if it appears that plaintiff was entitled to the possession. Towle v. Smith, 27 W 268.

The circuit court cannot award a writ of restitution on reversing a judgment on certiorari under which plaintiff was put in possession. Newton v. Leary, 64 W 190, 25 NW 39.

Where the lessee appeals from a judgment awarding possession of the premises to the lessor, the acceptance of rent secured by the undertaking would not deprive the lessor of the right to insist on forfeiture of the lease for nonpayment of the previous rent. Palmer v. City L. Co. 98 W 33, 73 NW 559.

It is not necessary that the justice fees required by sec. 3754, Stats. 1898, be paid in order that the undertaking should operate as a stay of proceedings. Palin v. Probert, 137 W 40, 118 NW 173.

Where the appeal was never perfected by the filing of an affidavit of good faith, there could be no breach of the undertaking given to pay costs on appeal or rent and damages accruing during the pendency of the appeal. Mueller v. Rice, 149 W 548, 136 NW 146.

291.13 History: R. S. 1849 c. 117 s. 19; R. S. 1858 c. 151 s. 19; R. S. 1878 s. 3369; Stats. 1898 s. 3369; 1925 c. 4; Stats. 1925 s. 291.13; 1969 c. 87, 284.

If the defendant executes an undertaking conformably to sec. 3368, R. S. 1878, and thereby secures the right to remain in the possession of the premises, he has no authority to make any material alterations in the buildings. Brock v. Dole, 66 W 142, 28 NW 334.

291.15 History: R. S. 1878 s. 3371; Stats. 1898 s. 3371; 1925 c. 4; Stats. 1925 s. 291.15; 1967 c. 276 s. 40; 1969 c. 87, 284.

Revisers' Note, 1878: Is new, and gives a tenant who is proceeded against in such action upon a default in the payment of rent in case judgment is rendered against him, the right to stay the execution of the judgment upon the payment of all rent due at the date of the judgment, together with the costs of the action. This provision is made in the laws of some other states, and seems a just provision, as in many cases there might be the forfeiture of a valuable lease upon an honest difference upon the question of a default in the payment of a sum claimed to be due. If, after a contest, the tenant is defeated, and pays all the rent then due, with the costs of the action, there would seem to be no good reason why he should not retain the possession.

A court of equity ought not to relieve from a forfeiture for the nonpayment of rent where the statute, 291.15, provides a period of time within which possession may be redeemed or retained by the payment of rent, and no equitable grounds are shown why such payment was not made. The lessor's habitual acceptance of the late tender of the rent and the sublessee's reliance thereon, and the lessor's failure to notify the sublessee of his intention to enforce strict compliance, were not grounds for equitable relief from the judgment obtained in the unlawful-detainer action. Herman v. Kennard Buick Co. 5 W (2d) 480, 93 NW (2d) 340.

CHAPTER 292.

Habeas Corpus.

292.01 History: R. S. 1849 c. 124 s. 1; R. S. 1858 c. 158 s. 1; 1872 c. 176 s. 9, 12; 1878 c. 336; R. S. 1878 s. 598, 3407; Stats. 1898 s. 595, 3407; 1901 c. 367 s. 1; Supl. 1906 s. 595; 1919 c. 347 s. 19; Stats. 1919 s. 3407; 1925 c. 4; Stats. 1925 s. 292.01; 1935 c. 483 s. 129; 1969 c. 255.

On jurisdiction of the supreme court (control over corporations and non-judicial officers) see notes to sec. 3, art. VII; on jurisdiction of circuit courts (extraordinary writs to non-judicial agencies and officers) see notes to sec. 8, art. VII; and on writs of error see notes to 274.05.

If the court or officer who has illegally imprisoned a person has refused his application for a discharge the matter is not res adjudicata. In re Blair, 4 W 522.

The validity of the commitment, on a petition for discharge on the ground that the sheriff has refused jail liberties, is not before the court. Rose v. Tyrrell, 25 W 563.

Where one has been imprisoned upon an attachment for a contempt in disobeying an injunctional order, he cannot, on an application for discharge by habeas corpus, avail himself of mere irregularities in the proceedings upon which the order was based, but must show lack of jurisdiction to make the order. In re Perry, 30 W 268.

When a defendant lawfully arrested on mesne process fails to give bail or is surrendered by his bail before judgment his liability to detention on such process does not expire on recovery of judgment against him; but unless otherwise discharged by the court his detention must abide a capias ad satisfaciendum. In re Kindling, 39 W 35.

A judgment of discharge is final and conclusive and can only be reviewed upon certiorari. While it is unreversed no order for rearrest in the same cause can be made. In re Crow, 60 W 349, 19 NW 713.

