

points or places of business established by said incorporation shall be deemed and considered as agencies, and all such agencies shall make return of property, and reports of the business of their respective agencies at Yankton, at which place the business of said incorporation shall be consolidated.

Take effect  
when.

Sec. 9. This act shall take effect and be in force from and after its passage, and the legislative assembly hereby reserve the right to alter, amend, or repeal this act or any part thereof at pleasure.

APPROVED January 3, 1863.

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## H A B E A S C O R P U S .

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### CHAPTER 44.

#### AN ACT REGULATING THE PROCEEDINGS ON HABEAS CORPUS.

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

Application for  
writ of habeas  
corpus.

Section 1. If any person shall be committed or detained for any criminal or supposed criminal matter, it shall and may be lawful for him to apply to the supreme or district court, in term time, or any judge thereof in vacation, for a writ of habeas corpus, which application shall be in writing, and signed by the prisoner or some person on his behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. The said court or judge to whom the said application shall be made, shall forthwith award the said writ of habeas corpus, unless it shall

appear from the petition itself, or from the document annexed, that the party can neither be discharged nor admitted to bail, nor in any other manner relieved; which said writ, if issued by the court, shall be under the seal of the court, if by a judge, under the hand of a judge, and shall be directed to the person in whose custody the prisoner is detained, and made returnable forthwith, to the intent that no officer, sheriff, jailer, keeper, or other person, to whom such writ shall be directed, may pretend ignorance thereof. Every such writ shall be indorsed with these words, "by the habeas corpus act;" and whenever the said writ shall, by any person, be served upon the sheriff, jailer, or keeper, or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his under officers or deputies, at the jail or place where the prisoner is detained, he, or some of his under officers or deputies, shall, upon payment or tender of the charges of bringing said prisoner, to be ascertained by the court or judge awarding the said writ, and indorsed thereon, not exceeding fifteen cents per mile, and upon sufficient security given to pay the charges carrying him back, if he shall be remanded, make return of such writ, and bring or cause to be brought, the body of the prisoner, before the court or judge who granted the writ, or in case of the adjournment of the said court, or absence of the judge, then before any of the judges aforesaid, and certify the true cause of his imprisonment, within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable; if beyond the distance of twenty miles, and not above one hundred miles, then within ten days; and if beyond the distance of one hundred miles, then within twenty days after the delivery of the writ as aforesaid, and not longer.

Sec. 2. When any person, not being committed or detained for any criminal or supposed criminal matter, shall be confined or restrained of his or her liberty, under any color or pretence whatever, he or she may apply for a writ of habeas corpus as aforesaid. Application shall be in writing, signed by the party or some person on his behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she

Service of writ.

Payment of charges.

Body brought before the judge who granted the writ

Person not committed on criminal matters restrained of his liberty.

is detained, which application or petition shall be verified by the oath or affirmation of the party applying, or some other person on his or her behalf. If the confinement or restraint is by virtue of any judicial writ, or process, or order, a copy thereof shall be annexed thereto, or an affidavit made that the same has been demanded and refused; the same proceedings shall thereupon be had in all respects as are directed in the preceding section.

Return of the writ; day fixed for the hearing.

Amendment of the return.

Causes of discharge of prisoner from custody.

Sec. 3. Upon the return of the writ of habeas corpus, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time. The said prisoner may deny any of the material facts set forth in the return, or may allege any fact to show, either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge, which allegations or denials shall be made on oath. The said return may be amended by leave of the court or judge before or after the same is filed, as also may all suggestions made against it, that thereby material facts may be ascertained. The said court or judge shall proceed in a summary way to settle the said facts by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner and the person who holds him in custody, and shall dispose of the prisoner as the case may require; if it appears that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:

First: When the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum, or person.

Second: Where, though the original imprisonment was lawful, yet, by some act, omission, or event, which has subsequently taken place, the party has become entitled to his discharge.

Third: Where the process is defective in some substantial form required by law.

Fourth: Where the process, though in proper form, has been issued in a case or under circumstances where the laws do not allow process or orders for imprisonment or arrest to issue.

Fifth: When, although in proper form, the process has been issued or executed by a person either unauthorized to issue or

execute the same, or where the person having the custody of the prisoner under such process, is not the person empowered by law to detain him.

Sixth: Where the process appears to have obtained by false pretence or bribery.

Seventh: Where there is no general law, nor any judgment, order, or decree of a court, to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding.

