JUDICIAL DEPARTMENT

CHAPTER 480

SUPREME COURT

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480.04 WRITS; PROCESS.

1. **Generally**
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1. Generally

That a judgment is erroneous because of judicial error is ground for appeal, writ of error, or certiorari, according to the case, but it is no ground for setting aside of the judgment on motion after the time for review has expired; and in the instant case the matters at issue were questions of fact which should have been raised before the trial court and, if relator felt aggrieved, the proceedings should have been by review as provided by statute. State ex rel v Probate Court, 211 M 333, 22 NW(2d) 448.

Validity of court rules if in opposition to statutory enactment. 5 MLR 73.

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

Commitments under the probate code. 20 MLR 333.

Assignments of error. 27 MLR 89.

2. Certiorari

Where an attorney asked for a review by writ of certiorari of the order of the probate court allowing a final account and fixing his fees the trial court properly quashed the writ. State ex rel v Probate Court, 200 M 167, 273 NW 636.

An order denying a motion to bring in an additional party is not reviewable by certiorari. Levstek v Nat'l Surety Corp. 203 M 324, 281 NW 260.

Since the proceeding in certiorari is in the nature of an appeal the record to be considered is that made and certified by the tribunal whose proceedings are under review. State ex rel v Alxandria, 210 M 260, 297 NW 723.

A claim of the defendant stated in the answer to a complaint in an action begun in the conciliation court of Duluth and upon appeal tried de novo in the municipal court, need not be formulated to comply with the ordinary rules of pleading and counterclaim unless the plaintiff so requests by proper motion. Certiorari is a proper method to review the judgment of the municipal court in such case. Opinion in 212 M 610, 3 NW(2d) 673, overruled. Warner v Anderson, 213 M 376, 7 NW(2d) 7.

While an order of an administrative board removing an appointee from office may be reviewed by certiorari, the inquiry in the supreme court is not whether the findings of the board are sustained by a preponderance of the evidence but whether there is any evidence whatsoever to sustain the order of removal, and the appellate court may examine the evidence for the sole purpose of determining whether it furnished any reasonable or substantial basis for the decision of the fact-finding body. State ex rel v State Bd. of Education, 213 M 184, 6 NW(2d) 251.

The civil service act which superseded the former veterans preference law gave a veteran employee a civil service status without a probation period if on the effective date of the act the veteran was a state employee and such status remained in effect until there is a valid discharge. The scope of review by the supreme court in certiorari proceedings is limited to and determined by the record made by the officers whose actions are sought to be reviewed. The appellate court cannot make findings of fact or determine questions of fact; but a wrongfully discharged employee as a party to the certiorari proceedings has a right to have considered and determined all questions properly presented by the record. State ex rel v Elston, 214 M 205, 7 NW(2d) 750.

3. Mandamus

History of the right of review by appellate courts, particularly through or under the prerogative writs. "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 offered summarily through certain extraordinary writs such as mandamus, quo warranto, and habeas corpus; and R.L. 1905, s. 203, insofar as it attempts to confer upon the supreme court original jurisdiction in election contests, is unconstitutional. Lauritsen v Seward, 99 M 313, 109 NW 404.

Evidence examined and found to require a finding that defendant resided in the county in which plaintiffs commenced the action; and mandamus is granted to remand the action to such county. Newberg v Martin, 200 M 596, 274 NW 875.

4. Quo warranto

The case would be exceptional and one in which it clearly appears that public interests require to justify a court in overruling the judgment of the attorney general in refusing to institute quo warranto proceedings or to consent thereto. Such exceptional circumstances do not appear in the instant case. State ex rel v Johnson, 201 M 219, 275 NW 684.

"Quo warranto" as authorized by the Minnesota constitution and statutes is not the old common-law writ but as changed by the statute of 9 Anne, Ch. 20, is in the nature of an information, and in the absence of an express statute is the exclusive proceeding to determine the legal existence or validity of the organization of a public corporation. The remedy is not applicable where another adequate remedy is available. It is a special proceeding requiring the respondent to show cause before a court of competent jurisdiction at a stated time and place "by what warrant" they exercised the powers they claim. The attorney general may determine whether to proceed in the district or in the supreme court. State ex rel v Village of North Pole, 213 M 297, 6 NW(2d) 458.

