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GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated All General Laws of the State in Force December 31, 1894

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CHAPTER 80.

SPECIAL PROCEEDINGS.

1. Writ of Mandamus, §§ 5974–5987.
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TITLE 1.

WRIT OF MANDAMUS.

§ 5974. Mandamus, how regulated.

The writ of mandamus is regulated as in this chapter prescribed.

(G. S. 1866, c. 80, § 1; G. S. 1878, c. 80, § 1.)

§ 5975. To whom writ may issue, etc.

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. 1866, c. 80, § 2; G. S. 1878, c. 80, § 2.)

A writ of *mandamus* will not be granted unless it appears that there has been a clear violation of a legal right. Post v. Sparta, (Mich.) 29 N. W. Rep. 721.

The writ of *mandamus* will not lie to require an act to be done which it would not be lawful for the person to do without it. Clark v. Buchanan, 2 Minn. 346, (Gil. 293.)

The writ should not be granted after the expiration of the period which, under the statute of limitations, would be a bar to an action. People v. Chapin, (N. Y.) 10 N. E. Rep. 141.

While the court cannot determine the right of a party to hold a seat in the legislature, it can determine his right to a certificate of election to the legislature, and will, by *mandamus*, compel its issuance to the party entitled to it. O'Ferrall v. Colby, 2 Minn. 180, (Gil. 148.)

Mandamus will not lie to compel a public officer to perform an official duty till a demand on him to perform it. State v. Davis, 17 Minn. 429, (Gil. 406.) *Mandamus* will not lie to compel the treasurer of a school-district to demand and receive from the county treasurer the money in his hands due the district, where the only demand upon such treasurer of the school-district was to pay an order by the trustees on such treasurer. Id.

For the use of the writ to compel the payment of claims against municipal corporations, see State v. Ames, 31 Minn. 440, 18 N. W. Rep. 277.

Mandamus to a county auditor to compel him to draw his warrant on the county treasurer, see State v. Tarpen, (Ohio,) 1 N. E. Rep. 200; State v. Morris, (Ind.) 2 N. E. Rep. 355.

The decision of comptroller as to the person entitled to receive the money to be refunded in case of a void tax sale cannot be reviewed by *mandamus*. People v. Chapin, (N. Y.) 10 N. E. Rep. 142.

Mandamus to compel the levy of a tax to pay the costs of an appeal awarded against a municipality. People v. City of Kingston, (N. Y.) 4 N. E. Rep. 348.

A justice of the peace may be compelled by *mandamus* to correct entries in his docket to make them conform to the facts. State v. Whittet, (Wis.) 21 N. W. Rep. 245.

Mandamus to compel a police judge to issue a warrant. State v. McCutchan, (Neb.) 30 N. W. Rep. 58.

Mandamus to compel trial judge to take off nonsuit. Lindsay v. Judges of Wayne Cir. Ct. (Mich.) 30 N. W. Rep. 590.

As to *mandamus* to compel a judge of an inferior court to allow and sign a bill of exceptions, see State v. Hawes, (Ohio,) 1 N. E. Rep. 1. And see Churchill v. Circuit Judge, (Mich.) 23 N. W. Rep. 211.

See, further, as to *mandamus* to judges of inferior courts, Prosecuting Att'y v. Judge of Recorder's Court, (Mich.) 26 N. W. Rep. 694; Chilson v. Wayne Circuit Judge, Id. 859; Barnum Wire Works Co. v. Wayne Circuit Judge, Id. 802; Abbott v. Chambers, (Mich.) 21 N. W. Rep. 911; Nederlander v. Jennison, Id. 912; York v. Ingham, (Mich.) 24 N. W. Rep. 157; Locke v. Speed, (Mich.) 28 N. W. Rep. 917; Hawkins v. Newaygo Circuit Court, (Mich.) 29 N. W. Rep. 92; Shelley v. St. Charles Co., 30 Fed. Rep. 603.

Mandamus will lie against a corporation to compel it to perform a specific duty, imposed by its charter or the general law, when the right to have it performed is a complete and perfect legal right, and there is no other specific adequate remedy. State v. Southern Minnesota R. R. Co., 18 Minn. 40, (Gil. 21.)