No court or judge, on the return of a habeas corpus, shall, in any other manner inquire into the legality or justice of a judgment or decree of a court legally constituted; in all cases where the imprisonment is a criminal, or supposed criminal matter, if it shall appear to the said court or judge that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority, or the process may have been informally made, or without due authority, or the process may have been executed by a person not authorized, the court or judge shall make a new commitment in proper form, and directed to the proper officer, or admit the party to bail, if the case be bailable.

Judge shall not in any other manner enquire into the justice of judgment.

Sec. 4. When any person shall be admitted to bail on habeas corpus, he shall enter into recognizance, with one or more securities, in such sum as the court or judge shall direct, having regard to the circumstances of the prisoner, and the nature of the offense, conditioned for his or her appearance at the next district court, to be holden in and for the county where the offense was committed, or where the same is to be tried; where any court or judge shall admit to bail or remand any prisoner brought before him or them on any writ of habeas corpus, it shall be the duty of the said court or judge, to bind all such persons as do declare anything material to prove the offense with which the prisoner is charged by recognizance, to appear at the proper court having cognizance of the offense, on the first day of the next term thereof, to give evidence touching the said offense, and not to depart the said court without leave: which recognizance so taken, together with the recognizance entered into by the prisoner when he is admitted to bail, shall be certified and returned to the proper court, on the first day

Persons to give recognizance with security.

of the next succeeding term thereof; if any such witness shall neglect or refuse to enter into a recognizance, as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to jail until he shall enter into such recognizance, or he be otherwise discharged by due course of law; if any judge shall refuse or neglect to bind any such witness or prisoner by recognizance, when taken as aforesaid, he shall be deemed guilty of a misdemeanor in office, and be proceeded against accordingly.

Judge neglecting to bind witness as guilty of misdemeanor.

Remanding prisoner shall be by order of court; proceedings in case of second writ.

Sec. 5. When any prisoner, brought up on a habeas corpus, shall be remanded to prison, it shall be the duty of the court or judge remanding him; if such prisoner shall obtain a second writ of habeas corpus, it shall be the duty of such sheriff, or other person to whom the same shall be directed, to return therewith the order aforesaid, and if it shall appear that the said prisoner was remanded for any offense adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

Power of judge under second writ.

Sec. 6. It shall not be lawful for any court or judge, on a second writ of habeas corpus obtained by such prisoner, to discharge the said prisoner, if he is clearly and specifically charged in the warrant of commitment with a criminal offense, but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail, where the offense is bailable by law, or remand him to prison; where the offense is not bailable, or where such prisoner shall fail to give the bail required.

Persons once discharged, not to be again committed, unless again indicted, &c.

Sec. 7. No person who has been discharged by order of a court or judge on a habeas corpus, shall be again imprisoned, restrained, or kept in custody for the same cause; unless he be afterwards indicted for the same offense; nor unless by the legal order or process of the court wherein he is bound by recognizance to appear. The following shall not be deemed to be the same cause:

First, if after a discharge for a defect of proof, or on any material defect in the commitment, in a criminal case, the prisoner should be again arrested on sufficient proof, and committed by legal process for the same offense.

Second, if, in a civil suit, the party has been discharged for

any illegality in the judgment, or process, and is afterwards imprisoned by legal process for the same cause of action.

Third, generally, whenever the discharge has been ordered on account of the non-observance of any of the forms required by law, the party may be a second time imprisoned, if the cause be legal, and the forms required by law observed.

Sec. 8. If any person shall be committed for a criminal, or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the second term of the court having jurisdiction of the offense, the prisoner shall be let at liberty by the court, unless the delay shall happen on the application of the prisoner, if such court at the second term shall be satisfied that the due exertions have been made to procure the evidence for and on behalf of the people, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case till the third term, if any such prisoner shall have been admitted to bail for a crime other than a capital offense, the court may continue the trial of said cause to a third term, if it shall appear by oath or affirmation that the witnesses for the people of the territory are absent, such witnesses being mentioned by name, and the court shown wherein their testimony is material.

When prisoner may be discharged from want of prosecution; continuance of cause where witnesses cannot be had.

Sec. 9. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on habeas corpus under this act out of the county in which he or she is confined, within fifteen days next preceding the term of the court at which such person ought to be tried, except it be to convey him or her into the county where the offense with which he or she stands charged, is properly cognizable.

Writ shall not be granted so as to delay trial, in certain cases.

