

James C. Child
35
THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

COMPILED BY
MOSES SHERBURNE and WILLIAM HOLLINSHEAD, Esqrs.,
COMMISSIONERS.

PUBLISHED BY STATE AUTHORITY.

SAINT PAUL:
THE PIONEER PRINTING COMPANY.

1859.

entitled to recover, and thereupon such assessment shall be had, or any such amount ascertained, in such manner as the court on application may direct, and judgment entered by the clerk for the amount so assessed or ascertained.

(49.) SEC. XLIX. [*Added on page 15 of the amendments of 1852 to the revised statutes.*] The provisions of the revised statutes, so far as the same may be applicable, shall apply to suits and proceedings pending at the time of their taking effect, on the first day of September, 1851, according to the subject matter, and without regard to the form of such suits and proceedings; but all judicial acts or proceedings had, or commenced prior to that time, though not in conformity to said statutes, shall not be invalidated thereby; and the subsequent proceedings therein, or in relation thereto, necessary to continue or render the same or any part thereof effectual, or obtain the benefit of the same, may be had, taken or prosecuted in such manner or form as may be necessary, not contrary to the laws previously in force, notwithstanding such proceedings may not be in compliance with the provisions of said statutes, where the same cannot without difficulty be conformed to such provisions.

Provisions of the revised statutes to apply to actions commenced before Sept. 1, 1851.

CHAPTER 73.

SPECIAL PROCEEDINGS.

SECTION

1. Parties designated plaintiff and defendant.
2. Judgment and order same meaning as in actions.
3. Writ of mandamus defined.
4. To whom and for what issued.
5. When not to issue.
6. Writ alternative or peremptory.
7. When peremptory writ allowed.
8. Proceedings.
9. Answer on return of writ.
10. If no answer, peremptory writ allowed.
11. No pleading but writ and answer.
12. Issue when tried.
13. Issue when tried.
14. Trial same as in civil actions.
15. If judgment for plaintiff, damages recovered.
16. Fine may be imposed in certain cases.
17. District courts to have original jurisdiction.
18. Writs of prohibition to be issued by supreme court.
19. Writ how served.
20. Proceedings upon return of writ.
21. Proceedings upon return of writ.
22. Court must render judgment.
23. Prohibition absolute when granted.
24. Who may prosecute it.
25. Who not entitled to prosecute it.
26. To whom application made.
27. Proof required in certain cases.
28. What application to state.
29. Writ to be granted without delay.
30. Contents of writ.
31. Writ not discharged for defect in form.

SECTION

32. Penalty if officer refuse to grant writ.
33. Return of writ.
34. Officer to bring the person in custody before court.
35. If return be not full, attachment to issue.
36. If sheriff neglect, attachment to issue to coroner.
37. Precept to sheriff.
38. Precept how executed.
39. Cause of imprisonment inquired into.
40. If no legal cause shown, discharge granted.
41. When party to be remanded.
42. In certain cases, party discharged.
43. Legality of judgment, &c., not to be inquired into.
44. On commitment for criminal offense how to proceed.
45. If party remanded, proceedings, &c.
46. Until judgment given, party how kept.
47. Notice when to be given.
48. When notice to district attorney.
49. Return may be controverted.
50. In case of sickness, how to proceed.
51. Obedience to writ and order, how enforced.
52. Officer not liable to action for obeying writ.
53. Persons once discharged, cannot be again imprisoned.
54. Penalty on person who shall imprison person who has been discharged.
55. Transferring party to elude writ a misdemeanor.
56. Transferring party to elude writ a misdemeanor.
57. Person aiding and assisting liable.

SECTION

- 58. Punishment on conviction.
- 59. In case of danger that party will be carried off, warrant may issue.
- 60. Arrest of person having custody of party.
- 61. Warrant how executed.
- 62. Person to be committed or bailed
- 63. Forfeiture for refusing copy of order.
- 64. Writ when made returnable.
- 65. Writ to be indorsed.

SECTION.

- 66. Writ by whom served.
- 67. Writ how served.
- 68. Writ how served.
- 69. Duty of officer to obey writ.
- 70. Charges of bringing up prisoner may be ordered to be paid.
- 71. When return to be made.
- 72. Common law provisions abrogated.
- 73. Writ to bring up prisoner to testify.

