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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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1 SECT. 10. If it is adjudged that a corporation has by
 2 neglect, abuse, or surrender, forfeited its corporate rights,
 3 privileges, and franchises, judgment shall be rendered that
 4 the corporation be excluded from such corporate rights,
 5 privileges, and franchises, and that the corporation be dis-
 6 solved. C. S. p. 620, Sect. 15. c 70

1 SECT. 11. If judgment is rendered in such action,
 2 against a corporation, or against persons claiming to be a
 3 corporation, the court may cause the costs therein to be col-
 4 lected by execution against the persons claiming to be a cor-
 5 poration, or by process against the directors or other officers
 6 of such corporation. C. S. p. 620, Sect. 16.

1 SECT. 12. When such judgment is rendered against a
 2 corporation, the court has power to restrain the corporation,
 3 to appoint a receiver of its property, and take an account
 4 and make distribution thereof among its creditors, and the
 5 attorney general, immediately after the rendition of such
 6 judgment shall institute proceedings for that purpose. C. S. p. 620, Sect. 17. Amended.

1 SECT. 13. Upon the rendition of such judgment against
 2 a corporation, or for the vacating or annulling of letters pat-
 3 ent, the attorney general shall cause a copy of the judgment-
 4 roll to be forthwith filed in the office of the secretary of
 5 state. C. S. p. 620, Sect. 18.

CHAPTER LXXX.
 SPECIAL PROCEEDINGS.

TITLE I.

WRIT OF MANDAMUS.

1 SECTION 1. The writ of mandamus is regulated as in
 2 this chapter prescribed. C. S. p. 632, Sect. 3. c 73

1 SECT. 2. It may be issued to any inferior tribunal, cor-
 2 poration, board, or person, to compel the performance of
 3 an act which the law specially enjoins as a duty resulting
 4 from an office, trust or station; but though it may require
 5 an inferior tribunal to exercise its judgment, or proceed to
 6 the discharge of any of its functions, it cannot control judi-
 7 cial discretion. C. S. p. 632, Sect. 4.

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C. S. p. 632, Sect. 5.

1 SECT. 3. The writ shall not issue in any case where
2 there is a plain, speedy, and adequate remedy, in the ordi-
3 nary course of law. It shall issue on the information of
4 the party beneficially interested.

C. S. p. 632, Sect. 6.

1 SECT. 4. The writ is either alternative or peremptory.
2 The alternative writ shall state concisely the facts, showing
3 the obligation of the defendant to perform the act, and his
4 omission to perform it, and command him, that immediate-
5 ly after the receipt of the writ, or at some other specified
6 time, he do the act required to be performed, or show cause
7 before the court out of which the writ issued, at a specified
8 time and place, why he has not done so; and that he then
9 and there return the writ, with his certificate of having done
10 as he is commanded. The peremptory writ shall be in a
11 similar form, except that the words requiring the defendant
12 to show cause why he has not done as commanded, shall be
13 omitted.

C. S. p. 632, Sect. 7.

1 SECT. 5. When the right to require the performance of
2 the act is clear, and it is apparent that no valid excuse can
3 be given for not performing it, a peremptory mandamus
4 may be allowed in the first instance; in all other cases the
5 alternative writ shall be first issued.

C. S. p. 632, Sect. 8,
Amended.

1 SECT. 6. The court or judge, by an indorsement on the
2 writ, shall allow the same, designate the return day there-
3 of, and direct the manner of service.

C. S. p. 632, Sect. 9.

1 SECT. 7. On the return day of the alternative writ, or
2 such further day as the court allows, the party on whom
3 the writ is served, may show cause by answer, made in the
4 same manner as an answer to a complaint in a civil ac-
5 tion.

C. S. p. 632, Sect. 10.
Amended.

1 SECT. 8. If no answer is made, a peremptory mandate
2 shall be allowed against the defendant; if an answer is
3 made containing new matter, the plaintiff may, on the trial
4 or other proceedings, avail himself of any valid objection to
5 its sufficiency; or may countervail it by evidence either in
6 direct denial, or by way of avoidance.

