

ARTICLE LX.

MANDAMUS.

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| 1. Application for. | 5. Pleading. |
| 2. Rule to show cause why it should not issue. | 6. To stand for trial, when. |
| 3. Answer. | 7. Trial by jury or court; judgment. |
| 4. Defendant not to be permitted to rely on any matter in second application which might have been pleaded to the first. | 8. Costs. |
| | 9. <i>Ex parte</i> hearing. |
| | 10. Dismissal of petition with costs. |
| | 11. Must be peremptory. |
| | 12. Appeal bond. |

1904, art. 60, sec. 1. 1888, art. 60, sec. 1. 1860, art. 59, sec. 1. 1806, ch. 90, sec. 9. 1858, ch. 285, sec. 1.

1. All applications for granting writs of mandamus shall be made to the circuit courts for the several counties and the superior court of Baltimore city, the court of common pleas or the Baltimore city court, or to the judges of said courts, respectively, during the recess of the court, and shall be commenced by petition verified by the affidavit of the applicant and setting forth fully the ground of his application.

When mandamus will issue.

Mandamus is appropriate in all cases where the law has established no specific remedy, and where in justice there ought to be one. *Harwood v. Marshall*, 9 Md. 97; *Legg v. Annapolis*, 42 Md. 226.

Mandamus will not issue unless the petitioner shows a clear legal right in himself, and a corresponding imperative duty on the part of the defendant. *Frederick County v. Fout*, 110 Md. 174; *Upshur v. Baltimore*, 94 Md. 746.

A ministerial duty may be enforced by mandamus. *Sudler v. Lankford*, 82 Md. 148; *contra*, if the duty is discretionary. *Devin v. Belt*, 70 Md. 354.

The writ is never issued when it would be nugatory. The application for mandamus abates upon the death of the applicant. *Booze v. Humbird*, 27 Md. 4.

Mandamus will not lie when there is an adequate remedy at law. *Brown v. Bragunier*, 79 Md. 242.

The fact that a petitioner for mandamus has a remedy in equity, does not defeat mandamus unless the former remedy has already been invoked. *Baltimore University v. Colton*, 98 Md. 636; *Hardcastle v. Maryland & Delaware R. R. Co.*, 32 Md. 35.

The courts will not refuse mandamus on the mere ground that the plaintiff has an adequate remedy in damages—art. 26, sec. 25.

Generally.

While mandamus is not a writ *ex debito justitiæ* but rests in the sound discretion of the court, the latter must not be arbitrary, but must be exercised under established rules of law. *Brooke v. Widdicombe*, 39 Md. 404; *Weber v. Zimmerman*, 23 Md. 53; *Hardcastle v. Maryland & Delaware R. R. Co.*, 32 Md. 35.

While a few general principles relative to mandamus are stated in the notes to section 1, no attempt is made to collect the cases dealing with that subject but containing no reference to the statute law—see *Brantly's Digest*.