Where there are two claimants to certain shares of stock in a corporation, and the certificates are issued to the wrongful claimant, the other has an adequate remedy by action, and *mandamus* to compel the issue of certificates to him will not lie. Baker v. Marshall, 15 Minn. 177, (Gil. 136.)

A writ of *mandamus* may be granted to compel a telephone company to furnish a telephone to one entitled to it in common with the public generally. State v. Telephone Co., (Neb.) 23 N. W. Rep. 237.

See Home Ins. Co. v. Scheffer, 12 Minn. 382, (Gil. 261, 265.)

Mandamus to settle a case. State v. Baxter, 38 Minn. 137, 36 N. W. Rep. 108.

Will not lie to compel the district court to certify a tax case. County of Brown v. Winona & St. Peter Land Co., 38 Minn. 397, 37 N. W. Rep. 949.

Cannot be granted to control or interfere with the action of an officer of the executive department of the state in his official acts, though they be such as might have been intrusted to some other officer. State v. Braden, 40 Minn. 174, 41 N. W Rep. 817.

Mandamus to compel a town to make a particular improvement on a highway held properly refused, as lying within the discretion of the board of supervisors. State v. Town of Somerset, 44 Minn. 549, 47 N. W. Rep. 163.

§ 5976. Restriction on issue of writ—On whose information to 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. 1866, c. 80, § 3; G. S. 1878, c. 80, § 3.)

See State v. Williams, 25 Minn. 340, 343.

In mandamus to enforce a purely public duty, any private citizen may move as relator. State v. Weld, 39 Minn. 426, 40 N. W. Rep. 561.

See State v. Archibald, 43 Minn. 328, 332, 45 N. W. Rep. 606.

Mandamus will not lie to compel a county treasurer to certify that all taxes have been paid, when taxes remain unpaid, though the same are illegal. State v. Nelson, 41 Minn. 25, 42 N. W. Rep. 548.

§ 5977. Alternative and peremptory writs—Form and contents.

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. 1866, c. 80, § 4, as amended 1875, c. 68, § 1; G. S. 1878, c. 80, § 4.)

The peremptory writ of *mandamus* should be issued in the first instance only upon a state of unquestionable facts, leaving no room for doubt as to the right to the performance of the act sought to be compelled, and when it is apparent and manifest that no valid excuse can be given for nonperformance. Where such is not the case the alternative writ is, in the first instance, the proper writ, or the application should be upon notice. Home Ins. Co. v. Scheffer, 12 Minn. 382, (Gil. 261.)

The supreme court has no jurisdiction to issue an alternative writ of *mandamus*. The proper practice is to apply upon notice for a peremptory writ. Harkins v. Supervisors Scott Co., 2 Minn. 342, (Gil. 294.) But see Crowell v. Lambert, 10 Minn. 369, (Gil. 295.)

A peremptory writ will be issued without notice only where the moving papers preclude the possibility of an excuse for not doing the act sought to be enforced. Id.

Notice must be given of an application for a peremptory writ, save where the duty sought to be enforced is very clear, and public or private rights would be jeopardized by delay, and where the moving papers preclude the possibility of any valid excuse for not performing the duty. Clark v. Buchanan, 2 Minn. 346, (Gil. 298.)

What variance is permissible between the alternative and the peremptory writ. State v. Weld, 39 Minn. 426, 40 N. W. Rep. 561.

§ 5978. Peremptory writ allowed, when.

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. 1866, c. 80, § 5; G. S. 1878, c. 80, § 5.)

Peremptory writ held improperly granted ex parte, commanding a county board to take action for removal of county seat. State v. County of Scott, 42 Minn. 284, 44 N. W. Rep. 64.

§ 5979. Allowance and endorsement of writ—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. 1866, c. 80, § 6, as amended 1875, c. 68, § 2; G. S. 1878, c. 80, § 6.)

§ 5980. Answer, when and how made.

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. 1866, c. 80, § 7; G. S. 1878, c. 80, § 7.)

§ 5981. Default—Peremptory writ—New matter in 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 controvail it by evidence, either in direct denial, or by way of avoidance.

(G. S. 1866, c. 80, § 8; G. S. 1878, c. 80, § 8.)

§ 5982. Writ and answer—Amendments—Issues, trial, etc.

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. 1866, c. 80, § 9; G. S. 1878, c. 80, § 9.)

Trial by jury in *mandamus* is not within § 4, art. 1, of the constitution. State v. Sherwood, 15 Minn. 221, (Gil. 172.)

