

To file deeds,
&c. with clerk
of district
court.

SEC. 5. It shall be the duty of said commissioners to receive any deed or deeds of land or bond for the payment of money which may be made to the county commissioners of said county, and deposit the same with any bond for building any public buildings for said county with the clerk of the district court.

SEC. 6. Said commissioners shall each receive three dollars per day for every day they are necessarily employed in locating said county seat, and three dollars each for every twenty miles travel to and from said county seat. The district court for said county, at its first term after the passage of this act, and until the public buildings are erected at the county seat, shall be held at the town of Fort Madison, and thereafter at the place selected by them for said county seat. And the treasurer of said county is hereby authorized and required to pay said commissioners the respective sums allowed by this act, out of any moneys in the treasury of said county not otherwise appropriated.

Approved January 16, 1840.

[Chap. 70.]

AN ACT relative to habeas corpus.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa, [That]* every person imprisoned or otherwise restrained of his liberty, may prosecute a writ of habeas corpus according to the provisions of this act, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

Application
to be by
petition.

SEC. 2. Application for such writ shall be made by petition signed either by the party for whose relief it is intended, or by some person in his behalf, as follows: To any judge of the supreme or district courts, or any supreme court commissioner, being within the county where the prisoner is detained, or if there be no such officer within such county, or if he be absent, or for any cause be incapable of acting, or have refused to grant such writ, then to some officer having such authority residing in any adjoining county.

Application
to officer out
of county.

SEC. 3. Whenever application for any such writ shall be made to any officer not residing within the county where the prisoner shall be detained, he

shall require proof by the oath of the party applying, or by other sufficient evidence, that there is no officer in such county authorized to grant the writ, or if there be one, that he is absent, or has refused to grant such writ, or from some cause to be specially set forth is incapable of acting, and if such proof be not produced, the application shall be denied.

SEC. 4. The petition must state in substance,

What to set forth.

First. That the person in whose behalf the writ is applied for is imprisoned or restrained in his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming both parties, if their names are known, or describing them, if they are not.

Second. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the party.

Third. If the confinement or restraint is by virtue of any warrant, order or process, a copy thereof must be annexed, or it must be averred that by reason of such prisoner's being removed or concealed before the application, a demand of such copy could not be made, or that such demand was made and the legal fees therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused.

Fourth. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists.

Fifth. It must be verified by the oath of the party making the application, or some other person.

SEC. 5. Any officer empowered to grant any writ applied for under this act, to whom such petition shall be presented, shall grant such writ without delay.

SEC. 6. Every writ of habeas corpus issued under the provisions of this act, shall be substantially in the following form: "The United States, to the sheriff of, &c., (or to A. B.) You are hereby commanded to have the body of C. D. by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged before E. F., judge of the district court (or supreme court commissioner, as the case may be,) at &c. on &c. (or immediately after the receipt of this writ,) to do and receive what shall then and

Form of writ.

there be considered concerning the said C. D.; and have you then and there this writ. Witness, &c.

Want of form shall not vitiate.

SEC. 7. Such writ of habeas corpus shall not be disobeyed for any defect of form, it shall be sufficient,

First. If the person having the custody of the prisoner be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person.

Second. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described in any other way so as to designate the person intended.

If writ refused, penalty.

SEC. 8. If any officer authorized by the provisions of this act to grant writs of habeas corpus, shall wilfully refuse to grant such writ when legally applied for, he shall forfeit for every such offence to the party aggrieved, one thousand dollars.

Return to state.

SEC. 9. The person upon whom any such writ shall have been duly served, shall state in his return plainly and equivocally,

First. Whether he has or has not the party in his custody, or under his power or restraint.

Second. If he have the party in his custody, or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large.

Third. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited on the return of the writ to the officer before whom the same is returnable.

Fourth. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place. The return must be signed by the person making the same, and, except where such person shall be a sworn public officer, and shall make

his return in his official capacity, it shall be verified by his oath.

SEC. 10. The person or officer on whom the habeas corpus shall have been served, shall also bring the body of the person in his custody according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided. To bring in body.

