

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

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immaterial that the principal has suffered no damage, or even that the transaction concerned was profitable to him. Where the agent of the buyer received a secret commission from the seller of a business, election by the buyer, upon discovery of fraud in the transaction to rescind the contract of sale and recover from the seller that with which he had parted, did not preclude a subsequent action by the buyer against his agent to recover secret commissions obtained in violation of duties of the agency. *Tarnowski v Resop*, 236 M 33, 51 NW(2d) 801.

557.02 NOTICE OF LIS PENDENS

NOTE: All lis pendens prior to April 25, 1919, become void at the expiration of 15 years from the date of filing.

Pursuant to section 557.02, a notice of lis pendens may be properly filed only if plaintiff pleads a cause of action which involves or affects the title to, or any interest in or lien upon, specifically described real property. If plaintiff has pleaded a joint adventure, then his action involves an equitable lien upon the designated real estate, and he has brought himself within the provisions of section 557.02 for the proper filing of a notice of lis pendens. A joint adventure is created, assuming that a corporation has not been organized and the circumstances do not establish a technical partnership, where two or more persons combine their money, property, time, or skill in a particular business enterprise and agree to share jointly, or in proportion to their respective contributions, in the resulting profits and usually in the losses. Although a joint adventure is not, in a strict legal sense, a copartnership, the rules and principles applicable to a partnership relation, with few if any material exceptions, govern and control the rights, duties, and obligations of the parties. An enterprise does not constitute a joint adventure unless each of the following four elements are present, namely: (a) Contribution. The parties must combine their money, property, time, or skill in some common undertaking, but the contribution of each need not be equal or of the same nature. (b) Joint proprietorship and control. There must be a proprietary interest and right of mutual control over the subject matter of the property engaged therein. (c) Sharing of profits but not necessarily of losses. There must be an express or implied agreement for the sharing of profits (aside from profits received in payment of wages as an employee) but not necessarily of the losses. (d) Contract. There must be a contract, whether express or implied, showing that a joint adventure was in fact entered into. *Rehnberg v Minnesota Homes, Inc.*, 236 M 230, 52 NW(2d) 454.

Before a right or interest acquired prior to the filing of a notice of lis pendens may be final, it must be an enforceable right. One who purchases real property from a party after a notice of lis pendens is properly filed for record takes subject to the final disposition of the pending cause and is bound by the decision which may be entered against the party from whom he derives his title, even though he is not a party to such action. *Marr v Bradley*, M, 59 NW(2d) 331.

557.04 Superseded by Rules of Civil Procedure, Rule 70.

Annotations relating to superseded section 557.04.

Pursuant to section 557.04, a district court may pass title to real estate by a judgment, without any other act to be done on the part of defendant, where such appears to be the proper mode to carry its judgment into effect. *Henschke v Young*, 226 M 339, 28 NW(2d) 766.

557.06 ACTION AGAINST COTENANT

Right of a joint tenant to maintain a suit to cancel a deed executed by the other joint tenant. 34 MLR 245.

557.08 FORCIBLE EVICTION, TREBLE DAMAGES

In a defense action against the landlord to recover damages for alleged illegal eviction, the evidence sustained the jury's finding that the landlord did not in good faith evict tenant from the premises. The statute allowing the person who has been

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put out of realty without lawful authority to recover damages applies only when the person is put out in a forcible manner. *Behrendt v Rassmussen*, 234 M 97, 47 NW(2d) 779.

In an action to recover damages for unlawful eviction from agricultural lands leased from defendant on shares for crop purposes, where eviction took place after commencement of the 1950 growing season, and the trial was held in October of the same year, and where profits plaintiff would otherwise have realized from crops to be grown that season were ascertainable and proved with reasonable certainty, the loss of said profits was a proper measure of plaintiff's damages; and where defendant's entry upon the leased land was peaceable and consisted merely of posting "no trespassing" signs in plaintiff's absence and no force was used to keep plaintiff off the land, plaintiff was not entitled to treble damages. *Poppen v Wadleigh*, 235 M 400, 51 NW(2d) 75.

CHAPTER 558

PARTITION OF REAL ESTATE

NOTE: Chapter 558 is excepted from the Rules of Civil Procedure. See, Rule 81.01 and appendix A.

558.01 PARTITION, SALE; WHO MAY BRING ACTION

A fractional part of realty may be sold for nonpayment ad valorem taxes, and the person acquiring the fee to such part may sell it through partition proceedings. *Christian Committee v State*, 228 M 549, 38 NW(2d) 803.

Allegations in the counterclaim that the realty involved in a partition suit was purchased by defendant with her money while living with plaintiff as his wife and that plaintiff's name was included in the contract for deed solely because of convenience were in the absence of an allegation to that effect, insufficient to show that plaintiff owned no interest in the realty. *Bennett v Bennett*, 230 M 415, 42 NW(2d) 39.

558.02 SUMMONS; SERVICE

NOTE: Beginning with "in which case" Superseded by Rules of Civil Procedure, Rule 4.041.

Where a counterclaim asking for the reformation of deeds affecting title was interposed in a partition proceeding, and the case was tried on the counterclaim alone, and the findings were made and judgment ordered against the defendants, an order denying a motion to amend the findings, conclusions of law and order for judgment was non-appealable. *Johnson v Geise*, 230 M 185, 40 NW(2d) 909.

558.03 COMPLAINT

Allegation in a counterclaim that the realty involved in the partition suit was purchased by defendant with her money while living with plaintiff as his wife, and that plaintiff's name was included in the contract for deed solely because of convenience, and marriage of the parties were insufficient to show that plaintiff owned no interest in the realty in the absence of allegation to that effect. *Bennett v Bennett*, 230 M 415, 42 NW(2d) 40.

558.07 CONFIRMATION OF REPORT; FINAL JUDGMENT

In a partition proceeding, where a counterclaim is interposed asking for reformation of certain deeds affecting the title and the case is tried on the counterclaim only, findings being made and judgment ordered against the defendants, who appeal