

**98. SEC. 4.** That said "the board of managers of the state hospitals" shall cause every such licensed institution to be visited by at least one of its number at least once in every year, and shall be entitled to receive twenty-five dollars each year from each institution so licensed, which sum shall be used to defray the expenses attendant upon examination and visitation of such licensed institution.

Board of managers to visit such institutions.

**99. SEC. 5.** That every person, association, corporation or institution licensed by "the board of managers of the state hospitals," under the provisions of this act, to keep an asylum, retreat or institution for the care, custody or treatment of the insane, or of persons of unsound mind, shall have the right and power, while such license remains in force and unrevoked, to receive and hold any patient or person who shall be delivered into the care, custody or charge of such licensed person, association, corporation or institution by virtue of any order or commitment of any judge or justice of any court of record of this state, or by virtue of the certificate of two respectable physicians under oath, setting forth the insanity or unsoundness of mind of such person, which certificate shall be dated within one month of the reception of such person and shall be accompanied by a request under the hand of the person by whose direction such patient is sent, stating the age and place of nativity, if known, the Christian name and surname, place of residence, occupation of such patient, and the degree of relationship, or other circumstances of connection between the patient and person requesting his admission; and each person signing such request or certificate shall annex to his name his profession or occupation, and the place of his residence, unless these facts appear on the face of the document; and every such certificate and request shall be delivered to and lodged with the superintendent or manager of the licensee upon the reception of such patient and shall be forthwith copied and entered in a book to be kept by such licensee for the purpose, together with a minute of the date of the reception of such patient.

Licensed private asylum may receive and hold patients.

**100. SEC. 6.** That within five days after the reception of such patient the licensee shall mail to "the board of managers of the state hospitals," to the address of the secretary therefor, a copy of the order and commitment or request and certificate which accompanied such patient, and within the first week of each quarter such licensee shall report in writing, mailed to the said secretary, the name, residence and physical and mental condition of every patient then in the custody of the licensee, together with the date and cause of discharge, or death of every patient who shall have been discharged or died since the last previous report, and shall keep an accurate record of all such matters.

Copy of papers received on admitting a patient to be sent to managers of state hospitals.

**101. SEC. 7.** That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and this act shall take effect July fourth, one thousand eight hundred and ninety-five.

Repealer.

## Mandamus.

1. Return to be made to the first writ.
2. Proceedings thereon, when it is returned.
3. If damages recovered there shall be no other suit.
4. Court may grant time to plead and make return.
5. Writ of error may be sued out to remove judgment.
6. Amended by section 13.
7. Amended by section 14.
8. Proceedings on application for *mandamus* to compel municipal corporation to raise amount of judgment by tax.
9. Limitation on amount that municipality may be required to raise.
10. Sum raised to be paid into court and distributed pro rata amongst creditors.
11. If claims not paid, a *mandamus* may issue the next year.
12. Applications for *mandamus* in such cases to be consolidated.
13. When writ of error will lie on denial of writ of *mandamus* or discharge of rule to show cause.
14. Writ of error to be made returnable forthwith.
15. Illegality of tax or appropriation may be pleaded in *mandamus* proceedings.

**An act for the better regulation of proceedings upon writs of mandamus.**

Rev. 180.

R. S. 996.

Passed December 2, 1794.

Return to be made to the first writ.

Proceedings thereon when it is returned.

1. That where any writ of mandamus shall issue out of the supreme court directed and delivered to any person or persons, who, by law, is or are required to make a return to such writ, such person or persons shall make his or their return to the first writ of mandamus.

2. That from and after the passing of this act, as often as any writ of mandamus shall issue out of the said supreme court, and a return shall be made thereunto, it shall and may be lawful to and for the person or persons, suing or prosecuting such writ of mandamus, to plead to or traverse all or any the material facts contained within the said return; to which the person or persons, making such return, shall reply, take issue, or demur; and such further proceedings, and in such manner, shall be had therein, for the determination thereof, as might have been had, if the person or persons, suing such writ, had brought his or their action on the case for a false return; and if any issue shall be joined on such proceedings, the person or persons suing such writ, shall and may try the same in such place as an issue joined in such action on the case should or might have been tried; and in case a verdict shall be found for the person or persons suing such writ, or judgment given for him or them upon a demurrer, or by nil dicit, or for want of a replication, or other pleading, he or they shall recover his or their damages and costs, in such manner as he or they might have done in such action on the case as aforesaid; and such damages and costs shall and may be levied by fieri facias, or capias ad satisfaciendum, as in other cases; and a peremptory writ of mandamus shall be granted, without delay, for him or them for whom judgment shall be given, as might have been if such return had been adjudged insufficient, and in case judgment shall be given for the person or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in manner aforesaid. (a)

