

1936 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1936)  
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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## PROHIBITION

**9784. Issuance and contents.**

Writ may issue where court is exceeding its legitimate powers in any matter over which it has jurisdiction if no other speedy and adequate remedy is available. 173 M271, 217NW351.

Writ issued to lower court only when that court is exceeding its jurisdiction. 173M623, 217NW494.

A writ of prohibition will not be granted where the petitioner had an adequate remedy by writ of certiorari. *Martin's Estate*, 182M576, 235NW279. See Dun. Dig. 7842.

## HABEAS CORPUS

**9739. Who may prosecute writ.****1. Unconstitutional law.**

On habeas corpus constitutionality of law under which court proceeded and jurisdiction of court may be challenged. *State v. Patterson*, 188M492, 249NW187. See Dun. Dig. 4132(76).

Constitutionality of law under which court proceeded and jurisdiction of court may be challenged in habeas corpus proceeding. *Id.*

**3. Not a substitute for appeal.**

A writ of habeas corpus cannot be used as substitute for writ of error or appeal for review of a judgment of conviction, nor serve as cover for a collateral attack on such a judgment. *State v. Wall*, 189M265, 249NW37. See Dun. Dig. 4129(56).

**3a. Office of writ.**

Where a summary court-martial has convicted a member of the National Guard, the only questions reviewable by habeas corpus are whether the military court had jurisdiction over him and power to impose the penalty inflicted. 174M82, 218NW542.

On habeas corpus, where respondent justifies detention of relator under a warrant of commitment fair on its face issued upon an adjudication of a competent court having jurisdiction, errors in proceeding prior to commitment are of no avail. *State v. Patterson*, 188M492, 249NW187. See Dun. Dig. 4132(74).

**3b. Custody of children.**

Habeas corpus lies to determine right to possession of child but court will give effect to divorce judgment. 173M177, 216NW937.

If child was awarded to third party who has never had nor sought possession of him, on controversy between parents, court will make such provision for his custody as it deems for the best interest of the child. 173M177, 216NW937.

Custody of children given to maternal grandmother as against father. 175M18, 221NW868.

Custody of child given to aunt and uncle as against father and stepmother. 176M193, 222NW927.

Fact that adjudication of delinquency by probate court committed delinquent to guardianship until 21 years of age instead of until 19 years of age, as prescribed by §8637, does not release her, before she has not yet attained the age of 19 years. *State v. Patterson*, 188M492, 249NW187. See Dun. Dig. 4431.

**4. Review of evidence.**

Governor's rendition warrant creates a presumption that accused is a fugitive from justice, and to entitle a prisoner held under such a warrant to discharge on habeas corpus evidence must be clear and satisfactory that he was not in demanding state at time alleged crime was committed. *State v. Owens*, 187M244, 244NW 820. See Dun. Dig. 3713(30).

**9740. Petition—To whom and how made.**

An order of court commissioner and writ of habeas corpus having been issued, it was error for district court judge to vacate one and quash other upon order to show cause directed to and served upon court commissioner alone, without notice to petitioner for writ, real party in interest, or his attorney. *State v. Hemenway*, 194M124, 259NW687. See Dun. Dig. 2331.

**9746. Return to writ.**

Where original warrant of governor was not produced at hearing on habeas corpus but no objection was made thereto and relator did not traverse return of sheriff which contained an alleged copy of original warrant, and in verified petition for writ it was alleged that

warrant had been issued, held, that relator was not entitled to discharge because of absence of original warrant. 172M401, 215NW863.

**9753. Held under process, when discharged.**

Scope of review by court in extradition proceeding. 178M368, 227NW176.

**9754. Bailed, remanded, etc., when.**

Where a person is held as a fugitive from justice under a rendition warrant issued by the Governor of this state, he ordinarily should not be released on bail pending a decision in a habeas corpus proceeding to test the legality of his arrest. *State v. Moeller*, 182M369, 234 NW649. See Dun. Dig. 3713.

**9760. Re-arrest of persons discharged.**

A justice of the peace has no power to amend, suspend or set aside a sentence once imposed; but when he has issued a commitment which is found to be erroneous, he may issue a new one, correctly setting forth the sentence. *Op. Atty. Gen.*, Feb. 28, 1931.

**9763. Service of writ—Bond.**

Where there has been no attempt to create a corporation de jure there can be no corporation de facto. 172 M471, 215NW845.

**9767. Appeal to supreme court.**

The trial on habeas corpus in the above court is a trial de novo. 172M401, 215NW863.

**9768. Hearing on appeal.**

179M472, 229NW582.

172M401, 215NW863; note under §9767.

Maternal grandmother awarded custody of female child in preference to father. 179M472, 229NW582.

Trial de novo. 179M532, 229NW787.

On appeal in habeas corpus proceeding, supreme court will not disturb action of trial court awarding custody of child, where all contesting persons are of excellent character and well-fitted for responsibilities of guardianship. *State v. Hedberg*, 192M193, 256NW91. See Dun. Dig. 4142.

On appeal in a habeas corpus proceeding to determine custody of a child, hearing is de novo. *State v. Sivertson*, 194M380, 260NW522. See Dun. Dig. 4142(13).

## CERTIORARI

**9769. Within what time writ issued.****1. In general.**

171M519, 214NW795; note under §9770.

On the record involved, certiorari would not give plaintiff an adequate remedy. *National Cab Co. v. K.*, 182M 152, 233NW838. See Dun. Dig. 1391.

In certiorari to review a holding of department of commerce, Supreme Court makes but a limited review and disturbs its holding only where it has gone beyond its jurisdiction or acts arbitrarily or oppressive, or without foundation in the evidence. 174M200, 219NW81.

The record certified by the tribunal, whose proceedings are under review is conclusive. 175M222, 220NW 611.

An order of the probate court, directing an executor to turn over to decedent's aunt certain funds which he claimed to hold as an individual was a final order, and reviewable by certiorari. *Martin's Estate*, 182M576, 235NW279. See Dun. Dig. 1394, 7842.

In our practice, writ of certiorari is used as a substitute for a writ of error. *Mark v. K.*, 188M1, 246NW 472. See Dun. Dig. 1391, 1402.

Extension of time to redeem from a mortgage foreclosure sale is granted by an order and not by judgment, and review of such order is by certiorari. *Swanson v. C.*, 192M81, 255NW812. See Dun. Dig. 1400.

Entry of judgment instead of order extending time for redemption from mortgage foreclosure sale under the moratorium statute did not prevent a review by certiorari. *Id.*

**9770. When served.**

Certiorari to review decision of Industrial Commission was quashed because not served upon the adverse party or his attorney within 60 days. 171M519, 214NW795.

## CHAPTER 88

## Actions against Boats and Vessels

**9774. For what liable.**

Defendant having executed a charter party in which it purported to contract as principal, is liable for breach of the contract, whether in fact contracting as principal or as agent for an undisclosed principal. 171M507, 214 NW510.

Evidence held to sustain finding that contract was breached by the failure of the vessel to report for loading within the time required by the contract; also that the delay was caused by the voluntary act of the owner; also that plaintiff had not waived its claim for damages. 171M507, 214NW510.