

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

BY

JNO. F. KELLY,

OF THE ST. PAUL BAR.

SECOND EDITION.

ST. PAUL:

PUBLISHED BY THE AUTHOR.

1891.

CHAPTER 75 (G. S. ch. 79).

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

Sections.
5331-5336. Jurisdiction.
5337-5343. Judgment.

JURISDICTION.

SEC. 5331. **To annul incorporation obtained by fraud.**— An action may be brought by the attorney general, in the name of the state, 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 some of them, or with their knowledge and consent.

G. S. ch. 79, § 1. 35 M. 223; 27 M. 39; 41 N. W. 1025.

SEC. 5332. **To vacate charter.**— An action may be brought by the attorney general, in the name of the state, for the purpose of vacating the charter, or annulling the existence, of a corporation, other than municipal, whenever such corporation:

First. Offends against any of the provisions of the act or acts creating, altering or renewing such corporation; or,

Second. Violates the provisions of any law by which such corporation forfeits its charter by abuse of its powers; or,

Third. Whenever it has forfeited its privileges or franchises, by failure to exercise its powers; or,

Fourth. Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or,

Fifth. Whenever it exercises a franchise or privilege not conferred upon it by law.

And the attorney general shall 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 state against the costs and expenses to be incurred thereby.

G. S. ch. 79, § 2. 21 M. 339.

SEC. 5333. **Usurping or forfeiting offices or franchises.**— An action may be brought by the attorney general, in the name of the state, upon his own information, or upon the complaint of a private party, against the party offending in the following cases:

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

Second. When any public officer has done or suffered an act which, by the provisions of law, causes a forfeiture of his office; or,

Third. When any association or number of persons act within this state as a corporation, without being duly incorporated. And the attorney general shall bring the action whenever he has reason to believe that any of these acts can be proved.

G. S. ch. 79, § 3. 25 M. 218; 25 M. 344.

SEC. 5334. To vacate letters patent.— An action may be brought by the attorney general, in the name of the state, for the purpose of vacating or annulling letters patent granted by the state, in the following cases:

First. 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 the person to whom the same were issued, or made with his consent or knowledge; or,

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

Third. When he has reason to believe that the patentee, or those claiming under him, have done or omitted any 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.

G. S. ch. 79, § 4.

SEC. 5335. One action when several claim office.— When 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.

G. S. ch. 79, § 8.

SEC. 5336. Join complainant as party.— 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 shall be joined with the state as plaintiff.

G. S. ch. 79, § 5. 3 M. 240.

JUDGMENT.

SEC. 5337. Upon right of complainant and defendant.— 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 thereto; and, 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.

G. S. ch. 79, § 6.

SEC. 5338. Possession of office.— If judgment is rendered in favor of the person so alleged to be entitled, 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 may be put in possession thereof, and of the books and papers belonging thereto, by order of the court; and any party refusing to deliver the same, when ordered by the court, shall be punished as for a contempt; and he may also recover, by action, the damages which he sustains by reason of the usurpation of the office by the defendant.

G. S. ch. 79, § 7.

SEC. 5339. Of exclusion from office or franchise.— When a person or a corporation is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising, any office, franchise or privilege, judgment shall be rendered that such person or corporation be excluded from the office, franchise or privilege. The court may also, in its discretion, impose upon the defendant a fine not exceeding one thousand dollars.

G. S. ch. 79, § 9.

SEC. 5340. Dissolution of corporation.— If it is adjudged that a corporation has, by neglect, abuse or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be

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excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.

G. S. ch. 79, § 10.

SEC. 5341. **Injunction — Receiver.**— When such judgment is rendered against a corporation, the court has power to restrain the corporation, to appoint a receiver of its property, and take an account, and make distribution thereof among its creditors; and the attorney general, immediately after the rendition of such judgment, shall institute proceedings for that purpose.

G. S. ch. 79, § 12.

SEC. 5342. **Costs.**— If judgment is 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.

G. S. ch. 79, § 11.

SEC. 5343. **Judgment-roll.**— Upon the rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, the attorney general shall cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of state.

G. S. ch. 79, § 13.