CHAPTER 556

ACTION TO PREVENT USURPATION, AND TO VACATE CHARTERS AND LETTERS PATENT

556.01 FOR USURPATION OF OFFICE OF ILLEGAL ACT.

HISTORY. R.S. 1851 c. 80 s. 5; P.S. 1858 c. 70 s. 5; G.S. 1866 c. 79 s. 3; G.S. 1878 c. 79 s. 3; G.S. 1894 s. 5963; R.L. 1905 s. 4545; G.S. 1913 s. 8255; G.S. 1923 s. 9711; M.S. 1927 s. 9711.

In an action in the nature of a quo warranto, two dissimilar interests may be united: that of the territory to oust an intruder from office, and that of the relator, to have his title to the office determined, and for damages for the usurpation. Territory of Minn. v Smith, 3 M 240 (164).

Upon mandamus the holder of the certificate of election is entitled to the possession of the office, and of the books, paper, and similar, and the court will not try the question of his eligibility. State v Sherwood, 15 M 221 (172).

Where a man assumes to hold and exercise the duties of a public office, known to the law, and the duties and powers of which are defined by law, an action in the nature of quo warranto will lie against him, to test the question whether the office is authorized with the particular district where he assumes to hold and exercise it. State v Parker, 25 M 215.

W as county treasurer, at the beginning of the second year of his term of office, was elected a member of the house of representatives, and while continuing to discharge the duties of the office of treasurer, entered upon the duties of such membership. The county board of commissioners, determining that by reason of W's election to and acceptance of the office of representative, a vacancy had been effected in the office of the county treasurer, appointed A to fill the same, who after receiving the certificate of appointment and qualifying, notified W's deputy of his appointment, and demanded possession of the records and other property of the office then in possession of the deputy. Possession being withheld, A sought to compel delivery by a proceeding in mandamus. The case was distinguished from the class of cases represented by Crowell v Lambert, 10 M 295 (369), and Atherton v Sherwood, 15 M 221, and held to be a case in which the title of W, the de facto incumbent of the office, was directly and unavoidably in controversy, although the proceeding was in form an action not for the determination of the title, but for the recovery of possession of the records and other property of such office; and in such a case mandamus did not lie. State v Williams, 25 M 340.

M was elected by a city council to the office of corporation attorney for the city on the first Tuesday of March as provided by a March 1st amendment of that year; H was elected to the same office on the second Tuesday as provided by a February amendment of that year; in a proceeding in the nature of quo warranto against M, the question was as to which election was valid. Held, the March 1st amendment was unconstitutional and void; and that as the statute authorizes judgment upon the rights of H as well as M, it was ordered that M be ousted from the office, and that he surrender and deliver up to H possession of the office with all books and papers relating thereto. State v Murray, 41 M 123, 42 NW 858.

The granting of leave to a private person to file an information in the nature of quo warranto, to try the right of persons to hold offices in a private corporation being discretionary, such leave will be denied where there are no exceptional circumstances which render inapplicable the remedy provided by Minnesota Statutes 1941, Chapter 556. State ex rel v Lockerby, 57 M 411, 59 NW 495.

Relator and defendant were candidates for sheriff under an election law providing that ballot should be endorsed on the back with the initials of two election judges of opposite political parties; of the 412 votes cast, of which the relator received 100, and defendant 305, not exceeding 30 were so marked, the others being

marked by two judges of the same party who did not know of the provision and acted in good faith; in an action by the attorney general for the state in which he joined the relator as plaintiff, held, the provision as to the two judges being of opposite political parties was not mandatory, and the law was complied with. Judgment affirmed for defendant. State ex rel v Gay, 59 M 6, 60 NW 676.

In an application to the supreme court for a writ of quo warranto to test the title to the office of alderman, held, such writ will not issue where the law furnishes another remedy except in special cases where it appears that public interests so require; that it did not appear that public interests were involved, and that if the relator believed he was entitled to the office, he had a remedy in the district court under Minnesota Statutes 1941, Section 556.01. Writ was denied. State ex rel v Moriarty, 82 M 68, 84 NW 495.

