

MINNESOTA STATUTES 1953 ANNOTATIONS

550.24 EXECUTIONS; REDEMPTION; EXEMPTIONS

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550.24 REDEMPTION OF REALTY

Where upon the death of an old age recipient appropriate foreclosure proceedings were taken and the lien foreclosed and the homestead was bid in for the state, the procedure for readmission by the heirs is as follows: Section 256.26, subdivision 8, provides that old age assistance liens may be enforced in the manner provided for the enforcement of mechanic's liens upon real estate. Section 514.15 provides that the judgment shall direct a sale for the satisfaction of the liens and the manner of sale, and that the right of redemption shall be the same as upon execution sales. Sections 550.24, 550.25, 550.26, 550.27, provide the method by which such redemption may be made. Upon such redemption being made a certificate of redemption may be issued either by the person from whom such redemption is made, the sheriff, or the clerk of the district court of the county in which the real property is located. The facts set forth in the certificate of redemption are in section 580.26. OAG Aug. 9, 1948 (521-P-4).

550.37 PROPERTY EXEMPT

HISTORY. Amended, 1949 c 282 s 1; 1951 c 673 s 1.

Interest necessary to support an exemption claim. 34 MLR 350.

The provision of the homestead statute specifically defined classes of personal property exempt from process but making no reference to income derived from homestead rentals, does not manifest a legislative intent not to include homestead rentals as exempt. *Wilson v First National Bank of Mankato*, M, 60 NW(2d) 69.

The statute exempting insurance proceeds, not exceeding \$10,000 payable to surviving wife or child from attachment or sale in any final process applies only where conditions of the beneficiary seek to subject the insurance proceeds to the debts of the beneficiary. *Pauling v Pauling*, 159 F(2d) 531.

JUDICIAL REMEDIES

DECLARATORY, CORRECTIVE, ADMINISTRATIVE

CHAPTER 555

UNIFORM DECLARATORY JUDGMENTS

555.01 COURTS TO CONSTRUE RIGHTS

NOTE: The Uniform Declaratory Judgments Act stems from Laws 1923, Chapter 286. The Act has been adopted in the following states: Alabama, Arizona, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

Atrocities of the declaration judgments law. 31 MLR 575.

Tax valuation of Minnesota iron ore. 34 MLR 389.

Right of declarative relief to review federal employee's alleged discharge in violation of the Veterans Preference Act. Question of sovereign immunity. 35 MLR 659.

Type of administrative action subject to judicial control through injunction and declaratory judgments. 37 MLR 20.

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Conditions for the granting of injunctive or declaratory relief. 37 MLR 24.

Recovery by insured of attorney's fees incurred defending a declaratory judgment action contesting policy coverage. 37 MLR 139.

The Uniform Declaratory Judgments Act is available to a plaintiff seeking to determine whether Laws 1945, Chapter 351, violates Minnesota Constitution, Article IV, Sections 34, 35, 36. The Act is not an extraordinary one but an alternative remedy where there is a justifiable controversy. *Leighton v City of Minneapolis*, 222 M 516, 25 NW(2d) 263.

A taxpayer of a town may, under the Declaratory Judgments Act, question the validity of a provision in the home rule charter of a city organized from a village theretofore existing within the boundaries of a town whereby the city attempted to constitute the town and city one election and assessment district as the town and village had previously been so constituted. *Almquist v City of Biwabik*, 224 M 503, 28 NW(2d) 744.

As to real estate taxes, where relief is available under Laws 1935, Chapter 300, establishing a method whereby taxpayers can have their rights determined with reference to such taxes without incurring a penalty and without running the risk of having the payment considered voluntary, proceedings under the Declaratory Judgments Act are not permitted. As to personal property taxes illegally levied, where the remedy provided by section 277.02 is unsatisfactory because payment before delinquency may be considered voluntary, while payment after delinquency may involve penalties, and where no method of obtaining relief comparable to that in the case of real estate taxes has been provided by the legislature, it is held, under the circumstances, that at the present time relief from illegally levied personal property taxes may be had under the Declaratory Judgments Act. Demurrer to complaint is sustained where allegations showed that dairy company, which was in possession of the personal property assessed, was a private corporation which had agreed to pay the taxes thereon and therefore was not in a position to claim relief because of the interest of the United States government (which was not a party) in the property in question. *Land O'Lakes Dairy v Village of Sebek*a, 225 M 540, 31 NW(2d) 660; *Land O'Lakes v Hintzen*, 225 M 535, 31 NW(2d) 474.

MSA, Chapter 278, provides a method whereby taxpayers can have the validity of real estate taxes determined without incurring penalty and without running the risk of having payments considered voluntary; and chapter 278 provides an adequate, speedy, and simple remedy, and where relief is available under chapter 278, proceedings under the Declaratory Judgments Act are not permitted. *Land O'Lakes v Village of Sebek*a, 225 M 540, 31 NW(2d) 660.

