CHAPTER 589

HABEAS CORPUS

589.01 WRIT OF HABEAS CORPUS; WHO MAY PROSECUTE.

HISTORY. R.S. 1851 c. 83 ss. 24, 25; P.S. 1858 c. 73 ss. 24, 25; G.S. 1866 c. 80 ss. 20, 21; G.S. 1878 c. 80 ss. 21, 22; G.S. 1894 ss. 5994, 5995; R.L. 1905 s. 4573; G.S. 1913 s. 8283; G.S. 1923 s. 9739; M.S. 1927 s. 9739.

1. Question as to constitutionality
2. Competent tribunal
3. Not a substitute for appeal
4. Scope of relief
5. Practice
6. Evidence
7. When discretionary
8. Renewed applications
9. Extradition cases

1. Question as to constitutionality

If the law or ordinance under which a court assumes to convict is void, its judgment is not a "final judgment of a competent tribunal," within the meaning of General Statutes 1878, Chapter 80, Section 22 (section 589.01), and the person imprisoned under it may be discharged from custody on habeas corpus. In re White, 43 M 250, 45 NW 232; State ex rel v Sheriff, 48 M 236, 51 NW 112; State ex rel v Billings, 55 M 467, 57 NW 206, 794.

The constitutionality of the law under which the court proceeded, the relator being incarcerated in Home School for Girls, and the jurisdiction of the court may be challenged on habeas corpus proceedings. State ex rel v Patterson, 188 M 492, 249 NW 187.

2. Competent tribunal

If the court is without jurisdiction, either of the person or the subject matter, it is not a competent tribunal within the meaning of this section; as where the offense was one beyond the jurisdiction of the municipal court of Minneapolis, its judgment of conviction was absolutely void, and imprisonment of the defendant without authority of law, and he may be discharged on habeas corpus. State ex rel v West, 42 M 147, 43 NW 845; State ex rel v Kinmore, 54 M 135, 55 NW 830.

The provisions of the military code of the national guard as of 1898 authorizing the trial, in times of peace, of members of the national guard by a court martial, for violation of rules and regulations, and their punishment, if found guilty, by a limited fine, or a limited imprisonment in case the fine is not paid, are not unconstitutional. State ex rel v Wagener, 74 M 518, 77 NW 424.

It is conclusively shown that if any crime was committed, it was committed in Hennepin County and the municipal court of St. Paul is without jurisdiction. State ex rel v Justus, 85 M 114, 88 NW 415.

A plea of former conviction or acquittal for the same offense raises an issue of fact of which the trial court has jurisdiction; but defendant's constitutional right may be waived, and if not raised at the proper time it is deemed waived by the defendant, and the jurisdiction of the court is not affected by the fact that such plea might have been interposed. State ex rel v Utecht, 206 M 42, 287 NW 229.

3. Not a substitute for appeal

Where a person is confined under the final judgment of a court, he can be released on habeas corpus only for jurisdictional defects. Habeas corpus cannot be allowed to perform the function of a writ of error or appeal. If a court has jurisdiction of the person and subject matter and could have rendered the judgment on any state of facts, the judgment, however erroneous or irregular or unsupported by the evidence, is not void, but merely voidable, and habeas corpus is not the proper remedy to correct the error. State ex rel v Sheriff, 24 M 87; In re Williams 39 M 172, 39 NW 65; State ex rel v Kinmore, 54 M 135, 55 NW 830; State ex rel v Billings, 55 M 467, 57 NW 794; State ex rel v Kilbourne, 68 M 320, 71 NW 396; State ex rel v Wolfer, 68 M 465, 71 NW 681; State ex rel v McMahon, 69 M 265, 72 NW 79; State ex rel v Norby, 69 M 451, 72 NW 703; State ex rel v Phillips, 73 M 77, 75 NW 1029; State ex rel v Wagener, 74 M 518, 77 NW 424; State ex rel v Matter, 78 M 377, 81 NW 9; State ex rel v Riley, 109 M 434, 124 NW 11; State ex rel v Langum, 112 M 121, 127 NW 465; State ex rel v McDonald, 112 M 428, 128 NW 454; State ex rel v Riley, 116 M 1, 133 NW 86; State ex rel v McDonough, 117 M 173, 134 NW 509; State ex rel v Sullivan, 171 M 36, 213 NW 56.

A writ of habeas corpus cannot be used as a substitute for writ of error or appeal for the review of a judgment of conviction. It cannot serve as a cover for a collateral attack on such a judgment. State ex rel v Wall, 189 M 265, 249 NW 37; State ex rel v Gibbons, 199 M 445, 271 NW 873; State ex rel v Utecht, 206 M 41, 287 NW 229.

4. Scope of relief

The order appointing a guardian of the estate of an incompetent person is conclusive in a hearing of a writ of habeas corpus. If questioned, it must be in direct proceeding. A court commissioner has no power to make an order which in effect removes a guardian. A guardian of an incompetent person has the right to remove his ward from one state to another, temporarily or permanently, but the right is always subject to the power of a court of chancery to restrain an improper removal. State ex rel v Lawrence, 86 M 310, 90 NW 769.

