

QUO WARRANTO.

Quo Warranto.

1. How information may be exhibited against intruder into office.
2. Of the judgment and costs.
3. Court to allow parties a reasonable time to plead.
4. Proceedings against person unlawfully holding or executing municipal office or franchise.
5. Relator to give bond to defendant.
6. When information and bond filed, rule to plead may be entered. Rule, how served.
7. When appearance of defendant to be entered and pleadings filed. Affidavit to be annexed to plea.
8. When party shall join in demurrer. When to be heard.
9. What sufficient notice of hearing.
10. Court always open for return of writs, &c.
11. Upon judgment of ouster, relator may have immediate possession.
12. Court may determine title of respondent or relator to office.

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

Passed March 17, 1795.

Rev. 206.

R. S. 997.

How informations may be exhibited against an intruder into office.

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, 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.

Of the judgment and costs.

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 fieri 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)

Supplement.

Approved May 9, 1884.

P. L. 1884, p. 320.

4. SEC. 1. That whenever it is alleged that any person or persons usurp, intrude into or unlawfully hold or execute any municipal office or franchise within this state, it shall and may be lawful to and for any citizen of this state, who believes himself lawfully entitled to such office or franchise, to file in the office of the clerk of the supreme court an information, or informations, in the nature of a quo warranto, at the relation of the said citizen, and who shall be mentioned in such information to be the relator, against such person or persons as defendant or defendants, for usurping, intruding into or unlawfully holding or 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, except as is otherwise provided for in this act. (b)

Proceedings against person unlawfully holding or executing municipal office or franchise.

(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 *Hd.* 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. Uiter*, 2 *Gr.* 84. So is the office of jail-keeper. *Bonnes v. Meeker*, 10 *Vr.* 139. A lawful but vacant office may be usurped and intruded into, as well as an office already filled by a lawful incumbent. *Miller v. Uiter*, 2 *Gr.* 88. An information in the nature of a quo warranto will lie against individuals. *Miller v. Uiter*, 2 *Gr.* 89. It was allowed to determine who were the legal trustees of a Presbyterian church. *State v. Crowell*, 4 *Hd.* 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.* 9, 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 offense, unless on the presentment or indictment of a grand jury. *Att'y-Gen. v. D. & B. E. 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. Uiter*, 2 *Gr.* 84. So, where the application is at the instance of a private relator, making 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 pretense 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. *Ib.* *Aliter* 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. *State, Mitchell v. Tolan*, 4 *Vr.* 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. *Ib.* 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 willful 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. *State, Mitchell v. Tolan*, 4 *Vr.* 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. *Ib.* 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 corporation, and that the effect will be to dissolve the corporation, is not, of itself, and standing alone, as a proposition of law, or as a settled point of practice, a ground for refusing leave to file an information. *State, Mitchell v. Tolan*, 4 *Vr.* 199. At common law and in cases not within the statute, the courts have no authority to direct such information, and leave the matter to the discretion of the attorney-general. *State v. Paterson Turnpike Co.*, 1 *Zab.* 9, 10. A relator who is not a contestant but merely a taxpayer and legal voter, who is an inhabitant of the city and subject to its municipal government, has a sufficient interest to support his right to interpose, where it is claimed that the members composing the common council were unduly elected. *State, Mitchell v. Tolan*, 4 *Vr.* 195, 199. Where the object is to displace a particular officer or member of a corporation, the proceedings must be instituted by a proper relator. *State, Winsor v. Brown*, 2 *Vr.* 355, 358. But when public corporations are once *de facto* formed, and are exercising corporate powers, proceedings by way of quo warranto, to declare such corporations inoperative and in effect dissolved, can only be in the name of the attorney-general acting *ex officio*. *Ib.* *State v. Paterson Turnpike Co.*, 1 *Zab.* 9, 10. In case of a small, annual township office, the court will allow an information in the nature of a quo warranto to be filed in the first instance; but in the case of a corporation or high public officer, a rule to show cause should be first taken. *State v. Gummersall*, 4 *Zab.* 529. *State v. Freeland* and *State v. Thompson*, cited, 4 *Zab.* 531, *Potts, J.* The defendant should be brought in by process, and then ruled to plead. *Ib.* To an information in the nature of a quo warranto, the defendant can plead but one plea. *State, Everett v. Roe*, 2 *Duch.* 215. The usual course in such case is for the defendant either to put in a disclaimer, or to plead to the information by setting out his title to the office. *State v. Uiter*, 2 *Gr.* 84, 87. Where the court have granted leave to file an information, the usual course is for the defendant not to file a general demurrer to the information, but either to put in a disclaimer or to plead to the information by setting out his title to the office, to which plea the attorney-general may reply or demur, as in other cases. *Ib.* See *State v. Associates, &c.*, cited 4 *Zab.* 529, 531, *Potts, J.* As to the distinction between the use of a writ of *certiorari* and quo warranto, see *Haines v. Freeholders of Camden*, 18 *Vr.* 454. *Loper v. Millville*, 24 *Vr.* 362. Where there is fraudulent voting at an election, a *prima facie* case must be made to show that it is at least probable that sufficient false votes were cast to change the result, before an information will be allowed to test the title of an incumbent to his office. *Roche v. Bruggemann*, 24 *Vr.* 122. The attorney-general has the right, where the property of the state or the interests of the public are directly concerned, to file an information either at law or in equity, without a relator. *Att'y-Gen. v. D. & B. E. R. Co.*, 12 *C. E. Gr.* 631. See *Elizabethtown Gaslight Co. v. Green*, 1 *Dick.* 118. Judgment of ouster should be rendered though the usurpation do not continue until the trial. *Hammer v. State*, 15 *Vr.* 671.

