

by *mandamus*, but by *quo warranto*. *Quo warranto*, therefore, in that country, is the proper proceeding to test the title of a party who has been elected, while *mandamus* is the proper remedy to enforce an election or admission into a vacant office. But in Maryland we have no proceeding by *quo warranto*,¹ and *mandamus* is indifferently used for the one or the other object. Thus in *Taylor v. Hebden*, 24 Md. 202, the appellee, supposing that his term of office had expired, retired from it, and permitted the appellant (who had been *bona fide* appointed in his place) to occupy it. He afterwards claimed and was restored to it by *mandamus*. In *Magruder v. Tuck*, 25 Md. 173, it was held that a *mandamus* would lie to the Governor of the State, directing him to issue a commission to the petitioner, who had been elected Judge of one of the Courts of the State, *i. e.* to perform the mere *ministerial* duty, but not where the duty devolved upon him is both political and judicial, as in *Miles v. Bradford*, 22 Md. 170.²

Before the passage of the Statute an attachment did not in general issue, for want of a return, until after the return of an *alias* and *pluries* writ of *mandamus*, and disobedience of a peremptory rule to return. The Statute provided that a return *should be made to the first writ 696 of *mandamus*, and, by its second section, gave the power of traversing the return in the place of an action for a false return. The latter action, however, was not taken away, for the Statute only provides that in case damages are recovered by virtue of its provisions against the persons making the return, they shall not be liable to be sued therefor in any other action. But the Statute, as appears from its language, was but of limited application.

By Art. 59³ of the Code, the method of proceeding is changed, and the alternative *mandamus* is abolished. The proceeding is now directed to be by petition for the writ, in which the grounds of the application are to be fully set forth. A rule is then laid upon the other party to shew cause why the writ should not issue, and he is, by a day to be named therein, to file his answer, *fully setting forth all the defences upon which he intends to rely in resisting such application*, and verified by his oath; and, by sec. 4^{3a} of that Article, no defendant will be allowed, on a second application for a *mandamus*, to rely upon any matter, which he might have relied on in his answer to a previous application for a *mandamus*.

¹ *Hawkins v. State*, 81 Md. 306.

² *Warfield v. Vandiver*, 101 Md. 78; *Brown v. Bragunier*, 79 Md. 234; *Groome v. Gwinn*, 43 Md. 572. For numerous other instances in which *mandamus* will, or will not lie, see *Poe's Practice*, sec. 710; also *Hummelshime v. Hirsch*, 114 Md. 39.

³ Code 1911, Art. 60. There has been no change in this article, except the addition to it made by the Act of 1888, ch. 388, (sec. 12), which provides that, in case of an appeal by the defendant, the court shall fix the penalty of the appeal bond necessary to stay the execution, or enforcement, of the order appealed from.

As to summons in an action at law with claim for *mandamus* or injunction, see Code 1911, Art. 75, secs. 125-137; *C. & P. Tel. Co. v. Mac-kensie*, 74 Md. 36.

^{3a} Code 1911, Art. 60, sec. 4.