

REVISED LAWS OF  
MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,  
AND OTHER LAWS OF A GENERAL AND  
PERMANENT NATURE, ENACTED  
BY THE LEGISLATURE IN  
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES  
AND FULL AND COMPLETE NOTES OF ALL  
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY  
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ST. PAUL  
WEST PUBLISHING CO.

1910

## CHAPTER 86.

## ACTIONS TO VACATE CHARTERS, ETC., AND TO PREVENT USURPATIONS.

## 4545. For usurpation of office, etc.

**Powers of Attorney General.**—The Attorney General, as the chief law officer of the state, possesses, in addition to the authority expressly conferred by statute, all common-law powers incident to and inherent in the office. State ex rel. Young v. Robinson, 101 Minn. 277, 112 N. W. 269, 20 L. R. A. (N. S.) 1127.

See note under section 1562.

## CHAPTER 87.

## SPECIAL PROCEEDINGS.

## MANDAMUS.

## 4556. To whom issued, etc.

**In general.**—The Board of Regents of the State University is an inferior tribunal, corporation, or board. Gleason v. University of Minnesota, 104 Minn. 359, 116 N. W. 650.

**4560. Writ, how issued—Order—Service.**—Writs of mandamus shall be issued upon the order of the court or judge, which shall designate the return day, and direct the manner of service thereof, and service of the same shall be by copies of the writ, order allowing same, and petition upon which the writ is granted. (R. L. 4560, as amended by Laws 1909, c. 408, § 1.)

G. S. 1894, § 5979, cited in Bailey v. Swallow, 98 Minn. 104, 107 N. W. 727.

## 4564. Effect of judgment for plaintiff—Appeal.

**Judgment—Collateral attack.**—A judgment directing issuance of a peremptory writ commanding the doing of some act, which is within the jurisdiction of the court to command, cannot be collaterally impeached or avoided in proceedings to punish disobedience. If facts arise subsequently rendering its modification proper, the exclusive remedy is by motion in the original action. State ex rel. Tuthill v. Giddings, 98 Minn. 102, 107 N. W. 1048.

## 4566. Jurisdiction of district and supreme courts.

Cited in Gleason v. University of Minnesota, 104 Minn. 359, 116 N. W. 650.

## HABEAS CORPUS.

## 4584. Proceedings on return of writ.

Cited in State ex rel. Grande v. Bates, 101 Minn. 303, 112 N. W. 260.

## 4586. Prisoner remanded, when.

Cited in State ex rel. Bales v. Bailey, 106 Minn. 138, 118 N. W. 676, 19 L. R. A. (N. S.) 775.

## 4587. Held under process, when discharged.

**Existence of court.**—The legal existence of a court organized under color of law cannot be questioned in habeas corpus sued out by a person convicted and sentenced in proceedings had before it. State ex rel. Bales v. Bailey, 106 Minn. 138, 118 N. W. 676, 19 L. R. A. (N. S.) 775.

## 4601. Appeal to supreme court.

Cited in State ex rel. Johnson v. Bryant, 99 Minn. 49, 108 N. W. 880.

§ 4602      ASSIGNMENTS FOR BENEFIT OF CREDITORS.      (Ch. 89)

**4602. Hearing on appeal.**

Cited in State ex rel. Ott v. Ott, 98 Minn. 533, 107 N. W. 1134; State ex rel. Johnson v. Bryant, 99 Minn. 49, 108 N. W. 880.

**CERTIORARI.**

[4602—]1. **Within what time writ issued.**—No writ of certiorari shall be issued, to correct any proceeding, unless such writ shall be issued within sixty days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby. ('09 c. 410 § 1)

**Historical.**—"An act limiting the time within which writs of certiorari may be issued and served, and providing for surety for costs and for taxation of costs in such cases." Approved April 22, 1909.

[4602—]2. **When served.**—Such writ must also be served upon the adverse party within said period of sixty days. ('09 c. 410 § 2)

[4602—]3. **Surety for costs in civil case.**—Each writ of certiorari in a civil case shall be indorsed by some responsible person as surety for costs. ('09 c. 410 § 3)

[4602—]4. **Costs.**—The party prevailing on a writ of certiorari in any proceeding of a civil nature shall be entitled to his costs against the adverse party; and in case such writ shall appear to have been brought for the purpose of delay or vexation, the court may award double costs to the prevailing party. ('09 c. 410 § 4)

[4602—]5. **When dismissed—Costs.**—If any writ of certiorari shall hereafter be issued contrary to any provision of this act, or shall not be served upon the adverse party within said period of sixty days, the party against which the same is so issued may have the same dismissed on motion and affidavit showing the facts and shall be entitled to his costs and disbursements the same as in other civil actions. ('09 c. 410 § 5)

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**CHAPTER 89.****ASSIGNMENTS FOR BENEFIT OF CREDITORS.****4611. Requisites.**

**Title of assignee.**—The legal title of the assignor's unexempt real estate vests in the assignee, and when the trust has been executed, or the proceedings terminated, if any real estate remains not disposed of, it reverts to the assignor by operation of law. Northwestern Mut. Life Ins. Co. v. Murphy, 103 Minn. 104, 114 N. W. 360.

See note under section 4272.

**4612. Assignment of real estate—Record.**

**Record—Notice.**—G. S. 1894, § 4228, is a registry law. When a duly certified copy of an order appointing a receiver of an insolvent is filed, it is notice of the receivership to all who thereafter deal with lands of the insolvent in the county. Noyes v. American Freehold Land Mortg. Co., 97 Minn. 38, 105 N. W. 1120.

**4618. Proof of claim—Order of payment.**

**Subd. 1.**—Money due the state for binding twine manufactured by it in its penitentiary and sold is a debt owing to the state, within sections 4618, 4633. In re Western Implement Co. (D. C.) 166 Fed. 576.