

collection of beasts or animals, or any circus, or to exhibit, show or perform any feats of activity or agility of horses or other animals or their riders, or both, or any such like shows or exhibitions, without having first obtained license for that purpose, as hereinafter mentioned.

2. Any [two judges of the court of common pleas] shall have authority to grant a license, in their discretion, to any person or persons, to exhibit and show any menagerie, or collection of beasts or animals, or any circus or such like exhibitions as are mentioned in the preceding section, within the county of which they are judges; and all licenses granted under this act shall set forth the township or townships in which such exhibition or show is authorized to be made, the time or number of days it may be continued, and the price or prices which may be demanded for admission to the same.

How and by whom.
Ib. § 2.
Amended.
[P. L. 1875, p. 37].

3. Before any such license shall be granted, the person or persons applying for the same shall be required to pay into the hands of any two judges of the court of common pleas to whom the application is made such sum of money as the said judges shall deem proper, not less than ten dollars, nor more than one hundred dollars, for each day said exhibition or show shall be licensed to continue.

Sum to be paid.
Ib. § 3.
P. L. 1875, p. 37.

4. Any person or persons offending against the provisions of this act shall forfeit and pay for every offence the sum of one hundred dollars, to be recovered in an action of debt, in any court having cognizance of the same, in the name of the county collector of the county where the offence is committed; and it shall be a duty hereby imposed for the collector of the county, or the collector of the township wherein such exhibition is made, to prosecute for and recover the same; and any such collector, so prosecuting, shall be entitled to retain in his hands twenty-five cents on every dollar he may receive by virtue of this act, as a compensation for his trouble.

Penalty for violation.
Ib. § 4.
Amended.

Collector to prosecute.

5. All moneys received and recovered under this act, after deducting the amount allowed to be retained agreeably to the provisions of the preceding section, shall be paid over to the county collector of the county where the same shall be received, or the offence committed, within thirty days after the receipt thereof, for the use of the county.

Money, to whom paid.
Ib. § 5.
Amended.

[See act for suppressing vice and immorality, *Sec. 8*].

Supplement.

Approved March 22, 1875.

[*Sec. 1* and *2* incorporated in foregoing act].

P. L. 1875, p. 37.

6. *Sec. 3*. That it shall be the duty of any constable, justice of the peace, or sheriff, to seize and take possession of all the goods and chattels of any person or persons offending against the provisions of this act, and hold the same until the determination of the action of debt mentioned in section fourth of the act to which this is a supplement, and in case the penalty mentioned in said section is not paid, to expose the same to public sale, and out of the proceeds, after deducting the sum of one hundred dollars, and all reasonable costs and charges, to pay over the balance to the owner or owners of the said goods and chattels.

Penalty, how collected.

Quo Warranto.

- 1. How exhibited against intruder.
- 2. Of the judgment and costs.
- “ Several rights may be determined.
- 3. Time to plead.

An act for rendering the proceedings upon information in the nature of a quo warranto more speedy and effectual.

Rev. 206.

Passed March 17, 1795.

R. S. 997.

1. That in case any person or persons shall usurp, intrude into, or unlawfully hold or execute any office or franchise within this state, it shall and may be lawful to and for the attorney-general, with the leave of the supreme court, to exhibit one or more information or informations in the nature of a *quo warranto*, at the relation of any person or persons, desiring to sue or prosecute the same, who shall be mentioned in such information or informations to be the relator or relators against such person or persons,

How informations may be exhibited against an intruder into office.

for usurping, intruding into, or unlawfully holding and executing any such office or franchise, and to proceed therein in such manner as is usual in cases of informations in the nature of a *quo warranto*; and if it shall appear to the said supreme court that the several rights of divers persons to the same office or franchise may properly be determined on one information, it shall and may be lawful for the said court to give leave to exhibit one such information against several persons, in order to try their respective rights to such office or franchise; and such person or persons, against whom such information or informations in nature of a *quo warranto* shall be sued or prosecuted, shall appear and plead as of the same term in which the said information or informations shall be filed, unless the said court shall give further time to such person or persons, against whom such information or informations shall be exhibited, to plead, and such person or persons as shall sue or prosecute such information or informations in nature of a *quo warranto* shall proceed thereupon with the most convenient speed that may be.

If found guilty judgment of ouster may be awarded against him, etc.

2. That in case any person or persons, against whom any information or informations in the nature of a *quo warranto* shall, in any of the said cases, be exhibited in the said supreme court, shall be found or adjudged guilty of an usurpation or intrusion into, or unlawfully holding and executing any such office or franchise, it shall and may be lawful to and for the said court, as well to give judgment of ouster against such person or persons of and from such office or franchise, as to fine such person or persons respectively for his or their usurping, intruding into, or unlawfully holding and executing any such office or franchise; and also it shall and may be lawful to and for the said supreme court to give judgment, that the relator or relators, in such information named, shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant or defendants in such information, he or they, for whom such judgment shall be given, shall recover his or their costs therein expended against such relator or relators; such costs to be levied by *feri facias*, or *capias ad satisfaciendum*, as in other cases.