A denial in the answer to the writ of any knowledge or information sufficient to form a belief as to whether the relator had received the certificate of election will not be struck out as sham. Id.

Proceedings against a railway company to compel it to bridge its tracks held properly amended by bringing in another claiming some interest in one of the tracks. State v. Minneapolis & St. L. Ry Co. 39 Minn. 219, 39 N. W. Rep. 153.

§ 5983. Effect of 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. 1866, c. 80, § 10; G. S. 1878, c. 80, § 10.)

§ 5984. Court may impose fine for neglect of duty.

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. 1866, c. 80, § 11; G. S. 1878, c. 80, § 11.)

§ 5985. Jurisdiction of district court—Mandamus to that court.

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. 1866, c. 80, § 12; G. S. 1878, c. 80, § 12.)

* See § 5987.

Under this section the granting of *mandamus* is within the exclusive original jurisdiction of the district court, and an order of such court denying an application for the writ is appealable. State v. Churchill, 15 Minn. 455, (Gil. 369.)

A party complaining that a statement of the case or bill of exceptions is erroneously settled should, ordinarily, in the first instance, make a regular application to the court or judge for a resettlement. Thereafter, if necessary, *mandamus* will lie to compel a correct settlement. State v. Macdonald, 30 Minn. 98, 14 N. W. Rep. 459.

Jurisdiction in cases to compel a railway company to adopt a tariff fixed by the railroad commission. State v. Chicago, M. & St. P. Ry. Co., 38 Minn. 281, 37 N. W. Rep. 782.

See note to § 5975.

§ 5986. Supreme and district courts—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 proceedings 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 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, c. 79, § 1; G. S. 1878, c. 80, § 13; as amended 1881, c. 40, § 1.)

See State v. Burr, cited in note to § 4823. State v. Town of Lake, 28 Minn. 362, 10 N. W. Rep. 17; State v Whitcomb, 28 Minn. 50, 8 N. W. Rep. 902; State v. Chicago, M. & St. P. Ry. Co., cited in note to § 5985.

§ 5987. Appeals.

An appeal lies to the supreme court from the district court in mandamus as in civil actions.

(G. S. 1866, c. 80, § 13; G. S. 1878, c. 80, § 14.)

An order denying a peremptory writ of *mandamus*, though the application be heard at chambers, is appealable. State v. Churchill, 15 Minn. 455, (Gil. 369.)

An order of the district court allowing a peremptory *mandamus* is appealable under

the sixth subdivision of G. S. 1878, c. 86, § 8 (§ 6140), as "a final order affecting a substantial right, made in a special proceeding;" and hence, to such an order, § 10 (§ 6142) of that chapter applies, so that the execution of the bond there authorized "stays all proceedings" upon the order, and "saves all rights affected thereby." State v. Webber, 31 Minn. 211, 17 N. W. Rep. 339.

TITLE 2.

WRITS OF PROHIBITION.

§ 5988. Issuance and contents of writ.

Writs of prohibition shall only be issued out of the supreme court, and shall be applied for upon affidavit, by motion to the court, or a judge thereof in vacation; and if the cause shown appears 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 is directed, to desist and refrain from any further proceedings in the action 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 proceedings in such action or matter.

(G. S. 1866, c. 80, § 14; G. S. 1878, c. 80, § 15.)

The writ of prohibition is issued only to restrain the exercise of judicial powers. Home Ins. Co. of St. Paul v. Flint, 13 Minn. 244, (Gil. 228.)

This court will not issue a writ of prohibition, unless it clearly appears that the inferior court is about to proceed in some matter over which it has no jurisdiction. Prignitz v. Fischer, 4 Minn. 366, (Gil. 275.) The court will not issue the writ in the first instance, but will issue an order to show cause. Id.

The writ of prohibition issues to a court only to compel it to keep within its jurisdiction. It will not lie to correct errors, or reverse illegal proceedings already had. Dayton v. Paine, 13 Minn. 493, (Gil. 454.)

A writ of prohibition ought not to issue when the aggrieved party has an ample remedy by appeal. State v. Cory, 35 Minn. 178, 28 N. W. Rep. 217.

A writ of prohibition will not lie to test the title of a de facto judicial officer to his office. State v. M'Martin, 42 Minn. 30, 43 N. W. Rep. 572.