Where the judgment brought up for review was rendered by the circuit court on certiorari to a commissioner who had issued the writ and discharged the prisoner, the supreme court is limited to the question of jurisdiction. Wright v. Wright, 74 W 439, 43 NW 145.

Imprisonment under an erroneous judgment is not ground for discharging the prisoner on habeas corpus. In re Eckhart, 85 W 681, 56 NW 375.

In reviewing proceedings had on habeas corpus the court will not go beyond the question of jurisdiction. In re Rosenberg, 90 W 581, 64 NW 299.

Suing out a writ of habeas corpus is the commencement of an action. The final decision of the court or officer is res adjudicata. State ex rel. Gaster v. Whitcher, 117 W 668, 94 NW 787.

Habeas corpus does not reach beyond a commitment to the proceedings leading up thereto, where the person is detained by virtue of the final order or judgment of a court having jurisdiction. In re Shinski, 125 W 280, 104 NW 86.

The writ of habeas corpus only reaches

jurisdictional error. Where a conviction is rendered under an unconstitutional law, the trial court had no jurisdiction and the error can be reached on habeas corpus. Servonitz v. State, 133 W 231, 113 NW 277.

Upon habeas corpus proceedings to test the legality of a detention under a commitment issued pursuant to the determination of an examining magistrate, the sole issue presented is whether the evidence introduced on the preliminary examination established the commission of the crime charged and a reasonable probability of the commission thereof by the defendants. State ex rel. Kropf v. Gilbert, 213 W 196, 251 NW 478.

Habeas corpus will lie to discharge from custody a defendant who was bound over by a county court under a complaint charging the defendant with obtaining money under false pretenses, where the evidence was insufficient to sustain felony charge, and the statute of limitations had run upon misdemeanor charges. Pepin v. State ex rel. Chambers, 217 W 568, 259 NW 410.

Discharge, under a writ of habeas corpus, of an accused who had been bound over for trial was error where there was sufficient evidence to constitute probable cause for believing that the accused had committed an offense. Ordinarily the question of intent to commit a criminal offense is not to be determined upon a hearing on petition for a writ of habeas corpus. Dreps v. State ex rel. Kaiser, 219 W 279, 262 NW 700.

Erroneous judgments are not void and imprisonments pursuant thereto are not illegal in the sense which entitles one imprisoned thereunder to be discharged on a writ of habeas corpus, if the court in fact had jurisdiction of the person and the subject matter of the action. (In re Ida Louise Pierce, 44 W 411, overruled.) Larson v. State ex rel. Bennett, 221 W 188, 266 NW 170.

The omission from the complaint of an allegation as to the value of the checks fraudulently obtained did not require discharging the defendant in habeas corpus proceedings brought after he was bound over on evidence taken on a preliminary examination at which the sufficiency of the complaint was not questioned, and at which the value was admitted by a stipulation especially in view of 357.19, Stats. 1935. State ex rel. Hull v. Larson, 226 W 585, 277 NW 101.

In a habeas corpus proceeding to test the legality of the petitioner being bound over for trial in the circuit court, the reviewing court can examine the evidence only sufficiently to discover whether there was any substantial ground for the exercise of judgment by the committing magistrate. It cannot go beyond that and weigh the evidence. State ex rel. Dinneen v. Larson, 231 W 207, 284 NW 21.

The admission of evidence offered in the habeas corpus proceedings to prove that the testimony on the preliminary examination was insufficient and incompetent to identify the defendant was properly denied, since the proposed evidence had no bearing and was inadmissible in the habeas corpus proceedings; under the record the issue was solely whether the evidence which was introduced on the preliminary examination afforded sufficient basis for the magistrate to find that there was probable cause to believe that the defendant participated in the burglary. Chambers v. State, 235 W 7, 291 NW 772.

An order of judgment in a habeas corpus proceeding is res adjudicata as to the persons charged with restraining another of his liberty, until reversed in some proper proceeding. Application of Rattel, 244 W 261, 12 NW (2d) 135.

Nothing will be investigated on habeas corpus except jurisdictional defects amounting to want of any legal authority for the detention or imprisonment. State ex rel. Briggs v. Kellner, 247 W 425, 20 NW (2d) 106.

Where the defendant appeared in the trial court and entered a plea in abatement, and, on the overruling thereof, a plea of not guilty, he submitted to the jurisdiction of the court, so that there was no illegal detention when he subsequently filed a petition for a writ of habeas corpus, and hence the writ could not issue. State ex rel. Wojtycski v. Hanley, 248 W 108, 20 NW (2d) 719.

