the necessary statutory affidavits on the part of the person making them that they were authorized, as agents of said association, to make said answer, as required under the statute. The appeal in this case is prosecuted from a judgment of the circuit court discharging the garnishee on the contest of the answer of the garnishee. The facts necessary to an understanding of the questions discussed and reviewed on the present appeal are sufficiently stated in the opinion.

J. B. Brown and Alvin Ahlrichs, for appellants. George H. Parker, for appellee.

DOWDELL, J. The appeal in this case is prosecuted from the judgment of the circuit court discharging the garnishee. The garnishee, the Cullman Building & Loan Association, is a domestic corporation. As disclosed by the record, the first and only legal answer made by the garnishee was that filed by S. L. Fuller on the 17th day of September, 1895, which was accompanied by the requisite statutory affidavit showing his authority as agent to make the answer. Code 1896, § 2190. The answer previously made and filed by C. Schulze was without the necessary statutory affidavit, and consequently was not such an answer as the court could predicate any order or judgment upon. Steiner v. Bank, 115 Ala. 179, 22 South. 30, and authorities there cited. At the fall term of the court, 1895 (September 16th), the cause was continued generally, and on the following day (September 17th), Fuller filed his written answer for the garnishee, and on the 19th day of September, at the same term, the order of continuance was set aside, and the garnishee required to answer orally. No further orders were made in the case at this term, and no contest was filed. At the following spring term, 1896, Fuller, as agent of the garnishee corporation, in obedience to the orders of the court, made oral answer in open court. This answer, as well as the written answer filed September 17, 1895, denied indebtedness to the defendant. Plaintiffs filed a contest of the oral answer made by the garnishee, which the garnishee moved to strike from the file, and at the same time praying to be discharged on their answer of no indebtedness, no contest having been filed to the written answer at the term at which it was made. This motion was overruled by the court, and the garnishee was required to join issue upon the contest. In this ruling the court committed an error. The motion of the garnishee should have been sustained, and the garnishee discharged, under the authorities of Steiner v. Bank, supra; Roman v. Baldwin (Ala.) 24 South. 360; Roman v. Dimmick (Ala.) 26 South. 214; and Code 1896, § 2191. It necessarily follows that any errors the court may have committed in any of its rulings upon the trial of the contest, so far as the plaintiffs are concerned, would be errors without injury, and therefore could not operate a reversal of the cause. The contest in the case being unauthorized, not having been instituted at the term at which the written answer was filed, and there being no order of continuance for that purpose at said term, the giving of the affirmative charge, at the request of garnishee, and the judgment of discharge, were free from reversible errors. The court, in its final action, merely rectified the error it had committed in overruling the garnishee's motion to strike the contest and discharge the garnishee. The judgment of the circuit court is affirmed.

DUNSTON v. STATE.

(Supreme Court of Alabama. Jan. 31, 1900.)

CRIMINAL LAW—CARRYING A PISTOL—DEFENSES.

On a trial under Cr. Code, § 4420, for carrying a pistol concealed about one's person, it is no defense that defendant was alone and in his own home.

Appeal from circuit court, Geneva county; A. H. Alston, Judge.

Ruffin Dunston was convicted of carrying a pistol concealed about his person, and appeals. Affirmed.

On the trial of the cause, the evidence showed, without conflict, that Ruffin Dunston, the defendant, had a pistol concealed about his person in Geneva county, within 12 months before the finding of the indictment; that at the time specified the defendant was in his own cabin, and had not been out of it with the pistol upon his person; that he was arrested in his own cabin by the sheriff, and searched, and the pistol thereby found concealed on his person. There was no evidence tending to show that the defendant had, at any time, left the cabin with the pistol on his person, or that any one had been present with him in the room, except the officers when they went to arrest him. This being all the evidence in the case, the defendant requested the court to give to the jury the following written charges, and separately excepted to the court's refusal to give each of them as asked: (1) "If the jury find that there was no evidence tending to show that defendant had left his house with the pistol on his person, although he had one concealed on his person within his bedroom at the time he was arrested, they must find him not guilty." (2) "If the jury believe from the evidence that the defendant was in his cabin alone at the time the sheriff arrested him, and there is no evidence tending to prove that he carried the pistol concealed about him on the outside of his cabin, it being his domicile, then he has not violated the statute, and they must find defendant not guilty." (3) "The statute against carrying a concealed pistol was intended to suppress a public evil, and consequently to guard the public safety; hence if the jury believe from all the evidence that the defendant, at no time covered by the testimony, had left his room, and there was no

one present with him at the time of his arrest, in the absence of any evidence that any one had been with him, although he had the pistol concealed when arrested, the offense was incomplete, and they must find the defendant not guilty."

James B. Cox, for appellant. Chas. G. Brown, Atty. Gen., for the State.

