

unenclosed, may exceed in the whole three hundred and twenty acres.

APPROVED, January 25, 1839.

QUO WARRANTO.

AN ACT relating to information in the nature of *quo warranto* and regulating the mode of proceeding thereon.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That when any person or persons shall usurp, intrude into, or unlawfully hold or exercise any public civil office, or any franchise within this Territory or any office in any corporation created by the authority of this Territory, or when any public civil officer shall have done, or suffered any act, which, by the provisions of law shall work a forfeiture of his office, or when any association of persons shall act as a corporation within this Territory without being lawfully incorporated, the District Attorney of the proper county shall, when directed by the Governor, the District Court of the proper county, or the Legislative Assembly, or he may, upon his own relation, or the relation of any private individual, upon leave granted by said court in term time, or the judge thereof, in vacation, file an information in the nature of a *quo warranto* in the said court.

When, against whom, by whom, and at whose instance, an information, in the nature of a *quo warranto*, may be filed.

SEC. 2. Whenever any such information shall be filed a summons shall be issued thereon which shall be served and returned forthwith, and whenever the same shall be returned served, the clerk of the court shall enter the defendant's appearance.

Summons, service, return & appearance.

SEC. 3. Whenever any such information shall be filed against any person for usurping any office, as in the first section provided, the District Attorney in addition to the other matters required to be set forth in the information, may also set forth therein the name of the persons, if any there should be, who may claim to be rightfully entitled to such office, with an averment of his right thereto, and in every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party so averred to be entitled, or only upon the right of the defendant, as justice shall require.

What right determined by the judgment.

SEC. 4. If judgment be rendered upon the right of the person so averred to be entitled, and the same be

Oath of office, bond and de-

in favor of such person, he shall be entitled after taking the oath of office and executing any official bond which may be required by law, to take upon him the execution of the office, and it shall be his duty immediately thereafter, to demand of the defendant in such information all the books and papers in his custody, or within his power, appertaining to the office from which he shall have been ousted.

SEC. 5. If any such defendant shall refuse or neglect to deliver over any such books or papers, pursuant to any such demand, he shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding five thousand dollars, and be imprisoned in the cell or dungeon of the jail of the county until he shall comply with the order of the court, or be otherwise discharged by due course of law.

SEC. 6. If judgment be rendered upon the right of the person so averred to be entitled, in favor of such person, he may, at any time within one year from the date of said judgment institute any suit which may be proper in the premises against the defendant, previously ousted, and recover the damages which he may have sustained by reason of the usurpation of said defendant.

SEC. 7. Where several persons claim to be entitled to the same office, or franchise, an information may be filed against all such persons, in order to try their respective rights to such office or franchise.

SEC. 8. An information in the nature of a *quo warranto* may also be filed by any district attorney upon his own relation, or on the relation of any other person, on leave granted, and shall be so filed where the same shall be directed by the Governor, the Legislative Assembly, or the district court of the proper county, against any corporate body, when such corporation shall have: 1. Offended against any of the provisions of the act or acts creating, altering, amending, or renewing such corporation: 2. Whenever it shall have forfeited its privileges and franchises by non-user: 3. Whenever it shall have done or omitted any acts which amount to a surrender of its corporate rights, privileges, and franchises: 4. Whenever it shall have misused any franchise or privilege conferred, or exercised any franchise or privilege not conferred on it by law, and it shall be the duty of the district attorney to apply for leave to file such information in every case provided for in this

mand for books, papers, &c.

Refusal, a contempt; fine and punishment therefor.

Suit for damages. Limitation, one year.

Plurality of claimants.

Quo warranto against corporations; by whom filed, at whose instance, and in what cases.

section, whenever he shall have good reason to believe that the same can be established by proof.

Application, in what county notice thereof, and hearing.

SEC. 9. Leave to file such information may be granted by the said district court, in term time, or the judge thereof in vacation, upon the application of the district attorney of the county wherein the principal office, or place of business, of such corporation shall be, and upon such application the court or judge may in their discretion direct notice thereof to be given to such corporation or its officers, previous to granting such leave, and may hear such corporation in opposition thereto.

Upon leave granted, information filed; summons, or rule, and plea, in 20 days.