C. S. p. 633, Sect. 11.
Amended.

1 SECT. 9. No other pleading or written allegation is al-
2 lowed than the writ and answer. They shall be construed
3 and amended in the same manner as pleadings in a civil
4 action, and the issues thereby joined, shall be tried and
5 further proceedings had, in the same manner as in a civil
6 action.

1 SECT. 10. If judgment is given for the plaintiff, he shall re-

2 cover the damages which he has sustained, together with
 3 costs and disbursements, and a peremptory mandamus shall C. S. p. 633, Sect. 15.
 4 be awarded without delay. Amended. c 73

1 SECT. 11. Whenever a peremptory mandamus is direct-
 2 ed to a public officer, body, or board, commanding the per- C. S. p. 633, Sect. 26.
 3 formance of any public duty specially enjoined by law, if
 4 it appears to the court that such officer or any member of
 5 such body or board, without just excuse, refuses or neglects
 6 to perform the duty so enjoined, the court may impose a
 7 fine not exceeding two hundred and fifty dollars, upon eve-
 8 ry such officer or member of such body or board; such fine,
 9 when collected, shall be paid into the state treasury, and
 10 the payment of such fine is a bar to an action for any pen-
 11 alty incurred by such officer, or member of such body or
 12 board, by reason of his refusal or neglect to perform the duty
 13 so enjoined.

1 SECT. 12. The district court has exclusive original ju-
 2 risdiction in all cases of mandamus, except where such writ
 3 is to be directed to a district court or a judge thereof in his 1862—p. 71, Sect. 3.
 4 official capacity, in which case the supreme court has exclu- Amended. c 18
 5 sive original jurisdiction, and in such case the supreme court
 6 or a judge thereof shall first make a rule, returnable in
 7 term, that such district court, or judge thereof, show cause
 8 before the court why a peremptory writ of mandamus should
 9 not issue, and upon the return day of such rule such dis-
 10 trict court, or judge, may show cause against the rule by
 11 affidavit or record evidence, and upon the hearing thereof
 12 the supreme court shall award a peremptory writ or dismiss
 13 the rule. In case of emergency a judge of the supreme
 14 court at the time of making the rule to show cause, may
 15 also appoint a special term of the court for hearing the mo-
 16 tion, and at which the rule shall be made returnable.

1 SECT. 13. An appeal lies to the supreme court from the New.
 2 district court in mandamus as in civil actions.

TITLE II.

WRITS OF PROHIBITION.

1 SECT. 14. Writs of prohibition shall only be issued out
 2 of the supreme court, and shall be applied for upon affida-
 3 vits, by motion to the court, or a judge thereof in vacation, C. S. p. 633, Sect. 18.
 4 and if the cause shown, appears to the court or judge to be Amended. c 73
 5 sufficient, a writ shall be thereupon issued, which shall
 6 command the court and party, or officer to whom it is di-

7 rected, to desist and refrain from any further proceedings
 8 in the action or matter specified therein, until the next term
 9 of said supreme court, or the further order of the court
 10 thereon; and to show cause at the next term of said court,
 11 or some day to be named in the same term at the option of
 12 the court, if issued in term time, why they should not be
 13 absolutely restrained from any further proceeding in such
 14 action or matter.

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C. S. p. 631, Sect. 19.

1 SECT. 15. Such writ shall be served upon the court and
 2 party or officer to whom it is directed, in the same manner
 3 as a writ of mandamus; and a return shall be made thereto
 4 by such court or officer, which may be enforced by attach-
 5 ment.

C. S. p. 634, Sect. 20.
Amended.

1 SECT. 16. If the party to whom such writ is directed,
 2 shall, by an instrument in writing, to be signed by him and
 3 annexed to such return, adopt the same return, and rely
 4 upon the matters therein contained, as sufficient cause why
 5 such court should not be restrained, as mentioned in said
 6 writ, such party shall thenceforth be deemed the defendant
 7 in such proceeding, and the person prosecuting such writ
 8 may take issue, or demur to the matters so relied upon by
 9 such defendant.

C. S. p. 634, Sect. 21.

1 SECT. 17. If the party to whom such writ is directed,
 2 shall not adopt such return, the party prosecuting such writ,
 3 shall bring on the argument of such return, as upon a rule
 4 to show cause; and he may, by his own affidavit, and other
 5 proofs, controvert the matters set forth in such return.

