

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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SAINT PAUL 1, MINNESOTA

1944

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9707. Fines, how disposed of.

Monies referred to in §53-47 and §5872, means license and examination fees collected by board, and not fines which are imposed by courts of competent jurisdiction for violations of act, which should be disposed of in accordance with §9707. Op. Atty. Gen., (188), April 9, 1940. Fines for violation of acts relating to wholesale prod-

uce dealers should be paid to county treasurer, while fines collected under Laws 1921, c. 495, §21, should be paid to state treasurer. Op. Atty. Gen. (135a-4), Nov. 26, 1940.

When arrest for violation of traffic laws is made by sheriff money should be paid into county treasury. Op. Atty. Gen. (199B-4), Jan. 9, 1942.

CHAPTER 86

Actions to Vacate Charters, Etc., and to Prevent Usurpations

9709. To annul act of incorporation—Fraud.

For cases on quo warranto in general, see §§132, 156. Cited pursuant to contention that notice of trial is necessary in quo warranto proceeding. State v. Village of North Pole, 213M297, 6NW(2d)458. See Dun. Dig. 8068.

As authorized by our constitution and statutes, quo warranto is not the old common-law writ, but rather the information in the nature of quo warranto as left by the changes brought about by St. 9 Anne., c. 20, and came into this country by adoption in that form as a part of our common law. Id. See Dun. Dig. 8074.

9711. For usurpation of office, etc.

Cited pursuant to contention that notice of trial is necessary in quo warranto proceeding. State v.

Village of North Pole, 213M297, 6NW(2d)458. See Dun. Dig. 8068.

One claiming an office can succeed only on the strength of his own title. Id. See Dun. Dig. 8072(82, 83).

9714. Usurping office—Complaint—Judgment.

Cited pursuant to contention that notice of trial is necessary in quo warranto proceeding. State v. Village of North Pole, 213M297, 6NW(2d)458. See Dun. Dig. 8068.

9717. Judgment for usurpation—Fine.

Cited pursuant to contention that notice of trial is necessary in quo warranto proceeding. State v. Village of North Pole, 213M297, 6NW(2d)458. See Dun. Dig. 8068.

CHAPTER 87

Special Proceedings

MANDAMUS

9722. To whom issued.

1. When will lie.

School board, having refused resident children of proper age admission to its school, is a proper party to mandamus proceedings to enforce rights of children to free education. State v. School Board of Consol. School Dist. No. 3, 206M63, 287NW625. See Dun. Dig. 5769.

Where voters of school district voted to exclude children of orphan home from school, and school board acted thereon, board was proper party defendant in action in mandamus to compel admission of children to school. Id.

Mandamus will not control discretion although it will lie to compel its exercise. Snell v. T., 206M437, 289NW 44. See Dun. Dig. 5752, 5753.

Mandamus is neither law nor source of law, and as a remedy it is granted only on equitable principles. Id. See Dun. Dig. 5752, 5753.

Where a veteran was discharged prior to passage of civil service act, he could not maintain mandamus for reinstatement after passage of that act, mandamus being only available by statutory grant and such statutes being repealed by the civil service act so far as he was concerned. State v. Stassen, 208M523, 294NW647. See Dun. Dig. 5763a.

Mandamus against an officer will not issue unless there is a clear and complete right shown by petitioner to receive that which court is asked to command official to give him. State v. Hoffman, 209M308, 296NW24. See Dun. Dig. 5756.

If deputy oil inspector discharged before Civil Service Act went into effect had a civil service status under existing statute, such status was abolished by going into effect of such act and mandamus would not lie to enforce such right, though petition was filed and alternative writ was issued prior to effective date. Reed v. T., 209M348, 296NW535. See Dun. Dig. 5752b.

Repeal of veterans' preference act by civil service act took away statutory remedy of mandamus for a wrongfully discharged state employee, including a pending action in mandamus which was not perfected by final judgment, even though trial had been had before repeal, and a cause of action for damages, as long as it remained inchoate and not merged in final judgment, was equally destroyed by repeal of statute which created it. State v. Railroad and Warehouse Com'n, 209M530, 296NW906. See Dun. Dig. 5763a.

Mandamus is appropriate remedy of one whose action is erroneously abated for duration of war on ground that he is an alien enemy. Ex parte Kumezo Kawato, 317US69, 63SCR115. See Dun. Dig. 5766.

Where performance of a duty is imposed upon a judge or court without any discretion in discharge thereof, performance may be compelled to mandamus. Stenzel's Estate, 210M509, 299NW2. See Dun. Dig. 5762.

Mandamus lies to compel judge of probate by order to fix time and place of hearing on a petition for pro-

bate of a will that notice thereof might be given pursuant to statute. Id. See Dun. Dig. 5766.

Mandamus is proper remedy to compel a public officer to perform a positive statutory duty, such as duty of county auditor and treasurer to pay over to township taxes collected therefor. State v. County of Pennington, 211M569, 2NW(2d)41. See Dun. Dig. 5762.

Where duty does not permit exercise of any discretion with respect to its performance and only one course of action is open and where aggrieved party does not have an adequate remedy by appeal, as where the duty is to entertain jurisdiction of an action and the court refuses to do so, or where duty is to issue a proper process or notice and court refuses to issue the same, as, for example, the statutory notice of hearing on a petition for probate of a will, writ of mandamus will issue. State v. Delaney, 213M217, 6NW(2d)97. See Dun. Dig. 5752, 5753, 5754, 5766.

Mandamus will issue to compel judicial officers in the same manner and to the same extent as other public officers to perform duties with respect to which they plainly have no discretion as to the precise manner of performance and where only one course of action is open. Id. See Dun. Dig. 5752.

Mandamus is not a substitute for, and cannot be used as, an appeal or writ of error. Id. See Dun. Dig. 5752.

Mandamus may issue out of supreme court to compel judge of district court to comply with a mandate. Personal Loan Co. v. Personal Finance Co., 213M239, 6NW (2d)247. See Dun. Dig. 460, 5765.

Writ was denied to compel a change of venue denied for lack of diligence. Roper v. Interstate Power Co., 213M597, 6NW(2d)625. See Dun. Dig. 5764a.

Mandamus does not lie to interfere with the discretion of public officers but will be granted to compel performance of a public duty which law clearly imposes upon them. It sets in motion the exercise of discretion but does not attempt to control particular manner in which a duty is to be performed. State v. Pohl, 214M221, 8NW(2d)227. See Dun. Dig. 5753, 5762.

Mandamus does not lie to interfere with discretion of public officers, but it will be granted to compel the performance of a public duty which the law clearly imposes upon them, and it sets in motion the exercise of discretion, but does not attempt to control the particular manner in which a duty is to be performed. State v. Pennebaker, 215M79, 9NW(2d)259. See Dun. Dig. 5753, 5755.

Mandamus issued to compel court to allow a case to be proposed where there had been a stay of proceedings and there was a misapprehension as to the effect of the stay on the part of court and counsel, a rejection of the transcript by counsel for appellee being followed promptly by a motion to the court for leave to propose a case for allowance. Schmit v. Village of Cold Spring, 215M572, 10NW(2d)727. See Dun. Dig. 5766.

9723. On whose information and when.

Ordinarily, where a party has an adequate remedy by appeal, a writ of mandamus should be denied, and