

Service.

why a writ of mandamus should not issue as prayed, a copy of which rule shall be served upon such defendant by a day to be therein limited.

Id s 3
1858, c 285, s 3
Answer of de-
fendant
42 Md 203

3. The defendant, by the day named in such order, shall file an answer to such petition, fully setting forth all the defences upon which he intends to rely in resisting such application, which shall be verified by his affidavit.

Id s 4
1858, c 285, s 3
On second ap-
plication, what
not allowed by
way of defence

4. No defendant shall be allowed, on a second application for a mandamus, to rely upon any matter by way of defence thereto which he might have relied on in his answer to a previous application for a mandamus by the same petitioner

Id s 5
1828, c 78,
1858, c 285, s 4
Petitioner to
plead to or
traverse, and
defendant to
take issue or
demur
Further pro-
ceedings.

5. The petitioner may plead to or traverse all and any of the material averments set forth in said answer, and the defendant shall take issue or demur to said plea or traverse within five days thereafter, and such further proceedings shall thereupon be had in the premises, for the determination thereof, as if the petitioner had brought an action on the case for a false return.

Id s 6.
1858, c. 285, s 4
Trial of issue

6. If issue shall be joined on such proceedings, the same shall stand for trial on the second day of the next succeeding term of such court (in case such issue shall be joined in the recess of such court), and if such issue shall be joined during the session, then the same shall stand for trial during such term, unless sufficient cause shall be shown to the court by the party defendant for the continuance thereof, in which case such issue shall be heard on the second day of the next succeeding term of such court, unless the parties shall agree upon an earlier day.

Id s 7
1858, c. 285, s 4
Damages for
petitioner.
27 Md 4

7. Such issue shall be tried by a jury, if either party desire it, but they may be heard or determined by the court, if both parties agree, and in case a verdict shall be found for the petitioner, or if the court upon hearing determine in favor of the petitioner, or judgment be given for him upon demurrer, or for want of a plea, such petitioner shall thereupon recover his damages and costs as he might have done in an action on the case for a false return, to be levied by execution or attachment, and a peremptory writ of mandamus shall be granted thereupon without delay against the defendant.

Id s 8
1858, c 285, s 4
Where judg-
ment for de-
fendant

8. If judgment shall be given for the defendant, he shall recover his costs of suit, to be levied in manner aforesaid

Id s 9
1858, c 285, s 5.
Proceedings, if
defendant fail
to answer
42 Md 203

9. If the defendant shall neglect to file his answer to the petition by the day named in the order of the judge, after being served with notice thereof, the said judge shall thereupon proceed to hear the said motion *ex parte*, within five days thereafter, and if he shall be of the opinion that the facts and law of the case authorize the granting of a mandamus as prayed, he shall thereupon, without delay, order a peremptory mandamus to issue, and shall also adjudge to the petitioner his costs of suit.

Id s 10
1858, c 285, s. 5.
Dismissal of
petition
42 Md 203.

10. If the judge shall, upon such *ex parte* hearing, be of opinion that the facts and law of the case do not authorize the granting of a mandamus, he shall dismiss such petition with costs.