(b) An officer of a *de facto* municipality cannot be ousted, at the instance of a private relator in quo warranto, on the ground that such public corporation has no legal existence. Such existence can be called in question only by the interposition of the attorney-general, acting for the state. *Steinbum v. Vickers*, 22 *Vr.* 180. When an information in the nature of a quo warranto is issued by the attorney-general, drawing in question the legality of the organization of a municipal corporation, such *de facto* corporation is a proper defendant in the procedure. *State v. Atlantic Highlands*, 21 *Vr.* 457. The information when against a corporation must be prosecuted in the name of the attorney-general alone, and cannot be joined with an information at the instance of private relators against officers in a corporation. *Giles v. Somers Point*, 20 *Vr.* 515. The defendant's title alone is to be inquired into on a quo warranto. *Davis v. Davis*, 23 *Vr.* 203. But see Sec. 12, *post*. When a public office has been intruded into, without color of right, the court will impose such a fine upon the usurper as shall appear, under the circumstances, to be condign. *Davis v. Davis, supra*. As to challenging the right of a relator to file an information without leave of court, see *Davis v. Davis*, 26 *Vr.* 80.

QUO WARRANTO.

Upon filing of information, relator to give bond to defendant to prosecute action to effect and pay costs.

5. SEC. 2. That upon the filing of such information the relator or relators shall execute a bond to the defendant or defendants in the penal sum of one hundred and fifty dollars, with one or more sufficient surety or sureties, being freeholders and residents in this state, with condition to prosecute said action with effect, and to pay costs to the defendants if they shall be entitled thereto; which bond shall be approved by a justice of the supreme court, or supreme court commissioner, and filed in the office of the clerk of the supreme court.

When information and bond filed, rule to be entered on defendant to plead, &c.

6. SEC. 3. That upon filing said information and bond as aforesaid, at request of the attorney of relator, the clerk of said court shall enter as of course a rule on the defendant or defendants to plead or demur to said information within ten days after service upon him or them of a certified copy of such information and rule; such service shall be made upon each defendant, either personally, if he shall be found, or if not found, by leaving said copies of the information and rule at the house or place of abode of the defendant, in the presence of some person of the family of the age of fourteen years, who shall be informed of the contents thereof; proof of said service shall be made by the affidavit of the person making the service of the time, place and manner of said service, which affidavit shall be filed with the clerk of said court.

How served.

Proof of service, &c.

When appearance of defendant to be entered and plea filed.

7. SEC. 4. That the defendant or defendants, within ten days after service of said information and rule as aforesaid, shall enter an appearance to said action, and (unless a justice of the supreme court, upon proper evidence of a reasonable cause therefor, shall grant further time, which, in case there has been personal service, shall not exceed ten days without consent of the relator) (a) shall file his plea or demurrer to said information, and in default thereof judgment by default shall be entered against him or them; if a plea shall be filed it shall have annexed to it an affidavit by each defendant, stating the facts, matters and things set forth in said plea, so far as they relate to his own acts, are true, and so far as they relate to the acts of others, he believes them to be true, and also stating that said plea is not filed for the purpose of delay, and that he believes he has a legal defense to said action on the merits of the case; if further pleadings shall be necessary they shall be filed within ten days, each after the other, or within five days after service of a certified copy upon the opposite party, or his attorney, unless a justice of the supreme court shall, under special circumstances, grant further time as aforesaid; and thereupon such further proceedings shall be had as are required by law.

Plea to have affidavit annexed.

When further pleadings filed and served.

When party shall join in demurrer.

8. SEC. 5. That when a demurrer shall be filed by either party, the other party shall join in demurrer within ten days, unless a justice of the supreme court shall grant further time as aforesaid; that whenever there shall be a joinder in demurrer the same shall be placed at once upon the calendar of the supreme court of the term in which issue is joined, for an immediate hearing, as soon as it is possible for the court to attend to the same; if not heard at the term in which issue is joined, said cause shall be placed by the clerk on the calendar of the succeeding term of said court, and shall be brought to a hearing at that term, upon ten days' notice by either party to the other.

When to be heard.

