

89022

GENERAL STATUTES OF MINNESOTA

SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES
AND OTHER LAWS OF A GENERAL AND PERMANENT
NATURE, ENACTED BY THE LEGISLATURE
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

COMPILED BY

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CHAPTER 87

SPECIAL PROCEEDINGS

MANDAMUS

8266. To whom issued, etc.—

When will lie—Nature of duty to be commanded (121-182, 141+97, 46 L. R. A. [N. S.] 9).

The supreme court will not issue a writ of mandamus to compel a district judge to settle a case presented after the lapse of the statutory period, there being no abuse of judicial discretion (132-146, 155+905). Appeal and Error, ⇨571.

Mandamus is the proper remedy to compel a court to proceed with the trial of an action over which it has jurisdiction, when the only ground of reversal is that it is within its discretion to decline to exercise jurisdiction (126-501, 148+463, Ann. Cas. 1915D, 198). Mandamus, ⇨31.

Mandamus is the proper remedy to compel a municipal court to assume jurisdiction of a case removed to it by change of venue from another municipal court (128-225, 150+924). Mandamus, ⇨31.

Mandamus as proper remedy to compel county auditor to exercise his discretion in letting bids for the construction of a state rural highway where he refuses to act, not because the bids are not acceptable, but on the erroneous ground that the project has been abandoned by the county board (see 132-36, 155+1048). Mandamus, ⇨92.

Mandamus will not issue to compel the revocation of a building permit for a defect which has been corrected or which the parties are ready and willing to correct (134-73, 158+730). Mandamus, ⇨15.

Compelling city council of Brainerd to entertain citizens' petition to remove city officers (121-182, 141+97, 46 L. R. A. [N. S.] 9). Mandamus, ⇨76.

While mandamus will not lie to control the discretion of a city council in issuing a liquor license, it may issue where the council in denying a license, acts on the assumption that it is prohibited by an initiative ordinance, and not in the exercise of its discretion in respect to the particular license (134-355, 159+792). Intoxicating Liquors, ⇨74.

Mandamus will not lie to control the action of a private officer in matters depending upon judgment or discretion; but, if the admitted facts show that it is his duty to perform an official act, he may be compelled to do so by mandamus (126-367, 148+306). Mandamus, ⇨71, 72.

In view of § 6183, giving a stockholder the right to inspect the corporate books, mandamus will lie under this section, at the instance of the president and majority stockholder of a corporation, to compel an inspection of the books of the corporation, to enable relator to resist a charge of embezzlement of the corporate funds; a mere charge of crime not putting him in the attitude of one coming into court with unclean hands (135-479, 160+486). Mandamus, ⇨129.

Necessary showing—A person seeking to compel by mandamus a town board to exercise its discretion in repairing a public road must show a clear right to the relief demanded (133-160, 157+1092). Mandamus, ⇨94.

Who are parties—In mandamus to compel the repair of public roads, the persons composing the town board may properly be made defendants (133-160, 157-1092). Mandamus, ⇨151(2).

Plaintiff in an action in a municipal court, not being party or privy to the judgment in mandamus proceedings, was not bound thereby (126-264, 148+66). Judgment, ⇨707.

8267. On whose information, and when—

Where a judgment was reversed without specific direction for a new trial, and plaintiff's motion in the court below for amendment of the findings and for judgment in her favor was granted, whereupon defendant filed a motion in the trial court to vacate the order so made or to grant a new trial, and such motion was overruled, defendant's remedy is appeal, and not mandamus in the supreme court to compel the award of a new trial (128-530, 149+1070). Mandamus, ⇨4(1).

Special interest of relator (121-182, 141+97, 46 L. R. A. [N. S.] 9). Mandamus, ⇨22.

8268. Alternative and peremptory writs—Contents—

A petition and writ seeking to compel the members of a town board to repair a public road held to be too vague and indefinite to show a clear right to the relief demanded (133-160, 157+1092). Mandamus, ⇨154(3).