Where a person on trial for a crime is sentenced to an insane asylum, recovers his sanity in fact and in the opinion of the superintendent of the hospital, he is entitled to be discharged therefrom and his further detention is illegal. If the superintendent does not discharge him, habeas corpus is the proper remedy. Northfoss v Welch, 116 M 62, 113 NW 82.

The mother of an illegitimate child, nine years of age, having failed to obtain the child by habeas corpus proceedings, renewed her application by obtaining an order to show cause in the district court and on a showing that she was a fit and suitable person and financially able, was given custody of her child. State ex rel v Peterson, 156 M 178, 194 NW 326.

Where a court having jurisdiction of the subject matter and of the defendant erroneously denies an application for change of judge by reason of bias and prejudice, the remedy is by appeal. Defendant is not entitled to be discharged on a writ of habeas corpus. State ex rel v McNaughton, 159 M 403, 199 NW 103.

Custody awarded to the natural father and mother of a child. State ex rel v Silver, 161 M 532, 201 NW 631; State ex rel v Hitman, 164 M 373, 205 NW 267.

Habeas corpus lies to determine the right to the possession of the child; but if it appears that the rights of the contending parties have been fixed by a valid judgment, the court will give effect to such judgment; but where custody was given to one who can no longer support him, habeas proceedings are not barred, because the child was not awarded to either of the contending parties. The child is placed in the custody of the mother, but without prejudice to an application in the original court wherein the divorce decree was granted. State ex rel v Kowitz, 173 M 177, 216 NW 937.

The welfare of two young children requires them to remain in custody of maternal grandmother, rather than father. State ex rel v Anderson, 175 M 518, 221 NW 868.

Girl nearly 13 years old, from her own choice is awarded to the custody of her aunt and uncle rather than to father and stepmother. State ex rel v Williams, 176 M 193, 222 NW 927.

Where a delinquent was committed to a guardian until she arrived at the age of 21 years, she may be held until she reaches the age of 19 years as prescribed by statute. State ex rel v Patterson, 188 M 492, 249 NW 187.

Section 610.10, directing the district court not to try a person for crime while he is in a state of insanity, imposes a duty on, but does not go to the jurisdiction of the court. Failure to comply with the statute is no ground for collateral attack, as by habeas corpus, on the judgment of conviction. State ex rel v Utecht, 203 M 448, 281 NW 775.

5. Practice

Upon a relation of a prisoner, the district court of Washington county directed a writ of habeas corpus to the prison warden. A judgment of conviction of the relator is not void, because at the time of the trial in Dakota county, there was pending in the United States court of appeals an appeal from an order of the United States district court discharging a writ of habeas corpus issued upon the petition of the relator. State ex rel v Sullivan, 158 M 473, 198 NW 309; State ex rel v Brunskill, 167 M 343, 209 NW 24, 210 NW 110.

A sentence imposing imprisonment as a punishment, and imprisonment to coerce payment of costs, the two exceeding the statutory limit, is not void altogether; and the prisoner is not entitled to his liberty until he has served the valid portion of his sentence. State ex rel v Maher, 164 M 289, 204 NW 955.

Where on a writ of habeas corpus the patient was discharged, the superintendent at St. Peter hospital appealed. Under the statute, the appeal is a trial de novo in the supreme court. Whether the petitioner before the probate court was or must be a relative, guardian, or resident of the same county as the alleged insane person, quaere. At any rate the jurisdiction of the probate court in the case was not negatived, and there could be no relief by habeas corpus. State ex rel v Freeman, 168 M 374, 210 NW 14.

The evidence was sufficient to sustain the action of the examining magistrate in holding the relator to answer in the district court to the charge of furnishing liquor, potable as a beverage, to a minor. Writ discharged. State ex rel v Felix, 171 M 140, 213 NW 556.

Where a summary court martial has convicted a member of the national guard of an offense against military law, the only question reviewable by habeas corpus is whether the military had jurisdiction over him and power to impose the penalty. State ex rel v Fisher, 174 M 82, 218 NW 542.

An application for a writ of habeas corpus is an independent proceeding to enforce a civil right, and is a collateral attack upon a criminal judgment. A defendant's constitutional right to plead former jeopardy is deemed waived if the plea is not entered at the proper time; and in habeas corpus proceeding involving a contention of former jeopardy in connection with a conviction of a state offense, we are bound to follow decisions of the United States supreme court only so far as due process under the fourteenth amendment is involved. State ex rel v Utecht, 206 M 41, 287 NW 229.

6. Evidence

The evidence on which a committing magistrate has committed a person may be reviewed under a writ of habeas corpus for the purpose of determining whether it fairly and reasonably tends to show the commission of the offense charged and whether it fairly and reasonably tends to make a probable cause for charging the prisoner with its commission. In re Snell, 31 M 110, 16 NW 692; State v Hayden, 35 M 283, 28 NW 659; State ex rel v Justus, 85 M 114, 88 NW 415.

When a person is restrained under a final judgment, the sufficiency to sustain the judgment cannot be reviewed on habeas corpus. State v Sheriff, 24 M 87; State v Kinmore, 54 M 135, 55 NW 830; State v Billings, 55 M 467, 57 NW 206, 794; State v McMahon, 65 M 453, 72 NW 79; State v Wolfer, 68 M 465, 71 NW 681; State ex rel v Norby, 69 M 451, 72 NW 703.