The fact that a petitioner has permitted the time to elapse within which an appeal may be taken does not give him the right to resort to habeas corpus. State ex rel. Doxtater v. Murphy, 248 W 593, 22 NW (2d) 685.

In a habeas corpus proceeding to test the legality of a petitioner's detention pursuant to an examining magistrate's determination after a preliminary examination, the reviewing court can examine the evidence only sufficiently to discover whether it rendered the charge against the prisoner within reasonable probabilities and there was any substantial ground for the exercise of judgment by the committing magistrate. Stathopoulos v. Hanley, 250 W 109, 26 NW (2d) 259.

The function of a warrant, issued on a complaint charging a person with escape from an Alabama prison, is to provide for his arrest and detention pending an extradition proceeding, and on habeas corpus to test the legality of the detention under such fugitive warrant, the inquiry is as to the validity of his detention to answer for the crime of escape from the Alabama prison, and does not extend to inquiring into the validity of the conviction pursuant to which he was sentenced to prison. State ex rel. Wells v. Hanley, 250 W 374, 27 NW (2d) 373.

Habeas corpus proceedings to determine the custody of children are equitable in their nature; the question of personal freedom is not involved, and the court is not bound to recognize the mere legal right of a parent or guardian, but should leave the children in such custody as their welfare appears to require. Anderson v. Anderson, 36 W (2d) 455, 153 NW (2d) 627.

292.02 History: R. S. 1849 c. 124 s. 2; R. S. 1858 c. 158 s. 2; R. S. 1878 s. 3408; Stats. 1898 s. 3408; 1925 c. 4; Stats. 1925 s. 292.02.

A party imprisoned under a judgment or order of a court having authority cannot be discharged however erroneous such judgment or order may be. In re Crow, 60 W 349, 19 NW 713.

The restrictions upon the writ of habeas corpus contained in secs. 3408 and 3427, Stats.

1898, are declarations of the common law and in harmony with the constitution. Servonitz v. State, 133 W 231, 113 NW 277.

Error in dismissing an appeal in a criminal action will not be corrected on habeas corpus, which is a summary proceeding under consideration. Arnold v. Schmidt, 155 W 55, 143 NW 1055.

The question of whether errors were committed within or during the exercise of the trial court's jurisdiction in a criminal prosecution cannot be raised in a habeas corpus proceeding growing out of such prosecution, and where it appears on the face of the petition for the writ that the court pronouncing judgment and sentencing a defendant had jurisdiction of the person and of the subject matter the application will be denied. Kushman v. State ex rel. Panzer, 240 W 134, 2 NW (2d) 862.

292.03 History: R. S. 1849 c. 124 s. 3; R. S. 1858 c. 158 s. 3; 1864 c. 45 s. 1; R. S. 1878 s. 3409; Stats. 1898 s. 3409; 1925 c. 4; Stats. 1925 s. 292.03; 1935 c. 483 s. 131; 1969 c. 255.

See note to sec. 1, art. IV, on legislative power generally, citing Bagnall v. Ableman, 4 W 163.

The judge to whom application is made must grant the writ unless it is clearly apparent from the petition or papers annexed that the party is not entitled to it. Bagnall v. Ableman, 4 W 163.

Where imprisonment is alleged after expiration of the term imposed a court commissioner may issue the writ and determine the fact; until reversed in certiorari his determination is conclusive. In re Crow, 60 W 349, 19 NW 713.

Under sec. 3409, R. S. 1878, the supreme court has exclusive jurisdiction to issue a writ of habeas corpus where the prisoner has been sent to the house of correction (for Milwaukee county) on a sentence which might have been carried out in the state prison. State ex rel. Heiden v. Ryan, 99 W 123, 74 NW 544.

See note to 260.03, citing State ex rel. Durner v. Huegin, 110 W 189, 85 NW 1046.

See note to 269.29, citing Longstaff v. State, 120 W 346, 97 NW 900.

See note to 252.15, citing State ex rel. Tuttle v. Hanson, 274 W 423, 80 NW (2d) 387.

On the procedure for obtaining a writ of habeas corpus see State ex rel. Casper v. Burke, 7 W (2d) 673, 97 NW (2d) 703.

292.04 History: R. S. 1849 c. 124 s. 5; R. S. 1858 c. 158 s. 5; R. S. 1878 s. 3410; Stats. 1898 s. 3410; 1907 c. 261; 1925 c. 4; Stats. 1925 s. 292.04; 1935 c. 483 s. 132.

A petition stating that the court which directed the imprisonment in a paternity proceeding had no jurisdiction because the complainant and her child are and at the time of the arrest were nonresidents, and because the complainant is a married woman, is sufficient to require the sheriff to produce the body of the defendant with his statement of reasons for the imprisonment. Illegality appearing in the return is ground for relief even though not set forth in the petition. State ex rel. Reynolds v. Flynn, 180 W 556, 193 NW 651.