✓ [Chapter 83, Revised Statutes.]

Parties designated plaintiff and defendant.

Judgment and order same meaning as in actions.

(1.) SEC. I. The party prosecuting a special proceeding may be known as the plaintiff, and the adverse party as the defendant.

(2.) SEC. II. A judgment in a special proceeding is the final determination of the parties therein. The definitions of a motion, and an order in a civil action, are applicable to similar acts in a special proceeding.

WRIT OF MANDAMUS.

Writ of mandamus defined.

(3.) SEC. III. The writ of mandamus is defined and regulated as in this chapter prescribed.

To whom and for what issued.

(4.) SEC. IV. It may be issued to any inferior tribunal, corporation, board, or person, to compel the performance of an act, which the law specially enjoins, as a duty resulting from an office, trust, or station; but though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, it cannot control judicial discretion.

Not issued where there is adequate remedy.

(5.) SEC. V. This writ ought not to be issued in any case where there is a plain, speedy, and adequate remedy, in the ordinary course of the law. It is issued on the information of the party beneficially interested.

Writ alternative or peremptory.

(6.) SEC. VI. The writ is either alternative or peremptory. The alternative writ must state concisely the facts, showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately after the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court, out of which the writ issued, at a specified time and place, why he has not done so; and that he then and there return the writ, with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

When peremptory writ allowed.

(7.) SEC. VII. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases, the alternative writ must be first issued.

Proceedings.

(8.) SEC. VIII. The motion for the writ, the allowance, and the service thereof, and the enforcement of obedience thereto, must be such as the court shall direct.

Answer in return of writ.

(9.) SEC. IX. On the return day of the alternative writ, or such further day as the court may allow, the party on whom the writ shall have been served, may show cause by answer, made in the same manner as an answer to a complaint in a civil action.

If no answer peremptory writ allowed.

(10.) SEC. X. If no answer be made, a peremptory mandate must be allowed against the defendant; if an answer be made containing new matter, the same shall not in any respect conclude the plaintiff, who may, on the trial or other proceedings, avail himself of any valid objection to

its sufficiency ; or may countervail it by proof, either in direct denial, or by way of avoidance.

(11.) SEC. XI. No other pleading or written allegation is allowed than the writ and answer ; these are the pleadings in the case, and have the same effect, and are to be construed and may be amended in the same manner, as proceedings in a civil action, and the issues thereby joined, must be tried, and the further proceedings had, in the same manner as in a civil action.

No pleading but writ and answer.

(12.) SEC. XII. Issues of fact, joined in the case of mandamus where the same is issued out of the supreme court, may be tried as provided in the next section.

Issue when tried.

(13.) SEC. XIII. (a) When the parties consent thereto, the court may try the issues of (the?) fact, arising upon the pleadings of the parties, or the same may be referred, as in civil actions in the district court ; but when either party refuses to consent to a trial, other than a trial by jury, the said supreme court may order a jury of twelve men, (possessing the requisite qualifications for jurors in the district courts,) to be summoned to appear forthwith, before the said court, to try the said issue ; and in case any of the jurors so summoned, should for any cause be rejected, or be disqualified to act as a juror in the case, the court may order others to be summoned until a jury shall be obtained.

Issue when tried.

(14.) SEC. XIV. When a jury shall be impaneled, the same proceedings shall be had as in the trial of a civil action in the district court.

Trial same as in civil action.

(15.) SEC. XV. If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the court or jury, or by referees, as in a civil action, together with costs and charges, and a peremptory mandamus must also be awarded without delay.

If judgment for plaintiff, damages recovered.

(16.) SEC. XVI. Whenever a peremptory mandamus is directed to a public officer, body, or board, commanding the performance of any public duty specially enjoined by law, if it appear to the court that such officer or any member of such body or board, has without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding two hundred and fifty dollars, upon every such officer or member of such body or board ; such fine, when collected, must be paid into the territorial treasury, and the payment of such fine is a bar to an action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

Fine may be imposed in certain cases.

(17.) SEC. XVII. [As amended on page 15 of the amendments of 1852 to the revised statutes:] The several district courts of this territory, shall have original jurisdiction in cases of mandamus, except in cases where such writ is directed to one of the judges of the said district court in his official capacity ; and the said courts shall proceed upon all such cases, in the same manner as in a civil action, except as hereinafter otherwise provided.