SEC. 10. Upon such leave being granted, and endorsed on the information, under the hand of the clerk of the court, or of the judge granting the same, the district attorney may forthwith file the same, and thereupon shall issue a writ of summons against such corporation, to be directed to the sheriff, commanding him to summon such corporation to appear in said court, and to answer the said information, and the said writ of summons shall be forthwith served and returned, but when such corporation shall appear by counsel, pursuant to the notice authorized by the ninth section of this act to be given, and shall be heard in opposition to the granting of such leave, the court or judge granting leave may also direct a rule to be entered, requiring the defendant to appear and plead to such information, within twenty days after service of a copy thereof, and notice of such rule, and in such cases it shall not be necessary to issue a writ of summons.

Summons, on whom served, return and appearance.

SEC. 11. The writ of summons issuing against such corporation, shall be served on the presiding officer, or the cashier, or the secretary, or treasurer thereof, and if there be no such officers, or none can be found, such service may be made on any director, or other person having the management of the affairs of the corporation, and upon the return of the summons served, the clerk shall enter the appearance of such corporation.

Copy of information, pleadings and issue.

SEC. 12. Whenever any writ of summons, issued pursuant to the provisions of this act, shall have been returned served, the defendant or defendants may apply for and receive a copy of said information from the clerk of the court, and shall plead thereto within thirty days from and after the return of said writ of summons, and each party shall file the proper pleadings on his part within thirty days from that on

which the last pleadings were filed, until a complete issue is presented for trial.

SEC. 13. Whenever any writ of summons, issued upon an information in the nature of *quo warranto* shall be returned not served, by reason of the defendant or the officers of the defendant not being found within the county, the clerk shall make out and cause to be published for four successive weeks, in some newspaper of general circulation in the county, and if there be none in the said county, then in the nearest newspaper; a notice of the filing of such information setting forth the substance thereof, and if said defendant shall not appear and plead to such information within thirty days after the last publication of said notice, the plaintiff shall be entitled, upon filing an affidavit of the due publication of said notice, to enter the default of the defendant and judgment shall be rendered on such default, in like manner as if the writ had been returned duly served.

When writ cannot be served, notice required and how given, affidavit, and judgment by default.

SEC. 14. An order may be made by the District Court or the judge thereof, on good cause shown, enlarging the time within which any matter of pleading shall be filed: *Provided*, Such order do not work a continuance of the cause.

Order of court, and proviso.

SEC. 15. Whenever any defendant, or defendants, against whom an information in the nature of a *quo warranto* shall have been exhibited, shall be found or adjudged guilty of usurping or intruding into, or unlawfully holding or exercising, any office, franchise or privilege, judgment shall be rendered that such defendant or defendants be ousted, and altogether excluded from such office, franchise or privilege, and also that the district attorney or relator, if there be one, recover his costs against such defendant or defendants.

Effects of judgment, and relators' costs.

SEC. 16. Whenever it shall be found or adjudged that any corporation, against which an information in the nature of a *quo warranto* shall have been filed, has, by offending against any of the provisions of the act or acts creating, altering, amending or renewing the same, exercising any franchise or power not conferred by law, or by any misuser, nonuser, or surrender, forfeit its corporate rights, privileges, and franchises, judgment shall be rendered that such corporation be ousted and altogether excluded from such corporate rights, privileges and franchises, and that said corporation be dissolved.

Judgment against corporations, and dissolution thereof.

Execution for costs.

SEC. 17. If judgment be rendered, upon any such information, against any corporation, or against any person claiming to be a corporation, the court may cause the costs thereon to be collected by execution against the directors, or other officers of such corporation, or against the person claiming to be a corporation.

Appointment of trustees: their bond, securities, duties and powers.

SEC. 18. Upon the dissolution of any corporation, under the fifteenth section of this act, the court pronouncing the judgment of ouster and dissolution, shall appoint three persons who shall not be directors of, or stockholders in, such corporation at the time of its dissolution, as trustees of the creditors and stockholders of the corporation dissolved, and who, after entering into bond to the Territory of Iowa, in such sum and with such securities as the said court shall designate and approve, conditioned for the faithful discharge of the trust and payment over and proper application of all money that may come into their hands, shall have full power to settle the affairs of the corporation, collect and pay the outstanding debts, and divide among the stockholders the moneys and other property that shall remain after the payment of debts, and other necessary expenses.

Trustees to demand books, papers, &c., may sue for debts, and in whose name.