What a sufficient notice of hearing.

9. SEC. 6. That whenever notice is required, two days' notice of the hearing, argument or trial of any motion or issue arising under this act shall be sufficient.

Court always open for return of writ, &c.

10. SEC. 7. That the supreme court shall always be open, except on Sunday, for the return of all writs and process in proceedings under this act.

Supplement.

Approved March 19, 1895.

P. L. 1895, p. 344.

Upon judgment of ouster, relator may have immediate possession.

11. SEC. 1. That hereafter any relator or relators, upon the entry of judgment of ouster in the supreme court in respect to any office or franchise within this state, upon any proceedings upon information in the nature

(a) See *Ridgway v. Horner*, 28 Vr. 84.

of a quo warranto, wherein such relator or relators shall theretofore have had judgment of ouster in said court, shall be entitled at once upon the entry thereof to enter, possess and enjoy the office in respect to which the said proceedings, whereon the said judgment may be founded, were or shall be taken; and that the said court or any judge thereof may, upon the entry of such judgment, thereupon make an order on any defendant in such proceedings requiring him immediately to surrender any such office or franchise, with all the books, papers and insignia thereof, to the relator or relators; and no writ of error or other proceedings shall in anywise affect the right of such relator or relators to immediate entry into such office or franchise; *provided*, that such relator or relators shall, upon his or their entry into such office or franchise, give bond to the defendant or defendants in such sum and with such surety or sureties as the supreme court or any judge thereof shall approve, conditioned for the repayment to the defendant of the emoluments of the office or franchise during such relator's incumbency therein to which such defendants may be adjudged to be entitled, as well as the costs of the defendant, in the event of the subsequent reversal of the judgment of ouster in the said proceedings.

Court may make order for surrender of office, &c.

Proviso.

An act in relation to the writ of quo warranto.

Approved February 18, 1895.

P. L. 1895, p. 82.

12. SEC. 1. That in all actions of quo warranto, the supreme court may, if the writ, return and pleadings are properly framed for the purpose, determine by its judgment, not only the title of the respondent to the office or franchise in question, but also the title of the relator or relators to the same office or franchise, and shall have power, by appropriate process or orders, to enforce its said judgment.

Supreme court may determine title of respondent or relator to office.

Railroads and Canals.

I. GENERAL RAILROAD LAW.

1. Proceedings for the formation of a company.
2. Amended by sections 42 and 46.
3. Certified copy to be evidence of incorporation.
4. Directors may receive subscriptions until whole capital stock is subscribed.
5. Amended by section 55.
6. Directors to appoint president and other officers.
7. Proceedings in case of forfeiture of stock.
8. Stock to be deemed personal estate.
9. Capital stock may be increased.
10. Proceedings in case of indebtedness by contractor for labor performed in construction of road.
11. Amended by section 83.
12. Proceedings when company and owner of lands cannot agree.
13. Appeals to be made in writing and filed with clerk of circuit court.
14. Amended by sections 59, 68 and 84.
15. May transport freight and passengers.
16. Dividends.
17. Amended by section 55.
18. Penalty for injury to property.
19. Statement of cost of road shall be filed with comptroller.
20. Amended by section 43.
21. Proceedings when additional lands are taken.
22. Conductors, brakemen, &c., to wear badges.
23. May connect with other roads.
24. Proceedings when agreement cannot be made for carrying United States mails.
25. In case of refusal of passenger to pay fare.
26. Notice to be made of the time of starting and running cars.
27. Checks for baggage.
28. Lumber or freight cars not to be placed in the rear of passenger cars.
29. Bell on locomotive to be rung on street and road crossings.
30. Signboards to be erected.
31. Penalty for intoxication while in charge of engine, &c.
32. Fences to be kept up and maintained.
33. Company not liable for injury to passengers riding on platform.
34. Time for commencement and completion of road.
35. Penalty for violation of certain provisions of this act.
36. Amended by sections 57 and 61.
37. Who may ride free.
38. Franchise heretofore or hereafter granted not to be exclusive.
39. Legislature may alter, amend or repeal act.
40. Railroad companies may establish and operate ferries.
41. Route of railroad relocated.
42. Amended by section 46.
43. Corporation may borrow money to build and repair road, &c., and issue bonds therefor.
44. Repealer.
45. Railroad company in possession of bridge may apply to riparian commissioners for adjudication respecting bridge structure when under indictment for obstructing navigation.
46. Articles of association not to be filed until \$2,000 of stock for every mile is subscribed and paid to state treasurer.
47. Repealer.
48. Number of persons requisite to form a company for underground railway.
49. Rates of freight to be charged.
50. Right of way not to include permanent use of surface of the earth.
51. Right to maintain and operate railroad, how acquired.
52. Railroad companies may sell tickets at less than limited rates.
53. Repealer.
54. Writs of *certiorari* to remove proceedings by commissioners appointed to assess damages, &c. Not to operate as a stay, &c.