When the attorney general of the state, acting in his official capacity as the chief law officer of the state, 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 as a matter of course and direct the writ to issue. Upon the return it is the duty of the court to determine the same upon the merits according to rules of law applicable thereto. State ex rel v Village of Kent, 96 M 255, 104 NW 948.

The court exhausts its discretion when it exercises it upon the preliminary application for leave to file the information. This presumes, however, that the court actually exercises its discretion, and does not deprive it of the right to dismiss the proceedings if it subsequently appears that it acted improvidently or through inadvertence and under a misapprehension of facts. Under such circumstances, no judicial discretion is exercised. State ex rel v Village of Kent, 96 M 255, 104 NW 948.

In an action brought by the attorney general under this section for the removal of defendant from the office of mayor of a city for his alleged malfeasance in office, and to recover the penalty provided by Minnesota Statutes 1941, Section 340.06, held: The forfeiture of office and pecuniary penalty prescribed by Minnesota Statutes 1941, Sections 340.05, 340.06, for the failure of the mayor, or other officer named therein, to make complaint of known violations of the statutes regulating the sale of intoxicating liquor, may be enforced by the attorney general through appropriate proceedings. The power conferred by the city's charter upon the city council thereof, upon the subject of the removal of municipal officers for misconduct in office, did not exclude the power of the state, through the attorney general, to effect a removal for a violation of the statute referred to, as the power of each was concurrent; nor was the authority of the attorney general taken away or superseded by the provisions of section 340.05, by which the county attorney of each county was required to prosecute violations of the statute. State v Robinson, 101 M 277, 112 NW 269.

In an action by quo warranto by plaintiffs as stockholders and directors of a private corporation to test the right and title of defendants to hold offices as officers in the corporation, defendants claimed plaintiff's only remedy was to proceed under Minnesota Statutes 1941, Section 556.01: Held, the remedy provided by section 556.01 is granted to the attorney general only, which remedy is concurrent with quo warranto, and he may proceed under either as he deems best. As to other persons, this statute does not apply, and their exclusive remedy is the common law writ of quo warranto, which action plaintiffs had a right to bring. Dennistoun v Davis, 179 M 373, 229 NW 353.

On defendants' motion, the court properly vacated an ex parte order issuing a writ of quo warranto directing defendants to show by what warrant they claimed the right to act as trustees of a named religious corporation, organized under the laws of this state, for it conclusively appeared from the petition, writ, and affidavits filed that defendants were in fact and law such trustees, and hence the writ had been improvidently issued. Dollenmayer v Ryder, 205 M 207, 286 NW 297.

Since quo warranto is an extraordinary legal remedy, procedure is not governed by the requirements of service of notice of trial applicable in civil actions, as defined by Minnesota Statutes, 1941, Sections 546.02, 546.05, for the reason that upon respondents in such case rests the burden of showing, before a court of competent jurisdiction, at a stated time and place designated in the writ, "by what

warrant" they exercised the powers claimed by them. State x rel v Village of North Pole, 213 M 297, 6 NW(2d) 458.

Attorney general will not institute quo warranto proceedings against one in possession of a public office and discharging the duties thereof unless there exists very substantial ground for believing his possession to be unlawful. OAG Jan. 17, 1939 (63b-3).

Statutory provisions for quo warranto are not exclusive, since common law proceedings for same writ may be brought by any taxpayer in either district court or supreme court. OAG Jan. 24, 1939 (361e-2).

A proceeding in the nature of quo warranto under Minnesota Statutes 1941, Chapter 480.04, is not the action provided by Chapter 446. State v Sharp, 27 M 38, 6 NW 408; State v Tracy, 48 M 497, 51 NW 613; State ex rel v Dahl, 69 M 108, 71 NW 910; State ex rel v Bergeron, 156 M 276, 194 NW 624; State ex rel v "Village of Minnewashta", 165 M 369, 206 NW 455; Dollenmayer v Ryder, 205 M 207, 286 NW 297.