Where it is obvious that the reason for the action of the city council in refusing to issue a liquor license is not within the personal knowledge of the relator, he may allege such reason on information and belief (134-355, 159+792). Mandamus, ⇨154(3).

Mandamus will not issue to compel a railroad company to comply with an ordinance directing it to lower its tracks at a crossing and construct a bridge for street traffic, where the lowering of the track will affect many other crossings in the vicinity, and the ordinance is silent as to such streets (135-277, 160+773). Mandamus, ⇨15.

8271. Answer—When and how made—

In mandamus to compel construction of extension of street railway in obedience to municipal ordinance, answer held to present issue of reasonableness as against demurrer (122-163, 142+136). Mandamus, [↔](#)165.

8272. Default—New matter—Demurrer—

Scope and effect of demurrer (121-182, 141+97, 46 L. R. A. [N. S.] 9). Mandamus, [↔](#)166½.

8273. Pleadings—Issues, trial, etc.—

What constitute pleadings; motion for judgment on (129-181, 151+970). Pleading, [↔](#)350(1).

8276. Jurisdiction of district and supreme courts—

In view of this section, an original application to the supreme court for a writ directing the district court to transfer an action to another county will not be entertained, the clerk's refusal to transmit the papers not being the refusal of the court; and mandamus to coerce him is within the exclusive jurisdiction of the district court (125-522, 146+480). Courts, [↔](#)207(4).

Dismissal of appeal on question becoming moot (see 129-535, 152+654). Appeal and Error, [↔](#)781(1).

PROHIBITION**8278. Issuance and contents—**

161+164; note under § 4200.

The writ lies where a court is about to exercise judicial power in a matter in which it never had jurisdiction, and where there is no adequate remedy by appeal, certiorari, or writ of error (135-99, 160+198). Prohibition, [↔](#)10(2).

HABEAS CORPUS**8283. Who may prosecute writ—**

One imprisoned under an excess sentence improperly imposed under § 8491, because the former conviction was not alleged in the indictment, may, after serving the maximum term provided by the statute denouncing the offense of which he was convicted, sue out habeas corpus and secure his discharge, since the judgment, to the extent of the excess sentence, was rendered without jurisdiction, and petitioner was not required to resort to appeal or writ of error (132-295, 156+127). Habeas Corpus, [↔](#)30; Indictment and Information, [↔](#)114.

Ordinarily the object of the writ is to inquire whether one is restrained of his liberty legally, but in cases involving the custody of an infant the personal freedom of the infant is not involved. In such case the writ is used, not merely to determine the legal right of custody as between applicants therefor, but to accomplish the best interests of the child. The juvenile court act (§§ 7162-7175) does not abrogate the remedy by habeas corpus to determine the custody of infants; and the general plan of that act, in respect to delinquent and dependent children, is not interfered with by a determination in habeas corpus which secures the welfare of the child (123-508, 144+157). Habeas Corpus, [↔](#)99(3).

The proceeding is of a civil nature distinct from the criminal prosecution concerning which the writ issues (123-84, 142+1051). Habeas Corpus, [↔](#)1.

One at liberty on bail who voluntarily causes one of his bondsmen to surrender him into custody is not entitled to sue out writ of habeas corpus (162+353). Habeas Corpus, [↔](#)11.

The courts will not try the question of a prisoner's guilt or innocence, nor will they, on the ground that the proceedings were instituted in bad faith or from ulterior motives, review the action of the Governor in granting an extradition warrant (126-38, 147+708). Habeas Corpus, [↔](#)92(2).

8284. Petition—To whom and how made—

It is the practice of the supreme court to refuse to issue the writ in ordinary cases unless the circumstances are exceptional. Proceeding entertained, where all parties consented thereto, and an early determination of the question presented seemed desirable (127-102, 148+896, L. R. A. 1915B, 95). Habeas Corpus, [↔](#)41.

