

# MANDAMUS.

See *Interpleader*.

9 Ann., c. 25.

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AN ACT for rendering the Proceedings upon Writs of *Mandamus*, and Informations in the nature of a *Quo Warranto*, more speedy and effectual; and for the more easy Trying and Determining the Rights of Offices and Franchises in Corporations and Boroughs.

WHEREAS divers persons have of late illegally intruded themselves into and have taken upon themselves to execute the offices of mayors, bailiffs, portreeves, and other offices, within cities, towns corporate, boroughs, and places within that part of Great Britain called England and Wales; and where such offices were annual offices it hath been found very difficult, if not impracticable, by the laws now in being, to bring to a trial and determination the right of such persons to the said offices within the compass of the year; and where such offices were not annual offices it hath been found difficult to try and determine the right of such persons to such offices, before they have done divers acts in their said offices prejudicial to the peace, order, and good government within such cities, towns corporate, boroughs, and places wherein they have respectively acted:

And whereas divers persons who had a right to such offices, or to be burgesses or freemen of such cities, towns corporate, boroughs, or places, have either been illegally turned out of the same, or have been refused to be admitted thereto, having in many of the said cases no other remedy to procure themselves to be respectively admitted or restored to their said offices or franchises of being burgesses or freemen than by writs of *mandamus*, the proceedings on which are very dilatory and expensive, whereby great mischiefs have already ensued, and more are likely to ensue, if not timely prevented: For remedy thereof,

1. . . . Where any writ of *mandamus* shall issue out of the Court of Queen's Bench, the Courts of Sessions of Counties Palatine, or out of any of the Courts of Grand Sessions in Wales, in any of the cases aforesaid, such person or persons who by the laws of this realm are required to make a return to such writ of *mandamus* shall make his or their return to the first writ of *mandamus*.

2. As often as, in any of the cases aforesaid, any writ of *mandamus* shall issue out of any of the said Courts, 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 *man-*

Returns to writs of *mandamus* out of the Queen's Bench, &c., shall be made to the first writ.

As soon as the return is made, the prosecutor in such writ may plead, &c., to

*damus* 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 using such writ had brought his or their action on the case for a false return:

which the person returning may reply, &c.

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:

How the proceedings shall be.

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; such costs and damages to be levied by *capias ad satisfaciendum*, *fieri facias*, or *elegit*; 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.

3. Provided always that, 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, any law, usage, or custom to the contrary thereof in any wise notwithstanding.

Persons against whom damages shall be recovered not liable to be sued in other actions.

4. . . . In case any person or persons shall usurp, intrude into, or unlawfully hold and execute any of the said offices or franchises, it shall and may be lawful to and for the proper officer in each of the said respective Courts, with the leave of the said Courts respectively, to exhibit one or more information or informations in the nature of a *quo warranto*, at the relation of any person or persons desiring to sue or prosecute the same, and who shall be mentioned in such information or informations to be the relator or relators against such person or persons so usurping, intruding into, or unlawfully holding and executing any of the said offices or franchises, and to proceed therein in such manner as is usual in cases of information in the nature of a *quo warranto*:

How informations in the nature of *quo warranto* may be exhibited against such as intrude, &c., into offices, &c.

And if it shall appear to the said respective Courts that the several rights of divers persons to the said offices or franchises

may properly be determined on one information, it shall and may be lawful for the said respective Courts to give leave to exhibit one such information against several persons, in order to try their respective rights to such offices or franchises; and such person or persons, against whom such information or informations in the nature of a *quo warranto* shall be sued or prosecuted, shall appear and plead as of the same term or sessions in which the said information or informations shall be filed, unless the Court where such information shall be filed shall give further time to such person or persons, against whom such information shall be exhibited, to plead; and such person or persons, who shall sue or prosecute such information or informations in the nature of a *quo warranto*, shall proceed thereupon with the most convenient speed that may be, any law or usage to the contrary thereof in any wise notwithstanding.

Judgment of ouster shall be given against persons found guilty of such usurpation, &c.;

5. . . . In case any person or persons, against whom any information or informations in the nature of a *quo warranto* shall in any of the said cases be exhibited in any of the said Courts, shall be found or adjudged guilty of an usurpation or intrusion into, or unlawfully holding and executing, any of the said offices or franchises, it shall and may be lawful to and for the said Courts respectively as well to give judgment of ouster against such person or persons of and from any of the said offices or franchises, as to fine such person or persons respectively for his or their usurping, intruding into, or unlawfully holding and executing any of the said offices or franchises;

and the relator shall recover costs.

And also it shall and may be lawful to and for the said Courts respectively to give judgment that the relator or relators, in such information named, shall recover his or their costs of such prosecution; and, if judgment shall be given for the defendant or defendants in such information, he or they for whom such judgment shall be given shall recover his or their costs therein expended against such relator or relators, such costs to be levied in manner aforesaid.

If judgment be given for the defendant, he shall have costs against the relator.

6. It shall and may be lawful to and for the said Courts respectively to allow to such person or persons respectively, to whom any writ of *mandamus* shall be directed, or against whom any information in the nature of a *quo warranto*, in any of the cases aforesaid, shall be sued or prosecuted, 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 Courts respectively shall seem just and reasonable, anything herein contained to the contrary thereof in any wise notwithstanding.

The Court may allow a convenient time to return a *mandamus*, plead, reply, &c.