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THE
REVISED STATUTES,
OF THE
TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE
LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

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Judgment against county.

officers, a judgment has been recovered, for a liability of the county, the execution of which has not been stayed upon appeal, must, upon demand, and the delivery to him of the certified copy of the docket of the judgment, pay the amount due thereon, if there be sufficient money of the county in his hands, not otherwise specifically appropriated. If he fail to do so, he shall be personally liable for the amount, unless the collection thereof, be afterwards stayed upon appeal.

Execution not to issue except on leave of court.

SEC. 29. Execution cannot be issued on a judgment mentioned in sections seventeen and nineteen without leave of the court nor must leave be granted until the court is satisfied that payment has been demanded of the proper county officers, as provided in the last two sections, and that the board of commissioners, have wrongfully omitted to include the amount in the tax list, as provided in section eighteen; when execution is issued the property of the county, only is liable thereon.

CHAPTER 80.

ACTIONS TO VACATE CHARTERS AND LETTERS PATENT, AND TO PREVENT THE USURPATION OF AN OFFICE OR FRANCHISE.

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Scire facias and quo warranto abolished, action substituted.

SEC. 1. The writ of scire facias, the writ of quo warranto, and proceeding by information in the nature of quo warranto are abolished, and the remedies heretofore, obtainable in these forms may be obtained by civil actions under the provisions of this chapter. But nothing contained in this section, affects any right already acquired or any judgment or order already made, or any proceeding already taken.

Action to vacate charter of corporation.

SEC. 2. An action may be brought by the attorney general in the name of the territory, whenever the legislature so directs, against a corporation for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act, or renewal, was procured upon some fraudulent suggestion, or concealment of a material fact, by the persons incorporated, or by some of them, or with their knowledge and consent.

In what cases action may be brought.

SEC. 3. An action may be brought by the attorney general, in the name of the territory, on leave granted by the supreme court, or a judge

thereof, for the purpose of vacating the charter, or annulling the existence of a corporation other than municipal, whenever such corporation :

1. Offends against any of the provisions, of the act, or acts creating, altering, or renewing such corporation ; or,
2. Violates the provisions of any laws, by which such corporation forfeits its charter, by abuse of its powers ; or,
3. Whenever it has forfeited its privileges, or franchises, by failure to exercise its powers ; or,
4. Whenever it has done, or omitted any act, which amounts to a surrender of its corporate rights, privileges, and franchises ; or,
5. Whenever it exercises a franchise or privilege, not conferred upon it by law.

And it is the duty of the attorney general, to apply for leave, and upon leave granted, to bring the action in every case of public interest, whenever he has reason to believe that any of these acts or omissions, can be proved ; and also in every other case, in which satisfactory security is given to indemnify the territory against the costs and expenses to be incurred thereby.

SEC. 4. Leave to bring the action, may be granted, upon the application of the attorney general, and the court or judge may, in their discretion direct notice of such application to be given to the corporation, or its officers, previous to granting such leave, and may hear the corporation in opposition thereto.

Leave to be first obtained from court.

SEC. 5. An action may be brought by the attorney general in the name of the territory, upon his own information, or upon the complaint of a private party, against the party offending in the following cases :

Action for usurping office or franchise.

1. When any person usurps, intrudes into, or unlawfully holds or exercises any public office, civil, or military, or any franchise within this territory, or any office in a corporation created by the authority of this territory ; or,

2. When any public officer, civil, or military, has done or suffered an act, which by the provisions of law makes a forfeiture of his office ; or,

3. When any association or number of persons, act within this territory as a corporation, without being duly incorporated. And it is the duty of the attorney general to bring the action, whenever he has reason to believe that any of these acts can be proved, or when he is directed to do so by a judge of the supreme court.

SEC. 6. An action may be brought by the attorney general, in the name of the territory, for the purpose of vacating or annulling letters patent, granted by the territory in the following cases :

Action to vacate letters patent.

