

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

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SECOND EDITION.

ST. PAUL:

PUBLISHED BY THE AUTHOR.

1891.

CHAPTER 73 (G. S. ch. 80, title 2).

WRIT OF PROHIBITION.

This writ was first introduced in reign of 3 Edw. I., for the purpose of preserving the rights of the crown and keeping courts in their regular channel. 3 Bl. Com. 112; 8 Bac. Abr. 206; 7 Com. Dig. 135; 2 H. Bl. 533; 5 East, 345; 1 Saund. 136. The writ issued by a superior court directed to the judge and parties to a suit in an inferior jurisdiction, commanding them to cease from prosecution of the same, upon suggestion that the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction (3 Bl. Com. 112; Vin. Abr. H., T.), and also when the court is proceeding by rules different from those which ought to be observed (Bull. N. P. 219) and when the inferior court would by proceeding defeat a legal right. 2 Chitt. Pr. 355.

Sections.

- 5291. Issuance and contents of writ.
- 5292. Service and return.
- 5293. Issue.

Sections.

- 5294. Trial.
- 5295. Judgment.
- 5296. Prohibition absolute.

SEC. 5291. **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. ch. 80, § 14 (15). 4 M. 366; 13 M. 244, 493; 15 M. 369; 19 M. 170. At common law the grounds for the writ were set forth in the affidavit, upon which a rule issued to show cause. The service of the rule had the effect of a prohibition *quousque*. Upon the return, the defendant declared or adopted the return, to which the applicant demurred or pleaded, and the issue tried as in other cases. 8 Bac. Abr. 206; 7 Com. Dig. 135; 1 Saund. 136.

SEC. 5292. **Service and return.**— 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. ch. 80, § 15 (16).

SEC. 5293. **Return — Issue.**— 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. ch. 80, § 16 (17). 4 M. 366.

SEC. 5294. **Same — Trial.**— 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. ch. 17 (18).

SEC. 5295. **Judgment.**— 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. ch. 80, § 18 (19).

SEC. 5296. **Prohibition absolute.**— 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. ch. 80, § 19 (20).