In proceedings in quo warranto to test the legality of the incorporation of the village the matter came before the supreme court upon relator's motion for an order vacating the decision and the report of the referee and for a new trial. Only those

grounds argued in the briefs will be considered by the court. Others are deemed waived. State ex rel v Village of St. Anthony, 223 M 149, 26 NW(2d) 193.

5. Prohibition

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, in a matter in which it has jurisdiction. The district court has the power to appoint a receiver "ex parte" in case of extreme emergency. The facts pleaded in this case do not show such an emergency as to warrant the appointment of a receiver with summary power to take over the property and assets of defendants without notice to them and opportunity to be heard. State ex rel v District Court, 204 M 415, 283 NW 738.

The office of the writ of prohibition is not to correct errors or reverse illegal proceedings but to prevent or restrain the usurpation of inferior tribunals or judicial officers and to compel them to observe the limits of their jurisdiction; and in the instant case a writ of prohibition is not available to petitioner. State ex rel v Johnson, 216 M 219, 12 NW(2d) 343.

In contradistinction to jurisdiction over the person, jurisdiction of the subject matter cannot be conferred by consent of the parties. 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. Huhn v Foley Bros. 221 M 279, 22 NW(2d) 3.

6. Injunction

The supreme court has no power to grant an injunction upon an appeal; and the motion to stay defendants from enforcing a city ordinance is denied. The ordinance is valid on its face, the power of regulation resting in the city is extensive but must be exercised within constitutional limits. If the quarry owner is wrongfully denied a permit, he has a remedy. Meyers v City of Mpls. 154 M 238, 189 NW 709, 191 NW 609.

480.05 POWER; RULES.

Close adherence to the rules of court is essential to the orderly and proper disposition of appeals. While a requisition to consider compliance with rules may at times be justified by circumstances, such unwarranted disrespect for orderly procedure as is here disclosed should not be lightly condoned. The motion to dismiss is allowed. Schmedler v Warren, 209 M 605, 297 NW 35.

Notwithstanding the court's power to integrate the bar, as a matter of public policy the Wisconsin courts find that integration might destroy some virtues of a voluntary association and might impose upon the supreme court embarrassing duties of censorship and audit, which the court declines to assume in the absence of an exigency requiring integration. Integration of the Bar, 249 Wis. 523, 25 NW(2d) 500.

A justification for integrating the bar and compelling payment of fees is that the supreme court has inherent power to control and regulate its bar as officers of the court, and such power may be implemented by dues from the members which serve in a measure the function of license fees, but which are not such in a legal sense. Integration of the Bar, 249 Wis. 523, 25 NW(2d) 500.

If a complaint charging professional misconduct on the part of any attorney has been referred by the supreme court to the practice of law committee of the State Bar Association, and expenses not inconsistent with the order of the court have been incurred by that committee in the investigating, handling, and prosecution of such complaint, and if the expenses are properly certified as having been so incurred by the practice of law committee and approved by the court, they may be legally paid to the association for the purpose of reimbursing that association for funds expended. OAG June 25, 1947 (275-a).

Validity of court rules when in opposition to statute. 5 MLR 73.

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

Federal appellate practice as affected by new rules of civil procedure. 24 MLR 1.

Champerty and maintenance; advertising by bar association. 25 MLR 788.

Assignments of error rule. 27 MLR 89.

480.051 REGULATE PLEADING, PRACTICE, AND PROCEDURE.

HISTORY. 1947 c. 498 s. 1.

480.052 ADVISORY COMMITTEE.

HISTORY. 1947 c. 498 s. 2.

480.053 RECOMMENDATIONS BY JUDICIAL COUNCIL.

HISTORY. 1947 c. 498 s. 3.

480.054 DISTRIBUTION OF PROPOSED RULES; HEARING.

HISTORY. 1947 c. 498 s. 4.