A complaint based upon Uniform Declaratory Judgments Act may be demurred to. A demurrer must be sustained if sustainable under statutory ground. Whether stated or not in the pleading, a demurrer admits all necessary inferences or conclusions of law based upon facts pleaded in the pleading demurred to; but does not admit bare conclusions of law or facts not well pleaded. *Paron v City of Shakopee*, 226 M 222, 32 NW(2d) 603.

Where the status of plaintiffs is no different in legal character from that of any other citizen or taxpayer of the municipality, they are not in a position to tax the property of the governing body of the municipality in directing that on sale liquor licenses be issued to persons other than plaintiff and a demurrer to the complaint was properly sustained. *Paron v City of Shakopee*, 226 M 222, 32 NW(2d) 603.

Where a declaratory judgment as to a disputed fact would be determinative of issues, rather than a construction of definite stated rights, status, and other relations commonly expressed in written instruments, the case is not one for a declaratory judgment and where the complaint merely showed that an inexperienced farmhand had been employed at \$25.00 per month with promise of increased pay as he became more capable, that certain payments had been made on account, that the employer had often asked the employee to state what he considered reasonable wages but that the employee declined to state, and the plaintiff prayed the court to determine the amount due the defendant no justiciable controversy within the Declaratory Judgment Act was stated. *Stark v Rodriguez*, 229 M 1, 37 NW(2d) 812.

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A declaratory judgment cannot be used to collaterally attack a judgment of a court of competent jurisdiction, but it may be used to determine whether the court had jurisdiction to enter any judgment at all in the matter involved. *Bengston v Setterberg*, 227 M 337, 35 NW(2d) 623.

In an action by the street railway company against the city for a judgment declaring invalid a city ordinance purporting to amend an earlier street railway franchise grant by increasing the annual license fee for each car, the street railway's motion for judgment on the pleadings did not resolve in favor of the city all fact issues, such as the reasonableness of the increase in the license fee. *Minneapolis Street Railway Co. v City of Minneapolis*, 229 M 502, 40 NW(2d) 355.

In a declaratory judgment action to determine the rights of a municipality and a contractor in and to receipts from parking meters during a certain period under a purported contract between the parties which had been declared void, the supreme court cannot consider the issue raised by one of the parties as to whether the purported contract contained severable rental provisions which might have survived the decision of the supreme court invalidating the award as a transaction of purchase and sale only. *City of St. Paul v Dual Parking Meter Co.*, 229 M 217, 39 NW(2d) 174.

Two separate suits for declared judgment and injunctive relief were brought by two separate local unions against the national organizations. In each suit the defendants demurred to the complaint and the district court overruled both demurrers, whereupon the defendant appealed. The supreme court held that plaintiffs were entitled to judgment declaring their right to disaffiliate from the parent union and to retain their assets. A local labor union is a separate and distinct voluntary association which owes its creation and continued existence to the will of its members and upon its disaffiliation from the international union its relationship with international is severed, even though it continues to retain its organization's assets. In the absence of enforceable provisions in the parent union's constitution preventing disaffiliation of local union intact with its property, the local union could by majority sever its relationship with the parent union and take its property with it. *Local United Electrical Workers v United Electrical Workers*, 232 M 217, 45 NW(2d) 408.

The complaint in an action for declaratory judgment alleging the existence of a contract between plaintiff and defendant calling for monthly payments by the defendant; that defendant has informed plaintiff that he will make no further payments, pursuant to the contract or otherwise; that he has failed to make certain payments required under the contract; and that he has informed plaintiff that the contract is not a valid or subsisting contract, is good as against a demurrer, even though the completed facts disclose that the defendant was not in default in his payments under the contract at the time of the commencement of the action. *Harrington v Fairchild*, 235 M 437, 51 NW(2d) 71.

No court has jurisdiction to render a declaratory judgment in the absence of a justiciable controversy. *Hassler v Engberg*, 233 M 487, 48 NW(2d) 343.

The existence of a justiciable controversy or of a genuine conflict between opposing litigants is essential to the maintenance of an action for a declaratory judgment. *Henderson v City of St. Paul*, 236 M 353, 53 NW(2d) 21.

In an action brought under the Uniform Declaratory Judgments Act to determine the validity of a service station real estate lease entered into in 1944, between plaintiff and defendant's predecessor in title, and to determine the meaning and effect of certain words and provisions in the lease, and in the latter stipulation confirming the lease, the trial court properly struck from the answer a paragraph which alleged that the business practices of the plaintiff and a so-called "all requirements" sales contract entered into in 1948 between plaintiff and defendant, were illegal under the Sherman Anti-Trust Act and the Clayton Act. *Mid-Continent Petroleum Corp. v Narverud*, M, 55 NW (2d) 626.