C. S. p. 634, Sect. 22.

1 SECT. 18. The court, after hearing the proofs and alle-
 2 gations of the parties, shall render judgment, either that a
 3 prohibition absolute, restraining the said court and party,
 4 or officer, from proceeding in such action or matter, do is-
 5 sue, or a writ of consultation authorizing the court and
 6 party, or officer, to proceed in the action or matter in ques-
 7 tion; and may make and enforce such order in relation to
 8 costs and charges, and the amount thereof, as may be deem-
 9 ed just.

C. S. p. 631, Sect. 23.

1 SECT. 19. If the party to whom such first writ of pro-
 2 hibition is directed, adopts the return of the court thereto,
 3 and judgment is rendered for the party prosecuting such
 4 writ, a prohibition absolute shall be issued, but if judgment
 5 is given against such party, a writ of consultation shall be
 6 issued as above provided.

TITLE III.

WRIT OF HABEAS CORPUS.

1 SECT. 20. Every person imprisoned or otherwise re-
 2 strained of his liberty, except in the cases in the following
 3 section specified, may prosecute a writ of habeas corpus,
 4 according to the provisions of this chapter, to obtain relief
 5 from such imprisonment or restraint, if it proves to be un-
 6 lawful.

C. S. p. 634, Sect. 24.

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1 SECT. 21. The following persons are not entitled to pros-
 2 ecute such writ: persons committed or detained by virtue
 3 of the final judgment, or decree of any competent tribunal
 4 of civil or criminal jurisdiction, or by virtue of an execution
 5 issued upon such judgment or decree; but no order of com-
 6 mitment for any alleged contempt, or upon proceedings
 7 as for contempt, to enforce the rights or remedies of any
 8 party, shall be deemed a judgment or decree within the
 9 meaning of this section; nor shall any attachment or other
 10 process issued upon any such order, be deemed an execu-
 11 tion within the meaning of this section.

C. S. p. 634, Sect. 25.

1 SECT. 22. Application for such writ shall be made by
 2 petition, signed and verified either by the party for whose
 3 relief it is intended, or by some person in his behalf, as fol-
 4 lows: to the supreme or district court, or to any judge there-
 5 of being within the county where the prisoner is detained;
 6 or if there is no such officer within such county, or if he is
 7 absent, or for any cause is incapable of acting, or has re-
 8 fused to grant such writ, then to some officer having such
 9 authority residing in any adjoining county.

C. S. p. 635, Sect. 26.

1 SECT. 23. Whenever application for any such writ is
 2 made to any officer not residing within the county where
 3 the prisoner is detained, he shall require proof by the oath
 4 of the party applying, or by other sufficient evidence, that
 5 there is no officer in such county authorized to grant the
 6 writ; or if there is one, that he is absent, or has refused to
 7 grant such writ; or for some cause, to be specially set forth,
 8 is incapable of acting, and if such proof is not produced,
 9 the application shall be denied.

C. S. p. 635, Sect. 27.

1 SECT. 24. The petition shall state in substance:
 2 *First.*—That the person in whose behalf the writ is applied
 3 for, is imprisoned or restrained of his liberty, the officer or
 4 person by whom he is so confined or restrained, and the place
 5 where, naming both parties, if their names are known, or
 6 describing them if they are not;
 7 *Second.*—That such person is not committed or detained

C. S. p. 635, Sect. 28.

8 by virtue of any process, judgment, decree, or execution,
9 specified in the twenty-first section of this chapter ;

10 *Third.*—The cause or pretence of such confinement or
11 restraint, according to the knowledge or belief of the party
12 verifying the petition ;

13 *Fourth.*—If the confinement or restraint is by virtue of
14 any warrant, order, or process, a copy thereof shall be an-
15 nexed, or it shall be averred, that by reason of such priso-
16 ner being removed or concealed before application, a de-
17 mand of such copy could not be made, or that such demand
18 was made, and the legal fees therefor tendered to the officer
19 or person having such prisoner in his custody, and that such
20 copy was refused ;

21 *Fifth.*—If the imprisonment is alleged to be illegal, the
22 petition shall state in what the alleged illegality consists.

