

# EXTRAORDINARY WRITS

*The People's Remedy*

The Kings bench is the seat of the tribunal (judge) for the supreme court of common law (court of record) made up of one or more sovereigns, with the power to fine or imprison for contempt and functions independently of the person of the magistrate. Therefore the kings bench can only be the Jury (grand or the petite) or the sovereign of the court. Whenever the Kings Bench is impaneled "by the people" a Court of Record is open whether it is in its investigative role as the Grand Jury or in its trial mode as the Petite Jury; its authority, power, judgments, and jurisdiction is final and cannot be challenged or overturned. All courts not of record (without the kings bench) are inferior courts whose jurisdiction is limited and special and whose proceedings are not according to the course of the common law. Criminal courts proceed according to statutory law. Jurisdiction and procedure is defined by statute. Likewise, civil courts and admiralty courts proceed according to statutory law. Any court proceeding according to statutory law is not a court of record which only proceeds according to common law; it is an inferior court.

Extraordinary writs emanate from the Kings Bench, and although the tribunal is usually a body of judges, twelve or twenty-five, it can also be executed by the People (King) themselves, and can only be refuted by the sworn affidavit of another person. These extraordinary writs are extraordinary "REMEDIES".

**WRIT** is a precept in writing, couched in the form of a letter, running in the name of the People (king), president, or state, issuing from a court of justice, and sealed with its seal, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done; it is a mandatory precept issuing from court of justice.<sup>1</sup>

**EXTRAORDINARY REMEDIES** There are many types of writs but the most powerful are "extraordinary remedies," in contradistinction to the ordinary remedy by action."<sup>2</sup> Such extraordinary writs as the Writ of Quo Warranto for the right for the People (king) to inquire by what authority; Writ of Habeas Corpus for the right of the People (King) to show cause for detention or release the body. Writ of Error used to reverse a judgment in error CORAM NOBIS which means before us ourselves. Writ of Certiorari which is a writ commanding judges or officers of inferior courts to certify or to return records or proceedings in a cause for judicial review of their action; and finally the Writ of Mandamus a writ that commands an official or a court to perform some act.

An extraordinary judicial writ issuing out of a court of superior jurisdiction, directed to an inferior court or tribunal exercising judicial powers, for the purpose of preventing the inferior tribunal from usurping a jurisdiction with which it is not lawfully vested;<sup>3</sup> from assuming or

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<sup>1</sup> Poirier v. East Coast Realty Co., 84 N.H. 461, 152 A. 612, 613. Process. State ex rel. Walling v. Sullivan, 245 Wis. 180, 13 N.W.2d 550, 555.

<sup>2</sup> Prudential Securities Co. v. Three Forks, H. & M. V. R. Co., 49 Mont. 567, 144 P. 158, 159.

<sup>3</sup> State v. Stanfield, 11 Okl.Cr. 147, 143 P. 519, 522

exercising jurisdiction over matters beyond its cognizance<sup>4</sup> or from exceeding its jurisdiction in matters of which it has cognizance.<sup>5</sup> Writs of prohibition and mandamus are demanding remedies by which the Supreme Court of Record could supervise lower courts and public officers.

**WRIT OF MANDAMUS** [Lat.] means we command; this is the name of a high prerogative writ which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived,<sup>6</sup> or to compel a court to give judgment on a verdict, to seal or amend a bill of exceptions, or to exonerate bail; or to compel an elected or appointed servant to perform some duty. The writ of prohibition is available if needed to restrain an inferior court from exceeding its jurisdiction prior to final judgment in a case.

**WRIT OF CERTIORARI** [Lat.] means to be informed of, to be made certain in regard to; the name of a writ of review or inquiry.<sup>7</sup> A writ commanding judges or officers of inferior courts to certify or to return records or proceedings in a cause for judicial review of their action;<sup>8</sup> By the common law, a supreme court has power to review the proceedings of all inferior tribunals, and to pass upon their jurisdiction and decisions on questions of law.<sup>9</sup> The command of a writ of certiorari > CERTIORARI FACIAS. (Blacks 4th) Cause to be certified.

**WRIT OF ERROR** A writ issued from a court of appellate jurisdiction, directed to the judge or judges of a court of record, requiring them to remit to the appellate court the record of an action before them, in which a final judgment has been entered, in order that examination may be made of certain errors alleged to have been committed, and that the judgment may be reversed, corrected, or affirmed, as the case may require.<sup>10</sup> CORAM NOBIS before us ourselves, or the King's Bench, applied to writs of error directed to another branch of the same court.<sup>11</sup> When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be coram non iudice, and the judgment is void.<sup>12</sup> Error in the proceedings "before you;" words used in a writ of error directed by a court of review to the court which tried the cause then it is said to be **error coram vobis**.

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<sup>4</sup> Jackson v. Calhoun, 156 Ga. 756, 120 S.E. 114, 115;

<sup>5</sup> Jackson v. Calhoun, 156 Ga. 756, 120 S.E. 114, 115

<sup>6</sup> Lahiff v. St. Joseph, etc., Soc., 76 Conn. 648, 57 A. 692, 65 L.R.A. 92, 100 Am.St.Rep. 1012

<sup>7</sup> Leonard v. Willcox, 101 Vt. 195, 142 A. 762, 766; Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, 229 Iowa 1028, 295 N.W. 858.

<sup>8</sup> Jacob; Ashworth v. Hatcher, 98 W.Va. 323, 128 S.E. 93.

<sup>9</sup> 6 Wend. 564; 10 Pick. 358; 4 Halst. 209.

