CHAPTER 587

WRITS OF PROHIBITION

587.01 WRITS; ISSUANCE AND CONTENTS.

HISTORY. R.S. 1851 c. 83 s. 18; 1852 Amend. pp. 15, 16; P.S. 1858 c. 73 s. 18; G.S. 1866 c. 80 s. 14; G.S. 1878 c. 80 s. 15; G.S. 1894 s. 5988; R.L. 1905 s. 4568; G.S. 1913 s. 8278; G.S. 1923 s. 9734; M.S. 1927 s. 9734.

To authorize the issuing of a writ of prohibition by the supreme court, it should clearly appear that the inferior court is about to proceed in some matter over which it possesses no jurisdiction. The danger of usurpation must be real and immediate. It is to be used with great caution and forbearance for the furtherance of justice and for securing order and regularity in the subordinate tribunals of the state. The court cannot issue it in such form as to raise an issue for trial by jury, but will issue in the first instance as an order to show cause, which may be controverted by affidavits as in other motions. Prignitz v Fischer, 4 M 366 (275); Dayton v Paine, 13 M 493 (454); State v Townsend, 70 M 58, 72 NW 825.

A writ of prohibition is an extraordinary writ issuing out of the supreme court for the purpose of keeping inferior courts or tribunals, corporations, officers, and individuals invested by law with judicial or quasi judicial authority from going beyond their jurisdiction. Home Insurance v Flint, 13 M 244 (228); Dayton v Paine, 13 M 493 (454); United States ex rel v Shanks, 15 M 369 (302); State ex rel v Probate Court, 19 M 117 (85); State ex rel v McMartin, 42 M 30, 43 NW 572; State v Townsend, 70 M 58, 72 NW 825.

It is directed to the court or other tribunal and to the prosecuting party, commending the former not to entertain and the latter not to prosecute the action or proceeding. Home Insurance v Flint, 13 M 244 (228); Dayton v Paine, 13 M 493 (454).

It is issued only to restrain the exercise of judicial powers. It will not issue to restrain the exercise by individuals or nonjudicial parties of political, legislative, or administrative functions. Home Insurance v Flint, 13 M 244 (228); Dayton v Paine, 13 M 493 (454); State ex rel v Ueland, 30 M 29, 14 NW 58; State ex rel v Peers, 33 M 81, 21 NW 860; State ex rel v Ostrom, 35 M 480, 29 NW 585.

The office of the writ is not to correct errors or reverse illegal proceedings, but to prevent or restrain the usurpation of inferior tribunals or judicial officers and to compel them to observe the limits of their jurisdiction. Dayton v Paine, 13 M 493 (454).

It is not a writ of right, but issues in the discretion of the court, and only in extreme cases where the law affords no other adequate remedy by motion, trial, appeal, certiorari, or otherwise. State ex rel v Probate Court, 19 M 117 (85); State ex rel v Wilcox, 24 M 143; State ex rel v Municipal Court, 26 M 162, 2 NW 166; State ex rel v District Court, 26 M 233, 2 NW 698; State v Cory, 35 M 178, 28 NW 217; State ex rel v Young, 44 M 76, 46 NW 204; State ex rel v Ward, 70 M 58, 72 NW 825; State ex rel v District Court, 77 M 302, 79 NW 960.

A court may lose its jurisdiction during the course of an action by reason of the subject matter passing beyond its control. State ex rel v Probate Court, 19 M 117 (85); State ex rel Young, 44 M 76, 46 NW 204.

Prohibition does not lie for an excess of jurisdiction committed during the course of the trial. State ex rel v Wilcox, 24 M 143.

In an action proceeding in the ordinary way by summons, pleadings, trial, judgment, and similar, where the cause of action is within the jurisdiction of the court, and in the course of the action any matter arises or is presented to the court which requires it to decide upon its jurisdiction, an error in such decision is to be corrected by appeal and not by prohibition. State ex rel v Municipal

Court, 26 M 162, 2 NW 166; State ex rel v District Court, 26 M 233, 2 NW 698; State v Cory, 35 M 178, 28 NW 217.

Prohibition will not lie to question the jurisdiction of the court over the person of the defendant. State ex rel v District Court, 26 M 233, 2 NW 698.

The exercise of unauthorized judicial or quasi judicial power is regarded as a contempt of the sovereign which should be promptly checked; and, in rare cases, the writ may issue to a person or body of persons not being in law a court, nor strictly officers. State v Young, 29 M 474 (523), 9 NW 737; State ex rel v McMartin, 42 M 30, 43 NW 572.

Three things are essential to justify the writ: (1) that the court, officer, or person is about to exercise judicial or quasi judicial power; (2) that the exercise of such power by such court, officer, or person is unauthorized by law; (3) that it will result in injury for which there is no other adequate remedy. It may also issue to an officer or municipal body to prevent the unlawful exercise of judicial or quasi-judicial power. State v Young, 29 M 474, 9 NW 737; State ex rel v Ostrom, 35 M 480, 29 NW 585; State ex rel v Ward, 70 M 58, 72 NW 825; State ex rel v District Court, 77 M 302,79 NW 960.

The writ will only lie where there is a want of jurisdiction of the subject matter; but jurisdiction of the subject matter means in this connection jurisdiction of the general class of cases to which the particular case belongs. It does not mean jurisdiction of the subject matter of the particular case. If the court has jurisdiction of the general class of cases to which the particular case belongs and could properly proceed on any possible state of facts, prohibition will not lie. State ex rel v Ward, 70 M 58, 72 NW 825; State ex rel v Dist. Ct. 77 M 405, 80 NW 355; State ex rel v Bazille, 89 M 440, 95 NW 211; State ex rel v Crosby, 92 M 176, 99 NW 636.