Court to allow parties a reasonable time to plead.

3. That it shall and may be lawful to and for the said supreme court to allow to such person or persons respectively, against whom any information in the nature of a *quo warranto* in any of the cases aforesaid shall be sued or prosecuted, or to the person or persons who shall sue or prosecute the same, such convenient time respectively to plead, reply, rejoin, or demur, as to the said court shall seem just and reasonable.(a)

(a) The words of the statute extend not only to the offices and franchises of corporations within the state, but also to the offices of the state itself, *State v. Parkhurst*, 4 Hal. 427, 437. The office of deputy adjutant general, is such an office or franchise, as is contemplated by the act for rendering the proceedings upon information in the nature of a *quo warranto*, more speedy and effectual, *Miller v. Ulter*, 2 Gr. 84. A lawful but vacant office may be usurped and intruded into, as well as an office already filled by a lawful incumbent, *Ibid.* 88. An information in the nature of a *quo warranto*, will lie against individuals, *Ibid.* 89. It was allowed to determine who were the legal trustees of a Presbyterian church, *State v. Crowell*, 4 Hal. 390. If a public corporation was never legally constituted, and it is necessary to obtain the judgment of the court so adjudging the proper method of proceeding is by a *scire facias* or *quo warranto*, so that the corporation itself may be directly before the court, *State, Winsor v. Brown*, 2 Vr. 355, 356. *State v. Paterson Turnpike Co.*, 1 Zab. 3, 11. The right of a party to an office can only be called in question by proceedings in *quo warranto*, *State, Stokes v. Board of Freeholders of Camden*, 6 Vr. 217. *State, Hoey v. Ocean*, 10 Vr. 75. The statute removes all doubt as to the application of the remedies of *quo warranto* and *mandamus*, to corporations merely civil, *Owen v. Whittaker*, 5 C. E. Gr. 122. *Quo warranto* proceedings are not prohibited by that clause of the constitution which forbids that a person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury, *Att'y-Gen. v. D. and B. R. R. Co.*, 9 Vr. 282. In an amicable suit between executors and legatees and devisees to which the state is a party by reason of an interest under the will, the court will, if necessary, order special proceedings to be taken, e. g., an information to be filed to protect the rights of the state, *Stevens v. Stevens*, 9 C. E. Gr. 77. The granting of an information, is not a mere matter of course, but depends upon the sound discretion of the court, according to the particular circumstances of the case, made upon the application for leave to file an information; as where the right, or the fact on which the right depends, is disputed, or where the right turns upon a point of new or doubtful law, *Miller v. Ulter*, 2 Gr. 84. So, where the application is at the instance of a private relator, mak-

ing no claim to the office, even where a good objection to the title of the person whose right is called in question is shown, *State, Mitchell v. Tolan*, 4 Vr. 195. When an election for officers of a municipal corporation was held on a wrong day, without objection, and by a pure mistake, which was not discovered by any person interested, either as an officer of election or candidate or voter, until after the election was held, and where there was no pretence of fraud or corrupt motive on the part of any person concerned in the election, which was participated in by a large majority of the qualified voters in the city, the court, in the exercise of its discretion, may properly refuse to allow an information in the nature of a *quo warranto* against the defendant, who was chosen an alderman at said election, to inquire by what authority he held and exercised his office, *Ibid.* *Alter*, if it appeared that the non compliance with the law was induced by any fraudulent motive, or was prompted by an intent to disregard the law, *Ibid.* 201. *Query*. Whether the court would interfere in the case stated, if any means were provided for supplying the vacancies created by ousting the defendants, or for continuing the city government without their presence in the city council, *Ibid.* 201. The rules which ordinarily govern the court in the exercise of this discretionary power, appear to be these: (1) That the relator be not a mere stranger coming in to disturb a corporation with which he has no concern; (2) that he has not concurred in the act which he afterward complains of as illegal; (3) in the absence of fraud, or a wilful violation of law, that public or private interests will not be seriously impaired by the ouster of the officer whose title to office it is proposed to inquire into, *Ibid.* 198. Where a city charter, required a majority of the whole number of aldermen who composed the city council, in order to constitute a quorum for transacting business, the fact that a successful prosecution of the proceedings would leave the council without such quorum, and thus result in the suspension of all municipal government in the city for nearly a year, ought to control the discretion of the court, unless the ends of justice demand the application of such severe remedy, *Ibid.* That the application against a member of a corporation is based on grounds affecting his individual title in common with that of every other member of the corpora-