7. Discretionary

Although the writ of habeas corpus is a constitutional and imperative writ of right it does not issue as a matter of course to every applicant. The petition for the writ must show probable cause for issuing it and where the petition on its face shows no sufficient prima facie ground for the discharge of the applicant, the writ may be legally refused. Hoskins v Baxter, 64 M 226, 66 NW 969; State ex rel v Goss, 73 M 126, 75 NW 1132.

8. Renewed applications

A decision of one court or officer on a writ of habeas corpus refusing to discharge a prisoner is not a bar to the issuance of another writ based on the same state of facts as the former writ, by another court or officer, or to a hearing or discharge thereon. In re Snell, 31 M 110, 16 NW 692.

An adjudication on the question of the right to the custody of an infant child, brought upon a writ of habeas corpus, may be pleaded res judicata, and is conclusive upon the same parties in all future controversies relating to the same matter, and upon the same state of facts. Such a case, which is one of private parties contesting private rights is distinguished from one where the suit is sued out by or on behalf of a prisoner, or one deprived of his liberty. State ex rel v Bechtel, 37 M 360, 34 NW 334; State ex rel v Flint, 61 M 539, 63 NW 1113.

9. Extradition cases

NOTE. See Chapter 629.

In a case of extradition, the court, upon habeas corpus, having before it the papers upon which the governor's warrant issued, will decide upon its sufficiency. Where the indictment accompanying the requisition shows an offense committed against the laws of the demanding state, the court will not consider its sufficiency as a criminal pleading. State ex rel v O'Connor, 38 M 243, 36 NW 462; State ex rel v Justus, 84 M 237, 87 NW 770; State v Gerber, 111 M 132, 126 NW 482; State ex rel v Langum, 126 M 38, 147 NW 708.

The governor's rendition warrant creates a presumption that the accused is a fugitive from justice; and to entitle a prisoner held under such a warrant to a discharge on habeas corpus, the evidence must be clear and satisfactory that he was not in the demanding state at the time the alleged crime was committed. State ex rel v Owens, 187 M 244, 244 NW 820.

589.02 PETITION; TO WHOM AND HOW MADE.

HISTORY. R.S. 1851 c. 83 s. 26; P.S. 1858 c. 73 s. 26; G.S. 1866 c. 80 s. 22; G.S. 1878 c. 80 s. 23; G.S. 1894 s. 5996; R.L. 1905 s. 4574; G.S. 1913 s. 8284; G.S. 1923 s. 9740; M.S. 1927 s. 9740.

The supreme court has original jurisdiction of the writ of habeas corpus, and to take recognizances in such proceedings. State v Grant, 10 M 39 (22); In re Snell, 31 M 110, 16 NW 692; In re Dall, 47 M 518, 50 NW 607.

A judge of the district court has power to allow a writ of habeas corpus returnable before himself at chambers. Such writ does not issue as a matter of course. Unless the petition shows prima facie ground for discharge of the applicant, the writ may be legally refused. State ex rel v Hill, 10 M 63 (45); Hoskins v Baxter, 64 M 226, 66 NW 969.

A court commissioner, having the power of a district judge in chambers, may allow a writ of habeas corpus under the seal of the court and returnable before himself, to issue to his own, or to an adjoining county, if there be no officer therein authorized to allow such writ. His determination must be given the same effect as if it had been made by a judge of the district court. An appeal to the supreme court from an order of the court commissioner may be on certification by the district court clerk. State ex rel v Hill, 10 M 63 (45); State ex rel v Barnes, 17 M 340 (315); State ex rel v Bechtel, 38 M 278, 37 NW 338; Hoskins v Baxter, 64 M 226, 66 NW 969; State ex rel v Merrill, 83 M 252, 86 NW 89.

A person applying for a writ must apply to a court or a judge thereof in the county where he is deprived of his liberty, if there be one willing and able to act. If there be none in that county, then to the nearest and most accessible judge willing to act. Such nearest available judge cannot be passed in order to select some other judge. In re Dall, 47 M 518, 50 NW 607.

Justification of sureties on an appeal bond given under the provisions of Laws 1897, Chapter 46, may be had before a court commissioner. Betts v Newman, 91 M 5, 97 NW 371.

Court commissioners have jurisdiction to hear and determine habeas corpus proceedings; but none, after examination or trial had, to rejudge the disposition attacked by weighing the evidence given before the magistrate. Their powers are confined to an examination of the evidence for the purpose of ascertaining whether the determination of the magistrate is entirely unsupported. State ex rel v Haugen, 124 M 456, 145 NW 167.

In view of the importance of an early determination this original proceeding is heard by the supreme court. The prisoner was sentenced for life. The pardon board, after he had served 21 years, commuted his sentenced to 30 years. As his good conduct allowance began at the beginning of his term, the relator was discharged from custody. State ex rel v Wolfer, 127 M 102, 148 NW 896.

A district judge, exercising the power of the court itself, has jurisdiction to vacate an order of the court commissioner for a writ of habeas corpus, and to quash the writ if issued, the merits of the matter not having been decided by the commissioner; but, it was error to vacate the order and quash the writ on notice on the commissioner alone. The relator, as the real party in interest, should have been notified. State v Hemenway, 194 M 124, 259 NW 687.

