

Act No. 44, 1901.

An Act to consolidate enactments relating to proceedings in Prohibition and on Writs of Mandamus. [7th November, 1901.]

PROHIBITION AND
MANDAMUS.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

Preliminary.

1. This Act may be cited as the "Prohibition and Mandamus Act, 1901," and is divided into Parts, as follows :—

PART I.—*Preliminary*—ss. 1-3.

PART II.—*Prohibition*—ss. 4-7.

PART III.—*Mandamus*—ss. 8-18.

2. (1) The Act mentioned in the Schedule to this Act is, to the extent therein expressed, hereby repealed.

(2) Nothing herein shall be deemed to affect the provisions of the Common Law Procedure Act, 1899.

3.

Prohibition and Mandamus.

Interpretation

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

“Court” means the Supreme Court of New South Wales.

PART II.

Prohibition.

Application for writs of prohibition may be made on affidavit only.

1 W. IV. c. 21 s. 1.

Form and contents of declaration.

Ibid.

4. It shall not be necessary to file a suggestion on any application for a writ of prohibition, but such application may be made on affidavits only.

5. (1) If the party applying is directed to declare in prohibition before writ issued, such declaration shall be expressed to be on behalf of such party only, and not on behalf of the party and of His Majesty.

(2) Such declaration shall contain and set forth in a concise manner so much only of the proceeding in the Court below as is necessary to show the ground of the application, without alleging the delivery of a writ or any contempt, and shall conclude by praying that a writ of prohibition may issue.

Defendant may demur or plead.

Ibid.

6. To such declaration the party defendant may demur or plead such matters by way of traverse or otherwise as may be proper to show that the writ ought not to issue, and conclude by praying that such writ may not issue.

Judgment.

Ibid.

7. (1) Judgment shall be given that the writ of prohibition do or do not issue, as justice may require.

Costs.

Ibid.

(2) The party in whose favour judgment is given, whether on nonsuit, verdict, demurrer, or otherwise, shall be entitled to the costs attending the application and subsequent proceedings, and have judgment to recover the same.

Damages.

Ibid.

(3) If a verdict is given for the party plaintiff in such declaration the jury may assess damages, for which judgment shall also be given, but such assessment shall not be necessary to entitle the plaintiff to costs.

PART III.

Mandamus.

Returns to be made to the first writ.

9 Anne c. 20, s. 1.

1 Wm. IV c. 21, s. 3.

8. Where a writ of mandamus issues out of the Court, every person by law required to make a return to such writ shall make his return to the first writ of mandamus.

Prohibition and Mandamus.

9. Where a writ of mandamus issues out of the Court, and a return is made thereunto, the person suing or prosecuting such writ may plead to or traverse all or any the material facts contained within the said return, to which the person making such return may 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 suing such writ had brought his action on the case for a false return.

Pleadings upon return to writ.
9 Anne c. 20, s. 2.
1 Wm. IV c. 21, s. 3.

10. If any issue is joined on such proceedings, the person suing such writ may try the same in such place as an issue joined in such action on the case might have been tried.

Venue.
Ibid.

11. (1) If a verdict is found for the person suing such writ, or judgment given for him upon a demurrer, or by nil dicit, or for want of a replication or other pleading—

Effect of verdict or judgment.
Ibid.

(a) he shall recover his damages and costs in such manner as he might have done in such action on the case; and

(b) a peremptory writ of mandamus shall be granted without delay for him as might have been if such return had been adjudged insufficient.

(2) If judgment is given for the person making such return to the writ, he shall recover his costs of suit.

12. If any damages are recovered by virtue of this Act against any such person making such return, he shall not be liable to be sued in any other action or suit for the making such return.

Person against whom damages recovered not liable to other action.
9 Anne c. 20, s. 3.
1 Will. IV c. 21, s. 3.

13. The Court may allow the person to whom any writ of mandamus is directed, or the person suing or prosecuting the same, such convenient time to make a return, plead, reply, rejoin, or demur, as to the Court seems just and reasonable.

Time for returning, pleading, &c.
9 Anne c. 20, s. 6.
1 Will. IV c. 21, s. 3.

14. Whereas writs of mandamus are sometimes issued to officers and other persons commanding them to admit to offices or do or perform other matters in respect whereof they claim no right or interest or their functions are merely ministerial, and it may be proper that such officers or persons should in certain cases be protected against the payment of damages or costs to which they may otherwise become liable :—

Persons interested may be called on to show cause.
1 Will. IV c. 21, s. 4.
1 & 2 Will. IV c. 58 s. 8.

(1) The Court upon application for any writ of mandamus may make rules and orders calling, not only upon the person to whom such writ may be required to issue, but also upon any other person having or claiming any right or interest in or to the matter of such writ to show cause against the issue of such writ and payment of costs of the application.

(2) Upon the appearance of such other person, in compliance with any such rule or order, or in default of appearance after service thereof, the Court may exercise all such powers and authorities, and make all such rules and orders applicable to the case as are given or mentioned by or in the Interpleader Act, 1901

Application of Interpleader Act.
1 & 2 Will. IV c. 58, s. 8.

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Return, &c., may be expressed to be on behalf of person interested.

1 W. IV, c. 21, s. 4.

Proceedings by and against such person.
Ibid.

Proceedings not to abate on death, resignation, or removal of person making return.

1 W. IV, c. 21, s. 5.

Costs in discretion of Court.

Ibid. s. 6.

15. The return to any such writ shall be made, and the issues in fact or in law upon any traverse thereof or demurrer shall be joined by and in the name of the person to whom the writ is directed; but the same may, if the Court so direct, be expressed to be made and joined on the behalf of such other person as is mentioned in such rule or order.

16. In that case such other person may frame the return and conduct the subsequent proceedings at his own expense, and if any judgment is given for or against the party suing such writ, such judgment shall be given against or for such other person, who shall have the like remedy for the recovery of costs and enforcing the judgment, as the person to whom the writ is directed would otherwise have had.

17. If the return to any such writ is, in pursuance of the authority given by this Act, expressed to be made on behalf of any other person as aforesaid, the further proceedings on such writ shall not abate or be discontinued by the death, or resignation, or removal from office of the person having made such return; but the same shall be continued and carried on in the name of such person, and if a peremptory writ is awarded, it may be directed to any successor in office or right to such person.

18. In all cases of application for any writ of mandamus whatsoever, the costs of such application, whether the writ is granted or refused, and also the costs of the writ, if the same is issued and obeyed, shall be in the discretion of the Court; and the Court may order by whom and to whom the same shall be paid.

SCHEDULE.

Reference to Act.	Title.	Extent of repeal.
5 Will. IV No. 8	An Act for adopting and applying certain Acts of Parliament passed in the eleventh year of the reign of His late Majesty, and first year of the reign of His present Majesty, and in the first and second years of the reign of His present Majesty respectively in the administration of justice in New South Wales in like manner as other laws of England are applied therein.	The whole, in so far as it applies to the Acts 1 Will. IV c. 21, and 1 & 2 Will. IV c. 58.