(a) 1. *Of application for mandamus.*—A mandamus will not be granted against a township committee until after they have had due notice of the motion, *Anon.*, 2 *Hal.* 192. That such notice was given may be proved by affidavit. *Dyer v. Ludlam*, 1 *Har.* 531. A mistake in names, made by commissioners in assessing damages, not affecting the rights of the parties, cannot be inquired into on an application for a mandamus. *State, Cleveland v. Orange*, 2 *Vr.* 131. Mandamus will not lie to a township committee where it appears that they have not the power to do what the relator seeks to have done. *Freeholders of Ocean v. Township of Lacey*, 13 *Vr.* 536. Private rights against corporations or their officers, depending wholly on contract, will not be enforced by mandamus. *Rosenfeld v. Einstein*, 17 *Vr.* 479. A director in a private corporation prayed for a mandamus against his codirector, commanding the latter to permit the former to have at all times an equal share and control with him in the management of the company's affairs. The writ was refused because the prayer was too general and too broad. *Id.* If *de facto* officers of a municipality, being the governing body, contract a debt on behalf of the municipality, pass the claim and order the treasurer to pay the bill, and the treasurer, having funds of the municipality, refuses to pay, mandamus against the treasurer is the proper remedy. *Harvey v. Philbrick*, 20 *Vr.* 374. A bill for expenses for detection of offenders against the criminal laws, properly verified by affidavit, approved by the prosecutor of the pleas and approved and certified by the presiding judge of the court of oyer and terminer, must be paid by the board of chosen freeholders on presentation, and such payment will be enforced by mandamus. *Irving v. Applegate*, 20 *Vr.* 376. A writ of mandamus will not issue to compel a justice of the peace to alter an entry made in his docket of the date at which an appeal bond was filed and approved by him. *Mooney v. Edwards*, 22 *Vr.* 479. Mandamus is the appropriate remedy to effect the restoration of a member of a private corporation who has been irregularly removed from membership. *Zelliff v. Knights of Pythias*, 24 *Vr.* 536. *Sibley v. Carteret Club of Elizabeth*, 11 *Vr.* 295. Mandamus proceeding has not the quality of a writ of error to revise and overturn faulty judgments. *Kirchgeessner v. Board of Health*, 24 *Vr.* 594. A mandamus will not be allowed to compel the performance, by township officers, of duties respecting the division of township property and debts between an old and a newly-created township, imposed by the provisions of a local and special act creating such township, such act being unconstitu-

tional. *Lakewood v. Brick*, 26 *Vr.* 275. A private relator may not, by mandamus, intervene between a municipal council, empowered by its charter to build public sewers, and the committee directed by ordinance to execute the work of constructing a particular sewer, when it appears that the council has refused to make any appropriation therefor and opposes the granting of the writ. *St. Vincent de Paul v. Bordentown*, 27 *Vr.* 148. See, also, *O'Hara v. Fagan*, 27 *Vr.* 279.

2. *Of allowance and nature of writs of mandamus.*—In general a peremptory mandamus is not granted in the first instance except by consent. *Anon.*, 6 *Hal.* 93. Where there is no question of fact in dispute, and the matter is of public interest in relation to an office of short term, a peremptory mandamus may properly issue. *State, Love v. Freeholders of Hudson*, 6 *Vr.* 269. *State, Herder v. Hunterdon*, 7 *Vr.* 363. *State, Kelly v. Paterson*, 6 *Vr.* 196. After a full hearing on a rule to show cause, a peremptory mandamus will be issued to require a municipal board of finance to appoint arbitrators as directed by an act of the legislature. *Cleveland v. Jersey City*, 9 *Vr.* 258. The court, in their discretion, may order an alternative mandamus on making a rule to show cause absolute. *Hugg v. Camden*, 10 *Vr.* 620. Mandamus to open a road ought to be, in the first instance, an alternative and not a peremptory writ. *State v. Elkinton*, 1 *Vr.* 335. The object of the alternative writ is to give the opposing party the benefit of a return and a full hearing on the merits. *State, Kelly v. Paterson*, 6 *Vr.* 198. An alternative writ takes the place of a declaration and must conform thereto in the essentials to good pleading. *Fairbank v. Sheridan*, 14 *Vr.* 82. *Rader v. Union*, 14 *Vr.* 518. If defective, it may be quashed or demurred to before a return is made. *Id.* If informal, a new writ may be had on payment of costs. *Id.* The prayer for relief in the alternative writ must be in exact conformity with the legal obligation of the defendant. *Rader v. Union*, *supra*. Where the court, on demurrer to an alternative mandamus, holds the writ good and the demurrer bad, the relator is entitled to judgment unless the defendant shows a substantial defense, which can be presented by a return. No costs can be awarded to the relator who succeeds on a demurrer to an alternative mandamus. *Hopper v. Freeholders of Bergen*, 23 *Vr.* 313. When an office is full *de facto*, of a person claiming it under color of right, the proper remedy to test the claimant's title is *quo warranto*, and not mandamus. *Leeds v. Atlantic City*, 23 *Vr.* 332.

