

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

BY

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CHAPTER 74 (G. S. ch. 80, title 3).

WRIT OF HABEAS CORPUS.

This writ was used anterior to Car. II. to remove illegal restraint on freemen. 3 Bulst. 23; 2 Lev. 123; 3 Keble, 434. To secure the full benefit of the writ, the statute 31 Car. II. ch. 2, was enacted, and was made more effective by 56 Geo. III. ch. 100. The writ was taken from the *interdict de homine libero exhibendo* of the Roman law. Dig. 43, 29. The American statutes were taken from 31 Car. II. ch. 2, and 56 Geo. III. ch. 100, and the office of the writ is to inquire into the lawfulness of the restraint and not the justice thereof. Hurd, Hab. Corp. 210, 457; 3 Pet. 201; 7 Wheat. 38; Cooley, Const. Lim. 339.

Sections.

5297-5299. Jurisdiction.
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5311-5313. Disobedience of writ.
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JURISDICTION.

SEC. 5297. **When to be granted.**— 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. ch. 80, § 20 (21). 39 M. 65.

SEC. 5298. **When not.**— 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. ch. 80, § 21 (22). 31 M. 113; 29 M. 463.

SEC. 5299. **Not to restrain power of court, when.**— 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. ch. 80, § 53 (54). This is preservation of writs of *habeas corpus ad testificandum* and *habeas corpus ad subjiciendum*. 3 Bl. Com. 130.

APPLICATION FOR WRIT.

SEC. 5300. **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 re-

fused to grant such writ, then to some officer having such authority residing in any adjoining county.

G. S. ch. 80, § 22 (23). 10 M. 39, 63; 38 M. 280.

SEC. 5301. **Same.**— 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. ch. 80, § 23 (24). 10 M. 63.

SEC. 5302. **Petition — Contents.**— 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. ch. 80, § 24 (25). 31 M. 113.

SEC. 5303. **Penalty for refusal of copy.**— 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. ch. 80, § 47 (48).

ISSUANCE OF WRIT.

SEC. 5304. **Penalty for wilfully refusing.**— 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. ch. 80, § 27 (28).

SEC. 5305. **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, etc. (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, etc. (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, etc.”

G. S. ch. 80, § 25 (26).

SEC. 5306. Sufficiency of.— 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. ch. 80, § 26 (27).

SERVICE OF WRIT.

SEC. 5307. By whom — Security for costs.— 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. ch. 80, § 49 (50), as amended 1877, ch. 34. Approved March 6th. Amendment struck out at, * “and the service thereof shall not be deemed complete unless the party serving the same tenders to the person in whose custody the prisoner is, if such person is a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up such prisoner.” At common law any person could make legal service by delivery. Hurd, Hab. Corp. 237.

SEC. 5308. 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. ch. 80, § 50 (51).

SEC. 5309. Same.— 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. ch. 80, § 51 (52).

SEC. 5310. Concealment of prisoner — 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. ch. 80, § 46 (47).

DISOBEDIENCE OF WRIT.

SEC. 5311. Attachment for.— 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. ch. 80, § 30 (31).

SEC. 5312. Precept for prisoner.—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. ch. 80, § 32 (33).

SEC. 5313. Same — Disobedience of sheriff.—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. ch. 80, § 31 (32).

RETURN OF WRIT.

SEC. 5314. When returnable.—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. ch. 80, § 48 (49). 17 M. 340.

SEC. 5315. When and how.—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. ch. 80, § 52 (53).

SEC. 5316. Form of return.—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. ch. 80, § 28 (29).

SEC. 5317. Traverse of return.—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. ch. 80, § 42 (43).

SEC. 5318. Body 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. ch. 80, § 29 (30).

SEC. 5319. Same — When prisoner sick.—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. ch. 80, § 43 (44).

SEC. 5320. 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. ch. 80, § 40 (41).

SEC. 5321. 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. ch. 80, § 41 (42).

PROCEEDINGS ON RETURN.

SEC. 5322. Examine into facts.—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. ch. 80, § 33 (34). 10 M. 63.

SEC. 5323. When cannot question legality.—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.¹

G. S. ch. 80, § 37 (38). ¹Sec. 5298, *ante*. 31 M. 113.

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SECS. 5324-5329.]

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SEC. 5324. When prisoner to be remanded.—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. ch. 80, § 35 (36). 31 M. 113.

SEC. 5325. When to be admitted to bail.—If 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. ch. 80, § 38 (39).

SEC. 5326. Same.—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. ch. 80, § 39 (40).

SEC. 5327. When to be discharged.—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. ch. 80, § 34 (35).

SEC. 5328. Same—Held under civil process.—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. ch. 80, § 36 (37).

SEC. 5329. Enforcement of order of discharge.—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

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[SEC. 5330.]

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. ch. 80, § 44 (45).

SEC. 5330. **Re-arrest.**— 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. ch. 80, § 45 (46). 37 M. 406.