§ 5989. Service and return of writ.

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

(G. S. 1866, c. 80, § 15; G. S. 1878, c. 80, § 16.)

§ 5990. Adoption by party of return of court or officer.

If the party to whom such writ is 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 said writ, such party shall thenceforth be deemed the defendant in such proceeding, and the person prosecuting such writ may take issue, or demur to the matters so relied upon by such defendant.

(G. S. 1866, c. 80, § 16; G. S. 1878, c. 80, § 17.)

§ 5991. Proceedings when return is not so adopted.

If the party to whom such writ is directed shall not adopt such return, 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.

(G. S. 1866, c. 80, § 17; G. S. 1878, c. 80, § 18.)

§ 5992. Judgment—Contents thereof.

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 action or matter, do issue, or a writ of consultation authorizing the court and party, or officer, to proceed in

the action 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.
(G. S. 1866, c. 80, § 18; G. S. 1878, c. 80, § 19.)

§ 5993. Prohibition absolute granted, when.

If the party to whom such first writ of prohibition is directed adopts the return of the court thereto, and judgment is rendered for the party prosecuting such writ, a prohibition absolute shall be issued; but if judgment is given against such party, a writ of consultation shall be issued as above provided.
(G. S. 1866, c. 80, § 19; G. S. 1878, c. 80, § 20.)

TITLE 3.

WRIT OF HABEAS CORPUS.

§ 5994. Who may prosecute writ.

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 proves to be unlawful.
(G. S. 1866, c. 80, § 20; G. S. 1878, c. 80, § 21.)

See State v. Buckham, 29 Minn. 462, 463, 13 N. W. Rep. 902; In re Snell, 31 Minn. 110, 16 N. W. Rep. 692.

§ 5995. Who not entitled to prosecute.

The following persons are not 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.
(G. S. 1866, c. 80, § 21; G. S. 1878, c. 80, § 22.)

If the law or ordinance under which the court assumes to convict is void, its judgment is not "a final judgment * * * of a competent tribunal." In re White, 43 Minn. 250, 45 N. W. Rep. 232.

See State v. West, 42 Minn. 147, 43 N. W. Rep. 845.

A judgment of imprisonment for a less term than the statute prescribes is merely erroneous, and the prisoner is not entitled to release on habeas corpus. In re Williams, 39 Minn. 172, 39 N. W. Rep. 65.

The jurisdiction of the tribunal over the person detained and the subject-matter may be inquired into on habeas corpus, but the writ cannot have the force of a writ of error or certiorari or appeal. State v. Kinmore, 54 Minn. 135, 55 N. W. Rep. 830.

§ 5996. Application, to whom, how, and where made.

Application for such writ shall be made by petition, signed and verified, either by the party for whose relief it is intended, or by some person in his behalf, as follows: to the supreme or district court, or to any judge thereof being within the county where the prisoner is detained; or if there is no such officer within such county, or if he is absent, or from any cause is incapable of acting, or has refused to grant such writ, then to some officer having such authority residing in any adjoining county.
(G. S. 1866, c. 80, § 22; G. S. 1878, c. 80, § 23.)

The statute conferring on judges of the supreme court power to allow writs of *habeas corpus* is constitutional. State v. Grant, 10 Minn. 39, (Gil. 22.)

The supreme court has original jurisdiction of the writ. A prisoner bound over and committed by a justice of the peace, who sues out a writ of *habeas corpus* from this court, may have a *certiorari* as ancillary thereto, to bring up the testimony received by the justice and by him returned to the district court and there filed. In re Snell, 31 Minn. 110, 16 N. W. Rep. 692.

A court commissioner may allow a writ of *habeas corpus*, returnable before himself, to issue to his own county, or to an adjoining county, where there is, in such adjoining county, no officer authorized to grant such writ. State v. Hill, 10 Minn. 63, (Gil. 45.)

A decision of one court or officer upon a writ of *habeas corpus*, refusing to discharge

a prisoner, is not a bar to the issue of another writ, based upon the same state of facts as the former writ, by another court or officer, or to a hearing or discharge thereupon. In re Snell, 31 Minn. 110, 16 N. W. Rep. 692. Distinguished, State v. Bechdel, 37 Minn. 360, 34 N. W. Rep. 334.