3. *Of quashing writs of mandamus.*—A motion to quash an alternative writ of mandamus, granted after argument upon notice, will not be entertained. *Mercer Freeholders v. Pennsylvania R. R. Co.*, 12 *Vr.* 250, 13 *Vr.* 490, 16 *Vr.* 82. A return to an alternative writ commanding the respondents to extend a brick sewer in a certain manner, will not be quashed where it shows substantial difficulties in the construction of the sewer, adequate relief provided for by another sewer and a want of funds or authority to raise them. *Gallager v. Jersey City*, 16 *Vr.* 465. If a return to an alternative writ be manifestly false, frivolous, or calculated to embarrass or delay the remedy sought, it will be quashed in a summary way, on motion, and a peremptory writ awarded. *Id.* A peremptory writ, issued to enforce a

3. *Provided always*, if any damages shall be recovered, by virtue of this act, against any such person or persons, making such return to such writ as aforesaid, he or they shall not be liable to be sued in any other action or suit, for the making such return.

If damages recovered, a bar.

4. That it shall and may be lawful to and for the said supreme court to allow to such person or persons respectively, to whom any writ of mandamus shall be directed, or to the person or persons who shall sue or prosecute the same, such convenient time respectively to make a return, plead, reply, rejoin or demur, as to the said court shall seem just and reasonable.

Court may allow time to make return and plead.

Supplement.

Approved March 17, 1870.

P. L. 1870, p. 39.

5. SEC. 1. That in all cases when upon any such proceedings had upon mandamus as mentioned in the act to which this is a supplement, judgment shall be given upon a verdict, or upon a demurrer or other issue, in fact or in law, joined upon any pleadings in pursuance of said act, it shall be lawful for any party to the record in any of such cases, who shall think himself aggrieved by such judgment, to sue out and prosecute a writ of error for the purpose of removing the same, and such like proceedings shall thereupon be had and taken, and such costs awarded as in ordinary cases of writs of error upon judgments in personal actions.

Writ of error may be sued out to remove judgment, &c.

Supplement.

Approved March 29, 1878.

P. L. 1878, p. 242.

- 6. SEC. 1. [Amended by Sec. 13, *post.*]
- 7. SEC. 2. [Amended by Sec. 14, *post.*]

Supplement.

Approved March 3, 1880.

P. L. 1880, p. 102.

8. SEC. 1. That whenever application is made for a writ of mandamus to require a municipal corporation to raise, by taxation, any judgment against it, the court to which such application is made shall, at the request of such municipal corporation, upon a rule to show cause, or upon affidavits taken on due notice, or otherwise, in such manner as the court shall prescribe, ascertain and determine :

Procedure on application for mandamus to compel municipal corporation to raise judgment by tax.

- I. The total indebtedness of such municipal corporation, the time when payable and the rate of interest payable thereon ;
- II. The real value for purposes of taxation of the taxable property within such corporation ;
- III. The amount required to be raised within such corporation for necessary expenses for municipal and other purposes during the current year ; and

judgment and execution against a municipal corporation, will not be quashed unless it clearly changes or enlarges, in a material matter, the terms of the alternative writ or rule absolute by which it was issued. *Brown v. Rahway*, 22 Vr. 279.

4. *Of service and return of writs of mandamus.*—The writ should be delivered or shown to the person to whom it is directed. *State v. Elkinton*, 1 Vr. 335. It may be served by a person not an officer, although service by the latter is better. *Ferguson ads. State*, 2 Vr. 289, 291. A return showing that the defendant has not the power to do the act is good. *State, Roll v. Perrine*, 5 Vr. 254, 257. The prosecutor of a mandamus may demur to the return. *Silverthorn v. Warren R. E. Co.*, 4 Vr. 173. A return of an overseer of the highway that at the time the writ was served on him he was not such officer is good. *State v. Halliday*, 3 Hal. 265. A judge's return cannot be contradicted by affidavits. *Benedict v. Howell*, 10 Vr. 221. A mandamus directed to a foreign corporation engaged in business in this state, commanding the performance of some duty growing out of that business, may be legally served upon any officer of the company in this state upon whom lawful service could have been made, according to the ancient common law, if the corporation were domestic. *Mercer Freeholders v. Pennsylvania R. E. Co.*, 13 Vr. 490. But see Secs. 149 and 150 on page 939, *ante*. If a writ is directed to one person, the original should be delivered to him ; if directed to several, the original should be delivered to one and copies left with the others. *Mercer Freeholders v. Pennsylvania R. E. Co.*, 12 Vr. 250, 13 Vr. 490. If the

