

Article 6.

Proceedings and Judgment.

§ 17-29. Notice to interested parties.

When it appears from the return to the writ that the party named therein is in custody on any process, or by reason of any claim of right, under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge until it appears that the person so interested, or his attorney, if he have one, has had reasonable notice of the time and place at which such writ is returnable. (1868-9, c. 116, s. 12; 1870-1, c. 221, s. 1; Code, s. 1634; Rev., s. 1843; C.S., s. 2231.)

§ 17-30. Notice to district attorney.

When it appears from the return that such party is detained upon any criminal accusation, the court or judge may, if he thinks proper, make no order for the discharge of such party until sufficient notice of the time and place at which the writ has been returned, or is made returnable, is given to the district attorney of the district in which the person prosecuting the writ is detained. (1868-9, c. 116, s. 13; Code, s. 1635; Rev., s. 1844; C.S., s. 2232; 1973, c. 47, s. 2.)

§ 17-31. Subpoenas to witnesses.

Any party to a proceeding on a writ of habeas corpus may procure the attendance of witnesses at the hearing, by subpoena, to be issued by the clerk of any superior court, under the same rules, regulations and penalties prescribed by law in other cases. (1868-9, c. 116, s. 34; Code, s. 1659; Rev., s. 1845; C.S., s. 2233.)

§ 17-32. Proceedings on return; facts examined; summary hearing of issues.

The court or judge before whom the party is brought on a writ of habeas corpus shall, immediately after the return thereof, examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same has been upon commitment for any criminal or supposed criminal matter or not; and if issue be taken upon the material facts in the return, or other facts are alleged to show that the imprisonment or detention is illegal, or that the party imprisoned is entitled to his discharge, the court or judge shall proceed, in a summary way, to hear the allegations and proofs on both sides, and to do what to justice appertains in delivering, bailing or remanding such party. (1868-9, c. 116, s. 19; Code, s. 1644; Rev., s. 1846; C.S., s. 2234.)

§ 17-33. When party discharged.

If no legal cause is shown for such imprisonment or restraint, or for the continuance thereof, the court or judge shall discharge the party from the custody or restraint under which he is held. But if it appears on the return to the writ that the party is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases:

- (1) Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person.
- (2) Where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.

- (3) Where the process is defective in some matter of substance required by law, rendering such process void.
- (4) Where the process, though in proper form, has been issued in a case not allowed by law.
- (5) Where the person, having the custody of the party under such process, is not the person empowered by law to detain him.
- (6) Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law. (1868-9, c. 116, s. 20; Code, s. 1645; Rev., s. 1847; C.S., s. 2235.)

§ 17-34. When party remanded.

It is the duty of the court or judge forthwith to remand the party, if it appears that he is detained in custody, either –

- (1) By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction.
- (2) By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree.
- (3) For any contempt specially and plainly charged in the commitment by some court, officer or body having authority to commit for the contempt so charged.
- (4) That the time during which such party may be legally detained has not expired. (1868-9, c. 116, s. 21; Code, s. 1646; Rev., s. 1848; C.S., s. 2236.)

§ 17-35. When the party bailed or remanded.

If it appears that the party has been legally committed for any criminal offense, or if it appears by the testimony offered with the return of the writ, or upon the hearing thereof, that the party is guilty of such an offense, although the commitment is irregular, the court or judge shall proceed to let such party to bail, if the case is bailable and good bail is offered; if not, the court or judge shall forthwith remand such party to the custody or place him under the restraint from which he was taken, if the person or officer, under whose custody or restraint he was, is legally entitled thereto; if not so entitled, the court or judge shall commit such party to the custody of the officer or person legally entitled thereto. (1868-9, c. 116, s. 22; Code, s. 1647; Rev., s. 1849; C.S., s. 2237.)

§ 17-36. Party held in execution not to be discharged.

When a writ of habeas corpus cum causa issues and the sheriff or other officer to whom it is directed returns upon the same that the prisoner is condemned, by judgment given against him, and held in custody by virtue of an execution issued against him, the prisoner shall not be let to bail but shall be presently remanded, where he shall remain until discharged in due course of law. (2 Hen. V, c. 2; R.C., c. 31, s. 111; Code, s. 937; Rev., s. 1850; C.S., s. 2238.)

§ 17-37. When party ill, cause determined in his absence.

When, from the illness or infirmity of the person directed to be produced by a writ of habeas corpus, such person cannot, without danger, be brought before the court or judge where the writ is made returnable, the party in whose custody he is may state the fact in his return to the writ; and if the court or judge is satisfied of the truth of the allegation, and the return is otherwise sufficient, the court or judge shall proceed to decide on such return and to dispose of the matter in the same

manner as if the body had been produced. (1868-9, c. 116, s. 23; Code, s. 1648; Rev., s. 1851; C.S., s. 2239.)

§ 17-38. No second committal after discharge; penalty.

No person who has been set at large upon any writ of habeas corpus shall be again imprisoned or detained for the same cause by any person whatsoever other than by the legal order or process of the court wherein he shall be bound by recognizance to appear or of any other court having jurisdiction in the case, under the penalty of two thousand five hundred dollars (\$2,500) to the party aggrieved thereby. (1868-9, c. 116, s. 26; Code, s. 1651; Rev., s. 1852; C.S., s. 2240.)