480.055 RULES NOT IN CONFLICT.

HISTORY. 1947 c. 498 s. 5.

480.056 PRESENT LAWS EFFECTIVE UNTIL MODIFIED.

HISTORY. 1947 c. 498 s. 6.

480.057 PROMULGATION.

HISTORY. 1947 c. 498 s. 7.

480.058 RIGHT RESERVED.

HISTORY. 1947 c. 498 s. 8.

480.06 DECISIONS.

The allowance of attorneys fees and other expenses of litigation is largely a matter of discretion with the trial court. It is the established policy of the supreme court to be conservative in the matter of such allowances. They are to be allowed cautiously and only when necessary. Spratt v Spratt, 151 M 466, 187 NW 227; Burke v Burke, 208 M 1, 292 NW 426.

Construction of a statute must be reasonable and practical. Broad and practical considerations should control. Judicial construction of a statute is as much a part thereof as if it had been written into it originally. Zochrison v Redemption Gold Corp. 200 M 383, 274 NW 536.

Previous decisions of the supreme court in which the precise question here presented for decision was not raised or passed on are not binding in the decision of the instant case. State ex rel v Gibbons, 202 M 421, 278 NW 578.

Where there are two appeals presenting the same questions of fact and law a decision in one appeal will dispose of the other. Marchinke v Egan, 202 M 625, 279 NW 587.

There was a decision of the supreme court on a prior appeal, and the case was remanded for entry of judgment on the merits for the defendant. No further proceedings were had in the district court except that the judgment was entered agreeably to the former decision. The action of the lower court in entering judgment must

be affirmed without further consideration of the instant appeal. Doyle v City of St. Paul, 206 M 649, 289 NW 784.

The doctrine of stare decisis is a declaration of policy rather than a rule. No rights of property involved, no rule of practice, it should not perpetuate error. It can have no restraining effect where, as here, erroneous policy of decision law is opposed to a later rule declared by statute; and where contracting parties first agree to a statutory arbitration and later make complete submission to an arbitration which does not comply with the statute but which is good at common law, it will be given effect as a common-law arbitration, inasmuch as the statute expressly allows and confirms arbitration "according to the common law." Park Const. Co. v Independent School Dist. 209 M 182, 296 NW 475.

The order for sale is reviewable on appeal from the final judgment, but where parties to a partition action who, until final judgment, have contended that there should be a sale of the premises rather than a division in kind, they will not be permitted on appeal to reverse their attitude and contend that the sale should not have been ordered. Burke v Burke, 209 M 386, 297 NW 340.

Arbitrators being the judges of the law as well as the facts under a general submission at common law, their award, unless successfully impeached upon some permissible ground, is final and conclusive on the parties; and an award cannot be successfully impeached upon the ground of error so palpable as to compel a finding that the arbitrators acted with prejudice and bias and not in the exercise of a fair and impartial judgment, where it appears that they decided the questions in dispute either according to well settled rules of law or according to the equities of the case. Park Const. Co. v Independent School Dist. 216 M 27, 11 NW(2d) 649.

Where the court has examined the record and has come to the conclusion that when viewed objectively the facts found by the jury are reasonably supported by the evidence, it is unnecessary for the appellate court to discuss the evidence in detail to demonstrate the correctness of the verdict. Cooper v Hoegland, 221 M 449, 22 NW(2d) 450.

"The stare decisis doctrine" is entitled to great weight and should ordinarily be adhered to unless reasons therefor no longer exist, are clearly erroneous, or are manifestly wrong; and is subordinate to legal reason and properly departed from if and when such departure is necessary to avoid the perpetration of error. The doctrine does not call for a blind, arbitrary and implicit following of precedents, but recognizes, no vested rights nor rule of property being involved, that it is more important as to far reaching judicial principles that the court should be right rather than it merely be in harmony with its previous decisions. United States v State of Minnesota, 113 F(2d) 770.

480.09 STATE LIBRARY.

Amended by L. 1947 c. 296 s. 5.

Superseded cumulations, disposal of. OAG Nov. 1, 1945 (851-F).