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C. S. P. 635, Sect. 30.

1 SECT. 25. Every writ of habeas corpus, issued under
2 the provisions of this chapter, shall be substantially in the
3 following form :

4 The State of Minnesota, to the sheriff of, &c., (or to A. B.)

5 “ You are hereby commanded to have the body of C. D.,
6 by you imprisoned and detained, as it is said, together with
7 the time and cause of such imprisonment and detention, by
8 whatsoever name the said C. D. shall be called or charged,
9 before E. F., judge of the district court, as &c., (or imme-
10 diately after the receipt of this writ,) to do and receive
11 what shall then and there be considered concerning the said
12 C. D. And have you then and there this writ.
13 “ Witness, &c.”

1 SECT. 26. Such writ of habeas corpus shall not be disobeyed
2 for any defect or form. It is sufficient :

C. S. P. 635, Sect. 31.

3 *First.*—If the person having the custody of the prisoner,
4 is designated either by his name of office, if he has any, or
5 by his own name, or if both such names are unknown, or
6 uncertain, he may be described by an assumed appellation,
7 and any one who may be served with the writ, shall be
8 deemed the person to whom it is directed, although it is
9 directed to him by a wrong name or description, or to
10 another person ;

11 *Second.*—If the person who is directed to be produced
12 is designated by name, or if his name is uncertain or un-
13 known, he may be described in any other way, so as to des-
14 ignate the person intended.

C. S. P. 636, Sect. 32.

1 SECT. 27. If any officer herein authorized to grant writs
2 of habeas corpus, wilfully refuses to grant such writ when
3 legally applied for, he shall forfeit for every such offense,
4 to the party aggrieved, one thousand dollars.

1 SECT. 28. The person upon whom any such writ is du-
2 ly served, shall state in his return plainly and unequivocal-
3 ly :

4 *First.*—Whether he has or has not the party in his custody
5 or control, or under his restraint, and if he has not, wheth-
6 er he has had the party in his custody, or under his con-
7 trol or restraint, at any and what time prior or subsequent
8 to the date of the writ ;

C. S. p. 636, Sect. 33.

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9 *Second.*—If he has the party in his custody or control or
10 under his restraint, the authority and true cause of such im-
11 prisonment or restraint, setting forth the same at large ;

12 *Third.*—If the party is detained by virtue of any writ,
13 warrant or other written authority, a copy thereof shall be
14 annexed to the return, and the original shall be produced
15 and exhibited on the return of the writ, to the officer be-
16 fore whom the same is returnable ;

17 *Fourth.*—If the person upon whom such writ is served,
18 has had the party in his control or custody, or under his re-
19 straint at any time prior or subsequent to the date of the
20 writ, but has transferred such custody or restraint to anoth-
21 er, the return shall state particularly to whom, at what
22 time, for what cause, and by what authority such transfer
23 took place.

24 The return shall be signed by the person making the
25 same, and except where such person is a sworn public offi-
26 cer, and makes his return in his official capacity, it shall be
27 verified by oath.

1 SECT. 29. The person or officer, on whom the writ is
2 served, shall bring the body of the person in his custody,
3 according to the command of such writ, except in case of
4 the sickness of such person, as hereinafter provided.

C. S. p. 636, Sect. 34.

1 SECT. 30. If the person upon whom such writ is duly
2 served, refuses or neglects to obey the same, by producing
3 the party named in such writ, and making a full and explicit
4 return to every such writ, within the time required by the
5 provisions of this chapter, and no sufficient excuse is shown
6 for such refusal or neglect, the officer before whom such
7 writ is returnable, upon due proof of the service thereof,
8 shall forthwith issue an attachment against such person, di-
9 rected to the sheriff of any county in this state, and com-
10 manding him forthwith to apprehend such person, and to
11 bring him immediately before such officer ; and on such per-
12 son being so brought, he shall be committed to close custody
13 in the jail of the county in which such officer is, until he
14 makes return to such writ, and complies with any order that
15 may be made by such officer, in relation to the person for
16 whose relief such writ was issued.

