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CHAPTER 63.

QUO WARRANTO AND SCIRE FACIAS

**SECTION 15‑63‑10.** Provisions of chapter are in lieu of scire facias and quo warranto.

The writ of scire facias, the writ of quo warranto and proceedings by information in the nature of quo warranto having been abolished, the remedies previously obtainable in those forms may be obtained by civil actions under the provisions of this chapter.

HISTORY: 1962 Code Section 10‑2251; 1952 Code Section 10‑2251; 1942 Code Section 827; 1932 Code Section 827; Civ. P. '22 Section 775; Civ. P. '12 Section 462; Civ. P. '02 Section 424; 1870 (14) 523 Section 443.

**SECTION 15‑63‑60.** Action against usurpers, for forfeiture of office or against persons acting as corporation.

An action may be brought by the Attorney General in the name of the State upon his own information or upon the complaint of any private party or by a private party interested on leave granted by a circuit judge against the parties offending in the following cases:

(1) When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this State or any office in a corporation, created by the authority of this State;

(2) When any public officer, civil or military, shall have done or suffered an act which, by the provisions of law, shall make a forfeiture of his office; or

(3) When any association or number of persons shall act within this State as a corporation without being duly incorporated.

HISTORY: 1962 Code Section 10‑2256; 1952 Code Section 10‑2256; 1942 Code Section 831; 1932 Code Section 831; Civ. P. '22 Section 779; Civ. P. '12 Section 466; Civ. P. '02 Section 428; 1870 (14) 523 Section 447.

**SECTION 15‑63‑70.** Action to vacate or annul letters patent.

An action may be brought by the Attorney General in the name of the State for the purpose of vacating or annulling the letters patent granted by the people of this State in the following cases:

(1) When he shall have reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact made by the person to whom such letters patent were issued or made or with his consent or knowledge;

(2) When he shall have reason to believe that such letters patent were issued through mistake or in ignorance of material fact; or

(3) When he shall have reason to believe that the patentee or those claiming under him have done or committed an act in violation of the terms and conditions on which the letters patent were granted or have by any other means forfeited the interest acquired under such letters patent.

HISTORY: 1962 Code Section 10‑2257; 1952 Code Section 10‑2257; 1942 Code Section 832; 1932 Code Section 832; Civ. P. '22 Section 780; Civ. P. '12 Section 467; Civ. P. '02 Section 429; 1870 (14) 524 Section 448.

**SECTION 15‑63‑80.** One action may be brought against several persons claiming office or franchise.

When several persons claim to be entitled to the same office or franchise one action may be brought against all such persons in order to try their respective rights to such office or franchise.

HISTORY: 1962 Code Section 10‑2258; 1952 Code Section 10‑2258; 1942 Code Section 839; 1932 Code Section 839; Civ. P. '22 Section 787; Civ. P. '12 Section 474; Civ. P. '02 Section 436; 1870 (14) 526 Section 455.

**SECTION 15‑63‑90.** Joining of relator as plaintiff.

When an action shall be brought by the Attorney General, by virtue of this chapter on the complaint of any private party or by a person having an interest in the question, the name of such person shall be joined with the State as plaintiff.

HISTORY: 1962 Code Section 10‑2259; 1952 Code Section 10‑2259; 1942 Code Section 833; 1932 Code Section 833; Civ. P. '22 Section 781; Civ. P. '12 Section 468; Civ. P. '02 Section 430; 1870 (14) 524 Section 449.

**SECTION 15‑63‑100.** Security for costs.

In every case the Attorney General, or circuit judge, as the case may be may require as a condition precedent to bringing such action that satisfactory security shall be given to indemnify the State against the costs and expenses to be incurred thereby. In every case brought by the Attorney General in which such security is given the measure of compensation to be paid by such person to the Attorney General shall be left to the agreement, express or implied, of the parties.

HISTORY: 1962 Code Section 10‑2260; 1952 Code Section 10‑2260; 1942 Code Section 833; 1932 Code Section 833; Civ. P. '22 Section 781; Civ. P. '12 Section 468; Civ. P. '02 Section 430; 1870 (14) 524 Section 449.