Under the Uniform Declaratory Judgments Act jurisdiction exists to declare the rights, status, and other legal relations of the parties, if the complainant is possessed

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of a judicially protectible right or status which is placed in jeopardy by the ripe or ripening seeds of an actual controversy with an adversary party. Such jurisdiction exists although the status quo between the parties has not yet been destroyed or impaired and even though no relief is or can be claimed or afforded beyond that of merely declaring the complainant's rights so as to relieve him of present uncertainty and insecurity. *Minneapolis Federation of Men Teachers, Local 238, A.F.L. v Board of Education*, M, 56 NW (2d) 203.

In a declaratory judgment action by an insurer against an insured to have an automobile liability policy declared void on the ground of misrepresentation of ownership of the insured's automobile or in the alternative, lack of insurable interest in the insured at the time of the accident, it is held that where the insured had no insurable interest in the insured's automobile at the time of the accident, the insurer did not have any obligation under the policy to pay injuries resulting from the accident involving the automobile or to defend insured in any action arising out of such accident. *Northwestern Nat. Cas. Co. v Bettinger*, 111 F Supp 511.

555.02 MAY HAVE INSTRUMENTS CONSTRUED

The law of the place of contracting determines the validity and effect of a promise with respect to fraud, illegality, or any other circumstances which may make it void or voidable; the law of the place of performance of a contract applies only to questions relating to the manner, time, location and sufficiency of the performance. This rule applies to the seller of a secret process or of an employee to whom it has been disclosed, not to disclose such secret or make use thereof. *Larx v Nicol*, 225 M 1, 28 NW(2d) 705.

Where trustees are in reasonable doubt as to their official duties or powers, they are entitled to instructions of the court in respect to such matters as the proper construction of the trust instrument, the extent of their powers, and duties, who are beneficiaries; and the character and extent of their interests, the allocation or apportionment of receipts or expenditures between principal and income, and as to the persons entitled to income or to the trust property. *Atwood's Trust*, 227 M 495, 35 NW(2d) 736.

Where in doubt as to their duties or powers trustees are entitled to instructions of the court in respect to such matters as the proper construction of the trust instrument, the extent of their powers and duties, as to who are beneficiaries of the trust, the character and extent of their interest, allocation or apportionment of receipts or expenditures between principal and income, and as to the persons entitled to the income or to the trust property on termination of the trust. *Atwood's Trust*, 227 M 495, 35 NW(2d) 736.

Where a declaratory judgment as to a disputed fact would be determinative of issues, rather than a construction of definite stated rights, status, and other relations, commonly expressed in written instruments, the case is not one for a declaratory judgment. *Stark v Rodriguez*, 229 M 1, 37 NW(2d) 812.

No court has jurisdiction to render a declaratory judgment in the absence of a justiciable controversy. The controversy must be justiciable in the sense that it involves distinct and concrete assertions of right, and the contest thereof touching the legal relations of parties having adverse interests in the matter with respect to which the declaration is sought and must admit of specific relief by a decree or judgment of a specific character as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. *Hassler v Engberg*, 233 M 487, 48 NW(2d) 346.

Under the provisions of sections 555.01 to 555.03 the validity of a contract may be determined before there is a breach thereof. *Harrington v Fairchild*, 235 M 437, 51 NW(2d) 71.

A controversy having arisen between plaintiff and defendant, an action for a declaratory judgment may be used to determine the validity of a service station realty lease. *Mid-Continent Petroleum Corp. v Narverud Motor Co.*, M, 55 NW(2d) 626.

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The amount and validity of an old age assistance lien may be determined in an action brought under section 555.02. OAG Oct. 6, 1948 (521-P-4).

555.03 CONTRACT MAY BE CONSTRUED

Recovery by insured of attorney's fees incurred in defending a declaratory judgment action contesting policy coverage. 37 MLR 139.

In a declaratory judgment action by an insurance company seeking to determine the applicability of the exclusionary clause in an automobile liability policy, the federal court had jurisdiction in view of the diversity of citizenship existing, the claim being under the Minnesota wrongful death statute. Security Insurance Co. v Jay, 109 F Supp 87.

555.04 WHO MAY ASK FOR CONSTRUCTION

Probate courts are courts of record of superior jurisdiction, jurisdiction being limited to certain specified subjects. Proceedings are in rem. Decrees of distribution are binding on all parties interested in the estate if the decree covers a subject over which the court has jurisdiction. A suit for declaratory judgment could be maintained to determine the rights of interested parties under a decree of distribution of the probate court assigning the homestead to the widow in fee contrary to the applicable statute giving the widow only a life estate, since suit was not a collateral attack upon the decree but was to determine whether there was any valid judgment at all that could affect the rights of the parties. Bengston v Setterberg, 227 M 337, 35 NW(2d) 623.

