Judicial Department

CHAPTER 480

SUPREME COURT

480.01 JUSTICES; TERMS.

HISTORY. 1849 c. 17 s. 1; 1849 c. 20 s. 1; R.S. 1851 c. 69 art. 1 ss. 2 to 4; 1852 c. 19; 1853 c. 3; 1854 c. 53; 1858 c. 8; P.S. 1858 c. 56 ss. 2, 3; 1862 c. 25; G.S. 1866 c. 63 s. 6; 1872 c. 43 s. 1; G.S. 1878 c. 63 s. 6; 1881 c. 141 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 63 s. 1a; G.S. 1894 ss. 4822, 4828; R.L. 1905 s. 69; G.S. 1913 s. 118; 1919 c. 96 s. 1; G.S. 1923 s. 129; M.S. 1927 s. 129.

480.02 SPECIAL TERMS.

HISTORY. R.S. 1851 c. 69 art. 1 ss. 9 to 11; 1852 c. 19; P.S. 1858 c. 56 ss. 8 to 10; G.S. 1866 c. 63 ss. 7 to 9; G.S. 1878 c. 63 ss. 7 to 9; G.S. 1894 ss. 4829 to 4831; R.L. 1905 s. 70; G.S. 1913 s. 119; G.S. 1923 s. 130; M.S. 1927 s. 130.

480.03 PENDING CASES CONTINUED.

HISTORY. G.S. 1866 c. 63 s. 10; G.S. 1878 c. 63 s. 10; G.S. 1894 s. 4832; R.L. 1905 s. 71; G.S. 1913 s. 120; G.S. 1923 s. 131; M.S. 1927 s. 131.

480.04 WRITS; PROCESS.

HISTORY. R.S. 1851 c. 69 art. 1 ss. 5, 8; 1852 c. 19; P.S. 1858 c. 56 ss. 4, 7; G.S. 1866 c. 63 ss. 1, 5; 1876 c. 58 s. 1; G.S. 1878 c. 63 ss. 1, 5; G.S. 1894 ss. 4823, 4827; R.L. 1905 s. 72; G.S. 1913 s. 121; 1917 c. 480 s. 1; G.S. 1923 s. 132; M.S. 1927 s. 132.

1. **Generally**
2. **Certiorari**
3. **Mandamus**
4. **Quo warranto**
5. **Prohibition**
6. **Injunction**

1. Generally

Where the verdict was murder in the second degree but evidence sustains conviction only in the third degree, the supreme court has power to direct the entry of judgment accordingly. State ex rel v Jackson, 198 M 111, 268 NW 924.

Rules governing attorneys in the practice of their profession. 16 MLR 270.

Guardianships and commitments under the probate code. 20 MLR 333.

2. Certiorari

Upon the return to a writ of certiorari, directed to an inferior tribunal not acting according to the course of the common law, the record, the proceedings in the nature of a record, the rulings of such inferior tribunal upon the admission or rejection of testimony, the instructions given and refused to the jury, with the exceptions taken, together with so much of the evidence as may be proper to show the bearing of such rulings and instructions, and prejudice to the petitioner, may be brought before the supreme court for examination and revision. Minnesota Central v McNamara, 13 M 508 (468).

Writ of certiorari will not lie before the entry of judgment, to review proceedings in district court in the matter of special assessments against real property

alleged to have been benefited by the improvement of a street. State ex rel v District Court, 44 M 244, 46 NW 349.

Relator was found guilty of contempt for non-payment of alimony, and was fined for criminal contempt, and ordered to pay certain moneys to his divorced wife or be committed to jail for contempt. Held, that the fine for criminal contempt be sustained and the writ as to the payments quashed. Where in contempt proceedings the penalty imposed is for the benefit of a party, the order is appealable, and certiorari will not lie to review it; but where the punishment is for criminal contempt imposed to vindicate the authority of the court, the order is not appealable and may be reviewed by certiorari. State ex rel v Willis, 61 M 120, 63 NW 169; Gulleson v Gulleson, 205 M 409, 286 NW 721.