<sup>10</sup> Siegelschiffer v. Penn Mut. Life Ins. Co., C.C.A.N.Y., 248 F. 226, 228; Ward v. Williams, 270 Ill. 547, 110 N.E. 821, 823; Board of County Com'rs of Harford County v. Jay, 122 Md. 324, 89 A. 715, 717.

<sup>11</sup> 1 Archb. Pr. K. B. 234.

<sup>12</sup> Manufacturing Co. v. Holt, 51 W.Va. 352, 41 S.E. 351.

**HABEAS CORPUS** - US Constitution Article I Section 9. The privilege of the writ of habeas corpus shall not be suspended. In the United States habeas corpus exists in two forms: common law and statutory. The Constitution for the United States of America acknowledges the Peoples' right to the common law of England as it was in 1789. It does not consist of absolute, fixed and inflexible rules, but broad and comprehensive principles based on justice, reason, and common sense.<sup>13</sup>

This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement. 3 Bl. Comm. 129. The "great writ of liberty," issuing at common law out of courts of Chancery, King's Bench, Common Pleas, and Exchequer.<sup>14</sup>

At common law, the writ, meaning "you have the body to testify", used to bring up a prisoner detained in a jail or prison to give evidence before the court.<sup>15</sup>

In civil cases habeas corpus is used to remove a person out of the custody of one court into that of another, in order that he may be sued and answer the action in the latter.<sup>16</sup>

In criminal cases habeas corpus is directed to the person detaining another, and commanding him to produce the body of the prisoner with the day and cause of his caption and detention, and to submit to whatsoever the judge or court awarding the writ shall consider in that behalf.<sup>17</sup>

On a petition for a writ of habeas corpus, the standard of review for a claim of prosecutorial misconduct, like the standard of review for a claim of judicial misconduct, is the narrow one of due process, and not the broad exercise of supervisory power.<sup>18</sup> The relevant question is whether the prosecutor's comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'<sup>19</sup>

Statutory procedure, a legal process that cannot be derailed 28 USC 2243 Issuance of writ; A court, justice or judge entertaining an application for a writ of habeas corpus **shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted**, unless it appears from the application that the applicant or person detained is not entitled thereto. The writ, or order to show cause shall be directed to the person having custody of the person detained. **It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.**

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<sup>13</sup> Miller v. Monsen, 37 N.W.2d 543, 547, 228 Minn. 400.

<sup>14</sup> Ex parte Kelly, 123 N.J.Eq. 489

<sup>15</sup> Hottle v. District Court in and for Clinton County, 233 Iowa 904, 11 N.W.2d 30, 34; 3 Bl. Comm. 130; 2 Tidd, Pr. 809. Ex parte Marmaduke, 91 Mo. 250, 4 S.W. 91, 60 Am.Rep. 250.

<sup>16</sup> 2 Sell. Pr. 259; 2 Mod. 198; 3 Bl. Comm. 129; 1 Tidd, Pr. 300.

<sup>17</sup> 3 Bl. Comm. 131; 3 Steph. Comm. 695.

<sup>18</sup> Darden v. Wainwright, 477 U.S. 168, 181 (1986) (quoting Donnelly v. DeChristoforo, 416 U.S. 637, 642 (1974)).

<sup>19</sup> Id. (quoting Donnelly, 416 U.S. at 643).

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed. Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained. The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts. The return and all suggestions made against it may be amended, by leave of court, before or after being filed. The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

**DEFAULT JUDGMENT** Rule 55. Default; (a) Entering a Default - When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk **MUST** enter the party's default.<sup>20</sup> It establishes allegations of complaint and concludes by way of estoppel.<sup>21</sup>

**QUO WARRANTO.** A writ, in the nature of a **writ of right for the king, against him who claimed or usurped any office, franchise, or liberty, to inquire by what authority he supported his claim, in order to determine the right.** It lay also in case of non-user, or long neglect of a franchise, or misuser or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse.<sup>22</sup> An extraordinary proceeding, prerogative in nature, addressed to preventing a continued exercise of authority unlawfully asserted.<sup>23</sup> It is intended to prevent exercise of powers that are not conferred by law, and is not ordinarily available to regulate the manner of exercising such powers.<sup>24</sup> Upon such a writ, if the corporate charter is found to be in violation of the unalienable rights of the People said chartered may be dissolved and the assets seized for remedy of the injured.

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<sup>20</sup> Default judgment. [Black's Law 4th edition, 1891] A judgment rendered in consequence of the non-appearance of the defendant. [Beard v. Sovereign Lodge, W. O. W., 184 N.C. 154, 113 S.E. 661; In re Smith, 38 Idaho, 746, 225 P. 495, 496; Brame v. Nolen, 139 Va. 413, 124 S.E. 299, 301]. One entered upon the failure of a party to appear or plead at the appointed time. The term is also applied to judgments entered under statutes or rules of court, for want of affidavit of defense, plea, answer, and the like, or for failure to take some required step in the cause.

<sup>21</sup> De Hoff v. Black, 206 N.C. 687, 175 S.E. 179.

<sup>22</sup> 3 Bl.Comm. 262.;

<sup>23</sup> Johnson v. Manhattan Ry. Co., N.Y., 53 S.Ct. 721, 289 U.S. 479, 77 L.Ed. 1331.;

<sup>24</sup> State ex rel. Johnson v. Conservative Savings & Loan Ass'n, 143 Neb. 805, 11 N.W.2d 89, 92, 93.