A petition which alleges no more than that the petitioner is restrained in violation of the constitution and laws and is illegally imprisoned without due process of law does not meet the requirement that the petition shall state in what the illegality of the imprisonment consists. State ex rel. Doxtater v. Murphy, 248 W 593, 22 NW (2d) 685.

Where the proceedings were otherwise regular and the trial court had jurisdiction to sentence the defendant, but committed jurisdictional error in failing to advise the defendant of his right to counsel, as expressly required by 357.26 (2), Stats. 1945, in the case of a felony, the defendant had a complete and adequate remedy by way of appeal or writ of error, so that, the time for pursuing such remedy not having expired, the defendant is not entitled to a remedy by way of a writ of habeas corpus, and his petition must be denied. State ex rel. Doxtator v. Murphy, 248 W 593, 22 NW (2d) 685.

"The petition should comply with sec. 292.04 (5), Stats., and should pray for an order to show cause why the writ should not be issued. To avoid the necessity to bring the prisoner before this court, which the issuance of the writ normally would do, an order to show cause will be made upon a proper petition why the writ should not be issued. A return and answer to the order and petition is then made and the matter is then heard on these pleadings. If an issue of fact arises it will be referred for determination * * *. Upon the determination of the facts the matter will then be heard and determined as if a writ had been issued and return made thereto and an appropriate order made. State ex rel. Casper v. Burke, 7 W (2d) 673, 678, 97 NW (2d) 703, 707.

292.05 History: R. S. 1849 c. 124 s. 4; R. S. 1858 c. 158 s. 4; R. S. 1878 s. 3411; Stats. 1898 s. 3411; 1925 c. 4; Stats. 1925 s. 292.05.

292.06 History: R. S. 1849 c. 124 s. 6; R. S. 1858 c. 158 s. 6; R. S. 1878 s. 3412; Stats. 1898 s. 3412; 1925 c. 4; Stats. 1925 s. 292.06; 1935 c. 483 s. 133.

The writ of habeas corpus will not be granted if the court, upon facts disclosed in the petition, is of the opinion that it cannot discharge the prisoner from custody. In re Semlar, 41 W 517.

292.07 History: R. S. 1849 c. 124 s. 7; R. S. 1858 c. 158 s. 7, 41, 42; R. S. 1878 s. 3413; Stats. 1898 s. 3413; 1925 c. 4; Stats. 1925 s. 292.07; 1935 c. 483 s. 134.

The writ of habeas corpus may be directed to any person or officer within this state, and due service must be made thereof and return thereto; upon failure, return will be enforced. In re Booth, 3 W 1.

292.08 History: R. S. 1849 c. 124 s. 8; R. S. 1858 c. 158 s. 8; R. S. 1878 s. 3414; Stats. 1898 s. 3414; 1925 c. 4; Stats. 1925 s. 292.08.

292.09 History: R. S. 1849 c. 124 s. 9; R. S. 1858 c. 158 s. 9; R. S. 1878 s. 3415; Stats. 1898 s. 3415; 1925 c. 4; Stats. 1925 s. 292.09; 1935 c. 483 s. 135.

292.10 History: R. S. 1849 c. 124 s. 43 to 45; R. S. 1858 c. 158 s. 43 to 45; R. S. 1878 s.

3416; Stats. 1898 s. 3416; 1925 c. 4; Stats. 1925 s. 292.10; 1935 c. 483 s. 136.

292.11 History: R. S. 1849 c. 124 s. 47; R. S. 1858 c. 158 s. 47; R. S. 1878 s. 3417; Stats. 1898 s. 3417; 1925 c. 4; Stats. 1925 s. 292.11; 1935 c. 483 s. 137.

292.12 History: R. S. 1849 c. 124 s. 43, 46; R. S. 1858 c. 158 s. 43, 46; R. S. 1878 s. 3418; Stats. 1898 s. 3418; 1925 c. 4; Stats. 1925 s. 292.12; 1935 c. 483 s. 138.

292.13 History: R. S. 1849 c. 124 s. 46, 48; R. S. 1858 c. 158 s. 46, 48; R. S. 1878 s. 3419; Stats. 1898 s. 3419; 1909 c. 198; 1925 c. 4; Stats. 1925 s. 292.13; 1935 c. 483 s. 139.

The person to whom the writ is directed must obey it, no matter what the authority of the warrant or by whom issued. Bagnall v. Ableman, 4 W 163.