The exercise of judicial functions is to determine what the law is, and what the legal rights of parties are, with respect to a matter in controversy; and whenever an officer is clothed with that authority, and undertakes to determine those questions, he acts judicially, and, if no appeal or other remedy is provided, certiorari will lie to review his decision. The property of the relators, located in Carlton county, was erroneously taxed in that county, being used and employed exclusively in connection with the firm's business located in St. Louis county where it was properly taxable. State ex rel v Dunn, 86 M 301, 90 NW 772.

The favorable recommendation of the county board and auditor of the county in which property is situated is a general condition precedent to favorable action by the tax commission on application for abatement of taxes on the ground of excessive valuation. In the instant case, the St. Paul board of abatement acted favorably, but on an application being made the tax commission denied same on the ground that as the county auditor had not reported favorably, they had no jurisdiction. This holding was sustained by the supreme court on certiorari to review. State ex rel v Minnesota, 103 M 485, 115 NW 647.

Certiorari is a proper method of obtaining a review of the action of a city council in revoking a liquor license. Certiorari is in the nature of an appeal. The record considered is that made and certified by the tribunal whose proceedings are under review. The return, in so far as it is responsive to the writ, is conclusive and the court of review will not inquire into charges of its falsity or require the respondents to state contrary to what they have certified. State ex rel v Duluth, 125 M 425, 147 NW 820.

The St. Paul charter, in its civil service provisions, authorizes the heads of departments to remove subordinates by methods prescribed. This provision does not contemplate that a police officer sought to be removed shall be accorded a formal trial, but there must be some cause touching the fitness of the employee. The cause is to be determined by the removing officer and his determination is to that extent judicial and may be reviewed by certiorari. State ex rel b McColl, 127 M 155, 149 NW 11.

From an order imposing punishment for civil contempt there is a right of appeal; from an order imposing punishment for criminal contempt there is no right of appeal, but may be reviewed by certiorari. Red River v Bernardy, 128 M 153, 150 NW 383.

The district court of Goodhue county granted its writ of certiorari to review the proceedings of the board of public works in reference to a paving assessment. On motion of the respondents, the writ was quashed and the relator appealed. The appellate court affirmed, holding that the relators have the right to raise by answer in the tax proceeding any objections raised, and they have an adequate remedy. Certiorari to review will lie where there is no right of appeal and no adequate remedy. Brown v Red Wing, 134 M 204, 158 NW 977.

Certiorari to review the action of the state superintendent of education revoking the license of the relator to teach school. Writ quashed. The appellate court will entertain original jurisdiction in certiorari only in cases where general public interest requires immediate determination. State ex rel v Schulz, 142 M 112, 171 NW 263.

Certiorari to review lies in a proper case to the probate court. Martin v County of Dodge, 146 M 131, 178 NW 167.

The rule that an ex parte order is not appealable when made in a judicial proceeding is applicable to an order made in a drainage proceeding sought to be reviewed by certiorari. Husely v Qvale, 156 M 401, 194 NW 1023.

Deductions of the inheritance because of disallowance of claims against an estate cannot be reached by certiorari to this court. Estate of Marshall, 179 M 233, 228 NW 920.

Motion to quash a writ of certiorari issued on petition of the defendants. The writ plaintiff is seeking to quash was one directing defendants to allow plaintiff to inspect the books, compare the records and other documents of general drivers' union, Local 544. Such an order is not reviewable by certiorari. Asplund v Brown, 203 M 571, 282 NW 473.

3. Mandamus

Laws 1881, Chapter 40, takes from the supreme court original jurisdiction in mandamus except in cases where the writ is directed to a district court, or a judge thereof in his official capacity. State ex rel v Burr, 28 M 40, 8 NW 899.

