

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

probate court to be a psychopathic personality, and to restore him to capacity, but which contained no allegations applicable to a petition for restoration and merely asked for vacation of commitment order and warrant of commitment on the ground that the probate court lacked jurisdiction to make the order, was a petition for habeas corpus of which the probate court had no jurisdiction. *State ex rel v Willson*, 230 M 560, 40 NW(2d) 910.

In ascertaining a jurisdictional fact, the court will pursue its inquiry through the record of the proceedings, and where the court is one of general jurisdiction habeas corpus can be invoked only where lack of jurisdiction appears on the face of the record. Where the same issue was presented in a previous application for a writ of habeas corpus and no appeal was taken to this court after the writ was discharged, the issue is *res judicata* in this proceeding. *State ex rel v Utecht*, 230 M 579, 43 NW(2d) 97.

Where grounds alleged in a petition for a writ of habeas corpus were almost identical with those presented in previous petitions considered by the appellate court, and the grounds were without merit, the trial court's order denying the petition is affirmed. *State ex rel v Utecht*, 230 M 579, 41 NW(2d) 579.

Where counsel properly appointed by the court to represent the complainant was allegedly negligent in allowing inadmissible evidence to be received at the trial there is not sufficient ground for habeas corpus. *Shaw v Utecht*, 232 M 82, 43 NW(2d) 782.

Habeas corpus cannot be used as a substitute for a writ of error or appeal or as a cover for a collateral attack upon a judgment of a competent tribunal which had jurisdiction of the subject matter and of the person of the defendant. This principle applies even though the defendant has permitted the time for appeal to elapse. *State ex rel Schwanke v Utecht*, 233 M 434, 47 NW(2d) 100.

A "warrant" in a criminal case has the sole function of giving the court jurisdiction over the person of the accused by bringing him in person before the court to answer the charge made against him; and unless the accused is before the court the warrant becomes wholly inoperative and defects therein cease to be material. By entering a plea of guilty or not guilty in a criminal prosecution the criminal waives objection to the jurisdiction of the court over his person. *State ex rel Schwanke v Utecht*, 233 M 434, 47 NW(2d) 99.

The natural parents have the first right to the care and custody of the child, unless the best interests of the child require it to be given into the hands of someone else. Custody of a 4½ year old child, who had been in the care of her maternal grandparents since her mother's death three months after her birth, was properly awarded to the child's father, who had subsequently remarried where it appeared that all parties involved were of good character and that the child would be properly cared for, regardless of which party was awarded her custody. *State ex rel v Boehland*, 237 M 144, 53 NW(2d) 814.

589.02 PETITION, TO WHOM AND HOW MADE

Power of federal courts to issue writ of habeas corpus; territorial jurisdiction of court. 33 MLR 197.

Power of the asylum state to free a fugitive who pleads in defense violation of his constitutional rights. 34 MLR 565.

The supreme court has original jurisdiction of writs of habeas corpus where a final and speedy decision is important to the preservation of the right to liberty of a citizen improperly restrained; and may exercise such jurisdiction though the prisoner has a remedy by appeal, where lack of authority to commit a prisoner appears from the face of the record. *Wojahn v Halter*, 229 M 374, 39 NW(2d) 545.

The term "debt" as used in the constitutional prohibition against imprisonment for debt has been limited to obligations to pay money or something due and owing from one to another arising out of a contract. An obligation to pay money under a stipulation for settlement is a debt within the meaning of our constitution. *Wojahn v Halter*, 229 M 374, 39 NW(2d) 545.

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The probate court does not have jurisdiction in habeas corpus proceedings. *State ex rel v Willson*, 230 M 156, 40 NW(2d) 940.

The petition presents no such exceptional circumstances as would justify an original application to the supreme court. In the absence of exceptional circumstances, the application for a writ of habeas corpus must be made to the proper district court before resort to the supreme court. *Seeker v Swenson*, M, 60 NW(2d) 592.

589.04 STATEMENTS IN PETITION

Habeas corpus; exhaustion of administrative remedies. 37 MLR 69.

The names of witnesses need not be endorsed on an information. The sufficiency of evidence to establish the guilt of relator could only be raised by an appeal or writ of error. It cannot be raised by habeas corpus proceedings. *State ex rel v Utecht*, 229 M 579, 40 NW(2d) 441.