292.14 History: R. S. 1849 c. 124 s. 10; R. S. 1858 c. 158 s. 10; R. S. 1878 s. 3420; Stats. 1898 s. 3420; 1925 c. 4; Stats. 1925 s. 292.14; 1935 c. 483 s. 140.

Where the petition alleges that petitioner is confined on an execution issued irregularly or in an action in which he was not liable to arrest, a return which shows that he is held by virtue of execution against his person valid upon its face is sufficient. In re Mowry, 12 W 52.

292.15 History: R. S. 1849 c. 124 s. 11; R. S. 1858 c. 158 s. 11; R. S. 1878 s. 3421; Stats. 1898 s. 3421; 1925 c. 4; Stats. 1925 s. 292.15; 1935 c. 483 s. 141.

292.16 History: R. S. 1849 c. 124 s. 12; R. S. 1858 c. 158 s. 12; R. S. 1878 s. 3422; Stats. 1898 s. 3422; 1925 c. 4; Stats. 1925 s. 292.16; 1935 c. 483 s. 142.

Where one county court ordered the county clerk jailed for contempt, and the municipal court of another county issued a writ of habeas corpus and released the clerk on bail, and the first court then held the sheriff in contempt for releasing the prisoner, the contempt order was erroneous since the release was by the municipal court and the sheriff was obliged to obey. State ex rel. Reynolds v. County Court, 11 W (2d) 560, 105 NW (2d) 876.

292.17 History: R. S. 1849 c. 124 s. 13; R. S. 1858 c. 158 s. 13; R. S. 1878 s. 3423; Stats. 1898 s. 3423; 1925 c. 4; Stats. 1925 s. 292.17; 1935 c. 483 s. 143.

292.18 History: R. S. 1849 c. 124 s. 14; R. S. 1858 c. 158 s. 14, 15; R. S. 1878 s. 3424; Stats. 1898 s. 3424; 1925 c. 4; Stats. 1925 s. 292.18; 1935 c. 483 s. 144.

292.19 History: R. S. 1849 c. 124 s. 16; R. S. 1858 c. 158 s. 16, 26; R. S. 1878 s. 3425; Stats. 1898 s. 3425; 1925 c. 4; Stats. 1925 s. 292.19; 1935 c. 483 s. 145.

Where there is no traverse and it is insisted that the prisoner shall be discharged, it amounts to a demurrer and the return must be accepted as a verity. In re Milburn, 59 W 24, 17 NW 965.

292.20 History: R. S. 1849 c. 124 s. 17; R. S. 1858 c. 158 s. 17; R. S. 1878 s. 3426; Stats. 1898 s. 3426; 1925 c. 4; Stats. 1925 s. 292.20.

It is only when no legal cause is shown for the imprisonment of a petitioner for a writ of habeas corpus that the court or judge is required to discharge the petitioner. State ex rel. Doxtater v. Murphy, 248 W 593, 22 NW (2d) 685.

While the word "discharge" employed in 292.24, Stats. 1967, means an absolute discharge, that word as used in the context of 292.20 is accorded a broader meaning so as to embrace a limited discharge from the custody of the penal institution in which the prisoner is then confined as well as an absolute discharge from all custody. State ex rel. La Follette v. Circuit Court, 37 W (2d) 329, 155 NW (2d) 141. See also Brown v. Wolke, 39 W (2d) 167, 158 NW (2d) 344.

292.21 History: R. S. 1849 c. 124 s. 18; R. S. 1858 c. 158 s. 18; R. S. 1878 s. 3427; Stats. 1898 s. 3427; 1925 c. 4; Stats. 1925 s. 292.21.

Error in the proceedings cannot be corrected on a writ. In re Crandall, 34 W 177.

Sec. 3427 (4), R. S. 1878, provides that the prisoner shall not be remanded, but shall be discharged, if the time for which he was sentenced has expired. In re Crow, 60 W 349, 19 NW 713.

Error in the judgment does not justify a discharge. It is only when the judgment was not authorized under any circumstances that the judgment is void so as to warrant the discharge of the person. State ex rel. Welch v. Sloan, 65 W 647, 27 NW 616.

If a court is legally in existence and its judge is an officer de facto his judgment cannot be attacked in habeas corpus. In re Burke, 76 W 357, 45 NW 24.

Where one has been imprisoned for contempt in disobeying an injunctional order he cannot, on application for discharge, avail himself of mere irregularities in proceedings upon which the order was based; he must show lack of jurisdiction to make the order. In re Rosenberg, 90 W 581, 63 NW 1065, 64 NW 299.

The detention upon a final judgment or order under sec. 3427, Stats. 1898, does not include a determination of a mere judicial inquiry. State ex rel. Durner v. Huegin, 110 W 189, 85 NW 1046.