589.03 PROOF IN CERTAIN CASES.

HISTORY. R.S. 1851 c. 83 s. 27; P.S. 1858 c. 73 s. 27; G.S. 1866 c. 80 s. 23; G.S. 1878 c. 80 s. 24; G.S. 1894 s. 5997; R.L. 1905 s. 4575; G.S. 1913 s. 8285; G.S. 1923 s. 9741; M.S. 1927 s. 9741.

The evidence did not clearly establish as a fact that the relator was in Minneapolis at the time the crime was committed in Milwaukee, and the writ is therefore discharged. State ex rel v Brown, 162 M 520, 203 NW 226.

589.04 STATEMENTS IN PETITION.

HISTORY. R.S. 1851 c. 83 s. 28; P.S. 1858 c. 73 s. 28; G.S. 1866 c. 80 s. 24; G.S. 1878 c. 80 s 25; G.S. 1894 s. 5998; R.L. 1905 s. 4576; G.S. 1913 s. 8286; G.S. 1923 s. 9742; M.S. 1927 s. 9742.

The petitioner should state in what the illegality of the imprisonment consists and by stating facts as distinguished from mere conclusions of law. If the confinement is by virtue of a warrant, a copy thereof must be annexed or a reason averred for not doing so. State ex rel v Becht, 23 M 1; State ex rel v Goss, 73 M 126, 75 NW 1132.

Where the petition on its face fails to show sufficient prima facie ground for the discharge of the applicant, the writ may be legally refused. Hoskins v Baxter, 64 M 226, 66 NW 969.

See, State ex rel v Brunskill, 167 M 343, 209 NW 24, 210 NW 110 (section 589.04[1]), and State ex rel v Utecht, 206 M 41, 287 NW 229 (section 589.04[5])

589.05 FORM OF WRIT; SEAL ESSENTIAL.

HISTORY. R.S. 1851 c. 83 ss. 30, 64; P.S. 1858 c. 73 ss. 30, 64; G.S. 1866 c. 80 ss. 25, 48; G.S. 1878 c. 80 ss. 26, 49; G.S. 1894 ss. 5999, 6022; R.L. 1905 s. 4577; G.S. 1913 s. 8287; G.S. 1923 s. 9743; M.S. 1927 s. 9743.

A pretended writ of habeas corpus issued by a court commissioner under his own hand and official seal, and not under the seal of any court, is unauthorized and void. State ex rel v Barnes, 17 M 340 (315).

589.06 WHEN SUFFICIENT.

HISTORY. R.S. 1851 c. 83 s. 31; P.S. 1858 c. 73 s. 31; G.S. 1866 c. 80 s. 26; G.S. 1878 c. 80 s. 27; G.S. 1894 s. 6000; R.L. 1905 s. 4578; G.S. 1913 s. 8288; G.S. 1923 s. 9744; M.S. 1927 s. 9744.

Matters of practice discussed and determined. State ex rel v Haugen, 124 M 456, 145 NW 167.

589.07 REFUSAL TO GRANT; PENALTY.

HISTORY. R.S. 1851 c. 83 s. 32; P.S. 1858 c. 73 s. 32; G.S. 1866 c. 80 s. 27; G.S. 1878 c. 80 s. 28; G.S. 1894 s. 6001; R.L. 1905 s. 4579; G.S. 1913 s. 8289; G.S. 1923 s. 9745; M.S. 1927 s. 9745.

Court commissioners have power to issue warrants of arrest, and act as committing magistrates. The sole reason claimed in the petition why the writ should issue was denial of the right of the commissioner to issue the warrant. The district judge rightfully refused to issue the writ. Hoskins v Baxter, 64 M 226, 66 NW 969.

589.08 RETURN TO WRIT.

HISTORY. R.S. 1851 c. 83 s. 33; 1852 Amend. p. 16; P.S. 1858 c. 73 s. 33; G.S. 1866 c. 80 s. 28; G.S. 1878 c. 80 s. 29; G.S. 1894 s. 6002; R.L. 1905 s. 4580; G.S. 1913 s. 8290; G.S. 1923 s. 9746; M.S. 1927 s. 9746.

The governor's warrant is presumptive evidence that the relator is a fugitive from justice, and the burden is upon the relator to show clearly and satisfactorily that he was not in the demanding state at the time of the crime. The original warrant of the governor was not produced at the trial. No objection was made. Relator did not traverse the sheriff's return which contained a copy of the warrant. Relator in his verified petition states that the governor's warrant was issued and that he was in custody under it. It was held that he was not entitled to his liberty. State ex rel v Murnane, 172 M 401, 215 NW 863.

589.09 BODY PRODUCED; EXCEPTION.

HISTORY. R.S. 1851 c. 83 s. 34; P.S. 1858 c. 73 s. 34; G.S. 1866 c. 80 s. 29; G.S. 1878 c. 80 s. 30; G.S. 1894 s. 6003; R.L. 1905 s. 4581; G.S. 1913 s. 8291; G.S. 1923 s. 9747; M.S. 1927 s. 9747.

