

## CHAPTER 294.

## QUO WARRANTO.

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**294.01 Remedy by civil action; forms.** The remedies heretofore obtainable by writs of seire facias and quo warranto and by proceedings by information in the nature of quo warranto may be obtained by civil action, and it shall not be necessary to sue out such writs in form; but this section shall not prevent the use by the supreme court of writs and proceedings in the forms hitherto used in such cases in such court.

**294.02 When and how tried.** Actions of quo warranto and seire facias shall be tried at special as well as at general terms of the circuit court, and the court shall have power to summon a jury for the purpose and prescribe the manner of summoning the same.

**294.03 Relator, when to be joined as plaintiff.** When an action shall be brought by the attorney-general by virtue of this chapter, on the relation or information of a person having an interest in the question, the name of such person shall be joined with the state as plaintiff.

**294.04 When action may be brought.** (1) 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, against the parties offending in the following cases:

(a) 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; or

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

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

(2) Such action may be brought in the name of the state by a private person on his own complaint when the attorney-general refuses to act or when the office usurped pertains to a county, town, city, village or school district.

**Note:** The declaratory relief act (269.56) warranto. *McCarthy v. Hoan*, 221 W 344, is not a substitute for mandamus or quo 266 NW 916.

**294.05 When defendant held to bail.** Whenever such action shall be brought against a person for usurping an office the attorney-general or person complaining, 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; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office and by means of his usurpation thereof, an order may be granted by a judge of the circuit court or by a justice of the supreme court, if the action be pending therein, for the arrest of such defendant and holding him to bail; and thereupon he shall be arrested and held to bail in the manner and with the same effect and subject to the same rights and liabilities as in other civil actions when the defendant is subject to arrest.

**294.06 Pleading.** In an action brought to determine the right to any office, in every case where the defendant has the official certificate of election to the office, the complaint shall state in what respect such certificate was improperly or illegally issued; and if any party claims that illegal votes were cast at the election for the office, he shall state in his pleading the names of the persons whom he claims cast illegal votes which were counted, and in what such illegality consists, and the election district where such illegal votes were cast, and the number of legal votes cast for each claimant, respectively; if he claims that lawful votes were tendered and not received, the names of such voters and the election district where tendered shall be alleged; if he claims lawful votes were rejected by the canvassers, the number and election district where so rejected shall be alleged, together with the number which it is claimed should have been counted for claimant. And if it be alleged by either party that the entire vote of any town, ward or election precinct was illegal, his pleading shall specify the grounds of such alleged illegality. [*Court Rule XXX; Supreme Court Order, effective Jan. 1, 1934*]