Before the time when the constitution of Minnesota was adopted, the writ of mandamus had lost its original character as a prerogative writ and had become a judicial writ in prerogative form for the enforcement of clearly defined existing legal rights for the protection of which no other adequate remedy existed. It is for this purpose only that the supreme court can be empowered to grant a writ of mandamus. The "remedial cases" in which the legislature is authorized to confer original jurisdiction upon the supreme court include only those cases in which the remedy is afforded summarily through certain extraordinary writs, such as mandamus, quo warranto, and habeas corpus. Lauritsen v Seward, 99 M 313, 109 NW 404.

Order to show cause on relation of Waylander directed to the district court why a writ of mandamus should not issue to compel the trial court to make certain findings of fact. Held, as the defendant had the remedy to appeal, mandamus will not lie to compel the court to make additional findings when only issue submitted to the jury is decided in his favor. State ex rel v Qvale, 180 M 580, 230 NW 472.

Where mandamus is used to review an order of the trial court on motion to change the place of trial to promote the convenience of witnesses, and ends of justice, only matters presented to the trial court can be considered here. Whether a change in place of trial should be granted or denied is a matter resting largely in the discretion of the trial court, and its action will not be reversed on appeal, except for clear abuse of discretion. State ex rel v District Court, 194 M 595, 261 NW 701.

Writ of mandamus issued commanding certain county auditors to desist from printing the name of a candidate on the ballot. O'Brien v O'Brien, 213 M 144, 6 NW(2d) 47.

4. Quo warranto

The respondents are directors of "Moorhead Independent School District," and the finding was for the respondents. In the absence of legislation or other controlling considerations to the contrary, such proceeding is governed, as respects procedure, by common-law rules. The onus probandi is, therefore, upon the respondent. It is for the attorney general to determine, irrespective of the relator, whether the public good requires him to institute and conduct such proceedings. State ex rel v Sharp, 27 M 38, 6 NW 408; State ex rel v Tracy, 48 M 497, 51 NW 613.

Proceedings on information in the nature of quo warranto belong to the class designated "remedial cases" in Minnesota Constitution, Article 6, Section 2, and are not included in "cases at law" referred to in Article 1, Section 4, of the same constitution, in which trial by jury is demandable as of right. The object of proceedings by quo warranto against a corporation being to protect public interests, to warrant a forfeiture of corporate franchise for misuser, the misuser must be such as to work or threaten a substantial injury to the public. State ex rel v Minn. Thresher, 40 M 213, 41 NW 1020.

The information will lie directly against a de facto or pretended municipal corporation for usurpation of corporate franchises. The question goes directly to its right to exercise the corporate franchise, and its lawful existence is not admitted by naming it as such. The information must be filed and prosecuted by

the attorney general. The writ will not lie at the instance of private parties. State ex rel v Tracy, 48 M 497, 51 NW 613.

This is a petition by relator for a mandamus to one of the judges of the district court of Ramsey county commanding him to entertain an application for a writ of quo warranto, and to exercise his discretion on its merits. Held, the district has jurisdiction to issue the common-law writ of quo warranto. The appellate court will not issue a writ of quo warranto if there is a remedy in the district court at all adequate, unless under special and exceptional circumstances, such as great public inconvenience by reason of delay in the district court and an appeal therefrom. State ex rel v Otis, 58 M 275, 59 NW 1015.

The court has the right in the exercise of a sound judicial discretion, and it may be its duty, to allow an information in the nature of quo warranto to be filed by a private person, having no personal interest in the question distinct from the public to test the right of an incumbent to hold office, notwithstanding the attorney general has refused to give his consent; but the granting or withholding leave to file such information is not a matter of strict legal right and must be one where it appears the public interest requires the court to overrule the attorney general. State x rel v Dahl, 69 M 108, 71 NW 910; State ex rel v Johnson, 201 M 219, 275 NW 684.