SEC. 19. The persons, so constituted trustees, shall forthwith demand of the officers of said corporation all moneys, property, books, deeds, notes, bills, obligations, and papers, of every description, whether in their custody or within the power and control of any one of them, belonging to said corporation, or in anywise necessary for the settlement of its affairs, or the faithful discharge of its debts and liabilities, and they shall have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its usual corporate name, and shall be jointly and severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall come into their hands.

Their liabilities.

Refusal to deliver books, papers, &c., a contempt, and how punished.

SEC. 20. If the officers of such corporation, or any one or more of them, shall refuse or neglect to deliver over any such moneys, property, books, deeds, notes, bills, obligations, or papers, pursuant to such demand, he or they so refusing or neglecting, shall be deemed guilty of a contempt of court, and shall be severally fined in any sum not exceeding five

thousand dollars, and be imprisoned in the cell or dungeon of the jail of the proper county, until he or they shall comply with the order of the court, or be otherwise discharged by due course of law, and shall be liable moreover to the said trustees in an action on the case for all damages that may have been sustained by the stockholders and creditors of the corporation, or any one of them, in consequence of such neglect or refusal.

Action for damages.

SEC. 21. When the information against any corporation shall be filed, as aforesaid, on any alleged misconduct of the officers or directors thereof, and judgment of forfeiture and ouster shall be rendered thereon, it shall be lawful for any person who has been injured thereby, at any time within one year from the date of said judgment, to institute any suit which may be proper in the premises against any such officer or directors, and recover the damages he may have sustained by reason of such misconduct.

Misconduct, forfeiture, and damages.

Limitation.

SEC. 22. Whenever the office of district attorney shall happen to be vacant, or said attorney shall be absent, or interested in the subject matter of contestation, or disabled from performing the duties prescribed by this act from any cause whatever, the district court in term time, or judge thereof, in vacation, may direct or permit any member of the bar to do and perform the duties herein directed to be done and performed by the district attorneys of the several counties of this Territory.

Who may perform the duties required of district attorneys, under this act.

SEC. 23. Nothing in this act contained shall be intended to restrain any court of chancery in this Territory from enforcing the performance of trusts for charitable purposes, at the relation of the district attorney of the proper county, or from enforcing trusts or restraining abuses in other corporations at the suit of the person injured.

Trusts, and their performance. Court of chancery.

SEC. 24. That all fines collected under the provisions of this act, shall be paid over into the treasury of the proper county, for the use of schools within said county.

Fines, where paid, and for what use.

SEC. 25. Nothing in this act contained shall authorize any proceeding against any corporation for forfeiture of charter, unless the same shall be commenced within five years from the time of the exercise of the power or the act of omission alleged as the cause of forfeiture, and no proceeding under this act shall be sustained against any corporation on account of the exercise of any power or franchise under its charter,

Limitation of suits.

- which shall have been used and exercised for the term of twenty years prior to the commencement of such proceeding, nor shall any proceeding be commenced under this act against any officer to oust him or her from office, unless such proceeding shall be commenced within three years next after the cause of such ouster, or right to hold such office, shall have arisen: *Provided*, That such proceedings under this act may be had, and the same shall not be barred in any of the above cases, if commenced within two years from the passage of this act.
- Actions, when to be commenced.** SEC. 26. Appeals may be taken from the decision of the district court only in cases wherein a corporation is a party to any proceedings under this act, upon such terms as the said district court shall prescribe, but in all cases writs of error may be prosecuted whenever the supreme court or any of the judges thereof, in vacation, upon being presented with a copy of the record, shall certify that there is reasonable cause for the bringing such writ. The said supreme court or judge, in vacation, may impose such terms and conditions upon the party wishing to prosecute such writ of error as to the said court or judge shall seem reasonable and just. The allowance of a writ of error shall operate, after notice thereof, as a stay of proceedings in the district court until the determination, but writs of error, without supersedeas shall issue as writs of right as in other cases.
- Proviso.**
- Appeals, when and to whom allowed.**
- Writs of error, how they shall operate.**
- This act in force, May 1st, 1839.** SEC. 27. This act to take effect, and be in force from and after the first day of May next.
- APPROVED, December 20, 1838.

RECORDERS.

AN ACT relating to the office of Recorder of Deeds, &c.

- Recorder's office in each organized county.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That there shall be an office of recorder of deeds, in each and every organized county in this Territory, which shall be called and styled the recorder's office; and said office shall be kept at the county seat of each organized county, and the recorder shall duly attend to the duties of the same, shall provide good, large, well bound books, of royal or other large paper, which shall be paid for out of the county treasury, wherein