As to power of district judge to reverse the decision of a court commissioner in proceedings on habeas corpus, see State v. Bechdel, 38 Minn. 278, 37 N. W. Rep. 338.

If there is no judge within the county capable and willing to act, the application should be to the nearest or most accessible court or judge capable and willing to act. In re Doll, 47 Minn. 518, 50 N. W. Rep. 607.

§ 5997. Same—Proof required in certain cases.

Whenever application for any such writ is made to any officer not residing within the county where the prisoner is 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 is 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 is not produced, the application shall be denied.

(G. S. 1866, c. 80, § 23; G. S. 1878, c. 80, § 24.)

A court commissioner may allow a writ of *habeas corpus*, returnable before himself, to issue to his own county, or to an adjoining county, if there be no officer therein authorized to allow such writ. State v. Hill, 10 Minn. 63, (Gil. 45.)

§ 5998. Petition shall state what.

The petition shall state in substance:

First. 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 are known, or describing them if they are not;

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

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

Fourth. If the confinement or restraint is by virtue of any warrant, order or process, a copy thereof shall be annexed, or it shall be averred that, by reason of such prisoner being removed or concealed before 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;

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

(G. S. 1866, c. 80, § 24; G. S. 1878, c. 80, § 25.)

See State v. Billings (Minn.) 57 N. W. Rep. 206.

§ 5999. Form of writ.

Every writ of habeas corpus, issued under the provisions of this chapter, shall be substantially in the following form:

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

"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."

(G. S. 1866, c. 80, § 25; G. S. 1878, c. 80, § 26.)

§ 6000. Writ sufficient, when.

Such writ of habeas corpus shall not be disobeyed for any defect of form. It is sufficient:

First. If the person having the custody of the prisoner is designated, either by his name of office, if he has any, or by his own name; or if both such names are unknown or uncertain, he may be described by an assumed appellation; and any one who may be served with the writ shall be deemed to be the person

to whom it is directed, although it is directed to him by a wrong name or description, or to another person.

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

(G. S. 1866, c. 80, § 26; G. S. 1878, c. 80, § 27.)

§ 6001. Refusal to grant writ—Penalty.

If any officer herein authorized to grant writs of habeas corpus wilfully refuses to grant such writ when legally applied for, he shall forfeit, for every such offence, to the party aggrieved, one thousand dollars.

(G. S. 1866, c. 80, § 27; G. S. 1878, c. 80, § 28.)

§ 6002. Return to writ shall contain what.

The person upon whom any such writ is duly served shall state in his return, plainly and unequivocally:

First. Whether he has or has not the party in his custody or control, or under his restraint; and if he has not, whether he has had the party in his custody, or under his control or restraint, at any and what time prior or subsequent to the date of the writ;

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

Third. If the party is 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;

Fourth. If the person upon whom such writ is served has had the party in his control 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 shall be signed by the person making the same, and, except where such person is a sworn public officer, and makes his return in his official capacity, it shall be verified by oath.

(G. S. 1866, c. 80, § 28; G. S. 1878, c. 80, § 29.)

§ 6003. Body of person in custody to be produced—Exception.

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

(G. S. 1866, c. 80, § 29; G. S. 1878, c. 80, § 30.)

§ 6004. Disobedience to writ—Proceedings to compel obedience.

If the person upon whom such writ is duly served refuses or neglects 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 is shown for such refusal or neglect, the officer before whom such writ is returnable, upon due proof of the service thereof, shall forthwith issue an attachment against such person, directed to the sheriff of any county in this state, 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 is, until he makes return to such writ, and complies with any order that may be made by such officer in relation to the person for whose relief such writ was issued.

(G. S. 1866, c. 80, § 30; G. S. 1878, c. 80, § 31.)

§ 6005. Same—Disobedience of sheriff—Proceedings thereon.

If a sheriff neglects to return such writ, the attachment may be directed to any coroner or other person 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.

(G. S. 1866, c. 80, § 31; G. S. 1878, c. 80, § 32.)

§ 6006. Same—Sheriff, etc., to bring up prisoner, and retain him in custody.

The officer by whom any such attachment is issued, may also, at the same time or afterward, issue a precept to the sheriff or other person to whom such attachment was directed, commanding him to bring forthwith before such officer the party for whose benefit such writ was allowed, who shall thereafter remain in the custody of such sheriff or person, until he is discharged, bailed or remanded, as such officer directs.