duty commanded is incumbent upon a corporation, the writ should be directed either to the corporation or to the select body within the corporation whose duty it is to perform the act commanded or to secure its performance. *Ib.* The only means of compelling a return to a writ of mandamus, or obedience to its command, is by attachment. *Ib.* A return must be made to a peremptory writ of mandamus as well as to the alternative. *Ib.* Where the writ, issued to enforce a judgment and execution against a municipal corporation, was served on the assessors of taxes after the duties of the assessors were completed, by statute, for any particular year, the writ will not be quashed, but the time for return will be extended. *Brown v. Rahway*, 22 Vr. 279.

5. *Of enforcing obedience to writs of mandamus.*—The operation of a mandamus being arrested after its service by an arrangement made between the council and the party obtaining the mandamus, the council will not be attached for failing to obey the mandamus. *Rahway Savings Institution v. Rahway*, 21 Vr. 350. Service of a rule to show cause why a party should not be attached for contempt in not obeying a writ of peremptory mandamus must be proved to have been made upon the party before the rule will be made absolute. *Brown v. Rahway*, 24 Vr. 156. The only means of compelling a return to a writ of mandamus, or obedience to its command, is by attachment. *Freeholders of Mercer v. Pennsylvania R. E. Co.*, 12 Vr. 250.

IV. The highest rate of taxation capable of being imposed on such corporation without injury to the interests of the creditors of the corporation whose claims are not yet due. (a)

Limitation on amount that may be required to be raised.

9. SEC. 2. That it shall not be lawful to require any municipal corporation by mandamus to raise for any such judgment, in any one year, more than such sum as, in addition to the amount found to be required for necessary expenses as aforesaid, will be raised in such municipal corporation by imposing the highest rate of taxation as determined in the manner aforesaid, and any sum ordered to be raised by taxation shall be included in the next annual tax levy for such municipal corporation.

Sum so ordered raised to be paid into court and distributed pro rata.

10. SEC. 3. That the sum so ordered to be raised may be required to be paid into said court, and may be distributed by said court pro rata among creditors having judgments against said corporations, and who, during a time to be fixed by the court, shall apply to the court and make due proof of their judgments as required by said court.

If claims not discharged a mandamus may be issued in next year.

11. SEC. 4. That if the sum so ordered to be raised shall not discharge all the claims so proved, the court shall have the power to make the same determination in the next year, and thereon to issue a mandamus in the same manner as is above provided, and so afterwards until the sums so raised shall discharge the judgments so proved.

While one application pending, all subsequent ones to be consolidated with it.

12. SEC. 5. That after one application is made for a mandamus against a municipal corporation to require it to raise by taxation any judgment against it, all subsequent applications, while the first is pending under this act, shall be consolidated with the first, and shall be treated and considered as made at one and the same time and be proceeded with in only one proceeding, and one writ of mandamus alone shall issue upon all the applications on which the court shall determine a writ should issue.

#### Amendatory act.

Approved March 3, 1881.

P. L. 1881, p. 72.

13. SEC. 1. That the first section of the act entitled "A further supplement to an act entitled 'An act for the better regulation of proceedings upon writs of mandamus,' passed December second, one thousand seven hundred and ninety-four," which said supplement was approved March twenty-ninth, one thousand eight hundred and seventy-eight [see Sec. 6, *ante*], be and the same is hereby amended so as to read as follows:

When writ of error will lie on denial of writ or discharge of rule to show cause.

[That where an application has heretofore been made, or shall hereafter be made, for a writ of alternative or peremptory mandamus, or where a rule to show cause why such writ should not be issued has heretofore been obtained, or shall hereafter be obtained, the said writ being desired for the purpose of compelling any officer or officers of this state, or of any county, township, or school district in this state, or the mayor and common council, or the mayor and board of aldermen, or any officer or officers of any city or other municipal corporation of this state, to perform a duty or make a payment required by law, and such writ has been or shall be denied, or such rule has been or shall be discharged, by the supreme court of judicature of this state, and such denial of said writ, or such discharge of said rule is the legal consequence necessarily resulting from a determination by said court of the question of the constitutionality or unconstitutionality of any statute of this state, that being the main question brought before the court for adjudication and the principal ground of the litigation between the parties, it shall be lawful for the relator or relators, at any time within one year next after the date of entry of the rule of said court denying said writ, or discharging said rule to show cause, to sue out and prosecute a writ of error to remove the proceedings into the court of errors and appeals, which court shall thereupon review the said proceedings and