A court does not lose jurisdiction of the subject matter by making an erroneous ruling or unauthorized order. State ex rel v Dist. Ct. 77 M 405, 80 NW 355; State ex rel v Bazille, 89 M 440, 95 NW 211; Davidson's Estate, 168 M 147, 210 NW 40.

Prohibition is a preventative not a corrective remedy. State ex rel v Crosby, 92 M 176, 99 NW 636.

Prohibition lies where the probate court is about to exercise judicial power in examination of an alleged insane person not actually within the territorial limits of the county, there being no adequate remedy by appeal, certiorari, or writ of error. State ex rel v Hense, 135 M 99, 160 NW 198.

Relator appealed from an order of the railroad and warehouse commission to the district court, and the court affirmed the order, an appeal, with stay on bond, was taken to the supreme court. When the supreme court affirmed, the district court vacated its stay, and the relator obtained a writ of error to the supreme court of the United States and filed a $30,000 supersedeas bond, and obtained a writ of prohibition. As none of the proceedings in any way affects the jurisdiction or power of the district court, the writ of prohibition is quashed. State ex rel v Dist. Ct. 136 M 455, 161 NW 164.

Writ of prohibition may issue where court is exceeding its legitimate powers in a matter over which it has jurisdiction, if no other speedy or adequate remedy is available. Where an order requires a motion for a new trial to be submitted to the trial judge outside his district, against protest, a writ of prohibition should issue. State ex rel v Johnson, 173 M 271, 217 NW 351.

The writ must be discharged as the district court had jurisdiction both of the person and the subject matter. Brown v Brown, 173 M 623, 217 NW 494.

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, and a writ of prohibition will not be granted. Martin's Estate, 182 M 576, 235 NW 279.

The rule that an absolute writ of prohibition will not issue unless the petitioner has first raised the question of its jurisdiction in the subordinate tribunal is one of practice and not of jurisdiction. It would not prevent the issue in a clear case where justice required it. In the instant case the remedy of appeal is inadequate, and the writ is made absolute. State ex rel v Dist. Ct. 195 M 174, 262 NW 155.

Where a trial judge insists on trying a case after he has been disqualified by reason of filing of an affidavit of prejudice, prohibition will lie. State ex rel v Schultz, 200 M 363, 274 NW 401.

Where in a criminal case the trial court has jurisdiction over both the person and the offense, a writ of prohibition will not lie on the ground that the offense charged did not constitute a public offense. State v Laughlin, 204 M 291, 283 NW 395.

While a district has power to appoint a receiver "ex parte" in case of extreme emergency, no such facts appear to show emergency, so the writ of prohibition is made absolute. State ex rel v Dist. Ct. 204 M 415, 283 NW 738.

A writ of prohibition is an extraordinary writ issuing out of the supreme court for the purpose of keeping inferior courts or tribunals from going beyond their jurisdiction. It is not a writ to correct errors or reverse illegal poceedings, but to prevent or restrain the usurpation of inferior tribunals or judicial officers, and to compel them to observe the limits of their jurisdiction. In view of the enactment of Laws 1943, Chapter 300, a writ is not available to the petitioner. State ex rel v Johnson, 216 M 219, 12 NW(2d) 343.

Writ of prohibition to Court Christian. 20 MLR 272.

587.02 SERVICE AND RETURN OF WRIT.

HISTORY. R.S. 1851 c. 83 s. 19; P.S. 1858 c. 73 s. 19; G.S. 1866 c. 80 s. 15; G.S. 1878 c. 80 s. 16; G.S. 1894 s. 5989; R.L. 1905 s. 4569; G.S. 1913 s. 8279; G.S. 1923 s. 9735; M.S. 1927 s. 9735.

The statute provides that the writ shall be served upon the court and party, or officer, to whom it is directed. Dayton v Paine, 13 M 493 (454).

The return to an alternative writ is required to be made by the court or officer to whom it is directed. Obedience may be enforced by attachment. The notion is wholly erroneous that the relator or its attorney was under any duty to make return. The holding in Dayton v Paine, 13 M 493 (454), does not relieve the counsel in the case from the practical necessity of seeing that a return is made, even if the court or officer is not required so to do. State ex rel v Dist. Ct. 195 M 172, 262 NW 155.

587.03 ADOPTION BY PARTY OF RETURN.

HISTORY. R.S. 1851 c. 83 s. 20; P.S. 1858 c. 73 s. 20; G.S. 1866 c. 80 s. 16; G.S. 1878 c. 80 s. 17; G.S. 1894 s. 5990; R.L. 1905 s. 4570; G.S. 1913 s. 8280; G.S. 1923 s. 9736; M.S. 1927 s. 9736.

587.04 WHEN RETURN NOT SO ADOPTED.

HISTORY. R.S. 1851 c. 83 s. 21; P.S. 1858 c. 73 s. 21; G.S. 1866 c. 80 s. 17; G.S. 1878 c. 80 s. 18; G.S. 1894 s. 5991; R.L. 1905 s. 4571; G.S. 1913 s. 8281; G.S. 1923 s. 9737; M.S. 1927 s. 9737.

587.05 JUDGMENT; WRIT OF CONSULTATION ABOLISHED.

HISTORY. R.S. 1851 c. 83 ss. 22, 23; 1852 Amend. p. 16; P.S. 1858 c. 73 ss. 22, 23; G.S. 1866 c. 80 ss. 18, 19; G.S. 1878 c. 80 ss. 19, 20; G.S. 1894 ss. 5992, 5993; R.L. 1905 s. 4572; G.S. 1913 s. 8282; G.S. 1923 s. 9738; M.S. 1927 s. 9738.