When the attorney general exhibits an information in the nature of quo warranto to the district court, and asks that a writ issue, directed to a municipal corporation, requiring it to show cause why its franchise should not be declared null and void, the court has no discretion, but must grant leave to file the information and direct the writ to issue, and on the return of the writ to try the issues. State ex rel v Kent, 96 M 255, 104 NW 948.

When an application is made to the supreme court by the attorney general asking the issuance of a writ to a village requiring it to show cause why its franchise should not be declared null and void, the court may exercise its discretion and determine whether it is a case in which a writ should issue. If in its opinion application should be to the district court, leave to file in the supreme court will be denied. State ex rel v Kent, 96 M 255, 104 NW 948.

Upon relation of the village of Chisholm the supreme court granted its writ of quo warranto to respondents to show cause why they should not accept their dismissal from office as members of the water commission. Respondents demurred to the information and writ. Demurrers were sustained and the writ quashed. Held, the village council had not the authority to discharge without a hearing. In quo warranto proceedings in the supreme court charges cannot be tried, and allegations of misfeasance in office must be disregarded. Chisholm v Bergeron, 156 M 276, 194 NW 624.

The granting of leave to a municipal corporation to file an information in the nature of quo warranto, notwithstanding the refusal of the attorney general to apply for the writ or to consent to its filing, lies in the sound jurisdiction of this court. That discretion should be exercised favorably and leave granted to file the information where one municipal corporation, on grounds prima facie valid, challenges the legal effectiveness of the proceedings by another to take over and include within its limits territory belonging to the former, the issue so raised being one of public rather than mere private interest. State ex rel v Chisholm, 196 M 285, 264 NW 798, 266 NW 689.

Finding on a hearing quo warranto, that the organization of a certain village was null and void. State ex rel v Village of North Pole, 213 M 297, 6 NW(2d) 458.

An information for writ of quo warranto filed by leave of the supreme court and subsequent proceedings should not be set aside upon a motion supported by affidavit which merely amounted to a denial of the allegations of the petition, but proper practice is to deny the motion and to require the respondent to plead to the information as he sees fit. State v Oehler, 218 M 289, 15 NW(2d) 783.

Removal from public office by court action. 20 MLR 729.

Estoppel against the state in matters relating to quo warranto; discretion of the court. 22 MLR 745.

5. Prohibition

Petition for a writ of prohibition to restrain the commissioner of registration of St. Paul and the county auditor from striking the name of the petitioner from

the registration rolls of the city and from election ballot as a representative. Held, that as the officers were following the rules laid down by the statute, the order to show cause is discharged as to both respondents. State ex rel v Ferguson, 203 M 603, 281 NW 765.

The district court has the power to appoint a receiver ex parte in cases of extreme emergency. The facts pleaded in the instant case do not show such emergency to exist. A writ of prohibition may issue out of the supreme court when it clearly appears that an inferior court has no rightful jurisdiction or is exceeding its legitimate powers. State ex rel v District Court, 204 M 415, 283 NW 738.

Writ of prohibition to court Christian. 20 MLR 272.

6. Injunction

The supreme court has no power to grant an injunction pending an appeal. In this case plaintiff made a motion to stay defendants from enforcing a city ordinance pending appeal. Meyers v Minneapolis, 154 M 238, 189 NW 709, 191 NW 609.

Th certificate of nomination designating a candidate as a "Real Democrat" is a violation of the democratic party's right to its name. The candidate so designated has no power to change the designation selected by his petitioners. O'Brien v O'Brien, 213 M 140, 6 NW(2d) 47.

480.05 POWER; RULES.

HISTORY. R.S. 1851 c. 69 art. 1 s. 6; 1852 c. 19; P.S. 1858 c. 56 s. 5; 1862 c. 17 s. 1; G.S. 1866 c. 63 s. 2; G.S. 1878 c. 63 s. 2; G.S. 1894 s. 4824; R.L. 1905 s. 73; G.S. 1913 s. 122; 1921 c. 297 s. 1; G.S. 1923 s. 133; M.S. 1927 s. 133.

