

CHAPTER 588

CONTEMPTS

588.01 CONTEMPTS

Abuse of process; elements of the cause of action; distinguished from malicious prosecution; void warrant no bar to abuse of process. 32 MLR 805.

Executive immunity from disclosure sought to be compelled by a subpoena duces tecum where determination of privilege by the judge. 35 MLR 586.

Contempt; due process. 36 MLR 965.

The essential elements of an action for abuse of process are the existence of an ulterior purpose, and an act using the process to accomplish a result for which it was not designed. It is a misuse of a process, after it has once been issued, for an end other than that which it was designed to accomplish. *Hoppe v Klapperich*, 224 M 224, 28 NW(2d) 781.

A pendente lite order forbidding a husband defendant in a divorce action from visiting his wife terminated with the entry of the divorce decree. *Krmpotich v Krmpotich*, 227 M 567, 35 NW(2d) 810.

If the act is wholly the disobedience by one party to a suit of a special order made in behalf of the other, and the order disobeyed may still be obeyed, and the purpose of the punishment is to aid in the enforcement of obedience, the proceeding notwithstanding its form is a proceeding in civil contempt; but where the forbidden act has been wholly performed and cannot be recalled, then the act is contempt of court rather than a disregard of the rights of the adverse party. The punishment in contempt can have no remedial aspect. The proceeding becomes, in its nature, criminal. Review of proceedings in civil contempt must be by appeal; while review of a conviction for criminal contempt must be by certiorari. *Swift v United Packing-house Workers*, 228 M 571, 37 NW(2d) 831.

A lawful order or decree presupposes jurisdiction of the court to make it and where such jurisdiction is lacking, the order is not lawful, and failure to obey it cannot be made the basis for a finding of contempt. *Wojahn v Halter*, 229 M 374, 39 NW(2d) 545.

588.02 POWER TO PUNISH, LIMITATION

Regardless of whether unauthorized practice of law occurs within or outside the presence of the court, the act is punitive and criminal in its nature and the proceedings are in the public interest to vindicate the dignity and authority of the court and to deter others from like offenses. *Gardner v Conway*, 234 M 468, 48 NW(2d) 788.

There is a distinction between criminal contempt and civil contempt. The first must be reviewed by certiorari and the second is not always appealable. *Gardner v Conway*, 234 M 468, 48 NW(2d) 788.

588.09 HEARING

The court's refusal to permit defendant in contempt proceedings to testify in his own behalf was reversible error. *Krmpotich v Krmpotich*, 227 M 587, 35 NW(2d) 810.

Since the order adjudging the defendant in contempt for failure to make support payments includes matters not responsive to order to show cause, and there was no appearance by defendant or his counsel, it is erroneous. *French v French*, 236 M 444, 53 NW(2d) 218.

588.10 PENALTIES FOR CONTEMPT OF COURT

Where pendente lite order directed the husband in a divorce action to remain away from and not interfere with his wife pending further order of the court, and was not extended by the divorce decree, the order terminated with the entry of the divorce decree and thereafter the husband could not be held in contempt thereof. The court's refusal to permit the defendant to testify in his own behalf was reversible error. *Krmpotich v Krmpotich*, 227 M 567, 35 NW(2d) 810.

CHAPTER 589

HABEAS CORPUS

589.01 WRIT OF HABEAS CORPUS; WHO MAY PROSECUTE

Judicial control of administrative action. 33 MLR 569.

Judicial control of administrative action by means of extraordinary remedies in Minnesota. 33 MLR 569.

History of the Minnesota statutes pertaining to the extraordinary remedies in general. 33 MLR 571.

Power of federal courts to issue writ of habeas corpus. 33 MLR 783.

Exhaustion of state remedies as a condition for federal habeas corpus. 34 MLR 653.

Unequal protection of the laws; re-sentence without credit for time served. 35 MLR 239.

Void sentence doctrine. 35 MLR 240.

Right of a parolee to a hearing upon revocation of commutation of sentence. 36 MLR 537.

Habeas corpus; mistreatment of federal prisoners; remedies available. 36 MLR 974.

Where the return in the habeas corpus petition shows good cause for the petitioner's detention, he must prove facts which he asserts invalidates the effect of the process. *Willoughby v Utecht*, 223 M 572, 27 NW(2d) 779.

Under sections 610.28 and 610.31 a person convicted of grand larceny in the second degree and of a prior conviction for armed robbery in the state of Ohio is subject to double punishment prescribed for the crime of which he is convicted, and the increased penalty is valid as against the objection that the prior conviction was in another state. *Willoughby v Utecht*, 223 M 572, 27 NW(2d) 779.

Generally, if for any reason a husband and wife have in fact separated and are living apart, court, when its power is invoked by habeas corpus proceedings, may determine which parent shall have custody of the children, and court in such cases will place the interest of the children above the rights of either parent and will make such provisions for their custody and care as will best serve their welfare; and court in such cases will place the interest of the children above the rights of either parent and will make such provisions for their custody and care as will best serve their welfare. *Atwood v Atwood*, 229 M 333, 39 NW(2d) 103.

A writ of habeas corpus is intended to speedily test the propriety of the restraint suffered by the complainant. *Wojahn v Halter*, 229 M 375, 39 NW(2d) 545.

The probate court has no jurisdiction in habeas corpus proceedings. An intervenor has no right to change the issue between the original parties. A petition labeled as a petition to vacate the order of commitment of a person found by the