District courts of the territory to have jurisdiction in cases of mandamus.

WRITS OF PROHIBITION.

(18.) SEC. XVIII. [Section 18 and 19, as amended on pages 15 and 16 of the amendments of 1852 to the revised statutes:] Writs of prohibition shall only be issued out of the supreme court, and such writs shall be applied for upon affidavits, by motion to the court, or a judge thereof in vacation, in the same manner, as writs of mandamus ; and if the cause

Writs of prohibition to be issued out of supreme court.

(a) Article 6, section 2 of the constitution, abolishes trial by jury in the supreme court. So long as the defendant in the proceeding by mandamus has the right of trial by jury on the return of the alternative writ, has the supreme court jurisdiction of that writ at all ?

shown, shall appear to the court or judge to be sufficient, a writ shall be thereupon issued, which shall command the court and party, or officer to whom it shall be directed, to desist and refrain from any further proceedings in the suit or matter specified therein, until the next term of said supreme court, or the further order of the court thereon; and to show cause at the next term of said court, or some day to be named in the same term at the option of the court, if issued in term time, why they should not be absolutely restrained from any further proceeding in such suit or matter.

Writ to be served upon the court or party.

(19.) SEC. XIX. Such writ shall be served upon the court and party or officer to whom it shall be directed, in the same manner as a writ of mandamus; and a return shall in like manner be made thereto by such court or officer, which may be enforced by attachment.

Proceedings upon return of writ.

(20.) SEC. XX. If the party to whom such writ of prohibition shall have been directed, shall, by an instrument in writing, to be signed by him and annexed to such return, adopt the same return, and rely upon the matters therein contained, as sufficient cause why such court should not be restrained, as mentioned in the said writ, such party shall thenceforth be deemed the defendant in such matter, and the person prosecuting such writ may take issue, or demur to the matters so relied upon by such defendant; and the like proceedings shall be had, for the trial of issues of law or fact joined between the parties, and for the rendering of judgment thereupon, as in a mandamus.

Proceedings upon return of writ.

(21.) SEC. XXI. If the party to whom such writ of prohibition shall be directed, shall not adopt such return, as above provided, the party prosecuting such writ, shall bring on the argument of such return, as upon a rule to show cause; and he may, by his own affidavit, and other proofs, controvert the matters set forth in such return.

Court to render judgment after hearing proofs of parties.

(22.) SEC. XXII. [*As amended on page 16 of the amendments of 1852 to the revised statutes.*] The court, after hearing the proofs and allegations of the parties, shall render judgment, either that a prohibition absolute, restraining the said court and party, or officer, from proceeding in such suit or matter, do issue, or a writ of consultation authorizing the court and party, or officer, to proceed in the suit or matter in question; and may make and enforce such order in relation to costs and charges, and the amount thereof, as may be deemed just.

Prohibition absolute when granted.

(23.) SEC. XXIII. If the party to whom such first writ of prohibition shall be directed, shall adopt the return of the court thereto, as above provided, and judgment shall be rendered for the party prosecuting such writ; a prohibition absolute shall be issued, but if judgment be given against such party, a writ of consultation shall be issued as above provided.

OF THE WRIT OF HABEAS CORPUS.

Who may prosecute it.

(24.) SEC. XXIV. Every person imprisoned, or otherwise restrained of his liberty, except in the cases in the following section specified, may prosecute a writ of habeas corpus, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

Who not entitled to prosecute it.

(25.) SEC. XXV. The following persons shall not be entitled to prosecute such writ: persons committed or detained by virtue of the final judgment, or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such judgment or decree; but no order of commitment for any alleged contempt, or upon proceedings as for contempt, to enforce the rights or remedies of any party, shall be

deemed a judgment or decree within the meaning of this section; nor shall any attachment, or other process issued upon any such order, be deemed an execution within the meaning of this section.

(26.) SEC. XXVI. Application for such writ shall be made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, as follows: to any judge of the supreme or district court, being within the county where the prisoner is detained; or if there be no such officer within such county, or if he be absent, or for any cause be incapable of acting, or have refused to grant such writ, then to some officer having such authority residing in any adjoining county.

To whom application made.