SHARPE, J. Neither by the letter nor by the spirit of the statute prohibiting the carrying of weapons concealed about the person is any exception created in favor of place. One of the objects of the law is the avoidance of bad influences which the wearing of a concealed deadly weapon may exert upon the wearer himself, and which in that way, as well as by the weapon's obscured convenience for use, may tend to the insecurity of other persons. Owen v. State, 31 Ala. 387; State v. Reid, 1 Ala. 612. The mental suggestions which proceed from constant contact with weapons specially adapted to, and usually worn for the purpose of, inflicting bodily harm to persons, may come as well when the wearer is in his domicile as elsewhere. The only matter relied on to acquit the defendant is that he was in his home when carrying the pistol concealed upon his person, and that until the time of his arrest he was alone. This neither avoids the operation of the statute nor excuses its violation. Harman v. State, 69 Ala. 248; Owen v. State, supra. The judgment will be affirmed.

STATE ex rel. CROW v. CROOK, Judge.[1]

(Supreme Court of Alabama. June 30, 1899.)

MANDAMUS—RETURN—STATUTES—JUDGES—AUTHORITY—VACATION PROCEEDINGS.

1. Code 1896, § 921, authorizes judges of the circuit courts to grant mandamus and certain other writs grantable at common law, but makes no provision as to the return of such writs. Sections 2825 and 2827, relating to pleadings and appeal in mandamus proceedings, provide that the "court shall award the relief," if any, and that appeal lies from the "decision of the court." *Held*, that there was nothing in the statutes changing the rule of common law in regard to the return of the writs, and hence they are returnable only to the "court in term time," and cannot be issued returnable to a "judge" in vacation.

2. Code 1896, § 431, authorizing appeals from judgments of the judges of the circuit court in mandamus proceedings, contemplates only such judgments as the judge had authority to render, and did not confer a power, not otherwise existing, of rendering judgment on a petition for mandamus in vacation.

3. Since a peremptory mandamus is enforceable by attachment against the respondent, and by fine or imprisonment for contempt, and such penalties can be inflicted only by the "court," and not by the "judges," as such, Code 1896, § 921, conferring on circuit judges the power to award such writ, did not give the judge authority to award it in vacation; for such construction would confer authority, without power to enforce it.

4. The judges of the circuit court having no authority to entertain proceedings for a peremptory mandamus in vacation, appeal will not lie from a judgment in such proceedings.

Mandamus by the state, on relation of J. D. Crow, against Emmett F. Crook, judge of probate. From a judgment dismissing the petition, petitioner appeals. Dismissed.

The state of Alabama, on the relation of J. D. Crow, filed a petition addressed to Hon. George E. Brewer, as judge of the Seventh judicial circuit, asking for a writ of mandamus, or other appropriate remedial writ, directed to Emmett F. Crook, as judge of probate of Calhoun county, commanding him to remove the books, papers, and records of his office from Anniston to Jacksonville, and at the latter place keep his office at the court house, and there open for the transaction of business, as prescribed by section 3361 of the Code of 1896. Petitioner alleged he owned an unpaid debt secured by mortgage, the record of which in the said probate office, together with the other books, papers, and records thereof, had been by respondent moved to Anniston, and there kept in an office which respondent claimed to be the probate office by reason of an election held under the Acts of the General Assembly of Alabama of 1898-99; that said acts were unconstitutional, null, and void; that the court house and county seat were still at Jacksonville, and not at Anniston; that all pretended proceedings under said Acts of 1898-99 were null and void, by reason of the unconstitutionality and invalidity thereof; that any pretended exercise of authority by the said judge of probate in removing his office to the city of Anniston, and his failure and refusal to hold and keep open the same, and the books, records, and papers thereof, in the court house in said town of Jacksonville, is contrary to law, and a failure in the performance of respondent's duty as such judge of probate; that petitioner is a resident citizen of Calhoun county, and has resided there more than five years; that he made a demand on said respondent, as such judge of probate, after such removal to Anniston, that he keep his office as such judge of probate at the court house, in the town of Jacksonville, and open there for the transaction of business, as required by law, which demand was peremptorily refused on the ground and for the reason claimed by respondent that, by virtue of said Acts of 1898-99 of the general assembly of Alabama and proceedings thereunder, the county seat of said county had been removed from Jacksonville to Anniston, where he had opened up the probate office of said county for the transaction of all of the business of the office, and that he would continue henceforth to hold the said office in Anniston. The petition is full and formal in its allegations, and is properly verified by affidavit of the petitioner. Upon filing and inspection of the petition with and before said judge of the Seventh judicial circuit, he ordered it to be entertained, made a rule nisi, and issued the alternative writ. The alternative

[1] Rehearing denied.