**SECTION 15‑63‑110.** Complaint and arrest of defendant in action for usurping office.

When such action shall be brought against a person for usurping an office, the Attorney General or private party bringing the action, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto. In such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office by means of his usurpation thereof, an order may be granted by a judge of the circuit or by a justice of the Supreme Court for the arrest of such defendant and holding him to bail. Thereupon he shall be arrested and held to bail in the same manner, with the same effect and subject to the same rights and liabilities as in other civil actions when the defendant is subject to arrest.

HISTORY: 1962 Code Section 10‑2261; 1952 Code Section 10‑2261; 1942 Code Section 834; 1932 Code Section 834; Civ. P. '22 Section 782; Civ. P. '12 Section 469; Civ. P. '02 Section 431; 1870 (14) 524 Section 450.

**SECTION 15‑63‑120.** Judgment in action for usurping office.

In every case judgment shall be rendered upon the right of the defendant and also upon the right of the party alleged to be entitled or only upon the right of the defendant as justice shall require.

HISTORY: 1962 Code Section 10‑2262; 1952 Code Section 10‑2262; 1942 Code Section 835; 1932 Code Section 835; Civ. P. '22 Section 783; Civ. P. '12 Section 470; Civ. P. '02 Section 432; 1870 (14) 524 Section 451.

**SECTION 15‑63‑130.** Assumption of office by relator, when judgment is in his favor.

If the judgment be rendered upon the right of the person so alleged to be entitled and such judgment be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office, and he shall immediately thereafter demand of the defendant in the action all the books and papers in his custody or within his power belonging to the office from which he shall have been excluded.

HISTORY: 1962 Code Section 10‑2263; 1952 Code Section 10‑2263; 1942 Code Section 836; 1932 Code Section 836; Civ. P. '22 Section 784; Civ. P. '12 Section 471; Civ. P. '02 Section 433; 1870 (14) 524 Section 452.

**SECTION 15‑63‑140.** Proceedings against usurping defendant on refusal to deliver books or papers to relator.

If the defendant shall refuse or neglect to deliver over such books or papers, pursuant to the demand, he shall be guilty of a misdemeanor, and the following proceedings shall be had to compel delivery of such books or papers:

(1) The successor in whose favor judgment has been so rendered may make complaint of such refusal or neglect to any judge of the circuit court of the circuit in which the person so refusing shall reside or to any justice of the Supreme Court. If such judge be satisfied by the oath of the complainant and such testimony as shall be offered that any such books or papers are withheld he shall grant an order directing the person so refusing to show cause before him, within some short reasonable time, why he should not be compelled to deliver such books or papers.

(2) At the time so appointed or at any other time to which the matter may be adjourned upon due proof being made of the service of such order, such judge shall proceed to inquire into the circumstances. If the person charged with withholding such books or papers shall make affidavit before the judge that he has truly delivered over to his successor all such books and papers in his custody or appertaining to his office, within his knowledge, all further proceedings before the judge shall cease and the person complained against shall be discharged.

(3) If the person complained against shall not make such oath and it shall appear that any such books or papers are withheld the judge before whom such proceedings shall be had shall, by warrant, commit the person so withholding to the jail of the county, there to remain until he shall deliver such books and papers or be otherwise discharged according to law.

(4) In the case stated in the last paragraph, if required by the complainant, the judge shall also issue his warrant, directed to any sheriff or constable, commanding him in the daytime to search such places as shall be designated in such warrant for such books and papers as belong to the officer so removed or whose term of office expired in his official capacity and which appertained to such office and seize and bring them before the officer issuing the warrant.

(5) Upon any books or papers being brought before such judge, by virtue of such warrant, he shall inquire and examine whether such books or papers appertained to the office from which the person so refusing to deliver was removed or of which the term expired and, if so, he shall cause them to be delivered to the complainant.

HISTORY: 1962 Code Section 10‑2264; 1952 Code Section 10‑2264; 1942 Code Section 837; 1932 Code Section 837; Civ. P. '22 Section 785; Civ. P. '12 Section 472; Civ. P. '02 Section 434; 1870 (14) 524 Section 453.