555.08 SUPPLEMENTAL RELIEF

Where the tenant moved out ten days before the lease expired but kept the keys of the apartment until two days before the lease ran out and the tenant based her claim of unlawful eviction solely on the landlord's action relative to mail delivered to the apartment about a week before the tenant turned over the keys, no eviction took place, and the trial court properly so instructed the jury. Loining v Kilgore, 232 M 347, 45 NW(2d) 554.

555.09 ISSUES OF FACT MAY BE TRIED

Declaratory judgments; determination of fact issue. 37 MLR 632.

Where trustees are in reasonable doubt as to their official duties or powers, they are entitled to instructions of the court in respect to such matters as the proper construction of the trust instrument, the extent of their powers, and duties, who are beneficiaries; and the character and extent of their interests, the allocation or apportionment of receipts or expenditures between principal and income, and as to the persons entitled to income or to the trust property. Atwood's Trust, 227 M 495, 35 NW(2d) 736.

Where a declaratory judgment as to a disputed fact would be determinative of issues, rather than a construction of definite stated rights, status, and other relations commonly expressed in written instruments, the case is not one for a declaratory judgment and where the complaint merely showed that an inexperienced farmhand had been employed at \$25.00 per month with promise of increased pay as he became more capable, that certain payments had been made on account, that the employer had often asked the employee to state what he considered reasonable wages but that the employee declined to state, and the plaintiff prayed the court to determine the amount due the defendant, no justiciable controversy within the Declaratory Judgment Act was stated. Stark v Rodriquez, 229 M 1, 37 NW(2d) 812.

A grantor conveying land, the title to which has reverted to him upon the happening of the condition specified in the conveyance, is entitled to a building permanently affixed thereto at the time of the reversion. A person erecting a building on land to which he has legal title subject to termination upon the happening of a

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condition subsequent is not entitled under MSA, Section 559.09 to remove the building after the happening of the condition. *Miller v Common School District*, 231 M 248, 43 NW(2d) 102.

555.10 COSTS

A benefit to the entire trust, aside from benefits conferred by acts which protect or increase the trust corpus, may, in exceptional cases, also be conferred by litigation which is unquestionably essential to a judicial determination of the meaning of ambiguous language employed by the settlor. Such action entitles a party to attorney's fees and expenses out of the trust fund corpus, especially where the powers of the trustees cannot surely be ascertained without a judicial determination. *Atwood's Trust*, 227 M 495, 35 NW(2d) 736.

555.12 REMEDIAL

The liberal construction of MSA, Chapter 555, required by section 555.12 justifies the court in determining the validity of a provision in a home rule city charter since the charter is in effect legislation. *Almquist v City of Biwabik*, 224 M 503, 28 NW(2d) 744.

A justiciable controversy may clearly exist without first having an actual disruption of the existing legal relations between the parties, and such a controversy does not lose its justiciable character because the court in the exercise of a sound discretion uses a restraining order to preserve the status quo until the rights of the parties have been declared. *Minneapolis Federation of Men Teachers, Local 238, A.F.L. v Board of Education*, M, 56 NW (2d) 203.

Complaint in an action for a declaratory judgment, alleging the existence of a contract between plaintiff and defendant calling for monthly payments by defendant; that defendant has informed plaintiff that he will make no further payments; that he has failed to make certain payments required under the contract; and that he has informed plaintiff that the contract is not a valid or subsisting contract, is good as against a demurrer. *Harrington v Fairchild*, 235 M 437, 51 NW(2d) 71.

CHAPTER 556

USURPATION; PREVENTION; LETTERS PATENT; VACATION

556.01 USURPATION OF OFFICE, ILLEGAL ACT

Type of administrative action subject to control by a writ of quo warranto. 37 MLR 1.

In quo warranto proceedings specifically brought to determine an incumbent's title to office A, a collateral attack may not be made upon such incumbent's title to office B, a separate and distinct office, although the incumbent of office B is ex officio of office A. *State v Brandt*, 225 M 345, 31 NW(2d) 5.

The modern "information in the nature of a writ of quo warranto" may be defined as a proceeding to correct the usurpation, misuser, or nonuser, of a public office or a corporate franchise, and the objects to be attained are identical to those which were secured by the ancient writ of quo warranto. The granting or withholding or leave to file an information at the instance of an individual, with or without the consent of the attorney general, is within the discretion of the trial court. Where the supreme court permits an information for a writ and has issued the writ, the court is deemed to have exercised its discretionary power and it is immaterial that the relator failed to petition the court. *State ex rel v Village of Mound*, 234 M 531, 48 NW(2d) 855.