(G. S. 1866, c. 80, § 32; G. S. 1878, c. 80, § 33.)

§ 6007. Proceedings on return of writ.

The officer before whom the party is 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 was upon commitment for any criminal charge, or not.

(G. S. 1866, c. 80, § 33; G. S. 1878, c. 80, § 34.)

A judge of a district court has power to allow a writ of *habeas corpus* returnable before himself at chambers. Savage v. Hill, 10 Minn. 63, (Gil. 45.)

See note to § 5996.

The title of the justice issuing the commitment to hold his office cannot be questioned on *habeas corpus*. Ex parte Johnson, (Neb.) 19 N. W. Rep. 594.

Where a prisoner waives his right to a jury trial under a statute permitting such waiver, and is afterwards convicted, the validity of such statute and waiver may be tested on *habeas corpus*. In re Staff, (Wis.) 23 N. W. Rep. 587.

See In re Finlen, (Nev.) 18 Pac. Rep. 827.

§ 6008. Prisoner to be discharged, when.

If no legal cause is 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.

(G. S. 1866, c. 80, § 34; G. S. 1878, c. 80, § 35.)

A person charged with crime and held to bail by the magistrate after examination, ought not to be discharged, if the magistrate had jurisdiction, and there is evidence reasonably tending to support his determination. State v. Hayden, 35 Minn. 283, 28 N. W. Rep. 659.

It is only when the judgment is not authorized by law under any circumstances in the particular case made by the pleadings, whether the trial has proceeded regularly or otherwise, that it can be said to be void, so as to justify the discharge of the defendant in custody thereunder. State v. Sloan, (Wis.) 27 N. W. Rep. 616. And see State v. Orton, (Iowa,) 25 N. W. Rep. 775; Willis v. Bayles, (Ind.) 5 N. E. Rep. 8; Holderman v. Thompson, (Ind.) Id. 175; U. S. v. Patterson, 29 Fed. Rep. 775.

§ 6009. Prisoner to be remanded, when.

The officer shall forthwith remand such party, if it appears that he is detained in custody, either:

First. 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,

Second. 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,

Third. 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,

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

(G. S. 1866, c. 80, § 35; G. S. 1878, c. 80, § 36.)

§ 6010. Prisoner held under process of court, discharged, when.

If it appears, 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:

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

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

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

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

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

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

(G. S. 1866, c. 80, § 36; G. S. 1878, c. 80, § 37.)

§ 6011. Legality of judgment, etc., not to be inquired into.

But no officer, on the return of any habeas corpus, can inquire into the legality or justice of any judgment, decree or execution, specified in the preceding twenty-first section.

(G. S. 1866, c. 80, § 37; G. S. 1878, c. 80, § 38.)

§ 6012. Prisoner held on commitment may be bailed or remanded.

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

(G. S. 1866, c. 80, § 38; G. S. 1878, c. 80, § 39.)

§ 6013. Proceedings in other cases.

In other cases the party shall be placed in custody of the person legally entitled thereto, or, if no one is so entitled, he shall be discharged.

(G. S. 1866, c. 80, § 39; G. S. 1878, c. 80, § 40.)

§ 6014. Custody of prisoner until judgment on return.

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

(G. S. 1866, c. 80, § 40; G. S. 1878, c. 80, § 41.)

§ 6015. Notice to county attorney and persons interested.

In criminal cases, notice of the time and place at which the writ is made returnable shall be given to the county attorney, if he is within the county; in other cases, like notice shall be given to any person interested in continuing the custody or restraint of the party seeking the aid of said writ.

(G. S. 1866, c. 80, § 41; G. S. 1878, c. 80, § 42.)

§ 6016. Traverse of return—Allegation of new matter.

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 are legally produced in support of such imprisonment or detention, or against the same, and so dispose of such party as justice requires.

(G. S. 1866, c. 80, § 42; G. S. 1878, c. 80, § 43.)

If the petitioner fails to plead, the case must be determined on the return. State v. Billings (Minn.) 57 N. W. Rep. 206.

See State v. Sheriff, 24 Minn. 87, 90.

§ 6017. Proceedings in case of sickness of prisoner.