556.02 USURPING OFFICE; COMPLAINT; JUDGMENT.

HISTORY. R.S. 1851 c. 80 ss. 8, 9; P.S. 1858 c. 70 ss. 8, 9; G.S. 1866 c. 79 s. 6; G.S. 1878 c. 79 s. 6; G.S. 1894 s. 5966; R.L. 1905 s. 4548; G.S. 1913 s. 8258; G.S. 1923 s. 9714; M.S. 1927 s. 9714.

In a proceeding in the nature of quo warranto brought by the attorney general to determine whether the relator elected as provided by one amendment to the office of corporation attorney of a city, or the defendant elected to the same office as provided by a subsequent amendment, was entitled to the office: Held, the subsequent amendment being unconstitutional and void, the election of the relator was the valid one; and that as Minnesota Statutes 1941, Sections 556.02, 556.03, and 556.05 authorize judgment in this proceeding upon the rights of the relator as well as those of defendant, it was ordered that judgment be entered ousting and excluding defendant from the office, and that he forthwith surrender and deliver up to the relator possession of said office with all the books and papers relating thereto. State v Murray, 41 M 123, 42 NW 858.

556.03 CLAIMANT TO HAVE OFFICE.

HISTORY. R.S. 1851 c. 80 ss. 10, 12; P.S. 1858 c. 70 ss. 10, 12; G.S. 1866 c. 79 s. 7; G.S. 1878 c. 79 s. 7; G.S. 1894 s. 5967; R.L. 1905 s. 4549; G.S. 1913 s. 8259; G.S. 1923 s. 9715; M.S. 1927 s. 9715.

State v Murray, 41 M 233, 42 NW 858. See note under section 556.02.

556.04 CLAIMANTS MAY BE JOINED.

HISTORY. R.S. 1851 c. 80 s. 13; P.S. 1858 c. 70 s. 13; G.S. 1866 c. 79 s. 8; G.S. 1878 c. 79 s. 8; G.S. 1894 s. 5968; R.L. 1905 s. 4550; G.S. 1913 s. 8260; G.S. 1923 s. 9716; M.S. 1927 s. 9716.

Where action in the nature of quo warranto at the relation of G was brought to test the right of J to hold the office of assessor for a county, S who made the same claim, was made a party to the proceeding. State v Johnstone, 61 M 56, 63 NW 176.

556.05 JUDGMENT FOR USURPATION; FINE.

HISTORY. R.S. 1851 c. 80 s. 14; P.S. 1858 c. 70 s. 14; G.S. 1866 c. 79 s. 9; G.S. 1878 c. 79 s. 9; G.S. 1894 s. 5969; R.L. 1905 s. 4551; G.S. 1913 s. 8261; G.S. 1923 s. 9717; M.S. 1927 s. 9717.

State v Murray, 41 M 123, 42 NW 858. See note under section 556.02.

556.06 TO ANNUL ACT OF INCORPORATION; FRAUD.

HISTORY. R.S. 1851 c. 80 s. 2; P.S. 1858 c. 70 s. 2; G.S. 1866 c. 79 s. 1; G.S. 1878 c. 79 s. 1; G.S. 1894 s. 5961; R.L. 1905 s. 4543; G.S. 1913 s. 8253; G.S. 1923 s. 9709; M.S. 1927 s. 9709.

In an action by a city to cancel and annul the franchise and privileges granted by ordinance to the defendant company, and set aside and annul the contract thereby entered into on the ground that the grantees and their successors had failed to carry out their contract to furnish pure water in the stipulated quantities, defendant claimed the ordinance did not constitute a contract, but that by its provisions the city was exercising a governmental function, and a forfeiture for an abuse of its corporate powers could only be taken advantage of by the state in a direct proceeding in the nature of quo warranto. Held, the obligations of the parties, as set out in the ordinance, constituted a contract, and an equitable action would lie on the part of the city to annul the franchise; and that while in a sense, the privilege of the grantees to occupy the streets was in the nature of a franchise, such franchise or privilege did not have its legal basis in the fact that the state had authorized defendant to do business as a corporation. City of St. Cloud v Water, Light & Power Co. 88 M 329, 92 NW 1112.