589.10 COMPELLING OBEDIENCE.

HISTORY. R.S. 1851 c. 83 ss. 35, 36; P.S. 1858 c. 73 ss. 35, 36; G.S. 1866 c. 80 ss. 30, 31; G.S. 1878 c. 80 ss. 31, 32; G.S. 1894 ss. 6004, 6005; R.L. 1905 s. 4582; G.S. 1913 s. 8292; G.S. 1923 s. 9748; M.S. 1927 s. 9748.

589.11 PRISONER HELD IN CUSTODY BY SHERIFF.

HISTORY. R.S. 1851 c. 83 s. 37; P.S. 1858 c. 73 s. 37; G.S. 1866 c. 80 s. 32; G.S. 1878 c. 80 s. 33; G.S. 1894 s. 6006; R.L. 1905 s. 4583; G.S. 1913 s. 8293; G.S. 1923 s. 9749; M.S. 1927 s. 9749.

589.12 PROCEEDINGS ON RETURN OF WRIT.

HISTORY. R.S. 1851 c. 83 s. 39; P.S. 1858 c. 73 s. 39; G.S. 1866 c. 80 s. 33; G.S. 1878 c. 80 s. 34; G.S. 1894 s. 6007; R.L. 1905 s. 4584; G.S. 1913 s. 8294; G.S. 1923 s. 9750; M.S. 1927 s. 9750.

Detail of proceedings in cases cited. State ex rel v Bates, 101 M 303, 112 NW 260; State ex rel v Brunskill, 167 M 343, 209 NW 24, 210 NW 110.

Habeas corpus cannot be used as a substitute for appeal or writ of error; and the supreme court will not assign counsel to assist the relator on his appeal from an order discharging the writ, when it appears that the appeal is frivolous. State ex rel v Utecht, 218 M 553, 16 NW(2d) 750.

The petitioner having been granted a conditional commutation of sentence, violated the conditions and the commutation was revoked. The supreme court of Minnesota sustained the action of the pardon board. The proper remedy to protect relator's rights is to apply to the United States supreme court for a writ of certiorari to the supreme court of Minnesota. Application for a writ of habeas corpus to the federal district court was denied. Guy v Utecht, 54 F. Supp. 287.

589.13 PRISONER DISCHARGED, WHEN.

HISTORY. R.S. 1851 c. 83 s. 40; R.S. 1858 c. 73 s. 40; G.S. 1866 c. 80 s. 34; G.S. 1878 c. 80 s. 35; G.S. 1894 s. 6008; R.L. 1905 s. 4585; G.S. 1913 s. 8295; G.S. 1923 s. 9751; M.S. 1927 s. 9751.

589.14 PRISONER REMANDED, WHEN.

HISTORY. R.S. 1851 c. 83 s. 41; P.S. 1858 c. 73 s. 41; G.S. 1866 c. 80 s. 35; G.S. 1878 c. 80 s. 36; G.S. 1894 s. 6009; R.L. 1905 s. 4586; G.S. 1913 s. 8296; G.S. 1923 s. 9752; M.S. 1927 s. 9752.

The legal existence of a court organized and created under color of law cannot be questioned in habeas corpus sued out by a person convicted and sentenced to imprisonment in proceedings had before it. State ex rel v Bailey, 106 M 138, 118 NW 676.

It was the duty of the court upon receipt of the verdict either to pass judgment thereon or set it aside and order a new trial, but not to discharge the defendant. If the court erred in this regard it was an error arising in the progress of the trial and did not go to the jurisdiction so as to be taken advantage of upon habeas corpus. State ex rel v Brown, 149 M 297, 183 NW 669.

Where a defendant is in custody by virtue of the final judgment of a competent court, he cannot be released on a writ of habeas corpus. State v Rudin, 153 M 159, 189 NW 710.

The pendency of an appeal does not stay the enforcement of another judgment of conviction rendered by the state court in another prosecution of a similar offense separate and distinct from the offense involved in the proceedings in the federal court. State ex rel v Brunskill, 167 M 343, 209 NW 24, 210 NW 110.

The commitment for criminal contempt, which embodies the judgment of conviction, affirmed on certiorari to the supreme court, complies with the provisions of section 589.14 (3), and authorizes the respondent sheriff to the custody of petitioner. State ex rel v Syck, 202 M 252, 277 NW 926.

If the trial court had jurisdiction of the offense and of the defendant, it is only where the extraordinary circumstances surrounding the trial make it a sham and a pretense rather than a real judicial proceeding that habeas corpus will lie on the ground that the judgment is a nullity for want of due process, and this is true even though there is a claim of denial of constitutional rights. State ex rel v Utecht, 206 M 41, 287 NW 229.

589.15 HELD UNDER PROCESS, WHEN DISCHARGED.

HISTORY. R.S. 1851 c. 83 s. 42; P.S. 1858 c. 73 s. 42; G.S. 1866 c. 80 s. 36; G.S. 1878 c. 80 s. 37; G.S. 1894 s. 6010; R.L. 1905 s. 4587; G.S. 1913 s. 8297; G.S. 1923 s. 9753; M.S. 1927 s. 9753.

The legal existence of a court organized and created under color of law cannot be questioned in habeas corpus proceedings by a person convicted before the de facto court. State ex rel v Bailey, 106 M 138, 118 NW 676.

If the superintendent refuses to discharge an inmate lawfully entitled to release, habeas corpus is the proper remedy. Northfoss v Welch, 116 M 62, 133 NW 82.