Petitions for writs of habeas corpus, unless made to the supreme court, should be addressed to the district court; and, while the court commissioner may grant them, they should be tested in the name of the presiding judge, though attestation in the name of the court commissioner is mere defect of form, cured by § 8288 (124-456, 145+167). Habeas Corpus, [↔](#)47(2), 53.

8288. When sufficient—

124-456, 145+167; note under § 8284.

8297. Held under process, when discharged—

The determination of a committing magistrate will not be disturbed on habeas corpus, where the record discloses evidence reasonably tending to support it (124-456, 145+167). Habeas Corpus, [↔](#)102.

Where respondent justifies under a commitment showing a valid conviction, but an unauthorized sentence, it is proper, in releasing petitioner from detention, to remand him to the proper court for further proceedings (125-304, 146+1102). Habeas Corpus, [↔](#)109.

8300. **Notice—To whom given—**In criminal cases, if the prisoner is confined in a town, village, city or county jail, notice of the time and place at which the writ is returnable shall be given to the county attorney of the county from which the prisoner was committed, if such county attorney is within his county; if the prisoner is confined in a state institution, said notice shall be given to the attorney general, whose duty it shall be to appear for the person named as respondent in said writ; 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 such writ. (Amended '15 c. 227 § 1)

8311. **Appeal to supreme court—**

An appeal from an order denying a writ and remanding the prisoner does not stay the criminal proceedings, so as to prevent commitment under the conviction (123-84, 142+1051). Habeas Corpus, ↪113(8).

An order discharging relator is appealable, though no stay was obtained in the court below (135-320, 160+858). Habeas Corpus, ↪113(3).

8312. **Hearing on appeal—**

135-320, 160+858; note under § 8311.

Relator, having made no application under this section, is in no position to invoke its provisions (124-456, 145+167). Habeas Corpus, ↪113(6).

CERTIORARI

8313. **Within what time writ issued—**

If an appeal lies under § 8001, certiorari is not an available remedy (161+1055). Certiorari, ↪5(1).

Certiorari, based on stipulation, and not on judgment entered, dismissed (127-519, 148+1082).

It is not necessary that all the petitioners in a ditch proceeding sought to be reviewed on certiorari be named as respondents (161+714). Drains, ↪37.

A writ issued to the judge of a district court, instead of to the district court, is not erroneous (161+714). Certiorari, ↪45.

A judgment awarding compensation under the workmen's compensation act may be opened on sufficient showing of newly discovered evidence, even after the lapse of the 60-day period for review by certiorari (134-189, 158+825). Master and Servant, ↪411.

Appealability of order denying motion to dismiss (see 129-300, 152+541). Certiorari, ↪70(1).

8314. **When served—**

On certiorari to review the action of respondent judge in a ditch proceeding, it was not necessary to serve a copy of the order allowing the writ. On certiorari to review the proceedings of respondent judge in a ditch proceeding, service of the writ upon the attorney for the petitioners in such proceeding was sufficient notice to them (161+714). Drains, ↪37.

8315. **Surety for costs in civil case—**

161+714.

8317. **When dismissed—Costs—**

Appealability of order denying a motion to dismiss (see 129-300, 152+541). Certiorari, ↪70(1).

CHAPTER 89

ASSIGNMENTS FOR BENEFIT OF CREDITORS

8326. **Requisites—**

An assignment is the exercise of a common-law right, and the assignee derives his title and power of sale from the deed of assignment, and not under the statute; and absence of approval of a sale by the court does not render the sale void, but only voidable (125-24, 145+404). Assignments for Benefit of Creditors, ↪240, 244, 246.

A sale of land by an assignee, in which all parties interested acquiesced, is not open to objection more than ten years thereafter, where the assignee was discharged after such sale was made on the ground that he had fully performed his trust (125-24, 145+404). Assignments for Benefit of Creditors, ↪250.

Nature of interest of creditor in assigned estate; garnishment thereof (see 130-392, 153+740). Assignments for Benefit of Creditors, ↪184; Garnishment, ↪31.