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 is satisfied of the truth of such allegation, and the return is otherwise sufficient, he shall proceed to decide upon such return, and to dispose of the matter; and if it appears that the person detained is illegally imprisoned, confined, or restrained of his liberty, the officer shall order those having such person in their custody to discharge him forthwith; and if it appears that such person is legally detained, imprisoned or confined, and is not entitled to be bailed, such officer shall dismiss the proceedings.

(G. S. 1866, c. 80, § 43; G. S. 1878, c. 80, § 44.)

§ 6018. Order of discharge, how enforced.

Obedience 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 the person guilty of such disobedience shall forfeit, to the party aggrieved, one thousand dollars, in addition to any special damages such party may have sustained.

(G. S. 1866, c. 80, § 44; G. S. 1878, c. 80, § 45.)

§ 6019. Rearrest of person discharged.

No person who has been discharged upon a habeas corpus shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof, or committed, for want of bail, by some court of record having jurisdiction of the cause; or unless, after a discharge for defect of proof, or for some material defect in the commitment in a criminal case, he is again arrested on sufficient proof, and committed by legal process.

(G. S. 1866, c. 80, § 45; G. S. 1878, c. 80, § 46.)

A discharge for defect of proof merely terminates the proceeding, so that he cannot be prosecuted except by a new proceeding instituted on sufficient evidence given therein. State v. Holm, 37 Minn. 405, 34 N. W. Rep. 748. The complaint and warrant for rearrest need not be any different from what they would be if there had been no prior arrest and discharge. Id.

See In re Snell, 31 Minn. 110, 113, 16 N. W. Rep. 692.

§ 6020. Transfer or concealment of person entitled to writ —Penalty.

If any one who has in his custody, or under his control, a person entitled to a writ of habeas corpus, whether a writ has been issued or not, transfers such prisoner to the custody, or places him under the power or control, of another person, or conceals him, or changes the place of his confinement, with intent to elude the service of such writ, or to avoid the effect thereof, the person so offending shall forfeit, to the party aggrieved thereby, the sum of four hundred dollars, to be recovered in a civil action.

(G. S. 1866, c. 80, § 46; G. S. 1878, c. 80, § 47.)

§ 6021. Refusal to furnish copy of order, etc.—Penalty.

Any officer or other person refusing to deliver a copy of any order, warrant, process, or other authority, by which he detains any person, to any one who demands such copy, and tenders the fees thereof, shall forfeit two hundred dollars to the person so detained.

(G. S. 1866, c. 80, § 47; G. S. 1878, c. 80, § 48.)

§ 6022. Writ, when returnable—To be sealed.

Every writ of habeas corpus may be made returnable at a day certain, or forthwith, as the case may require, and shall be under the seal of the court.

(G. S. 1866, c. 80, § 48; G. S. 1878, c. 80, § 49.)

A writ of *habeas corpus* issued by a court commissioner under his own hand and seal, but without the seal of the court, is void. State v. Barnes, 17 Minn. 340, (Gil. 315.)

§ 6023. Service of writ—Security required of petitioner.

It can only be served by an elector of this state. The officer granting the writ may, in his discretion, require a bond in a penalty not exceeding one thousand dollars, with sufficient sureties, conditional that the obligators will pay all costs and expenses of the proceeding, and the reasonable charges of restoring the prisoner to the person from whose custody he was taken, if he is remanded. Such bond shall run to the sheriff of the county, and be filed in the office of the clerk of the court from which the writ issues.

(G. S. 1866, c. 80, § 49, as amended 1877, c. 34, § 1; G. S. 1878, c. 80, § 50.)

§ 6024. Writ, how served.

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 is confined, with any under officer, or other person of proper age, having charge, for the time, of such prisoner.

(G. S. 1866, c. 80, § 50; G. S. 1878, c. 80, § 51.)

§ 6025. Same—When person conceals himself.

If the person on whom the writ ought to be served conceals himself, or refuses 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.

(G. S. 1866, c. 80, § 51; G. S. 1878, c. 80, § 52.)

§ 6026. Return to be made, when.

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

(G. S. 1866, c. 80, § 52; G. S. 1878, c. 80, § 53.)

§ 6027. Power to issue writ for various purposes.

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 action or proceeding, civil or criminal, pending in such court, when they think the personal attendance and examination of the witness necessary for the attainment of justice.

(G. S. 1866, c. 80, § 53; G. S. 1878, c. 80, § 54.)