In requisition cases, on habeas corpus neither the good faith of the prosecution nor the guilt or innocence of the fugitive is open to inquiry. State ex rel v Wall, 178 M 369, 227 NW 176.

589.16 BAIL OR REMAND OR DISCHARGE.

HISTORY. R.S. 1851 c. 83 ss. 44, 45; P.S. 1858 c. 73 ss. 44, 45; G.S. 1866 c. 80 ss. 38, 39; G.S. 1878 c. 80 ss. 39, 40; G.S. 1894 ss. 6012, 6013; R.L. 1905 s. 4588; G.S. 1913 s. 8298; G.S. 1923 s. 9754; M.S. 1927 s. 9754.

Whether a person under an indictment for murder should be admitted to bail will not be considered by the supreme court until after the trial court has exercised its discretion in the matter. Such an application will be denied by the supreme court when the trial judge has been of the opinion the offense charged is not bailable, and for that reason denied bail. In re Salisbury, 153 M 548, 194 NW 460.

Under a rendition warrant issued by the governor of this state, the fugitive ordinarily should not be released on bail pending a decision in a habeas corpus proceeding to test the legality of his arrest. State ex rel v Moeller, 182 M 369, 234 NW 649.

589.17 CUSTODY UNTIL JUDGMENT.

HISTORY. R.S. 1851 c. 83 s. 46; P.S. 1858 c. 73 s. 46; G.S. 1866 c. 80 s. 40; G.S. 1878 c. 80 s. 41; G.S. 1894 s. 6014; R.L. 1905 s. 4589; G.S. 1913 s. 8299; G.S. 1923 s. 9755; M.S. 1927 s. 9755.

589.18 NOTICE TO COUNTY ATTORNEY OR ATTORNEY GENERAL.

HISTORY. R.S. 1851 c. 83 ss. 47, 48; P.S. 1858 c. 73 ss. 47, 48; G.S. 1866 c. 80 s. 41; G.S. 1878 c. 80 s. 42; G.S. 1894 s. 6015; R.L. 1905 s. 4590; G.S. 1913 s. 8300; 1915 c. 227 s. 1; G.S. 1923 s. 9756; M.S. 1927 s. 9756.

589.19 TRAVERSE OF RETURN; NEW MATTER.

HISTORY. R.S. 1851 c. 83 s. 49; P.S. 1858 c. 73 s. 49; G.S. 1866 c. 80 s. 42; G.S. 1878 c. 80 s. 43; G.S. 1894 s. 6016; R.L. 1905 s. 4591; G.S. 1913 s. 8301; G.S. 1923 s. 9757; M.S. 1927 s. 9757.

Where, upon the trial of an indictment, the trial court had jurisdiction of the defendant, no inquiry can be had under a writ of habeas corpus as to whether the relator was in fact present or absent when the jury was discharged, or whether the decision of the court in discharging them was correct or incorrect. State ex rel v Sheriff, 24 M 87.

If a petitioner does not plead, the petition must be disposed of forthwith on the return alone without the introduction of evidence. State ex rel v Billings, 55 M 467, 57 NW 206, 794.

On appeal from the judgment of the district court in a habeas corpus proceeding to determine the custody of a child, there is a trial de novo, even though the parties have stipulated to try the case solely on the record. The supreme court will determine what is to the best interest of the child. State ex rel v Beardsley, 149 M 437, 183 NW 956.

589.20 PROCEEDINGS IN CASE OF SICKNESS OF PRISONER.

HISTORY. R.S. 1851 c. 83 s. 50; P.S. 1858 c. 73 s. 50; G.S. 1866 c. 80 s. 43; G.S. 1878 c. 80 s. 44; G.S. 1894 s. 6017; R.L. 1905 s. 4592; G.S. 1913 s. 8302; G.S. 1923 s. 9758; M.S. 1927 s. 9758.

589.21 ORDER OF DISCHARGE, HOW ENFORCED.

HISTORY. R.S. 1851 c. 83 s. 51; P.S. 1858 c. 73 s. 51; G.S. 1866 c. 80 s. 44; G.S. 1878 c. 80 s. 45; G.S. 1894 s. 6018; R.L. 1905 s. 4593; G.S. 1913 s. 8303; G.S. 1923 s. 9759; M.S. 1927 s. 9759.

589.22 RE-ARREST OF PERSON DISCHARGED.

HISTORY. R.S. 1851 c. 83 s. 53; P.S. 1858 c. 73 s. 53; G.S. 1866 c. 80 s. 45; G.S. 1878 c. 80 s. 46; G.S. 1894 s. 6019; R.L. 1905 s. 4594; G.S. 1913 s. 8304; G.S. 1923 s. 9760; M.S. 1927 s. 9760.

The fact that the petitioner had once been brought before the district court upon habeas corpus, and on hearing remanded, is not a bar to an original hearing in the supreme court. In re Snell, 31 M 110, 16 NW 692.

A discharge upon habeas corpus for defect of proof, merely terminates the proceeding under which the party was held so he cannot be further prosecuted, except by a new proceeding instituted on sufficient evidence. A complaint and warrant for his re-arrest need not be any different from what they would be if there had been no prior arrest and discharge. State ex rel v Holm, 37 M 405, 34 NW 748.