See note to 292.02, citing Servonitz v. State, 133 W 231, 113 NW 277.

The trial court, after imposing sentence on a defendant convicted of a criminal offense, had no power to stay the execution of the sentence from time to time merely for the purpose of having the defendant available to testify at some future session of the grand jury, even though such stays, granted on application of the prosecuting officers, were consented to by the defendant, and hence such stays were nullities, so that the sentence nevertheless continued to run, and, under the facts, expired before the expiration of the stays, and hence there was no law for the detention of the defendant thereafter and he was properly discharged on a writ of habeas corpus. Drewniak v. State ex rel. Jacquest, 239 W 475, 1 NW (2d) 899.

On a writ of error sued out by a sheriff to review a judgment discharging a convicted

defendant from custody on a writ of habeas corpus, the defendant could not object to the sufficiency of the complaint on which he had been convicted, where he had waived the sufficiency of the complaint by not objecting thereto on the trial, and where his petition for a writ of habeas corpus did not allege the insufficiency of the complaint as a ground of illegality of his imprisonment. Kushman v. State ex rel. Panzer, 240 W 134, 2 NW (2d) 862.

On an application for a writ of habeas corpus in behalf of a child held in a state institution under commitment by a judge of the juvenile court, the only unlawfulness with which the court is concerned is want of jurisdiction of the judge to issue the commitment. In re Ziegler, 245 W 453, 15 NW (2d) 34.

Habeas corpus cannot be used to inquire into the acts constituting contempt; and where the return shows detention for contempt, what the charge was, and the act found, the writ should be quashed and the prisoner remanded. Errors in the exercise of jurisdiction are not reviewable by habeas corpus. State ex rel. Reynolds v. County Court, 11 W (2d) 560, 105 NW (2d) 876.

292.22 History: R. S. 1849 c. 124 s. 19, 20; R. S. 1858 c. 158 s. 19, 20; R. S. 1878 s. 3428; Stats. 1898 s. 3428; 1925 c. 4; Stats. 1925 s. 292.22; 1935 c. 483 s. 146.

If a conviction is void for lack of jurisdiction it may be so determined on habeas corpus proceedings. In re Staff, 63 W 285, 23 NW 587.

A prisoner sentenced for a period in excess of that fixed by statute cannot be released on habeas corpus; the judgment is not void, merely erroneous. In re Graham, 74 W 450, 43 NW 148.

A person adjudged guilty of murder upon his plea of guilty to the information will not be discharged upon habeas corpus, although the judgment is erroneous because the information did not sufficiently charge the crime of murder. In re Carlson, 176 W 538, 186 NW 722.

Where the information under which the petitioner was convicted duly charged him with rape, errors of the circuit court, in considering the jury's verdict a sufficient basis for adjudging the defendant guilty and sentencing him on the verdict, the errors committed within or during the course of exercise of jurisdiction are not reviewable in habeas corpus. In re Elliott, 200 W 326, 228 NW 592.

See note to 292.21, citing Drewniak v. State ex rel. Jacquest, 239 W 475, 1 NW (2d) 899.

292.23 History: R. S. 1849 c. 124 s. 21; R. S. 1858 c. 158 s. 21; R. S. 1878 s. 3429; Stats. 1898 s. 3429; 1925 c. 4; Stats. 1925 s. 292.23; 1935 c. 483 s. 147.

292.24 History: R. S. 1849 c. 124 s. 22; R. S. 1858 c. 158 s. 22; R. S. 1878 s. 3430; Stats. 1898 s. 3430; 1925 c. 4; Stats. 1925 s. 292.24; 1935 c. 483 s. 148.

Where the proceedings were regular so far as holding the defendant for trial, and the statute under which he was prosecuted was not void, and the trial court did not fail to gain jurisdiction by reason of some defect in the proceedings, but committed jurisdictional error in failing to advise the defendant of his right to counsel, and he was before the supreme court, he would be remanded for further proceedings in the trial court, it being within the power of the appellate court to remand him, to discharge him, or to admit him to bail, as the circumstances of the case might require. State ex rel. Doxtater v. Murphy, 248 W 593, 22 NW (2d) 685.

292.25 History: R. S. 1849 c. 124 s. 23; R. S. 1858 c. 158 s. 23; R. S. 1878 s. 3431; Stats. 1898 s. 3431; 1925 c. 4; Stats. 1925 s. 292.25; 1935 c. 483 s. 149.

A court commissioner has no power on application for a writ of habeas corpus to admit a convicted person to bail. In re Murphy, 148 W 292, 134 NW 823.