A petition for return of habeas corpus was defensive where no copy of the warrant of commitment was annexed to the petition and no reason was given for failure to do so. *State ex rel v Utecht*, 230 M 579, 40 NW(2d) 441.

The claim that defendant was accused of forgery in the second degree by information rather than by indictment of grand jury, and that the names of the witnesses appearing against the defendant were not endorsed on the information, did not justify an issue of a writ of habeas corpus following conviction and sentence to state penitentiary. *Stolpestad v Utecht*, 231 M 266, 42 NW(2d) 813.

The alleged negligence of the accused's counsel, properly appointed by the court to represent him, in allowing inadmissible evidence to be received at the trial was not a ground for habeas corpus. The sufficiency of allegations of an information can not be challenged in habeas corpus proceedings after the judgment. If there are errors they should have been asserted at the trial, reviewed upon appeal or by writ of error. *Shaw v Utecht*, 232 M 82, 43 NW(2d) 781.

589.05 FORM OF WRIT; SEAL ESSENTIAL

Power to issue writ of habeas corpus; scope of the inquiry extended to matters outside of and contradictory to the record. 32 MLR 507.

In drafting and adopting sections 489.01 to 489.05 in the 1945 revision of the Minnesota Statutes it was the intention of the legislature to continue the election of court commissioners during the same years as other county officers may be elected. The phrase "next general election" refers to the next general election at which a court commissioner may be elected and means that appointee may serve out the entire unexpired term. No election for court commissioner of Hennepin county may be held in the year 1948. *State ex rel v Fitzsimmons*, 226 M 557, 33 NW(2d) 854.

589.06 WHEN SUFFICIENT

Power of the asylum state to free a fugitive who pleads in defense violation of his constitutional rights. 34 MLR 565.

Habeas corpus is a civil remedy, separate and apart from the criminal action, and, therefore, it may not be used as a substitute for a writ of error or appeal; as a motion to correct, amend, or vacate; or as a cover for a collateral attack upon a judgment of a competent tribunal which had jurisdiction of the subject matter and of the person of the defendant. Ordinarily, the only function of habeas corpus after conviction for a crime is to ascertain (1) whether the court had jurisdiction of the crime and of the person of the defendant; (2) whether the sentence was authorized by law; and (3) whether the defendant was denied certain fundamental constitutional rights. Petitioner in a habeas corpus proceeding bears the burden of proof of showing the illegality of his detention. *Breeding v Swenson*, M, 60 NW(2d) 4.

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In the exercise of its discretion a trial court may, at any time and without notice, constitutionally vacate a stay of execution and reinstate the original sentence, and the fact that a court does not state the reason for revoking the stay is a mere irregularity not going to the jurisdiction of the court. *Breeding v Swenson*, M, 60 NW(2d) 4.

589.08 RETURN TO WRIT

Where the return on habeas corpus sets forth process showing good cause for petitioner's detention he must prove facts which he asserts invalidate the apparent effect of such process. *Willoughby v Utecht*, 223 M 572, 27 NW(2d) 779.

In a habeas corpus proceeding where the evidence sustains the finding that when relator waived a jury trial he was not temporarily insane the petition was properly denied. *State ex rel v Utecht*, 227 M 589, 34 NW(2d) 721.

Petition for writ of habeas corpus based upon the same set of material facts held insufficient to justify issuance of writ in previous decision of supreme court should be quashed and appeal from order of district court denying petition should be dismissed. Where petitioner had served substantially less than the minimum period of imprisonment required by sentence imposed under indeterminate sentence law irrespective of any increased punishment for prior convictions, petition for writ of habeas corpus on ground of alleged invalidity of such increased punishment was premature. *Shaw v Utecht*, 235 M 55, 49 NW(2d) 385.

In habeas corpus proceedings for discharge of one arrested on the warrant of the governor in interstate extradition proceedings, the burden of proof to show that he is not a fugitive from justice is on the prisoner. The guilt or innocence of a defendant cannot be determined in habeas corpus proceedings nor can ulterior motives or malice be inquired into. *State ex rel v Ryan*, 235 M 161, 50 NW(2d) 259.

Under the terms of the commutation of sentence issued to the petitioner, the pardon board had the authority to revoke the commutation where the petitioner had expressly waived any right to notice or hearing on the question of the revocation thereof. The pardon or commutation of sentence is an act of grace bestowed upon the prisoner by the pardoning authority and not something that he can demand. The prisoner is not deprived of any legal right when the commutation is revoked without notice or hearing. *Washburn v Utecht*, 236 M 31, 51 NW(2d) 657.