589.23 TRANSFER OR CONCEALMENT OF PERSON; FORFEITURE.

HISTORY. R.S. 1851 c. 83 ss. 55, 56; P.S. 1858 c. 73 ss. 55, 56; G.S. 1866 c. 80 s. 46; G.S. 1878 c. 80 s. 47; G.S. 1894 s. 6020; R.L. 1905 s. 4595; G.S. 1913 s. 8305; G.S. 1923 s. 9761; M.S. 1927 s. 9761.

589.24 REFUSAL TO FURNISH COPY.

HISTORY. R.S. 1851 c. 83 s. 63; P.S. 1858 c. 73 s. 63; G.S. 1866 c. 80 s. 47; G.S. 1878 c. 80 s. 48; G.S. 1894 s. 6021; R.L. 1905 s. 4596; G.S. 1913 s. 8306; G.S. 1923 s. 9762; M.S. 1927 s. 9762.

The facts do not bring this case within the purview of this section. Defendant made no demand for a copy, and if he wanted a copy should have paid for it. The sheriff cannot voluntarily make a copy and make a legal charge against the state for so doing. Steenerson v Board, 68 M 517, 71 NW 687.

589.25 SERVICE OF WRIT; BOND.

HISTORY. R.S. 1851 c. 83 s. 66; 1852 Amend. p. 16; P.S. 1858 c. 73 s. 66; G.S. 1866 c. 80 s. 49; 1877 c. 34 s. 1; G.S. 1878 c. 80 s. 50; G.S. 1894 s. 6023; R.L. 1905 s. 4597; G.S. 1913 s. 8307; G.S. 1923 s. 9763; M.S. 1927 s. 7963.

589.26 MANNER OF SERVICE.

HISTORY. R.S. 1851 c. 83 ss. 67, 68; P.S. 1858 c. 73 ss. 67, 68; G.S. 1866 c. 80 ss. 50, 51; G.S. 1878 c. 80 ss. 51, 52; G.S. 1894 s. 6024, 6025; R.L. 1905 s. 4598; G.S. 1913 s. 8308; G.S. 1923 s. 9764; M.S. 1927 s. 9764.

589.27 RETURN TO BE MADE, WHEN.

HISTORY. R.S. 1851 c. 83 s. 71; P.S. 1858 c. 73 s. 71; G.S. 1866 c. 80 s. 52; G.S. 1878 c. 80 s. 53; G.S. 1894 s. 6026; R.L. 1905 s. 4599; G.S. 1913 s. 8309; G.S. 1923 s. 9765; M.S. 1927 s. 9765.

589.28 POWER OF COURT NOT RESTRAINED.

HISTORY. R.S. 1851 c. 83 s. 73; P.S. 1858 c. 73 s. 73; G.S. 1866 c. 80 s. 53; G.S. 1878 c. 80 s. 54; G.S. 1894 s. 6027; R.L. 1905 s. 4600; G.S. 1913 s. 8310; G.S. 1923 s. 9766; M.S. 1927 s. 9766.

589.29 APPEAL TO SUPREME COURT.

HISTORY. 1895 c. 327 ss. 1, 2; R.L. 1905 s. 4601; G.S. 1913 s. 8311; G.S. 1923 s. 9767; M.S. 1927 s. 9767.

When an action or other judicial proceeding has been tried, and a decision rendered, the legislature cannot, by an act subsequently passed, grant a new trial, or a trial de novo. State ex rel v Flint, 61 M 539, 63 NW 1113.

An operator of a steam boiler employed by a railway company, does not come under the exception granted to engineers, and the trial court having entered an order discharging the relator, there was a reversal on appeal. State ex rel v McMahon, 65 M 453, 68 NW 77.

In extradition proceedings the indictment or affidavit accompanying the requisition is sufficient if it substantially charges the commission of a crime against the laws of the demanding state. With pleadings in other respects this state has no concern. State ex rel v Goss, 66 M 291, 68 NW 1089.

In a proceeding in habeas corpus on behalf of the alleged fugitive, if it appears that the warrant has been revoked, he must be discharged, and the grounds of such revocation cannot be inquired into. State ex rel v Toole, 69 M 104, 72 NW 53.

Laws 1899, Chapter 225, relating to the business of commission merchants is not in conflict with the United States Constitution, Article 1, Section 8, nor in conconflict with Minnesota Constitution, Article 1, Sections 2 or 7. State ex rel v Megaarden, 77 M 483, 502, 80 NW 633, 778.

Marriage emancipates a minor child from parental control. Where a girl under 14 years of age marries, her father has no legal right to restrain her from living with her husband if she so elects. State ex rel v Lowell, 78 M 166, 80 NW 877.

An appeal from an order by a court commissioner may be heard on the record returned where the certificate of the district court shows all proceedings had; and there being no application for the hearing of evidence, the appeal will be disposed of upon the certified return. State ex rel v Merrill, 83 M 252, 86 NW 89.

In controversies between parents as to custody of children, the welfare of children is the controlling consideration of the court. State ex rel v Greenwood, 84 M 203, 87 NW 489.