(27.) SEC. XXVII. Whenever application for any such writ, shall be made to any officer not residing within the county where the prisoner shall be detained, he shall require proof by the oath of the party applying, or by other sufficient evidence, that there is no officer in such county authorized to grant the writ; or if there be one, that he is absent, or has refused to grant such writ; or for some cause, to be specially set forth, is incapable of acting, and if such proof be not produced, the application shall be denied.

Proof required in certain cases.

(28.) SEC. XXVIII. The petition must state in substance:

What application to state.

1. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming both parties, if their names be known, or describing them if they are not;

2. That such person is not committed or detained by virtue of any process, judgment, decree, or execution, specified in the twenty-fifth section of this chapter;

3. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the party;

4. If the confinement or restraint is by virtue of any warrant, order, or process, a copy thereof must be annexed, or it must be averred, that by reason of such prisoner being removed or concealed before the application, a demand of such copy could not be made, or that such demand was made, and the legal fees therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused;

5. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists;

6. It must be verified by the oath of the party making the application.

(29.) SEC. XXIX. Any officer empowered to grant any writ applied for under this chapter, to whom such petition shall be presented, shall grant such writ without delay, unless it shall appear from the petition itself, or from the documents annexed, that the party applying therefor is, by the provisions of this chapter, prohibited from prosecuting such writ.

Writ to be granted without delay.

(30.) SEC. XXX. Every writ of habeas corpus, issued under the provisions of this chapter, shall be substantially in the following form: In the name of the United States, to the sheriff of, &c., (or to A. B.)

Contents of writ.

“You are hereby commanded to have the body of C. D., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged, before E. F., judge of the district court, as &c., (or immediately after the receipt of this writ,) to do and receive what shall then and there be considered concerning the said C. D. And have you then and there this writ.

“Witness, &c.”

(31.) SEC. XXXI. Such writ of habeas corpus shall not be disobeyed for any defect or form. It shall be sufficient:

Writ not discharged for defect in form.

1. If the person having the custody of the prisoner, be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown, or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ, shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person;

2. If the person who is directed to be produced, be designated by name, or if his name be uncertain or unknown, he may be described in any other way, so as to designate the person intended.

Penalty if officer
refuse to grant
writ.

(32.) SEC. XXXII. If any officer, authorized by the provisions of this chapter, to grant writs of habeas corpus, shall willfully refuse to grant such writ when legally applied for, he shall forfeit for every such offense, to the party aggrieved, one thousand dollars.

Return of writ.

(33.) SEC. XXXIII. The persons upon whom any such writ shall have been duly served, shall state in his return plainly and unequivocally:

Return of officer.

1. [*As amended on page 16 of the amendments of 1852 to the revised statutes:*] Whether he have or have not the party in his custody or power, or under his restraint, and if he have not, whether he has had the party in his custody, or under his power or restraint, at any and what time prior or subsequent to the date of the writ;

2. If he have the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large;

3. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited on the return of the writ, to the officer before whom the same is returnable;

4. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place.

The return must be signed by the person making the same, and except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by oath.

Officer to bring
the person in
custody before
the court.

(34.) SEC. XXXIV. The person or officer, on whom the habeas corpus shall have been served, shall also bring the body of the person in his custody, according to the command of such writ, except in case of the sickness of such person, as hereinafter provided.

If return be not
full attachment
to issue.

(35.) SEC. XXXV. If the person upon whom such writ shall have been duly served, shall refuse or neglect to obey the same, by producing the party named in such writ, and making a full and explicit return to every such writ, within the time required by the provisions of this chapter, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the officer before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county in this territory, and commanding him forthwith to apprehend such person, and to bring him immediately before such officer; and on such person being so brought, he shall be committed to close custody, in the jail of the county in which such officer shall be, until he shall make return to such writ, and comply with any order that may be made by such officer, in relation to the person for whose relief such writ shall have been issued.

If sheriff neglect,
attachment to
issue to coroner.

(36.) SEC. XXXVI. If a sheriff of any county, shall have neglected to return such writ, the attachment may be directed to any coroner or

other person, to be designated therein, who shall have full power to execute the same, and such sheriff upon being brought up, may be committed to the jail of any county other than his own.

(37.) SEC. XXXVII. The officer by whom any such attachment shall be issued, may also at the same time, or afterwards, issue a precept to the sheriff, or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such officer, the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person, until he shall be discharged, bailed, or remanded, as such officer shall direct.

