

# GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN  
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-  
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-  
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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CHAPTER 72 (G. S. ch. 80, title 1).

WRIT OF MANDAMUS.

This writ was introduced by 9 Anne, ch. 20, and regulated by 1 Will. IV. ch. 21; and 6 and 7 Vict. ch. 67, to prevent disorder from failure of justice, and to be used where the law has established no specific remedy, and where in justice and good government there ought to be one. 3 Burr. 1267; 1 T. R. 143; 5 Pet. 190. The writ is a command in the name of the sovereign authority to some person, corporation or inferior court, requiring some specific act to be done which belongs to the office or duty of such person, corporation or inferior tribunal. 5 Pet. 190; 21 Pick. 258. It is not a writ of right, and hence not grantable as of course, but upon discretion. 2 T. R. 385; 1 Cowen, 501.

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SEC. 5277. **Regulated.**—The writ of mandamus is regulated as in this chapter prescribed.

G. S. ch. 80, § 1.

SEC. 5278. **Office of writ.**—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.

G. S. ch. 80, § 2. 2 M. 346; 15 M. 177; 17 M. 429; 18 M. 40; 31 M. 445.

SEC. 5279. **When writ shall not issue.**—The writ shall not issue in any case where there is a plain, speedy and adequate remedy, in the ordinary course of law. It shall issue on the information of the party beneficially interested.

G. S. ch. 80, § 3. 17 M. 215; 25 M. 343. The principle is that the writ will issue to compel the performance of a ministerial act when there is no other special and adequate remedy. 19 How. 15; 14 How. 152; 14 East, 395; 9 Pet. 573; 14 Pet. 497.

SEC. 5280. **Alternative or peremptory.**—The writ of mandamus is either alternative or peremptory. The alternative writ shall 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 a copy of the writ, or at some other specified time, to 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 make his return to the writ, with his certificate on such return of having done as he is commanded. The peremptory writ shall be in similar form, except that the words requiring the defendant to show cause why he has not done as commanded shall be omitted.

G. S. ch. 80, § 4, as amended 1875, ch. 68. Approved March 2d. Amendment inserted "a copy of" before writ, and "make his return to." 2 M. 180, 342, 344, 346; 12 M. 382.

SEC. 5281. **Jurisdiction to issue.**—The district court has exclusive original jurisdiction in all cases of mandamus, except where such writ is to be

directed to a district court or a judge thereof in his official capacity, in which case the supreme court has exclusive original jurisdiction; and in such case the supreme court, or a judge thereof, shall first make a rule, returnable in term, that such district court, or judge thereof, show cause before the court why a peremptory writ of mandamus should not issue; and upon the return-day of such rule, such district court or judge may show cause against the rule, by affidavit or record evidence; and upon the hearing thereof the supreme court shall award a peremptory writ, or dismiss the rule. In case of emergency, a judge of the supreme court, at the time of making the rule to show cause, may also appoint a special term of the court for hearing the motion, and at which the rule shall be made returnable.

G. S. ch. 80, § 12. 10 M. 369; 33 M. 293.

**SEC. 5282. Allowance — Service.**— The court or judge, by an endorsement on the writ, shall allow the same, and designate the return-day thereof, and direct the manner of the service thereof: *provided*, that such service shall be by copy of the writ, and of the allowance thereof, and of any order or direction of said court or judge endorsed upon said writ.

G. S. ch. 80, § 6, as amended 1875, ch. 68, § 2. Approved March 2d. Amendment added the proviso.

**SEC. 5283. Peremptory writ in first instance.**— 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 shall be first issued.

G. S. ch. 80, § 5.

**SEC. 5284. Answer.**— On the return-day of the alternative writ, or such further day as the court allows, the party on whom the writ is served may show cause by answer, made in the same manner as an answer to a complaint in a civil action.

G. S. ch. 80, § 7. This is substitute for common-law return under 1 Will. IV. ch. 21. Bull. N. P. 201; 2 Bl. Com. 111.

**SEC. 5285. Same — New matter — No answer.**— If no answer is made, a peremptory mandamus shall be allowed against the defendant; if an answer is made containing new matter, the plaintiff may, on the trial or other proceedings, avail himself of any valid objection to its sufficiency; or may counter-vail it by evidence, either in direct denial, or by way of avoidance.

G. S. ch. 80, § 8. If return insufficient, traverse ought not to be tendered nor issue joined, but upon demurrer peremptory writ issues. Bull. N. P. 201; 3 Dall. 42; 5 Binn. 87; 41 E. C. L. 697.

**SEC. 5286. Amendment — Issue — Trial.**— No other pleading or written allegation is allowed than the writ and answer. They shall be construed and amended in the same manner as pleadings in a civil action, and the issues thereby joined shall be tried, and further proceedings had, in the same manner as in a civil action.

G. S. ch. 80, § 9. 15 M. 221; 39 N. W. 156.

**SEC. 5287. Trial of issues of fact.**— Issues of fact in any such proceeding instituted in the supreme court or in any district court, [shall be tried in the district court] of the county in which the defendant may reside, or in which the material facts contained in the relation for the mandamus shall be alleged to have taken place, and either party shall be entitled to have any issue of fact in such proceeding tried by a jury as in an ordinary civil action. The provisions of this act shall govern and be applicable in any such action or proceeding heretofore commenced in the supreme court in which there has not been a final hearing. *Provided*, always, that except as aforesaid nothing in this act contained shall be construed so as to divest the supreme court of jurisdiction to hear and finally determine any and all such suits or proceed-

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ings now pending in said court. And *provided further*, that any such suit or proceeding now pending in the supreme court in which there is any issue of fact which has not been finally heard or determined, the said supreme court shall, on the request of the attorney of either the plaintiff or defendant in such suit or proceeding, transmit the record to the district court of the proper county, which district court shall thereupon and thereafter have jurisdiction of the case, and shall proceed to try any issue or issues therein, in the same manner and with the same effect as if such suit or proceeding had been originally commenced in such district court. And provided further, that the district court in which such suit or proceeding is pending may grant a change of venue as in ordinary civil actions.

1869, ch. 79, as amended 1881, ch. 40. Approved March 7th. Before amendment this law provided that supreme court shall have original concurrent jurisdiction with the district courts in all cases of mandamus, allowed by court or by any judge in term or vacation, returnable as may be designated, and in case of issue of fact, referee may be appointed to take and report testimony. 15 M. 221; 28 M. 50, 41, 363; 38 M. 293.

**SEC. 5288. Judgment for plaintiff.**— If judgment is given for the plaintiff, he shall recover the damages which he has sustained, together with costs and disbursements, and a peremptory mandamus shall be awarded without delay.

G. S. ch. 80, § 10.

**SEC. 5289. Disobedience of writ — Penalty.**— 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 appears to the court that such officer, or any member of such body or board, without just excuse, refuses or neglects 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, shall be paid into the state 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.

G. S. ch. 80, § 11. 15 M. 221.

**SEC. 5290. Appeal.**— An appeal lies to the supreme court from the district court in mandamus as in civil actions.

G. S. ch. 80, § 13 (14). 15 M. 455; 31 M. 211.