**SECTION 15‑63‑150.** Recovery of damages from usurper.

If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages he shall have sustained by reason of the usurpation by the defendant of the office from which such defendant has been excluded.

HISTORY: 1962 Code Section 10‑2265; 1952 Code Section 10‑2265; 1942 Code Section 838; 1932 Code Section 838; Civ. P. '22 Section 786; Civ. P. '12 Section 473; Civ. P. '02 Section 435; 1870 (14) 526 Section 454.

**SECTION 15‑63‑160.** Judgment of exclusion from office or franchise; penalty for usurpation.

When a defendant, whether a natural person or corporation, against whom such action shall have been brought shall be adjudged guilty of usurping, intruding into or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise or privilege and also that the plaintiff recover costs against such defendant. The court may also, in its discretion, fine such defendant a sum not exceeding two thousand dollars. The fine, when collected, shall be paid into the State Treasury.

HISTORY: 1962 Code Section 10‑2266; 1952 Code Section 10‑2266; 1942 Code Section 840; 1932 Code Section 840; Civ. P. '22 Section 788; Civ. P. '12 Section 475; Civ. P. '02 Section 437; 1870 (14) 526 Section 456.

**SECTION 15‑63‑170.** Judgment of forfeiture against corporation.

If it shall be adjudged that a corporation against which an action shall have been brought pursuant to this chapter has, by neglect, abuse or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises and that the corporation be dissolved.

HISTORY: 1962 Code Section 10‑2267; 1952 Code Section 10‑2267; 1942 Code Section 841; 1932 Code Section 841; Civ. P. '22 Section 789; Civ. P. '12 Section 476; Civ. P. '02 Section 438; 1870 (14) 526 Section 457.

**SECTION 15‑63‑180.** Costs against corporation or persons claiming to be such.

If judgment be rendered in such action against a corporation or against persons claiming to be a corporation the court may cause the costs to be collected by execution against the persons claiming to be a corporation or by attachment or process against the directors or other officers of such corporation.

HISTORY: 1962 Code Section 10‑2268; 1952 Code Section 10‑2268; 1942 Code Section 842; 1932 Code Section 842; Civ. P. '22 Section 790; Civ. P. '12 Section 477; Civ. P. '02 Section 439; 1870 (14) 526 Section 458.

**SECTION 15‑63‑190.** Restraining corporation; appointment of receiver.

When such judgment shall be rendered against a corporation the court shall have power to restrain the corporation, to appoint a receiver of its property and to take an account and make distribution thereof among its creditors. And the Attorney General, immediately after the rendition of such judgment, shall institute proceedings for that purpose.

HISTORY: 1962 Code Section 10‑2269; 1952 Code Section 10‑2269; 1942 Code Section 843; 1932 Code Section 843; Civ. P. '22 Section 791; Civ. P. '12 Section 478; Civ. P. '02 Section 440; 1870 (14) 526 Section 459.

**SECTION 15‑63‑200.** Filing judgment roll against corporation or vacating letters patent.

Upon the rendition of such judgment against a corporation or for the vacating or annulling of letters patent the Attorney General shall cause a copy of the judgment roll to be forthwith filed in the office of the Secretary of State.

HISTORY: 1962 Code Section 10‑2270; 1952 Code Section 10‑2270; 1942 Code Section 844; 1932 Code Section 844; Civ. P. '22 Section 792; Civ. P. '12 Section 479; Civ. P. '02 Section 441; 1870 (14) 526 Section 460.

**SECTION 15‑63‑210.** Entry of judgment relating to letters patent; disposition of realty.

The Secretary of State shall, upon the filing of a copy of the judgment roll, if the record relates to letters patent, make an entry in the records of his office of the substance and effect of such judgment and of the time when the record thereof was docketed. The real property granted by such letters patent may thereafter be disposed of in the same manner as if such letters patent had never been issued.

HISTORY: 1962 Code Section 10‑2271; 1952 Code Section 10‑2271; 1942 Code Section 845; 1932 Code Section 845; Civ. P. '22 Section 793; Civ. P. '12 Section 480; Civ. P. '02 Section 442; 1870 (14) 526 Section 461.