SEC. 11. If the person upon whom such writ shall have been duly served, shall refuse or neglect to obey the same by producing the party named in such writ, and making a full and explicit return to every such writ within the time required by the provisions of this act, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the officer before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county in this territory, and commanding him forthwith to apprehend such person, and to bring him immediately before such officer; and on such person being so brought, he shall be committed to close custody in the jail of the county in which such officer shall be, without being allowed the liberties thereof, until he shall make return to such writ, and comply with any order that may be made by such officer in relation to the person for whose relief such writ shall have been issued. On refusal, attachment to issue, and person committed.

SEC. 12. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person to be designated therein, who shall have full power to execute the same, and such sheriff, upon being brought up, may be committed to the jail of any county other than his own. In case of sheriff, attachment served by coroner.

SEC. 13. The officer by whom any such attachment may be issued, may also at the same time or afterwards issue a precept to the same sheriff or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such officer the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person until he shall be discharged, bailed or remanded, as such officer shall direct. Precept to bring in party may also issue.

SEC. 14. In the execution of such attachment or precept or of either of them, the sheriff or other per- Posse comitatus.

son to whom they shall be directed may call to his aid the power of the county, as in other cases.

To examine
cause of re-
straint.

SEC. 15. The officer before whom the party shall be brought on such writ, shall immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not.

When to be
discharged.

SEC. 16. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such officer shall discharge such party from the custody or restraint under which he is held.

Same.

SEC. 17. If it appear on the return that the prisoner is in custody by virtue of civil process of any court legally constituted or issued by any officer in the course of judicial proceedings before him authorized by law, such prisoner can only be discharged in one of the following cases:

First. Where the jurisdiction of such court or officer has been exceeded either as to matter, place, sum, or person.

Second. 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.

Third. Where the process is defective in some matter of substance required by law, rendering such process void.

Fourth. Where the process, though in proper form, has been issued in a case not allowed by law.

Fifth. Where the person having the custody of the prisoner under such process is not the person empowered by law to detain him; or,

Sixth. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

May bail or
remand.

SEC. 18. If it appear that the party has been legally committed for any criminal offence, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be guilty of such an offence, although the commitment be irregular, the officer before whom such party shall be brought shall proceed to let such party to bail, if the case be bailable and good bail be offered, or if not, shall forthwith remand such party.

Or otherwise
commit.

SEC. 19. If the party be not entitled to his discharge and be not bailed, the officer shall remand

him to the custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was be legally entitled thereto; if not so entitled, he shall be committed by such officer to the custody of such officer or person as by law is entitled thereto.

SEC. 20. Until judgment be given upon the return, the officer before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such officer shall be, or place him in such care or under such custody as his age and other circumstances may require.

SEC. 21. When it appears from the return to any such writ, that the party named therein is in custody on any process under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney if he have one, if to be found within the county, shall have had sufficient notice of the time and place at which such writ shall have been made returnable.

SEC. 22. The party brought before any such officer on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath, and thereupon such officer shall proceed in a summary way to hear such allegations and proofs as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require.

SEC. 23. Whenever from the sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot without danger be brought before the officer before whom the writ is made returnable, the party in whose custody he is may state that fact in his return to the writ, verifying the same by his oath; and if such officer be satisfied of the truth of such allegation, and the return be otherwise sufficient, he shall proceed to decide upon such return and to dispose of the matter; and if it appear that the person detained is illegally imprisoned, confined or restrained of his liberty, the officer shall grant a writ of discharge,

commanding those having such person in their custody to discharge him forthwith; and if it appear that such person is legally detained, imprisoned or confined and is not entitled to be bailed, such officer shall cease from all further proceedings thereon.

Order of discharge enforced by attachment.

SEC. 24. Obedience to any writ of discharge or to any order for the discharge of any prisoner granted pursuant to the provisions of this act may be enforced by the officer issuing such writ or granting such order, by attachment, in the same manner as herein provided for a neglect to make a return to a writ of habeas corpus, and with the like effect in all respects; and the person guilty of such disobedience shall forfeit to the party aggrieved one thousand two hundred and fifty dollars, in addition to any special damages such party may have sustained.

Penalty.