(a) When a municipal corporation, having a general power to levy taxes to pay its debts, enters into a contract, the legislature cannot take away or substantially impair such taxing power so far as relates to such contracts. *Rahway v. Munday*, 15 Pr. 395, affirming S. C., 14 Pr. 338. In such case, if the corporation refuses to exert its taxing power in favor of such contractor, a mandamus to compel such action is a right which cannot be taken away or impaired by subsequent legislation.

*Id.* The city of Rahway, having this power to tax, issued certain bonds. A holder of some of such obligations proceeded under the act of 1878, after obtaining judgment, to serve a copy of his execution on the assessors of the city, who refusing to assess the sums so due, the judgment creditor applied for a mandamus. *Held*, that he was entitled to such writ, the act of 1880, restricting the use and effect of the writ of mandamus, being held to be unconstitutional. *Id.*

the action of the supreme court thereon, and make determination in reference thereto.]

14. SEC. 2. That the second section of the said supplementary act [see Sec. 7, *ante*] be and the same is hereby amended so as to read as follows :

[That the said writ of error shall be made returnable forthwith, and upon return thereof said court of errors and appeals shall require an immediate and speedy assignment of errors and joinder in error, and upon such short notice as may by the court last aforesaid be directed, shall hear and determine the cause during the term to or in which said writ of error is returnable, if possible so to do without necessitating the postponement of other business of said term to a subsequent term; and on reversal the supreme court shall take action accordingly.]

Writ of error to be made returnable forthwith.

Hearing.

#### Supplement.

Approved March 19, 1895.

P. L. 1895, p. 339.

15. SEC. 1. That in all proceedings by mandamus, to enforce the collection or payment of a tax or appropriation, it shall and may be lawful to plead and show as a defense that such tax or appropriation is in whole or in part illegal.

Illegality of tax or appropriation may be pleaded in mandamus proceedings.

## Marriages, Births and Deaths.

1. Within what degrees marriages are prohibited.
2. Amended by sections 6 and 7.
3. Amended by section 8.
4. Penalty for marrying minors without consent of parent or guardian.
5. Amended by section 9.
6. Amended by section 7.
7. Who authorized to solemnize marriages.
8. Regulations concerning the marriage of minors.
9. Record and return of marriage of minors.
10. Justices of the supreme court, the chancellor and vice chancellors may solemnize marriages.
11. Certificate of marriage to be transmitted to proper officer. What certificate shall set forth.
12. Certificate of birth to be transmitted to the proper officer. What certificate shall set forth. Duty of assessors and clerks.
13. Physicians to furnish undertaker with certificate of death. What certificate shall set forth.
14. Certificates of marriages and births to be transmitted to registrars, clerks or assessors.
15. Certificate of death to be delivered to registrars, clerks or assessors. Permit for burial to be issued.
16. In absence of clerk or registrar, judge of court or justice of peace may issue permit for burial. Copy of permit transmitted to whom.
17. Proceedings in case bodies are brought into this state for burial.
18. Proceedings in case of removal of bodies from this state.
19. Keepers of cemeteries to keep record of interments.
20. Undertakers to transmit burial certificates to assessors.
21. Penalty for making false certificates.
22. Amended by section 27.
23. Certificates of marriages, births and deaths to be alphabetically arranged by superintendent of bureau of vital statistics.
24. State bureau of vital statistics to prepare blank forms of certificates, &c. Duties of assessors, registrars and clerks.
25. Penalties, how and by whom recovered.
26. Repealer.
27. Assessors, clerks and registrars to transmit certificates to bureau of vital statistics. Record to be kept in certain cities.

### I. Who may not marry.

R. S. 376, 778.

#### An act concerning marriages, births and deaths.

P. L. 1848, p. 155.  
 " 1851, p. 435.  
 " 1856, p. 129.  
 " 1862, p. 161.  
 " 1863, p. 472.  
 " 1816, p. 960.  
 " 1872, p. 27.

Revision—Approved March 27, 1874.

1. That no man or woman shall intermarry within the degrees hereafter named, that is to say : (a)

(a) A marriage between a man and woman related within the degrees prohibited by law is not void, but voidable, and until dissolved by a court of competent jurisdiction must, in all col-

lateral proceedings, be treated as valid. *Boylan v. De Inzer*, 18 *Stew.* 465.