C. S. p. 636, Sect. 35.

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C. S. p. 636, Sect. 36. 1 SECT. 31. If a sheriff neglects to return such writ, the
2 attachment may be directed to any coroner or other person
3 designated therein, who shall have full power to execute the
4 same, and such sheriff upon being brought up, may be com-
5 mitted to the jail of any county other than his own.

C. S. p. 637, Sect. 37. 1 SECT. 32. The officer by whom any such attachment is
2 issued, may also at the same time, or afterwards, issue a
3 precept to the sheriff, or other person to whom such attach-
4 ment was directed, commanding him to bring forthwith be-
5 fore such officer, the party for whose benefit such writ was
6 allowed, who shall thereafter remain in the custody of such
7 sheriff or person, until he is discharged, bailed, or remanded
8 as such officer directs.

C. S. p. 637, Sect. 39. 1 SECT. 33. The officer before whom the party is brought
2 on such writ, shall immediately after the return thereof,
3 proceed to examine into the facts contained in such return,
4 and into the cause of the confinement, or restraint of such
5 party, whether the same was upon commitment, for any
6 criminal charge or not.

C. S. p. 637, Sect. 40. 1 SECT. 34. If no legal cause is shown for such imprison-
2 ment or restraint, or for the continuation thereof, such offi-
3 cer shall discharge such party from the custody or restraint
4 under which he is held.

C. S. p. 637, Sect. 41. 1 SECT. 35. The officer shall forthwith remand such party,
2 if it appears that he is detained in custody, either :
3 *First.*—By virtue of process issued by any court or judge
4 of the United States, in a case where such court or judge
5 has exclusive jurisdiction ; or,
6 *Second.*—By virtue of the final judgment or decree, of
7 any competent court of civil or criminal jurisdiction, or
8 of any execution, issued upon such judgment or decree ; or,
9 *Third.*—For any contempt, specially and plainly charg-
10 ed in the commitment, by some court, officer, or body,
11 having authority to commit for the contempt so charged ;
12 and,
13 *Fourth.*—That the time during which such party may be
14 legally detained has not expired.

C. S. p. 637, Sect. 42. 1 SECT. 36. If it appears on the return, that the prisoner
2 is in custody by virtue of civil process, of any court legal-
3 ly constituted, or issued by an officer, in the course of ju-
4 dicial proceedings before him, authorized by law, such
5 prisoner can only be discharged in one of the following
6 cases :
7 *First.*—When the jurisdiction of such court or officer,
8 has been exceeded either as to matter, place, sum, or per-
9 son ;

10 *Second.*—Where, though the original imprisonment was
11 lawful, yet by some act, omission, or event, which has ta-
12 ken place afterwards, the party is entitled to be discharged ;

13 *Third.*—Where the process is defective in some matter
14 of substance required by law, rendering such process void ;

15 *Fourth.*—Where the process, though in proper form has
16 been issued in a case not allowed by law ;

17 *Fifth.*—Where the person having the custody of the pris-
18 oner under such process, is not the person empowered by
19 law to detain him ; or,

20 *Sixth.*—Where the process is not authorized by any
21 judgment, order, or decree of any court, nor by any pro-
22 vision of law.

1 SECT. 37. But no officer on the return of any habeas
2 corpus, can inquire into the legality or justice of any judg- C. S. p. 637, Sect. 43.
3 ment, decree, or execution, specified in the preceding twen- c 73
4 ty-first section.

1 SECT. 38. If it appears that the party has been legally
2 committed for any criminal offense, or if he appears, by the C. S. p. 638, Sect. 44.
3 testimony offered with the return, upon the hearing thereof,
4 to be guilty of such an offense, although the commitment is
5 irregular, the officer before whom such party is brought,
6 shall proceed to let such party to bail, if the case is bailable,
7 and good bail is offered, or if not, shall forthwith remand
8 such party.

1 SECT. 39. In other cases the party shall be placed in
2 custody of the person legally entitled thereto, or if no one C. S. p. 638, Sect. 45.
3 is so entitled he shall be discharged. Amended.

1 SECT. 40. Until judgment is given upon the return, the
2 officer before whom such party is brought, may either com- C. S. p. 638, Sect. 40.
3 mit such party to the custody of the sheriff of the county in
4 which such officer is, or place him in such care, or under
5 such custody, as his age and other circumstances require.