Court rules, Minnesota Statutes 1941, pp. 3945 to 3994.

The supreme court has no power to grant an injunction pending an appeal. Meyers v Mpls. 154 M 238, 189 NW 709, 191 NW 609.

Where it appears that a seemingly excessive verdict probably was contributed to by misconduct of the prevailing party, this court will order a new trial in the interest of orderly administration of justice. Hanskett v Broughton, 157 M 83, 195 NW 794.

Laws 1929, Chapter 424, prescribing conditions upon which certain persons shall be admitted to practice law, violates the equality provisions of the constitution, and is void. In re Humphrey, 178 M 331, 227 NW 179.

Where the verdict was murder in the second degree, but evidence sustains conviction only in the third degree, this court has power to direct the entry of judgment accordingly. State v Jackson, 198 M 111, 268 NW 924.

Rules governing attorneys in the practice of their profession. 16 MLR 270.

480.06 DECISIONS.

HISTORY. 1862 c. 26 ss. 1, 2; G.S. 1866 c. 63 s. 4; G.S. 1878 c. 63 s. 4; G.S. 1894 s. 4826; R.L. 1905 s. 74; G.S. 1913 s. 123; G.S. 1923 s. 134; M.S. 1927 s. 134.

A decision based upon identical provisions of state and federal constitutions should clearly indicate on which of the constitutional provisions the decision is based; the United States supreme court having jurisdiction by certiorari to review only decisions involving a federal question. Nat'l Tea Co. v Minnesota, 309 US 554, 60 SC 678.

480.07 CLERK; BOND, ASSISTANTS, RECORDS.

HISTORY. 1858 c. 9 ss. 1 to 3; P.S. 1858 c. 5 ss. 86 to 88; G.S. 1866 c. 6 ss. 60 to 62; G.S. 1878 c. 6 ss. 62 to 64; 1881 c. 160 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 7 s. 1; G.S. 1894 ss. 374 to 377; R.L. 1905 ss. 75, 76; G.S. 1913 ss. 127, 128; 1921 c. 46 s. 1; G.S. 1923 ss. 138, 139; M.S. 1927 ss. 138, 139.

480.08 MARSHAL.

HISTORY. 1874 c. 114 s. 1; 1887 c. 222 s. 1; 1893 c. 241 s. 3; G.S. 1894 ss. 7956, 7961, 7968; R.L. 1905 s. 77; G.S. 1913 s. 129; G.S. 1923 s. 140; M.S. 1927 s. 140.

480.09 STATE LIBRARY.

HISTORY. 1903 c. 272 ss. 1 to 7; R.L. 1905 ss. 78 to 82; G.S. 1913 ss. 130 to 134; G.S. 1923 ss. 141 to 145; M.S. 1927 ss. 141 to 145.

480.10 JANITOR.

HISTORY. 1887 c. 222 s. 1; G.S. 1894 s. 7961; R.L. 1905 s. 83; G.S. 1913 s. 135; G.S. 1923 s. 146; M.S. 1927 s. 146.

480.11 REPORTER.

HISTORY. 1865 c. 34 ss. 1 to 3; G.S. 1866 c. 27 ss. 1, 2; G.S. 1878 c. 27 ss. 1, 2; 1881 c. 103 ss. 1, 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 27 ss. 5, 6; G.S. 1894 ss. 2278 to 2282; 1895 cc. 22, 23; 1901 c. 3; R.L. 1905 ss. 84 to 86; G.S. 1913 ss. 136 to 138; G.S. 1923 s. 147 to 149; M.S. 1927 s. 147 to 149.

480.12 MINNESOTA REPORTS.

HISTORY. 1895 cc. 22, 23; 1903 c. 129; R.L. 1905 s. 87; G.S. 1913 s. 130; G.S. 1923 s. 150; 1927 c. 379 s. 1; M.S. 1927 s. 150; 1937 c. 81 s. 1.