589.12 PROCEEDINGS ON RETURN OF WRIT

Scope of inquiry on habeas corpus extended to matters outside of and contradictory to the record. 32 MLR 507.

Recital in the judgment that sentence was imposed in abstentia did not preclude defendant from raising in habeas corpus proceedings the question of whether such absence was voluntary or involuntary and evidence taken before the trial court was properly before the appellate court. *State ex rel v Utecht*, 230 M 579, 36 NW(2d) 126.

An appeal from an order denying petition for writ of habeas corpus brings the case to the supreme court de novo. *Stolpestad v Utecht*, 231 M 266, 42 NW(2d) 813; *State ex rel v Utecht*, 232 M 82, 43 NW(2d) 781.

589.19 TRAVERSE OF RETURN, NEW MATTER

An application for a writ of habeas corpus is an independent proceeding to enforce a civil right. The writ may not be used as a cover for a collateral attack upon a judgment of a competent tribunal which had jurisdiction of the subject matter and of the prisoner. Rules applicable to collateral attack on a judgment apply where a collateral attack is made on a sentence. The sentence is the judgment. Where a proposed amendment to an application for a writ of habeas corpus, if allowed, would constitute a collateral attack on the judgment or the allegations of the proposed amendment are sham, the amendment should not be allowed. *Breeding v Utecht*, M, 59 NW(2d) 314.

589.22 RE-ARREST OF PERSON DISCHARGED

Where a prisoner after commutation of his sentence, on condition that he lead a law-abiding life, participated in a robbery, and the board of pardons without notice and hearing, revoked the commutation of sentence, the prisoner was not entitled to secure his release from prison by habeas corpus. In view of the statute covering habeas corpus and providing for a trial de novo in the supreme court, the common law doctrine permitting the renewal of petition for habeas corpus on the same set of facts no longer exists, but the doctrine of res judicata applies. *Guy v Utecht*, 229 M 58, 38 NW(2d) 59.

589.30 HEARING ON APPEALS

Res judicata is applicable to habeas corpus. 36 MLR 169.

On appeal from the discharge of a writ of habeas corpus the appellate court draws its own conclusion from the evidence on issues of fact, the trial being de novo. *State ex rel v Utecht*, 227 M 589, 36 NW(2d) 126.

Where a prisoner after commutation of his sentence, on condition that he lead a law-abiding life, participated in a robbery, and the board of pardons without notice and hearing, revoked the commutation of sentence, the prisoner was not entitled to secure his release from prison by habeas corpus. In view of the statute covering habeas corpus and providing for a trial de novo in the supreme court, the common law doctrine permitting the renewal of petition for habeas corpus on the same set of facts no longer exists, but the doctrine of res judicata applies. *Guy v Utecht*, 229 M 58, 38 NW(2d) 59.

While an appeal from an order denying a writ of habeas corpus brought the case to the supreme court de novo, the court instead of appointing a referee to take testimony on deposition might consider the question whether the petition on its face presented a case for issuance of a writ. *State ex rel v Utecht*, 230 M 579, 40 NW(2d) 441.

The supreme court's opinion affirming the order of the district court denying a petition for a writ of habeas corpus to the state prison warden, is res judicata on an appeal from the district court's subsequent order denying appellant's similar petition presenting the same material facts without raising any new question of substance. *State ex rel v Utecht*, 232 M 116, 44 NW(2d) 113.

Where there were four appeals involved but one was an appeal in habeas corpus proceedings in which no costs or disbursements are allowable, and appellants partially prevailed in one of the three matters left to be considered, and respondent prevailed in two of the three matters left to be considered, an equitable adjustment under the circumstances required that appellants be allowed one-third of appellants' disbursements and respondents two-thirds of respondent's disbursements. *Re Maloney's Guardianship*, 234 M 1, 49 NW(2d) 576.

JURIES

CHAPTER 593

JURIES, JURORS

593.01 PETIT JURY

Denial of due process by systematic and intentional exclusion of eligible classes from jury panel. 32 MLR 297.

Judicial process in non-jury cases. 34 MLR 584.

Right to trial by jury in an action for treble damages based upon the Emergency Price Control Act of 1942. 35 MLR 304.