

PROVISOS

the said court or judge granting the same; *provided*, the person detained be not committed or detained for treason or felony plainly expressed in the warrant of commitment, or be not convict or in execution by legal process; *and provided*, that if the person detained be so detained under color of a warrant of commitment, the petition presented by him or on his behalf be accompanied by a copy of the warrant of commitment or detainer or cause of commitment or detainer, or otherwise by an affidavit that a copy thereof was demanded by him of the person in whose custody the prisoner is detained, and the same was neglected or refused to be given; *and provided*, that if the detainer is on any other color or pretence, there be probable ground shown to the court or judge that the person by or on whose behalf the said application is made, is detained without just cause; but nothing herein shall prevent the issuing of a writ of habeas corpus at the instance of a person arrested on a charge of any offence which is bailable by law, in order that he may be discharged on bail in the usual course of law.

In force from February 1, 1862.

1867, c. 415 repeals section 4 and enacts the following in lieu thereof.

1867, c. 415
Service of writ.

4. The writ of habeas corpus shall be served by delivering it to the officer or other person to whom it is directed, or by leaving it at the prison or place in which the party suing it out is detained, and such officer or other person shall forthwith, or within such reasonable time as the court shall direct, make his return of the writ and cause the person detained to be brought before the court or judge, according to the command of the writ, and shall likewise certify the true cause of his detainer or imprisonment (if any) or under what color or pretence such person is confined or restrained of his liberty.

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In force from March 18, 1867.