When the attorney general of the state, acting in his official capacity as the chief law officer of the state, 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 as a matter of course and direct the writ to issue. Upon the return, it is the duty of the court to try the issues of law and fact presented thereby, and to determine the same upon the merits according to rules of law applicable thereto. State ex rel v Village of Kent, 96 M 255, 104 NW 948.

Action by quo warranto to test the title to office in a private corporation may be brought in the district court by other officers and stockholders of the corporation without application to or action by the attorney general. Dennistoun v Davis, 179 M 373, 229 NW 353.

Use of quo warranto to prevent a private corporation from violating the criminal law. 12 MLR 422.

556.07 TO VACATE CORPORATE CHARTER.

HISTORY. R.S. 1851 c. 80 s. 3; P.S. 1858 c. 70 s. 3; G.S. 1866 c. 79 s. 2; G.S. 1878 c. 79 s. 2; G.S. 1894 s. 5962; R.L. 1905 s. 4544; G.S. 1913 s. 8254; G.S. 1923 s. 9710; M.S. 1927 s. 9710.

The supreme court has jurisdiction by quo warranto to enforce the forfeiture of the charter of a corporation; and as between this remedy and that by action in the district court, it is for the attorney general, to whom the interests of the state in such cases are intrusted, to determine which he will pursue. State v St. P. & S. C. Ry. 35 M 246, 28 NW 245.

Where, in a proceeding by the attorney general in behalf of the state for the dissolution of a corporation under a statute providing that the suspension of its lawful business by a railroad company for one year shall be a ground for forfeiture of its privileges and franchises acquired under the laws of this state, the facts clearly bring the case within its terms, it is mandatory upon the court to declare a forfeiture. State v Minn. Cent. Ry. Co. 36 M 246, 258, 30 NW 816.

Although in a general sense, a civil action under Minnesota Statutes 1941, Chapter 556, and a proceeding by quo warranto in which the supreme court has original jurisdiction, may be termed concurrent remedies, the remedy by civil action is more in accordance with the ordinary mode of judicial procedure in determining property rights, and ought to be pursued except in those special cases where the public interests seem to demand a more speedy or summary mode of procedure than by action in the district court. State v Minn. Thresher Mfg. Co. 40 M 213, 224, 41 NW 1020.

To constitute a misuser of the corporate franchise, such as to warrant its forfeiture, the ultra vires acts must be so substantial and continued as to amount to a clear violation of the condition upon which the franchise was granted, and so derange or destroy the business of the corporation that it no longer fulfils the end for which it was created. State v Minn. Thresher Mfg. Co. 40 M 213, 41 NW 1020.

A quo warranto proceeding against a village and its officers and trustees is not the civil action provided by Minnesota Statutes 1941, Chapter 556. State ex rel v Village of Kent, 96 M 255, 104 NW 948.

It is a general rule that courts are without authority to dissolve a corporation at the suit of a minority stockholder unless such authority has been conferred by statute; but where majority stockholders take upon themselves the exclusive management and control of the corporation and abuse their power by arbitrarily or fraudulently conducting the affairs of the company so as to appropriate to themselves the profits or property thereof to the despoilment of the minority stockholders, courts of equity will afford relief by dissolving the corporation if no other adequate remedy be available. This drastic remedy should be resorted to at the instance of minority stockholders only when their rights can be protected in no other way. Thwing v McDonald, 134 M 148, 156 NW 780, 158 NW 820.

When it has become impossible to accomplish the purpose for which the corporation was chartered or organized, or when failure or ruin is inevitable, the courts may intervene and wind up its business and apportion and distribute its assets to those entitled thereto. Thwing v McDonald, 134 M 148, 156 NW 780, 158 NW 820.

Where, after a good-faith purchaser has become the owner of the equitable title to the land by virtue of the recording acts, the holder of an unrecorded assignment pays the balance due the state and surrenders the certificate and receives a patent, the patent cannot be canceled and the legal title revested in the state at the suit of the equitable owner, but the patentee may be adjudged to hold the legal title in trust for the equitable owner, and may be required to convey it to him upon payment of the amount so paid to the state. Krelwitz v McDonald, 135 M 408, 161 NW 156.

