartway. *State ex rel v Town of Greenwood*, 220 M 508, 20 NW(2d) 345.

Removal from public office. 20 MLR 721, 748.

586.09 JUDGMENT FOR PLAINTIFF; APPEAL.

Mandamus has been established as the proper remedy to be pursued by landowner to secure from county auditor official certificate of amount required to be paid county treasurer in redemption of land sold for taxes. Said remedy has not been supplanted by the uniform declaratory judgments act, and it was error to quash the mandamus proceeding on the ground that it was not now a proper remedy. *Farmers & Merchants Bank v Billstein*, 204 M 224, 283 NW 138.

A school board having refused resident children of proper age admission to its school is a proper party to mandamus proceedings to enforce the rights of such children to a free education. The board having acted in behalf of the district in the discharge of governmental functions is not liable for costs or disbursements. *State ex rel v School Board*, 206 M 63, 287 NW 625.

An order denying a motion to vacate an order granting and refusing separate requests for judgment on the pleadings, itself a nonappealable order, does not acquire appealable status; and where in mandamus in the district court for Ramsey county to compel respondent as a justice of the peace to grant a new trial, the trial court properly denied the relator's request for judgment on the pleadings and properly dismissed the writ. *State ex rel v Delaney*, 212 M 519, 4 NW(2d) 384.

Tort liability of administrative officers. 21 MLR 263, 308.

586.11 JURISDICTION OF DISTRICT AND SUPREME COURTS.

Whether a municipality may be sued elsewhere than in the county in which it is situated is a question of venue rather than jurisdiction, and mandamus does not lie against the district court to obtain a removal of the case from Olmsted to Mower

MINNESOTA STATUTES 1947 ANNOTATIONS

1393

MANDAMUS 586.12

county. The proper method would be by motion under the statute for a change of venue. *Scaife v Dornack*, 211 M 349, 1 NW(2d) 356.

An owner of land taken or damaged in condemnation proceedings, even though omitted from proceedings, is nevertheless entitled to compensation. In future where lands are damaged or taken in the construction of a public project and they are not included in the condemnation proceeding, the aggrieved owners of such omitted lands may compel condemnation of them by an action in mandamus against the highway commissioner, or other state officer, empowered to acquire by condemnation the land required for the project. *State ex rel v Anderson*, 220 M 139, 19 NW(2d) 71.

Although a writ of prohibition is appropriate for determining whether a probate judge is disqualified for bias, we observe that a more expeditious and suitable remedy is to be had by applying to the district court for a writ of mandamus. *Payne v Lee*, 222 M 269, 24 NW(2d) 265.

586.12 ISSUES OF FACT; TRIAL.

Trial by jury as a matter or right under the code. 11 MLR 449, 452.

Removal from public office; veterans preference. 20 MLR 748.