Precept to sheriff

(38.) SEC. XXXVIII. In the execution of such attachment or precept, or of either of them, the sheriff, or other person to whom they shall be directed, may call to his aid the power of the county, as in other cases.

Precept how executed.

(39.) SEC. XXXIX. The officer before whom the party shall be brought, on such writ, shall immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement, or restraint of such party, whether the same shall have been upon commitment, for any criminal or supposed criminal matter, or not.

Cause of imprisonment inquired into.

(40.) SEC. XL. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such officer shall discharge such party from the custody or restraint, under which he is held.

If no legal cause shown, discharge granted.

(41.) SEC. XLI. It shall be the duty of the officer forthwith to remand such party, if it shall appear that he is detained in custody, either:

When party to be remanded.

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or,

2. By virtue of the final judgment or decree, of any competent court of civil or criminal jurisdiction, or of any execution, issued upon such judgment or decree; or,

3. For any contempt, specially and plainly charged in the commitment, by some court, officer, or body, having authority to commit for the contempt so charged; and,

4. That the time during which such party may be legally detained has not expired.

(42.) SEC. XLII. If it appear on the return, that the prisoner is in custody by virtue of civil process, of any court legally constituted, or issued by an officer, in the course of judicial proceedings before him, authorized by law, such prisoner can only be discharged in one of the following cases:

In certain cases party discharged.

1. When the jurisdiction of such court or officer, has been exceeded either as to matter, place, sum, or person;

2. Where, though the original imprisonment was lawful, yet by some act, omission, or event, which has taken place afterwards, the party has become entitled to be discharged;

3. Where the process is defective in some matter of substance required by law, rendering such process void;

4. Where the process, though in proper form has been issued in a case not allowed by law;

5. Where the person having the custody of the prisoner under such process, is not the person empowered by law to detain him; or,

6. Where the process is not authorized by any judgment, order, or decree of any court, nor by any provisions of the law.

(43.) SEC. XLIII. But no officer on the return of any habeas corpus, issued under this chapter, shall have power to inquire into the legality or justice of any judgment, decree, or execution, specified in the preceding second section.

Legality of judgment, &c., not to be inquired into.

On commitment for criminal offense how to proceed.

(44.) SEC. XLIV. If it appear that the party has been legally committed for any criminal offense, or if he appears, by the testimony offered with the return, upon the hearing thereof, to be guilty of such an offense, although the commitment be irregular, the officer before whom such party shall be brought, shall proceed to let such party to bail, if the case be bailable, and good bail be offered, or if not, shall forthwith remand such party.

If party remanded, proceedings, &c.

(45.) SEC. XLV. If the party be not entitled to his discharge, and be not bailed, the officer shall remand him to the custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto; if not so entitled, he shall be committed by such officer to the custody of such officer or person as by law is entitled thereto.

Until judgment given party how kept.

(46.) SEC. XLVI. Until judgment be given upon the return; the officer before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such officer shall be, or place him in such care, or under such custody, as his age and other circumstances may require.

Notice when to be given.

(47.) SEC. XLVII. When it appears from the return to any such writ, that the party named therein is in custody, on any process under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney, if he have one, if to be found within the county, shall have had sufficient notice of the time and place at which such writ shall have been made returnable.

When notice to district attorney

(48.) SEC. XLVIII. When it shall appear from the return, that such party is detained upon any criminal accusation, such officer shall make no order for the discharge of such party, until sufficient notice of the time and place at which such writ shall have been returned, or shall be made returnable, shall be given to the district attorney, of the county in which such officer shall be, if to be found within the county.

Return may be controverted.

(49.) SEC. XLIX. The party brought before any such officer, on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath; and thereupon such officer shall proceed in a summary way, to hear such allegations and proofs as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require.

In case of sickness, how to proceed.

(50.) SEC. L. Whenever from the sickness or infirmity of the person, directed to be produced by any writ of habeas corpus, such person cannot, without danger, be brought before the officer before whom the writ is made returnable, the party in whose custody he is, may state the fact in his return to the writ, verifying the same by his oath; and if such officer be satisfied of the truth of such allegation, and the return be otherwise sufficient, he shall proceed to decide upon such return, and to dispose of the matter; and if it appear that the person detained, is illegally imprisoned, confined, or restrained of his liberty, the officer shall grant a writ of discharge, commanding those having such person in their custody, to discharge him forthwith; and if it appear that such person is [legally] detained, imprisoned, or confined, and is not entitled to be bailed, such officer shall cease from all further proceedings thereon.