1 SECT. 41. In criminal cases notice of the time and place,
2 at which the writ is made returnable, shall be given to the C. S. p. 638, Sects. 47
3 county attorney, if he is within the county ; in other cases & 48, combined &
4 like notice shall be given to any person interested in con- amended.
5 tinuing the custody or restraint of the party seeking the aid
6 of said writ.

1 SECT. 42. The party brought before any such officer,
2 on the return of any writ of habeas corpus, may deny any C. S. p. 638, Sect. 49.
3 of the material facts set forth in the return, or allege any
4 fact to show either that his imprisonment or detention is
5 unlawful, or that he is entitled to his discharge, which alle-

6 gations or denials shall be on oath ; and thereupon such offi-
 7 cer shall proceed in a summary way, to hear such allega-
 8 tions and proofs as are legally produced in support of such
 9 imprisonment or detention, or against the same, and to dis-
 10 pose of such party as justice requires.

273 C. S. p. 638, Sect. 50.
 1 SECT. 43. Whenever from the sickness or infirmity of
 2 the person, directed to be produced by any writ of habeas
 3 corpus, such person cannot, without danger, be brought
 4 before the officer before whom the writ is made returnable,
 5 the party in whose custody he is, may state the fact in his
 6 return to the writ, verifying the same by his oath ; and if
 7 such officer is satisfied of the truth of such allegation, and
 8 the return is otherwise sufficient, he shall proceed to decide
 9 upon such return, and to dispose of the matter ; and if it
 10 appears that the person detained, is illegally imprisoned,
 11 confined, or restrained of his liberty, the officer shall order
 12 those having such person in their custody, to discharge him
 13 forthwith ; and if it appears that such person is legally de-
 14 tained, imprisoned, or confined, and is not entitled to be
 15 bailed, such officer shall dismiss the proceedings.

C. S. p. 638, Sect. 51.
 1 SECT. 44. Obedience to any order for the discharge of
 2 any prisoner, granted pursuant to the provisions of this
 3 chapter, may be enforced by the officer issuing such writ,
 4 or granting such order, by attachment, in the same manner
 5 as herein provided for a neglect to make a return to a writ
 6 of habeas corpus, and the person guilty of such disobe-
 7 dience, shall forfeit to the party aggrieved, one thousand
 8 dollars, in addition to any special damages such party may
 9 have sustained.

C. S. p. 639, Sect. 53.
 Amended.
 1 SECT. 45. No person who has been discharged upon a
 2 habeas corpus shall be again imprisoned or restrained for
 3 the same cause, unless indicted therefor, convicted thereof,
 4 or committed for want of bail, by some court of record
 5 having jurisdiction of the cause ; or unless after a discharge
 6 for defect of proof, or for some material defect in the com-
 7 mitment in a criminal case, he is again arrested on sufficient
 8 proof and committed by legal process.

C. S. p. 639, Sects. 55
 & 56, combined &
 amended.
 1 SECT. 46. If any one who has in his custody, or under
 2 his control, a person entitled to a writ of habeas corpus,
 3 whether a writ has been issued or not, transfers such pris-
 4 oner to the custody or places him under the power or con-
 5 trol of another person, or conceals him, or changes the
 6 place of his confinement with intent to elude the service of
 7 such writ or to avoid the effect thereof, the person so
 8 offending shall forfeit to the party aggrieved thereby the
 9 sum of four hundred dollars, to be recovered in a civil
 10 action.

1 SECT. 47. Any officer or other person refusing to deliver
 2 a copy of any order, warrant, process or other authority, C. S. p. 640, Sect. 63.
 3 by which he detains any person, to any one, who demands
 4 such copy and tenders the fees thereof, shall forfeit two
 5 hundred dollars to the person so detained. c 73

1 SECT. 48. Every writ of habeas corpus may be made C. S. p. 640, Sect. 64.
 2 returnable at a day certain, or forthwith, as the case may Amended.
 3 require, and shall be under the seal of the court.