1. When he has reason to believe that such letters patent, were obtained by means of some fraudulent suggestion or concealment of a material fact, made by persons to whom the same were issued or made, or without his consent or knowledge ; or,

2. When he has reason to believe that such letters patent, were issued through mistake, or in ignorance of a material fact :

3. When he has reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same.

SEC. 7. When an action is brought by the attorney general by virtue of this chapter, on the complaint or information of any person having an interest in the question, the name of such person must be joined with the territory as plaintiff.

When private persons may be joined as plaintiff.

SEC. 8. Whenever such action is brought against a person for usurping an office, the attorney general, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right there.

When for usurping office and receiving fees, defendant may be arrested.

to; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the supreme court, for the arrest of such defendant and holding him to bail, and thereupon he may be arrested and held to bail in the same manner, and with the same effect, and subject to the same rights and liabilities as in other civil actions where defendant is subject to arrest.

Judgment may determine the right of claimant.

SEC. 9. In every such case, judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice requires.

When claimant may enter upon office.

SEC. 10. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office, and it is his duty immediately thereafter to demand of the defendant in the action, all the books and papers in his custody; or within his power, belonging to the office.

Punishment for refusal to deliver books.

SEC. 11. If the defendant refuse or neglect to deliver over such books or papers pursuant to the demands, he is to be deemed guilty of a misdemeanor, and the same proceedings may be had, and with the same effect, to compel delivery of such books and papers, as are prescribed by law to obtain books and papers from a justice of the peace, where the same are withheld from his successor in office.

Person entitled may recover damages.

SEC. 12. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

When several claimants to office all may be included.

SEC. 13. Where several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

Judgments in actions under this chapter.

SEC. 14. When a defendant, whether a natural person or a corporation, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise, or privilege, judgment must be rendered, that such defendant be excluded from the office, franchise, or privilege, and also that the plaintiff recover costs against such defendant; the court may also, in its discretion, impose upon the defendant a fine not exceeding one thousand dollars, which fine, when collected, must be paid into the treasury of the territory.

Corporation may be dissolved.

SEC. 15. If it be adjudged that a corporation against which an action shall have been brought, pursuant to this chapter, has by neglect, abuse, or surrender, forfeited its corporate rights, privileges, and franchises, judgment must be rendered that the corporation be excluded from such corporate rights, privileges, and franchises, and that the corporation be dissolved.

Costs may be ordered.

SEC. 16. If judgment be rendered, in such action, against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein, to be collected by execution against the persons claiming to be a corporation, or by process against the directors or other officers of such corporation.

Injunction, and receiver appointed.

SEC. 17. When such judgment is rendered against a corporation, the court has the same power to restrain the corporation, to appoint a receiver of its property, and take an account and make distribution thereof among its creditors, as is given in the chapter upon actions respecting corporations, and in the chapter upon the voluntary dissolution of corporations, to the court of chancery; and it is the duty of the

attorney general, immediately after the rendition of such judgment, to institute proceedings for that purpose.

SEC. 18. Upon the rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, it is the duty of the attorney general to cause a copy of the judgment roll to be forthwith filed in the office of the secretary of the territory.

Record when filed with secretary.

CHAPTER 81.

OF THE REMOVAL OF ACTIONS TO THE SUPREME COURT.

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SEC. 1. A judgment or order, in a civil or criminal action, in any of the district courts, may be removed to the supreme court, as provided in this chapter.

Judgment &c., may be removed to supreme court.

SEC. 2. All penal judgments in the district courts, may be examined and affirmed, reversed or modified, by the supreme court, or if necessary, a new trial may be ordered; such examination may be had upon a writ of error or appeal, as hereinafter provided.

Judgment, &c., how examined in supreme court.

SEC. 3. Any party aggrieved, may appeal in the cases prescribed in this chapter.

Appeals how taken.

SEC. 4. The party appealing, is known as the appellant, and the adverse party, as the respondent; but the title of the action is not to be changed in consequence of the appeal.

Title of the action not to be changed by appeal.

SEC. 5. An appeal must be made by the service of a notice in writing, on the adverse party, and on the clerk with whom the judgment

Appeal how made.