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.

Racial discrimination in selection of juries. 35 MLR 635.

Although the trial court in a criminal case may review and analyze the evidence, remarks which take away the free will of the jury to arrive at its own verdict violate the accused's constitutional right to an impartial jury. State v Shetsky, 229 M 566, 40 NW(2d) 337.

The New York statute providing for the selection of a special or so-called "blue ribbon" jury panel is constitutional and valid. Fay v People, 67 SC 1613.

Husband and wife may sit on the same jury. State v Wilkins, 115 Vt 269, 56 At(2d) 473.

Conflicts in evidence, however sharp, are to be resolved by the jury and its verdict will not be set aside unless it is manifestly and palpably contrary to the evidence as a whole. Robinson v Butler, 234 M 252, 48 NW(2d) 169.

In an equitable action the trial court in its discretion may submit some questions of fact to a jury, but neither party has the right to trial by jury on equitable matters. Georgopolis v George, 237 M 176, 54 NW(2d) 137.

593.03 NUMBER TO BE DRAWN

HISTORY. Amended, 1953 c 68 s 1.

593.04 QUALIFICATIONS, DISABILITIES, AND EXEMPTIONS

Jury service is the compulsory duty required of every citizen unless exempted therefrom by law. County officers are so exempt. In the absence of a proper rule governing jury service, county employees cannot be paid their salaries when they are not performing the services for which they have been engaged. OAG Aug. 21, 1951 (120).

A village may require that the amount of fees and compensation received by an employee for services as juror or otherwise during the period of municipal employment shall be deducted from the salary of the employee. OAG Nov. 4, 1952 (260-A-5).

Members of a fire company organization are exempt from jury service. OAG June 2, 1952 (260-A-7).

593.05 HOW DRAWN AND SUMMONED

In drawing a list of names to constitute a petit jury panel or a grand jury panel, a deputy clerk of court or a deputy sheriff may act as clerk of the district court or sheriff, but a municipal judge may not act in place of a justice of the peace. OAG Oct. 29, 1953 (260-B).

593.06 HOW DRAWN AND SUMMONED IN COUNTIES HAVING MORE THAN 200,000 INHABITANTS

HISTORY. 1907 c 35 s 1; 1909 c 200 s 1; 1909 c 221 s 3; GS 1913 s 7964.

593.13 SELECTION OF JURORS

HISTORY. RS 1851 c 8 s 15, 16; PS 1858 c 7 s 7, 8; 1860 c 15 art 2 s 16, 17; GS 1866 c 8 s 98, 99; 1877 c 10 s 1; 1878 c 18 s 1; GS 1878 c 8 s 107, 108; 1885 c 5; GS 1894 s 673, 675; RL 1905 s 4336; GS 1913 s 7971; 1917 c 485 s 1; 1929 c 13; 1931 c 218; 1951 c 449 s 1.

Where a petit jury is challenged because of failure to select 144 persons to serve thereon, it is incumbent upon the board to present evidence as to the reason for its failure to comply therewith. The absence of the county seal on the list submitted does not violate any statute. State v Morgan, 235 M 388, 51 NW(2d) 61.

593.135 JURORS; SUMMONING AND SELECTING IN CERTAIN CASES

HISTORY. 1953 c 662 s 1.

593.16 JURY OF SIX; DRAWING; CHALLENGES

HISTORY. 1927 c 345 s 2; 1929 c 236 s 2.

593.17 CHALLENGES

HISTORY. 1927 c 345 s 3; 1929 c 236 s 3.

JUDICIAL PROOF

CHAPTER 595

WITNESSES

595.01 WITNESS

Unfavorable inference from failure to call a witness. 33 MLR 423.

Dissatisfaction with exclusionary rules relating to the admission of evidence. 34 MLR 582.

Compulsory use of blood grouping tests in paternity cases. 35 MLR 515.

Definition of reasonable doubt in criminal cases. 35 MLR 584.

Executive immunity from disclosure. 35 MLR 586.

Intentional multi-state torts. 36 MLR 1.

Admissibility of public opinion polls; hearsay evidence. 37 MLR 385.

State and federal income tax statutes, notable differences. 38 MLR 1.

Where plaintiff's witness on cross-examination testified that she did not remember making certain statements to defendant's representative concerning the accident and refused to admit or deny having made such statements, a sufficient foundation was laid to authorize defendant to call such representative as an impeaching witness to prove the statement. Koop v Great Northern, 224 M 286, 28 NW(2d) 687.

The competency of an expert witness is addressed to the sound discretion of the trial court. Beckman v Schroeder, 224 M 370, 28 NW(2d) 629.

The trial court primarily determines the qualifications of a witness offered as an expert. Sallblad v Burman, 225 M 104, 29 NW(2d) 673.

The demonstrated physical facts, fortified by the positive testimony of disinterested witnesses, must in the instant case prevail over the declarations of plaintiffs, who were vitally interested in securing a favorable outcome. It is manifest that the evidence, with its undisputed physical facts, so overwhelmingly and conclusively preponderates against the verdict as to negate the testimony of the plaintiffs and to leave the verdict without a reasonable basis for its support. Cofran v Swanman, 225 M 40, 29 NW(2d) 448.

The res ipsa loquitur rule does not apply where the instrumentality causing the injury was not under the exclusive control of the defendant; and in the instant case an injury to a woman falling into an open coal hole in the public sidewalk, abutting upon the church's property, did not of itself afford sufficient evidence to support her burden of proving that the church was guilty of negligence proximately causing or contributing to the accident. Fandel v Parish of St. John the Evangelist, 225 M 77, 29 NW(2d) 817.

In an action by the executrix to set aside gifts made by the testatrix during her lifetime on the ground of undue influence and lack of mental capacity, testimony of