

MANDAMUS.

CHAPTER 13.

AN ACT DEFINING THE ACTION OF MANDAMUS
AND PRESCRIBING THE PRACTICE THEREIN.

*Be it enacted by the Legislative Assembly of the Territory
of Dakota :*

Writ of
mandamus

Section 1. That the writ of mandamus shall be the order of a court of competent jurisdiction, and issue from the district court, commanding an inferior tribunal, corporation, board or person, to do or not to do an act, the performance or omission of which, the law specially enjoins as a duty resulting from an office, trust or station, and it is granted on the complaint of any private party aggrieved, without the concurrence of the district attorney for the people of the Territory; or on the complaint of the people of the Territory, by the district attorney, when the public interest is concerned, and it is in the name of such private party, or of the people of the Territory, as the case may be brought.

What plaintiff
must state

Sec. 2. The plaintiff in such action shall state his claim fully, and shall also state facts sufficient to constitute a cause for such claim; and shall also set forth that the plaintiff, if a private individual, is personally interested therein, and the extent of such interest, and that he may sustain damage by the non-performance of such duty, and that performance thereof has been specially demanded by him, and refused or neglected, and shall pray a writ of mandamus commanding the defendant to fulfill such duty.

Discretion

Sec. 3. Where a discretion is left to an inferior tribunal the writ of mandamus can only compel it to act. It cannot control the discretion of such inferior tribunal.

Sec. 4. The writ may also be issued by the supreme court to any district court if necessary, and also in any other case where it is necessary to enable it to exercise its legitimate powers.

May be issued
by supreme court

Sec. 5. The pleadings and other proceedings in any action in which a writ of mandamus is prayed, shall be the same in all respects as in other civil actions, except as herein charged.

Pleadings and
proceedings

Sec. 6. Upon the filing of a complaint in an action of mandamus, the plaintiff must present the same to a judge of the supreme or district court for an allowance of an alternative writ of mandamus.

Filing of
complaint.

Sec. 7. If such judge upon an examination of such complaint, is of the opinion that cause of action is set out therein, he shall make an order that the defendant forthwith perform the act or acts, the omission of which is complained of in such complaint; or that such defendant show cause if any exists, at the next term of the proper court, why a peremptory mandamus should not issue.

Upon examina-
tion of

Sec. 8. Upon the filing of such order in the proper clerk's office, the clerk must immediately issue such alternative writ of mandamus; which writ shall be served and returned as a summons and in like manner.

Upon filing of
such order

Sec. 9. The defendant may state any matter in his answer which constitutes a defence or furnishes a reason why the peremptory writ of mandamus should not issue.

Defendant may
state,—what

Sec. 10. If, upon the trial of the issue joined in such action, the issue is found in favor of the plaintiff, the court shall order the peremptory writ of mandamus to issue forthwith.

Trial of issue
joined

Sec. 11. The writ shall merely command the performance of the act and shall be directed to the defendant in person, and returnable forthwith, and no return except that of full compliance shall be allowed; but time for compliance with the command of the writ may be given in the discretion of the court.

Writ shall
merely command

Sec. 12. The court upon the application of the plaintiff may proceed against the defendant by attachment, or may direct that the act be performed by the plaintiff or some other person appointed by the court.

Proceed by
attachment

During the pendency of action

Sec. 13. During the pendency of the action, the court or any judge thereof, in vacation, may make temporary orders for preventing damage or injury to the plaintiff until the cause is decided.

When people are a party

Sec. 14. When the people of the Territory are a party, the attorney may appeal without security.

Action shall not lie,—where

Sec. 15. The action of mandamus shall not lie in any case, where the plaintiff has a plain, speedy and adequate remedy in the ordinary cause of civil actions.

Act to take effect —When

Sec. 16. This act shall be in force and effect from and after its passage and approval.

Approved, January 9th, 1869.

MEDICAL PROFESSION.

CHAPTER 14.

AN ACT TO PROTECT THE CITIZENS OF DAKOTA TERRITORY, AND ELEVATE THE STANDING OF THE MEDICAL PROFESSION.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

Unlawful for what. Provided

Section 1. That it shall be unlawful for any person within the limits of said Territory, who has not attended two full courses of instruction and graduated at some school of medicine, either of the United States or some foreign country, or who cannot produce a certificate of qualification from some State or county medical society, and is not a person of good moral character, to practice medicine in any of its depart-