Order of discharge evidence in action for escape.

SEC. 25. No sheriff or other officer shall be liable to any civil action for obeying any such writ or order of discharge, and if any action shall be brought against such officer for suffering any person committed to his custody to go at large pursuant to any such writ or order, he may with his plea of the general issue give notice of the same in bar of such action.

Evasive transfer a misdemeanor.

SEC. 26. Any one having in his custody or under his power, any person for whose relief a writ of habeas corpus shall have been duly issued pursuant to the provisions of this act, who with intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

Aid a misdemeanor.

SEC. 27. Every person who shall knowingly aid or assist in the violation of the last preceding section, shall be deemed guilty of a misdemeanor.

How punished.

SEC. 28. Every person convicted of any offence under either of the three last sections, shall be punished by fine or imprisonment, or both, at the discretion of the court in which he shall be convicted; but such fine shall not exceed one thousand dollars, nor such imprisonment six months.

Warrant may issue when

SEC. 29. Whenever it shall appear by satisfactory proof that any one is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the territory, or suffer

some irreparable injury before he can be relieved by the issuing of a habeas corpus, any officer authorized to issue such writ may issue a warrant under his hand and seal, reciting the facts, and directed to any sheriff, constable or other person, commanding such officer or person to take such prisoner and forthwith to bring him before such officer to be dealt with according to law.

SEC. 30. When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence committed in the taking or detaining of such prisoner, the warrant shall also contain an order for the arrest of such person for such offence.

When to contain order for arrest.

SEC. 31. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the officer issuing the same; and thereupon the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of habeas corpus had been issued in the first instance.

Like return and proceedings as on habeas corpus.

SEC. 32. If the person having such prisoner in his custody shall be brought before such officer as for a criminal offence, he shall be examined, committed, bailed or discharged by such officer in like manner as in other criminal cases of the like nature.

Person having custody may be committed.

SEC. 33. Any officer or other person refusing to deliver a copy of any order, warrant, process or other authority by which he shall detain any person, to any one who shall demand such copy, and tender the fees thereof, shall forfeit two hundred dollars to the person so detained.

Refusing copy, penalty.

SEC. 34. Every writ of habeas corpus may be made returnable at a day certain or forthwith, as the case may require.

When returnable.

SEC. 35. Every such writ shall be endorsed with a certificate that the same has been allowed, and with the date of such allowance, which endorsement shall be signed by the officer allowing the writ.

Certificate of allowance.

SEC. 36. Every writ of habeas corpus issued pursuant to this act, may be served by delivering the same to the person to whom it is directed; if he cannot be found, it may be served by being left at the jail or other place in which the prisoner may be confined, with any under officer or other person of

Habeas corpus, how served.

proper age, having charge for the time of such prisoner.

Same.

SEC. 37. If the person on whom the writ ought to be served conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling house or of the place where the party is confined.

Charges to be paid by petitioner.

SEC. 38. Every officer allowing a writ of habeas corpus directed to any other than a sheriff, coroner, constable, or marshal, may, in his discretion, require as a duty to be performed in order to render the service thereof effectual, that the charges of bringing up such prisoner shall be paid by the petitioner; and in such case he shall, in the allowance of the writ, specify the amount of such charges so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

When returnable.

SEC. 39. If the writ be returnable at a certain day, such return shall be made, and such prisoner shall be produced at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced, within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

Common law abrogated except.

SEC. 40. The provisions of the common law in regard to the writ of habeas corpus, treated of in this act, are hereby abrogated, except so much and such parts thereof as may be necessary to carry into full effect the provisions herein contained; and the authority of courts and officers to award such writ or to proceed thereon by the common law, shall be exercised in conformity to the provisions of this act, in all cases therein provided for.

This act not to restrain.

SEC. 41. Nothing contained in this act shall be construed to restrain the power of any court to issue a writ of habeas corpus when necessary, to bring before them any prisoner for trial in any criminal case lawfully pending in the same court; or to bring in any prisoner to be examined as a witness in any suit or proceeding, civil or criminal, pending in such court, when they shall think the personal attendance and examination of the witness necessary for the attainment of justice.

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