Where by reason of the misconduct of those controlling the corporation substantial injury will result to the stockholders, a court of equity may, without statutory authority and in the absence of corporate insolvency, intervene by way of receivership, require an accounting from the delinquent officers, order a sale of the corporate assets and adjudge a dissolution of the corporation. Green v Nat'l Adv. & A. Co. 137 M 65, 162 NW 1056.

Action by quo warranto to test the title to office in a private corporation may be brought in the district court by other officers and stockholders of the corporation without application to or action by the attorney general. Dennistoun v Davis, 179 M 373, 229 NW 353.

The charter of the plaintiff corporation is based on a legislative enactment of territorial days, and since neither the legislature, nor the highest legal enforcement officer under the provisions of Section 556.07, have ever attacked the charter in any way, a finding by the trial court of complete corporate rectitude will be sustained. Trustees v Peacock, 217 M 409, 14 NW(2d) 773.

556.08 CORPORATION, WHEN DISSOLVED.

HISTORY. R.S. 1851 c. 80 s. 15; P.S. 1858 c. 70 s. 15; G.S. 1866 c. 79 s. 10; G.S. 1878 c. 79 s. 10; G.S. 1894 s. 5970; R.L. 1905 s. 4552; G.S. 1913 s. 8262; G.S. 1923 s. 9718; M.S. 1927 s. 9718.

556.09 COSTS.

HISTORY. R.S. 1851 c. 80 s. 16; P.S. 1858 c. 70 s. 16; G.S. 1866 c. 79 s. 11; G.S. 1878 c. 79 s. 11; G.S. 1894 s. 5971; R.L. 1905 s. 4553; G.S. 1913 s. 8263; G.S. 1923 s. 9719; M.S. 1927 s. 9719.

556.10 JUDGMENT AGAINST CORPORATION; RECEIVER.

HISTORY. R.S. 1851 c. 80 s. 17; P.S. 1858 c. 70 s. 17; G.S. 1866 c. 79 s. 12; G.S. 1878 c. 79 s. 12; G.S. 1894 s. 5972; R.L. 1905 s. 4554; G.S. 1913 s. 8264; G.S. 1923 s. 9720; M.S. 1927, 9720.

556.11 TO VACATE LETTERS PATENT.

HISTORY. R.S. 1851 c. 80 s. 6; P.S. 1858 c. 70 s. 6; G.S. 1866 c. 79 s. 4; G.S. 1878 c. 79 s. 4; G.S. 1894 s. 5964; R.L. 1905 s. 4546; G.S. 1913 s. 8256; G.S. 1923 s. 9712; M.S. 1927 s. 9712.

556.12 JUDGMENT ROLL; COPY FILED.

HISTORY. R.S. 1851 c. 80 s. 18; P.S. 1858 c. 70 s. 18; G.S. 1866 c. 79 s. 13; G.S. 1878 c. 79 s. 13; G.S. 1894 s. 5973; R.L. 1905 s. 4555; G.S. 1913 s. 8265; G.S. 1923 s. 9721; M.S. 1927 s. 9721.

556.13 RELATOR TO BE JOINED.

HISTORY. R.S. 1851 c. 80 s. 7; P.S. 1858 c. 70 s. 7; G.S. 1866 c. 79 s. 5; G.S. 1878 c. 79 s. 5; G.S. 1894 s. 5965; R.L. 1905 s. 4547; G.S. 1913 s. 8257; G.S. 1923 s. 9713; M.S. 1927 s. 9713.

Two dissimilar interests may be united; that of the territory to oust an intruder from office, and that of the relator, to have his title to the office determined, and for damages for the usurpation. Territory of Minn. v Smith, 3 M 240 (164).

The statute authorizes judgment in this proceeding upon the rights of the relator as well as those of the defendant. State v Murray, 41 M 123, 42 NW 858.

On defendants' motion, the court properly vacated an ex parte order issuing a writ of quo warranto directing defendants to show by what warrant they claimed the right to act as trustees of a named religious corporation, organized under the laws of this state, for it conclusively appeared from the petition, writ, and affidavits filed that the respondents were in fact and law such trustees, and hence the writ had been improvidently issued. Dollenmayer v Ryder, 205 M 207, 286 NW 297.