Obedience to writ and order how enforced.

(51.) SEC. LI. Obedience to any writ of discharge, or to any order for the discharge of any prisoner, granted pursuant to the provisions of this chapter, may be enforced by the officer issuing such writ, or granting such order, by attachment, in the same manner as herein provided for a

neglect to make a return to a writ of habeas corpus, and with the like effect in all respects; and the person guilty of such disobedience, shall forfeit to the party aggrieved, one thousand two hundred and fifty dollars, in addition to any special damages such party may have sustained.

(52.) SEC. LII. No sheriff or other officer shall be liable to any civil action for obeying any such writ or order of discharge; and if any action shall be brought against such officer, for suffering any person committed to his custody to go at large, pursuant to any such writ or order, he may set up the same in answer, in bar of the action.

Officer not liable to action for obeying writ.

(53.) SEC. LIII. No person who has been discharged by the order of any officer, upon a habeas corpus, issued pursuant to the provisions of this chapter, shall be again imprisoned, restrained, or kept in custody, for the same cause; but it shall not be deemed the same cause:

Persons once discharged cannot be again imprisoned.

1. If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence, by legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted, or convicted for the same offense by the legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted or convicted for the same offense; or

2. If, after a discharge for defect of proof, or for any material defect in the commitment, in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offense; or

3. If in a civil suit the party has been discharged for any illegality in the judgment or process hereinbefore specified, and is afterwards imprisoned by legal process for the same cause of action; or

4. If in any civil suit, he shall have been discharged from commitment on process, and shall be afterwards committed on execution in the same cause, or on mesne process in any other cause after such first suit shall have been discontinued.

(54.) SEC. LIV. If any person shall knowingly recommit, imprison, or restrain of his liberty, or cause to be committed, imprisoned, or restrained of his liberty for the same cause, except as provided in the last section, any person so discharged, or shall knowingly aid or assist therein, he shall forfeit to the party so aggrieved, one thousand two hundred and fifty dollars; and shall also be deemed guilty of a misdemeanor.

Penalty on person who shall imprison person who has been discharged.

(55.) SEC. LV. Any one having in his custody, or under his power, any person who by the provisions of this chapter, would be entitled to a writ of habeas corpus, to inquire into the cause of his detention, who shall with intent to elude the service of any such writ, or to avoid the effect thereof, transfer any such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

Transferring party to elude writ a misdemeanor.

(56.) SEC. LVI. Any one having in his custody, or under his power, any person for whose relief a writ of habeas corpus shall have been duly issued, pursuant to the provisions of this chapter, who with the intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

Transferring party to elude writ a misdemeanor.

(57.) SEC. LVII. Every person who shall knowingly aid, or assist in the violation of either of the last two preceding sections, shall be deemed guilty of misdemeanor.

Person aiding and assisting liable.

(58.) SEC. LVIII. Every person convicted of any offense under either of the last four sections, shall be punished by fine or imprisonment,

Punishment on conviction.

or both, in the discretion of the court, in which he shall be convicted; but such fine shall not exceed one thousand dollars, nor such imprisonment six months.

In case of danger that party will be carried off, warrant may issue.

(59.) SEC. LIX. Whenever it shall appear by satisfactory proof that any one is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the territory, or suffer some irreparable injury before he can be relieved by the issuing of a habeas corpus, any officer authorized to issue such writs may issue a warrant under his hand and seal, reciting the facts, and directed to any sheriff, constable or other person, commanding such officer or person to take such prisoner and forthwith to bring him before such officer, to be dealt with according to law.

Arrest of person having custody of party.

(60.) SEC. LX. When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having such prisoner in custody, as for a criminal offense, committed in the taking or detaining of such prisoner, the warrant shall also contain an order for the arrest of such person for the offense.

Warrant how executed.

(61.) SEC. LXI. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the officer issuing the same; and thereupon the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of habeas corpus had been issued in the first instance.

Person to be committed or bailed.