The supreme court will not, upon habeas corpus, review regarding one held on extradition warrant, extend its inquisition beyond the rendition warrant to ascertain whether the prisoner had been previously unlawfully arrested, or was in unlawful custody at the time such warrant was served upon him. State ex rel v Justus, 84 M 237, 87 NW 770.

The right of the guardian of an incompetent person to remove his ward from one state to another is always subject to the control of the chancery court. The order appointing three persons as joint guardians of the person and estate, cannot be questioned except in a direct proceeding. State ex rel v Lawrence, 86 M 310, 90 NW 769.

A village marshal has no right to arrest and take into custody a person found guilty of a violation of the village ordinance unless he is in possession of a writ of commitment when he makes the arrest. The fact that the writ is in the hands of the village attorney will not justify the taking. State ex rel v Leindecker, 91 M 277, 97 NW 972.

The final order of a court commissioner, made in habeas corpus proceedings is, under Laws 1895, Chapter 327, appealable within 30 days after it is filed with the clerk of the district court, even though it directs the entry of a judgment for the relief awarded. State ex rel v Martin, 93 M 294, 101 NW 303.

Award of custody to mother affirmed. State ex rel v Bryant, 99 M 49, 108 NW 880.

Where a prisoner, after conviction and sentence to imprisonment, but before commitment, obtains a writ of habeas corpus, and after hearing is remanded, an appeal does not stay the issuance of the commitment. State ex rel v McDonald, 123 M 84, 142 NW 1051.

An order discharging relator in habeas corpus proceeding is appealable notwithstanding no stay was obtained in the court below. State ex rel v Langum, 135 M 320, 160 NW 858.

Upon appeal in habeas corpus proceeding, pursuant to General Statutes 1913, Section 8311 (section 589.29), where the controversy is as to the custody of a minor, the best interests of the child control. State ex rel v Krueger, 143 M 149, 173 NW 414.

The good faith of a criminal prosecution in extradition proceedings, which has been passed on by the governor, cannot be reviewed on habeas corpus, nor can the guilt or innocence of the relator be inquired into. State ex rel v Sheriff, 148 M 484, 181 NW 640.

The trial in the supreme court on appeal from habeas corpus is de novo. The demand and papers attached are sufficient on which to issue a warrant of rendition. State ex rel v Murnane, 172 M 401, 215 NW 863.

When the mother is dead and the father a fit person, he has preferential but not controlling right to custody of the child. In this case, the interest of the child seemed to be in favor of the maternal grandmother. State ex rel v Mason, 179 M 473, 229 NW 582.

589.30 HEARING ON APPEAL.

HISTORY. 1895 c. 327 s. 3; R.L. 1905 s. 4602; G.S. 1913 s. 8312; G.S. 1923 s. 9768; M.S. 1927 s. 9768.

The child was six years old, born out of wedlock. The mother, now married, asks for custody as against her parents, and the child was awarded to her by the trial court. On appeal, the trial was de novo, a referee being appointed to take and report the evidence. The decision of the trial court was affirmed. State ex rel v Ott, 98 M 533, 107 NW 1134.

Custoday of child given to natural mother and her present husband over claim of the child's grandmother. State ex rel v Bryant, 99 M 49, 108 NW 880.

Child left with present custodians. Gauthier v Walter, 110 M 103, 124 NW 634.

Hearings on appeal from trial court's orders upon habeas corpus are tried in the supreme court in the same manner as if the writ originally issued out of the supreme court. State ex rel v Riley, 116 M 1, 133 NW 86; State ex rel v Johnson, 184 M 314, 238 NW 490.

Errors and irregularities occurring on trial below need not be considered. State ex rel v Wolfer, 119 M 368, 138 NW 315.

The welfare of the child held to require her to be left in her present home, subject to the right of visitation on the part of the eleemosynary institution to which her custody had been previously awarded by the juvenile court, there being no radical difference in religious faith. State ex rel v White, 123 M 508, 144 NW 157.

On appeal the trial is de novo, and evidence may be taken, even if the parties have stipulated to review the case on the record. State ex rel v Beardsley, 149 M 437, 183 NW 956.

While the statute favors the parent, the right is not absolute, and the court's control in the interest of the child. In the instant case, on appeal and trial de novo, the child was left with its maternal grandmothers. State ex rel v Phelps, 166 M 423, 208 NW 131; State ex rel v Mason, 179 M 472, 229 NW 582; State ex rel v Jensen, 214 M 193, 7 NW(2d) 393.

On trial de novo the trial court was reversed and the relator granted his liberty. State ex rel v Sullivan, 179 M 532, 229 NW 787.

Where all parties are proper persons to have custody of the child, the appellate court will not disturb the order of the trial court. State ex rel v Hedberg, 192 M 193, 256 NW 91.

Mother awarded custody. State ex rel v Sivertson, 194 M 380, 260 NW 522.

Ordinarily, parents are entitled to the custody of their children, but in exceptional cases this right may be denied. The principal consideration is the welfare of the child. State ex rel v Jensen, 214 M 193, 7 NW(2d) 393.

The record of a pardon kept in the governor's office is an original record and cannot be attacked collaterally. The commutation was issued upon condition the prisoner lead a law-abiding life, and he not having done so, the board had power to revoke the commutation without notice or hearing. Guy v Utecht, 216 M 255, 12 NW(2d) 753.