1 SECT. 49. It can only be served by an elector of this
 2 state, and the service thereof shall not be deemed complete
 3 unless the party serving the same tenders to the person in C. S. p. 640, Sect. 66.
 4 whose custody the prisoner is, if such person is a sheriff, Amended.
 5 coroner, constable or marshal, the fees allowed by law for
 6 bringing up such prisoner. The officer granting the writ
 7 may in his discretion require a bond in a penalty not ex-
 8 ceeding one thousand dollars, with sufficient sureties, con-
 9 ditioned that the obligors will pay all costs and expenses of
 10 the proceeding and the reasonable charges of restoring the
 11 prisoner to the person from whose custody he was taken, if
 12 he is remanded. Such bond shall run to the sheriff of the
 13 county and be filed in the office of the clerk of the court
 14 from which the writ issues.

1 SECT. 50. Every writ of habeas corpus issued pursuant
 2 to this chapter, may be served by delivering the same to C. S. p. 641, Sect. 67.
 3 the person to whom it is directed; if he cannot be found it
 4 may be served by being left at the jail, or other place in
 5 which the prisoner is confined, with any under officer or
 6 other person of proper age having charge for the time of
 7 such prisoner.

1 SECT. 51. If the person on whom the writ ought to be
 2 served conceals himself, or refuses admittance to the party C. S. p. 641, Sect. 68.
 3 attempting to serve the same, it may be served by affixing
 4 the same in some conspicuous place on the outside, either of
 5 his dwelling house or of the place where the party is con-
 6 fined.

1 SECT. 52. If the writ is returnable at a certain day, such
 2 return shall be made, and such prisoner produced at the C. S. p. 641, Sect. 71.
 3 time and place specified therein; if it is returnable forth-
 4 with, and the place is within twenty miles of the place of
 5 service, such return shall be made, and such prisoner pro-
 6 duced within twenty-four hours; and the like time shall be
 7 allowed for every additional twenty miles.

1 SECT. 53. Nothing contained in this chapter shall be
 2 construed to restrain the power of any court to issue a writ

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C. S. p. 641, Sect. 73.

3 of habeas corpus, when necessary to bring before them any
 4 prisoner for trial, in any criminal case lawfully pending in
 5 the same court, or to bring any prisoner to be examined as
 6 a witness in any action or proceeding, civil or criminal,
 7 pending in such court, when they think the personal attend-
 8 ance and examination of the witness, necessary for the at-
 9 tainment of justice.

CHAPTER LXXXI. OF THE FORECLOSURE OF MORTGAGES.

TITLE I.

FORECLOSURE BY ADVERTISEMENT.

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C. S. p. 643, Sect. 1.

1 SECTION 1. Every mortgage of real estate, containing
 2 therein a power of sale, upon default being made in any con-
 3 dition of such mortgage, may be foreclosed by advertise-
 4 ment, in the cases and in the manner hereinafter specified.

C. S. p. 643, Sect. 2.

1 SECT. 2. To entitle any party to give a notice as here-
 2 inafter prescribed, and to make such foreclosure, it is re-
 3 quisite :

4 *First.*—That some default in a condition of such mort-
 5 gage has occurred by which the power to sell has become
 6 operative ;

7 *Second.*—That no action or proceeding has been institu-
 8 ted at law, to recover the debt then remaining secured by
 9 such mortgage, or any part thereof ; or if any action or pro-
 10 ceeding has been instituted, that the same has been discon-
 11 tinued, or that an execution upon the judgment rendered
 12 therein, has been returned unsatisfied, in whole or in part ;
 13 and,

14 *Third.*—That the mortgage containing such power of
 15 sale has been duly recorded, and if it has been assigned,
 16 that all the assignments thereof have been recorded.

C. S. p. 644, Sect. 3.

1 SECT. 3. When a mortgage is given to secure the pay-
 2 ment of money by instalments, each of the instalments either
 3 of principal or interest, mentioned in such mortgage, may
 4 be taken and deemed to be a separate and independent
 5 mortgage ; and such mortgage for each of such instalments,
 6 may be foreclosed in the same manner, and with the like effect
 7 as if such separate mortgage as given for each of such sub-
 8 sequent instalments; and a redemption of any such sale by
 9 the mortgagor shall have the like effect, as if the sale for