(62.) SEC. LXII. If the person having such prisoner in his custody shall be brought before such officer as for a criminal offense, he shall be examined, committed, bailed, or discharged by such officer, in like manner as in other criminal cases of the like nature.

Forfeiture for refusing copy of order.

(63.) SEC. LXIII. Any officer or other person refusing to deliver a copy of any order, warrant, process or other authority, by which he shall detain any person, to any one, who shall demand such copy and tender the fees thereof, shall forfeit two hundred dollars to the person so detained.

Writ when made returnable.

(64.) SEC. LXIV. Every writ of habeas corpus may be made returnable at a day certain, or forthwith, as the case may require.

Writ to be indorsed.

(65.) SEC. LXV. Every such writ shall be indorsed with a certificate that the same has been allowed, and with the date of such allowance, which indorsement shall be signed by the officer allowing the writ.

Writs of habeas corpus how served.

(66.) SEC. LXVI. [*As amended on page 16 of the amendments of 1852 to the revised statutes:*] Writs of habeas corpus can only be served by an elector of some county within this territory; and the service thereof shall not be deemed complete so as to require the bringing up of the prisoner before the officer issuing the same, unless the party serving the same shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up such prisoner; nor unless he shall also give bond to the sheriff, coroner, constable or marshal, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific sum of money; and if not, then in such sum as the officer granting the writ shall direct, not exceeding one thousand dollars, conditioned that such person shall pay the charges of carrying back such prisoner, if he shall be remanded, and that such prisoner will not escape by the way, either in going to or returning from the place to which he is to be taken; but if such fees be not paid, or such security not tendered, the officer to whom the writ is directed, shall make return thereto in the manner required by section thirty-three of this chapter,

and thereupon the officer or court granting the writ, may order the prisoner to be brought up notwithstanding, or proceed as if he were before him.

(67.) SEC. LXVII. Every writ of habeas corpus issued pursuant to this chapter, may be served by delivering the same to the person to whom it is directed; if he cannot be found it may be served by being left at the jail, or other place in which the prisoner may be confined, with any under officer or other person of proper age having charge for the time of such prisoner. Writ how served.

(68.) SEC. LXVIII. If the person on whom the writ ought to be served conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling house or of the place where the party is confined. Writ how served.

(69.) SEC. LXIX. It shall be the duty of every sheriff, coroner, constable, or marshal, upon whom a writ of habeas corpus shall be served, whether such writ be directed to him or not, upon payment or tender of the charges allowed by law, and the delivery or tender of the bond herein described, to obey and return such writ according to the exigency thereof; and it shall be the duty of every other person, upon whom such writ shall be served, having the custody of the individual for whose benefit the writ shall be issued, to obey and execute such writ according to the command thereof, without requiring any bond or the payment of any charges, unless the payment of such charges shall have been required by the officer issuing such writ. Duty of officer to obey writ.

(70.) SEC. LXX. Every officer allowing a writ of habeas corpus, directed to any other than a sheriff, coroner, constable or marshal, may in his discretion require as a duty to be performed, in order to render the service thereof effectual, that the charges of bringing up such prisoner shall be paid by the petitioner, and in such case he shall in the allowance of a writ specify the amount of such charges so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services. Charges of bringing up prisoner may be ordered to be paid.

(71.) SEC. LXXI. If the writ be returnable at a certain day, such return shall be made, and such prisoner shall be produced at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced within twenty-four hours; and the like time shall be allowed for every additional twenty miles. When return to be made.

(72.) SEC. LXXII. The provisions of the common law, in regard to the writ of habeas corpus, treated of in this chapter, are hereby abrogated, except so much and such parts thereof as may be necessary to carry into full effect the provisions herein contained; and the authority of courts and officers to award such writ, or to proceed thereon by the common law, shall be exercised in conformity to the provisions of this chapter, in all cases therein provided for. Common law provisions abrogated.

(73.) SEC. LXXIII. Nothing contained in this chapter shall be construed to restrain the power of any court to issue a writ of habeas corpus, when necessary to bring before them any prisoner for trial, in any criminal case lawfully pending in the same court, or to bring any prisoner to be examined as a witness in any suit or proceeding, civil or criminal, pending in such court, when they shall think the personal attendance and examination of the witness, necessary for the attainment of justice. Writ to bring up prisoner to testify.