

MINNESOTA STATUTES 1953 ANNOTATIONS

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USURPATION; PREVENTION; ETC. 556.01

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.

MINNESOTA STATUTES 1953 ANNOTATIONS

556.05 USURPATION; PREVENTION; ETC.

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556.05 JUDGMENT FOR USURPATION, FINE

After a writ of quo warranto is issued defendant may plead thereto within the specified time and the proceeding thereafter continues as in an ordinary civil action. The judgment for the relator may be a general judgment of ouster, an ouster of right to do a particular act complained of, suspensive judgment of ouster with fine, or a simple fine. State ex rel v Village of Mound, 234 M 531, 48 NW(2d) 855.

556.07 TO VACATE CORPORATE CHARTER

Although the attorney general in seeking to vacate a corporate charter may proceed either by civil action under sections 301.57 and 556.07, or both, by quo warranto, any other person in the absence of express statutory authorization must rely exclusively on quo warranto as a remedy. Miller v Minneapolis Underwriters Assn., 226 M 367, 33 NW(2d) 49.

An action to cancel or annul a corporate charter is a civil remedy employed by or on behalf of a state to cancel or recall a franchise which a domestic corporation proceeded against, has abused. The attorney general in seeking to vacate a corporate charter may proceed either by civil action or by quo warranto; any other person must rely exclusively on quo warranto. Miller v Minneapolis Underwriter's Assn., 226 M 367, 32 NW(2d) 48.

The Sibley county agricultural society, whose corporate existence terminated June 1, 1913, and which did not take advantage of Laws 1945, Chapter 193 or Laws 1947, Chapter 158, and as Laws 1949, Chapter 6, 12, and 41 are not applicable in the present instance, there is no way by which the corporate existence of the Sibley county agricultural society may now be renewed and the persons interested should form a new corporation under present existing laws. OAG May 18, 1949 (772-A-5).

556.10 JUDGMENT AGAINST CORPORATION, RECEIVER

The appointment of receiver in connection with sequestration proceedings is in the nature of an equitable attachment, a quasi *in rem* proceeding in which creditors seek to compel satisfaction of their personal claims against the defendant corporation out of the attached assets, and the court has jurisdiction in the same proceeding to determine property claims against the assets. Schwartz v First Trust Co., 236 M 165, 52 NW(2d) 290.

556.11 TO VACATE LETTERS PATENT

Invention in discovery of principals of nature. 33 MLR 430.

The applicant proposed to modify past coated abrasive articles such as sandpaper, abrasive belts, discs and the like by changing the binder or coating whereby the abrasive grains were bonded by a vinyl resin or mixture of the same. The appellate court sustained the primary examiner and rejected the application because of the substitution of one material for another which was already the subject of patent was not a matter of invention. In re Oakes, 179 F(2d) 1017.

CHAPTER 557

ACTIONS RELATING TO REAL PROPERTY

557.01 NONRESIDENT, AGENT TO ACCEPT SERVICE

NOTE: Third sentence superseded by Rules of Civil Procedure, Rules 4.044 and 5.02.

All profits made by an agent in the course of an agency belong to the principal, whether they are fruits of performance or of violation of the agent's duty, and it is