Sec. 10. Any person being committed to any prison, or in custody of any officer, sheriff, jailer, keeper, or other person, or his under officer or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison, or custody, into any other prison or custody, unless it be by habeas corpus, or some other legal writ; or where the prisoner shall be delivered to the constable, or other inferior officer, to be carried to some common jail; or shall be removed from one place to another, within the county, in order to his discharge

Provisions as to removal of prisoner from one place or jail to another; penalty for improper removal.

or trial in due course of law; or in case of sudden fire, infection, or other necessity; or where the sheriff shall commit such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as is provided in the act concerning jails and jailors; or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of the United States, or territories; if any person shall, after such commitment as aforesaid, make out, sign, or countersign any warrant or warrants for such removal, except as before excepted, then, he or they shall forfeit to the prisoner or aggrieved party, a sum not exceeding three hundred dollars, to be received by the prisoner or party aggrieved, in the manner hereinafter mentioned.

Penalty if judge fail or delay to issue writ

Sec. 11. Any judge empowered by this act to issue writs of habeas corpus, who shall corruptly refuse to issue such writ, when legally applied to, in a case where such writ may lawfully issue, or who shall for the purpose of oppression, unreasonably delay the issuing of such writ, shall, for every such offense, forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars.

Officer refusing to execute and return writ punished as for a contempt.

Sec. 12. If any officer, sheriff, jailer, keeper, or other person to whom any such writ shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of said writ, within the time required by this act, all and every such officer, sheriff, jailer, keeper, or other person, shall be deemed guilty of contempt of the court or judge who issued said writ; whereupon, the said court or judge may and shall issue an attachment against such officer, sheriff, jailer, keeper, or other person, and cause him or them to be committed to the jail of the county, there to remain without bail or mainprize, until he or they shall obey the said writ, such officer, sheriff, jailer, keeper, or other person, shall also forfeit to the prisoner or aggrieved party, a sum not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

Officer having custody, removing or concealing him to evade service of writ, how punished,

Sec. 13. Any one having a person in his custody or under his restraint, power, or control, for whose relief a writ of habeas corpus is issued, who with intent to avoid the effect of such writ, shall transfer such person to the custody, or place

him or her under the control of another, or shall conceal him or her, or change the place of his or her confinement, with intent to avoid the operation of such writ, or with intent to remove him or her out of this territory, shall forfeit for every such offense, one thousand dollars, and be imprisoned not less than one year, nor more than five years; if any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ [of] habeas corpus had issued at the time of the removal, transfer, or concealment therein mentioned, if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

Sec. 14. Any sheriff, or his deputy, any jailer or coroner, having custody of any prisoner committed on a civil or criminal process of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order or commitment by virtue of which he is imprisoned, within six hours after the demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

Officer keeping prisoner refusing to give him a copy of commitment, how punished.

Sec. 15. Any person who, knowing that another, has been discharged by order of a competent judge or tribunal, on a habeas corpus, shall, contrary to the provisions of this act, arrest or detain him again for the same cause which was shown on the return of such writ, shall forfeit five hundred dollars for the first offense, and one thousand dollars for every subsequent offense.

Penalty for re-arresting prisoner for same cause, after discharge.

Sec. 16. All the pecuniary forfeitures under this act, shall enure to the use of the party for whose benefit the writ of habeas corpus issued, and shall be sued for and recovered, with costs, in the name of the territory, by every person aggrieved.

Pecuniary penalties herein imposed to go to person for whom writ was issued.

Sec. 17. In any action or suit for any offense against the provisions of this act, the defendant or defendants may plead the general issue, and give the special matter in evidence.

General issue may be pleaded.

Sec. 18. The recovery of the said penalties shall be no bar to a civil suit for damages.

Recovery of penalties not to bar civil action.

Sec. 19. The supreme and district courts within this territory, or the judges thereof in vacation, shall have power to issue writs of habeas corpus, for the purpose of bringing the body of any person confined in any jail within the same before them, to testify or be surrendered in discharge of bail. When a writ

Who may issue writ; for what purposes; writ may run into any county; return of prisoner to proper custody; compensation of officers.

of habeas corpus shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness shall be confined in any jail in this territory out of the county in which such principal or witness is required to be surrendered, or to any county in this territory, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid shall by the officer executing such writ, be returned by virtue of an order of the court, for the purpose aforesaid, an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. The party praying out such writ of habeas corpus shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the courts respectively.

Sec. 20. This act shall take effect and be in force from and after its passage.

APPROVED January 9, 1863.

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## HOLIDAYS.

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### CHAPTER 45.

AN ACT TO DESIGNATE THE HOLIDAYS TO BE OBSERVED IN THE ACCEPTANCE AND PAYMENT OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

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

Certain holidays upon which demands for payment of notes, &c., cannot be made.

Section 1. The following days, namely : the first day of January ; Washington's birthday, or the twenty-second day of February ; the fourth day of July ; thanksgiving days on the proclamation of the Governor ; the twenty-fifth day of December, commonly called Christmas day, shall for all purposes what-