

CHAPTER 587

WRITS OF PROHIBITION

587.01 WRITS; ISSUANCE AND CONTENTS.

NOTE: See, 1852 amendment, page 16; and note the action of the statute revision commission of 1905 in abolishing the antiquated "writ of consultation" never needed and no longer used.

The writ of prohibition will not issue where the law provides a remedy and an ample remedy is found in the election statutes. *State ex rel v Ferguson*, 203 M 603, 281 NW 765.

Where certiorari to review is an applicable and adequate remedy a writ of prohibition will not lie. *State ex rel v District Court*, 206 M 645, 287 NW 491.

The granting of a writ of prohibition is discretionary and ordinarily will be denied in the exercise of the court's discretion where, as here, the party has a complete remedy by mandamus; but mandamus lies to compel a judge of probate by order to fix the time and place of hearing on a petition for the probate of a will so that notice thereof may be given pursuant to section 525.83. *State ex rel v Kreger*, 210 M 509, 299 NW 2.

Where an appeal lies from an order based on a holding that the court has jurisdiction the proper method of reviewing the order is by appeal rather than by a writ of prohibition. *State ex rel v Funck*, 211 M 27, 299 NW 684.

In the instant case, the validity of stays granted by the trial court cannot be presented in the supreme court on this motion to dismiss an appeal. Plaintiff's remedy against unauthorized stays was by writ of prohibition. Following *State ex rel v Johnson*, 173 M 271, 217 NW 359. *Stevens v Stevens*, 220 M 457, 19 NW(2d) 744.

Prohibition is not a writ of right, but, in the absence of another legal remedy reasonably efficient and adequate, the writ issues in the discretion of the court to prevent an inferior tribunal from proceeding in a matter over which it is wholly without jurisdiction or in which it is exceeding its legitimate power and authority. In the instant case, the writ is made absolute and proceedings in the municipal court annulled. *Huhn v Foley Bros.* 221 M 279, 22 NW(2d) 3; *Payne v Lee*, 222 M 269, 24 NW(2d) 259.

Irregularities and errors in a proceeding over which an inferior tribunal may lawfully exercise jurisdiction cannot be reviewed by writ of prohibition, such writ being a preventive and not a correctional remedy. *Heinsch v Kirby*, 222 M 352, 24 NW(2d) 493.

A writ of prohibition is limited in its application to the purpose of prohibiting judicial or quasi-judicial action in excess of jurisdiction, and will not issue to restrain or prohibit individuals or non-judicial bodies from performing purely political, legislative, or administrative acts. The restraining order is vacated and an alternate writ of prohibition quashed when a writ of prohibition to restrain the county auditor from placing a certain name on the official ballot is denied. *O'Neill v Kallsen*, 222 M 379, 24 NW(2d) 715.

No issue on the merits of a controversy in the trial court can properly be raised upon the application for a writ of prohibition. *State ex rel v District Court*, 222 M 546, 25 NW(2d) 692.

Use of the writ of prohibition to prevent the court from taking jurisdiction of a fictitious counter-claim. 5 MLR 314.

When will a writ of prohibition issue. 7 MLR 425.

Writ of prohibition to the Court Christian. 20 MLR 272.

587.05 JUDGMENT; WRIT OF CONSULTATION ABOLISHED.

Our district courts are courts of concurrent jurisdiction. When one first acquires jurisdiction over an action and the parties thereto, it is an excess of jurisdiction for another, by injunctive proceedings against the parties, to attempt to restrain further proceedings in the court first acquiring jurisdiction. *State ex rel v District Court*, 195 M 169, 262 NW 155.

Prohibition will not lie to restrain a probate court from entertaining a petition for probate of a purported will by the proponent of another instrument who has already commenced proceedings for its probate in a different county. The county in which the proceedings are first commenced has jurisdiction to decide the question of venue, and its decision thereof is reviewable by appeal or certiorari. *State ex rel v Probate Court*, 215 M 322, 9 NW(2d) 765.

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 over which it is wholly without jurisdiction or in which it is exceeding its legitimate power and authority. The supreme court made absolute a writ forbidding the municipal court of St. Paul from proceeding in an action instituted by plaintiff to recover costs of transportation from Alaska to St. Paul for medical treatment, because plaintiff's remedy under the Longshoremen's act was exclusive. *Huhn v Foley Bros.* 221 M 279, 22 NW(2d) 5.