292.26 History: R. S. 1849 c. 124 s. 24; R. S. 1858 c. 158 s. 24; R. S. 1878 s. 3432; Stats. 1898 s. 3432; 1925 c. 4; Stats. 1925 s. 292.26; 1935 c. 483 s. 150.

292.27 History: R. S. 1849 c. 124 s. 25; R. S. 1858 c. 158 s. 25; R. S. 1878 s. 3433; Stats. 1898 s. 3433; 1925 c. 4; Stats. 1925 s. 292.27; 1935 c. 483 s. 151.

The decision in McDonald v. Milwaukee County, 41 W 642, was only to the effect that a sheriff cannot employ counsel at public expense to defend against proceedings commenced by writ of habeas corpus. Counsel employed by private expense may appear in such proceeding on behalf of the sheriff when the district attorney consents. State ex rel. Durner v. Huegin, 110 W 189, 85 NW 1046.

292.28 History: 1915 c. 285; Stats. 1915 s. 3433m; 1925 c. 4; Stats. 1925 s. 292.28; 1935 c. 483 s. 152.

292.29 History: R. S. 1849 c. 124 s. 27; R. S. 1858 c. 158 s. 27; R. S. 1878 s. 3434; Stats. 1898 s. 3434; 1925 c. 4; Stats. 1925 s. 292.29; 1935 c. 483 s. 153.

292.30 History: R. S. 1849 c. 124 s. 28; R. S. 1858 c. 158 s. 28; R. S. 1878 s. 3435; Stats. 1898 s. 3435; 1925 c. 4; Stats. 1925 s. 292.30; 1935 c. 483 s. 154.

292.31 History: R. S. 1849 c. 124 s. 29; R. S. 1858 c. 158 s. 29; R. S. 1878 s. 3436; Stats. 1898 s. 3436; 1925 c. 4; Stats. 1925 s. 292.31; 1935 c. 483 s. 155.

Sec. 3436, Stats. 1898, protects the sheriff from any liability for obeying the order discharging or directing a discharge of prisoners, but there is no statute protecting him from liability for wrongful imprisonment. State ex rel. Durner v. Huegin, 110 W 189, 85 NW 1046.

292.32 History: R. S. 1849 c. 124 s. 30; R. S. 1858 c. 158 s. 30; R. S. 1878 s. 3437; Stats. 1898 s. 3437; 1925 c. 4; Stats. 1925 s. 292.32.

292.33 History: R. S. 1849 c. 124 s. 36; R. S. 1858 c. 158 s. 36; R. S. 1878 s. 3438; Stats. 1898 s. 3438; 1925 c. 4; Stats. 1925 s. 292.33; 1935 c. 483 s. 156.

292.34 History: R. S. 1849 c. 124 s. 37; R. S. 1858 c. 158 s. 37; R. S. 1878 s. 3439; Stats. 1898 s. 3439; 1925 c. 4; Stats. 1925 s. 292.34.

292.35 History: R. S. 1849 c. 124 s. 38; R. S. 1858 c. 158 s. 38; R. S. 1878 s. 3440; Stats. 1898 s. 3440; 1925 c. 4; Stats. 1925 s. 292.35.

292.36 History: R. S. 1849 c. 124 s. 39; R. S. 1858 c. 158 s. 39; R. S. 1878 s. 3441; Stats. 1898 s. 3441; 1925 c. 4; Stats. 1925 s. 292.36.

292.37 History: R. S. 1849 c. 124 s. 40; R. S. 1858 c. 158 s. 40; R. S. 1878 s. 3442; Stats. 1898 s. 3442; 1925 c. 4; Stats. 1925 s. 292.37.

292.38 History: R. S. 1849 c. 124 s. 31; R. S. 1858 c. 158 s. 31; R. S. 1878 s. 3443; Stats. 1898 s. 3443; 1925 c. 4; Stats. 1925 s. 292.38; 1935 c. 483 s. 158.

Sec. 3443, R. S. 1878, does not apply to the case of a child taken by habeas corpus from the custody of one parent on petition of the other, to whom its custody has been awarded, and afterwards again detained in custody of the parent in whose care it first was. Beyer v. Vanderkuhlen, 48 W 320, 4 NW 354.

292.39 History: R. S. 1849 c. 124 s. 32; R. S. 1858 c. 158 s. 32; R. S. 1878 s. 3444; Stats. 1898 s. 3444; 1925 c. 4; Stats. 1925 s. 292.39; 1935 c. 483 s. 159.

