

GENERAL STATUTES  
OF THE  
STATE OF MINNESOTA

36

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COMPLETE IN TWO VOLUMES.

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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## CHAPTER 79.

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

## § 1. Action to annul act of incorporation.

Where a case is presented to the attorney general, making it reasonably probable that any of the acts or omissions enumerated in c. 80, Rev. St., can be proved against a corporation, it is his duty to apply for leave to bring the action contemplated by such chapter, and if he neglect or refuse so to do, *mandamus* will lie to compel him to apply for such leave. *State v. Berry*, 3 Minn. (Gil.) 190.

After application for leave to sue has been made, the discretion, as to whether suit will be brought, is for the court alone. *Id.*

See *State v. Sharp*, 27 Minn. 88, 6 N. W. Rep. 408; *State v. St. Paul & S. C. R. Co.*, 85 Minn. 222, 28 N. W. Rep. 245.

## § 3. Action against intruders, etc., in office.

See *State v. Sherwood*, 15 Minn. 221, (Gil. 172, 177); *State v. Williams*, 25 Minn. 340, 344; *State v. Parker*, *Id.* 215, 218.

## § 5. Joinder of complainants.

In an action in the nature of a *quo warranto* under this section, two dissimilar interests may be united—the one public, on the part of the territory, to prevent one not duly chosen from exercising official functions; and the other private, and on behalf of the claimant, to establish his right to the office, and to recover damages he may have sustained by the usurpation. *Territory v. Smith*, 3 Minn. 240, (Gil. 164.)

## CHAPTER 80.

## SPECIAL PROCEEDINGS.

## TITLE 1.

## WRIT OF MANDAMUS.

## § 2. To whom issued.

A writ of *mandamus* will not be granted unless it appears that there has been a clear violation of a legal right. *Post v. Sparta*, (Mich.) 29 N. W. Rep. 721.

The writ of *mandamus* will not lie to require an act to be done which it would not be lawful for the person to do without it. *Clark v. Buchanan*, 2 Minn. 846, (Gil. 298.)

The writ should not be granted after the expiration of the period which, under the statute of limitations, would be a bar to an action. *People v. Chapin*, (N. Y.) 10 N. E. Rep. 141.

While the court cannot determine the right of a party to hold a seat in the legislature, it can determine his right to a certificate of election to the legislature, and will, by *mandamus*, compel its issuance to the party entitled to it. *O'Ferrall v. Colby*, 2 Minn. 180, (Gil. 148.)

*Mandamus* will not lie to compel a public officer to perform an official duty till a demand on him to perform it. *State v. Davis*, 17 Minn. 429, (Gil. 406.) *Mandamus* will not lie to compel the treasurer of a school-district to demand and receive from the county treasurer the money in his hands due the district, where the only demand upon such treasurer of the school-district was to pay an order by the trustees on such treasurer. *Id.*

For the use of the writ to compel the payment of claims against municipal corporations, see *State v. Ames*, 31 Minn. 440, 18 N. W. Rep. 277.