Revisor's Note, 1935: 292.39 is amended to include the substance of 292.40, 292.41 and 292.42 and those sections are repealed. [Bill 75-S, s. 159]

292.44 History: R. S. 1849 c. 124 s. 50; R. S. 1858 c. 158 s. 50; R. S. 1878 s. 3449; Stats. 1898 s. 3449; 1925 c. 4; Stats. 1925 s. 292.44; 1935 c. 483 s. 164; 1951 c. 247 s. 54.

Revisor's Note, 1951: Restores words inadvertently omitted in printing ch. 483 (Bill 75-S), Laws 1935. These words were not stricken in the bill or by any amendment. [Bill 198-S]

It is the duty of the warden of the prison to respond to a writ of habeas corpus ad testificandum and produce the convict in court. The warden is entitled to be reimbursed necessary traveling expenses incurred in taking the convict into court on such writ. The state is not entitled to collect witness fees from the county on account of the convict's testifying in response to such writ. 10 Atty. Gen. 1168.

The only process authorized by which to bring a person in legal confinement into court to testify is that of a writ of habeas corpus ad testificandum. 22 Atty. Gen. 939.

See note to 885.01, citing 48 Atty. Gen. 260.

292.45 History: 1927 c. 233; Stats. 1927 s. 292.45; 1929 c. 391 s. 1; 1935 c. 483 s. 165; 1957 c. 94; 1961 c. 310; 1969 c. 366 s. 117 (2) (b).

The state prison may be reimbursed for traveling expenses incurred by an officer who necessarily accompanies a prisoner to court in response to a writ of habeas corpus ad testificandum. 16 Atty. Gen. 703.

292.46 History: 1933 c. 40 s. 3; Stats. 1933 s. 292.46.

CHAPTER 293.

Mandamus and Prohibition.

293.01 History: R. S. 1849 c. 125 s. 1; R. S. 1858 c. 159 s. 1; R. S. 1878 s. 3450; Stats. 1898 s. 3450; 1925 c. 4; Stats. 1925 s. 293.01; 1935 c. 483 s. 167.

Revisor's Note, 1935: Mandamus is a civil action, 206 W 651. 293.02. Therefore it is proper to call the parties "plaintiff" and "defendant" as in common actions. By so doing the ambiguity of "respondent" in Supreme Court is avoided; and terminology standardized. The right to move to quash is well established by the decisions, State ex rel. Illinois v. Giljohann, 111 W 377, State ex rel. Cothren v. Lean, 9 W 279, is treated as a demurrer and it often determines the issues with little expense. Some returns are long and expensive. [Bill 75-S, s. 167]

On jurisdiction of the supreme court (general superintending control over inferior courts and control over corporations and nonjudicial officers) see notes to sec. 3, art. VII; and on jurisdiction of circuit courts (appellate jurisdiction and supervisory control and extraordinary writs to non-judicial agencies and officers) see notes to sec. 8, art. VII.

The application must show affirmatively that relator is entitled to the right claimed. State ex rel. Spaulding v. Elwood, 11 W 17.

Where there is no return to an alternative writ the relator is not therefor entitled to a peremptory writ. He must enforce a return. State ex rel. Holmes v. Baird, 11 W 260.

The writ must express the precise duty to be performed. State ex rel. Hasbrouck v. Milwaukee, 22 W 397.

A circuit judge has authority to allow an alternative writ at chambers; and it seems that any officer having the general power of such judge at chambers has. State ex rel. Bement v. Rice, 35 W 178.

In circuit court the rule to show cause should supersede the alternative writ only in cases where, after hearing, no issue of fact appears to be involved. Schend v. St. George's Aid Society, 49 W 237, 5 NW 355.

On the hearing of an order to show cause why a peremptory writ should not issue questions of material fact were raised, it was error to grant the writ before relator had established his right in an action. State ex rel. Pfister v. Manitowoc, 52 W 423, 9 NW 607.

A peremptory writ must be sealed and made returnable at some certain day. State ex rel. Taylor v. Delafield, 64 W 218, 24 NW 905.

An alternative writ may be served in the same manner as a summons. State ex rel. Drury v. Lincoln, 67 W 274, 30 NW 360.

The judgment in an action to compel a county to aid in building a bridge directed the issuance of a mandamus commanding its supervisors to meet and levy the necessary tax upon the taxable property of the county. It did not fix a time for such meeting nor except from liability to the tax the property within certain cities which was not subject thereto. It would be a compliance if the tax was levied upon the property in the county subject thereto at the first meeting of the board after the writ was served. State ex rel. Spring Lake v. Pierce County, 71 W 321, 37 NW 231.

Where defendant moved to quash the writ after demurrer to the return, and submitted the case on the alternative writ, return, demurrer and motion to quash, he had conceded the truth of the relation, and consented to