230.89 History: 1963 c. 78; Stats. 1963 s. 230.89; 1969 c. 334.

230.90 History: 1963 c. 78; Stats. 1963 s. 230.90; 1969 c. 334.

230.91 History: 1963 c. 78; Stats. 1963 s. 230.91; 1969 c. 334.

230.92 History: 1963 c. 78; Stats. 1963 s. 230.92; 1969 c. 334.

230.93 History: 1963 c. 78; Stats. 1963 s. 230.93; 1969 c. 334.

230.94 History: 1963 c. 78; Stats. 1963 s. 230.94; 1969 c. 334.

230.95 History: 1963 c. 78; Stats. 1963 s. 230.95; 1969 c. 334.

230.96 History: 1963 c. 78; Stats. 1963 s. 230.96; 1969 c. 334.

230.97 History: 1963 c. 78; Stats. 1963 s. 230.97; 1969 c. 334.

CHAPTER 231.

Uses and Trusts.

231.01 History: R. S. 1849 c. 57 s. 1; R. S. 1858 c. 84 s. 1; R. S. 1878 s. 2071; Stats. 1898 s. 2071; 1925 c. 4; Stats. 1925 s. 231.01; 1969 c. 283.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 231 through 1969, including the effects of ch. 283, Laws 1969. One section of ch. 231 (231.45) is restated in ch. 710 (as 710.05) effective July 1, 1971; and various other provisions of ch. 231 are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the effects of ch. 283, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 700.

Charitable uses and trusts, except as authorized and limited by ch. 84, R. S. 1858, are abolished. Ruth v. Oberbrunner, 40 W 238.

Notwithstanding the language of a trust in favor of a religious organization, giving property a "denominational impress," is valid under sec. 2000, R. S. 1849. Fadness v. Braunborg, 73 W 257, 41 NW 84.

A trust is not void because of any obscurity which may readily be made certain by some definite test therein provided when the time shall have arrived for executing the trust in regard to the matters involved. Becker v. Chester, 115 W 90, 91 NW 87, 650.

If any person receive a deposit of money to be used in purchasing land to be held by him upon a charitable trust for a class and he fails to have the trust expressed in the deed and such failure be subsequently acquiesced in by the depositor, no trust results and the depositor has no remedy but a recovery of the money. Richtman v. Watson, 150 W 385, 136 NW 797.

Some of the essential elements of a valid trust and the distinction between a trust and an agency are stated and illustrated in Warsco v. Oshkosh S. & T. Co. 183 W 156, 196 NW 829.

The original statute of uses did not execute uses of personal property. Estate of Hart, 187 W 629, 205 NW 386.

An enforceable trust can be created without a writing; there is no statute in Wisconsin otherwise providing. Hartman v. Loverud, 227 W 6, 227 NW 641.

In construing a trust instrument the language should be so construed as to give effect to the intention of the testator or settlor, if that intention may be ascertained from the language of the instrument, considered in the light of the surrounding circumstances. Findings of fact made by a trial court, in controversies concerning the administration of a trust estate, are accorded the same effect that findings of fact are accorded in other controversies, and hence will not be disturbed on appeal unless they are against the great weight and clear preponderance of the evidence. Welch v. Welch, 235 W 282, 290 NW 758, 293 NW 150.

Although a transfer of the property to a trustee may be the surest way to create a trust, the same result will be accomplished if the owner declares that he himself holds the property in trust for the person designated. Evidence, consisting in part of letters written by a second wife to her attorney and to the mother of the children of her deceased husband by a former marriage, and disclosing that the second wife had segregated and set apart the sum of $5,000 as a trust fund for the education and maintenance of such children, warranted a determination that the second wife had created a binding and enforceable, self-declared trust in and to such sum with herself as trustee, so that on her death such trust sum was not to be withheld by her executors as an asset of her estate. Wyse v. Puchner, 260 W 365, 51 NW (2d) 38.

A trust is created when the title to the subject matter thereof passes to the intended trustee by delivery thereof or of a deed of conveyance to him or to a third person; but if the third person is an agent of the transferor and in receiving delivery acts only as his agent, no trust is created since the property is still within the dominion of the donor. In order to constitute an effectual delivery, the donor must not only have parted with the possession of the property, but he must also have relinquished to the donee all present and future dominion and control over it, beyond any power on his part to recall. Wuesthoff v. Dept. of Taxation, 261 W 98, 52 NW (2d) 131.

In construing statutory provisions relating to trusts adopted from another state, the Wisconsin supreme court may turn to decisions of courts of such other state construing the same or similar statutory provisions. Janura v. Fencl, 261 W 179, 52 NW (2d) 144.

231.02 History: R. S. 1849 c. 57 s. 2; R. S. 1858 c. 84 s. 2; R. S. 1878 s. 2072; Stats. 1898 s. 2072; 1925 c. 4; Stats. 1925 s. 231.02; 1969 c. 283.

231.03 History: R. S. 1849 c. 57 s. 3; R. S. 1858 c. 84 s. 3; R. S. 1878 s. 2073; Stats. 1898 s. 2073; 1925 c. 4; Stats. 1925 s. 231.03; 1969 c. 283.

A conveyance to one in trust for and to the use of another, without further expression of

the nature and purposes of the trust, vests the absolute legal estate in the latter. Sullivan v. Bruhling, 66 W 472, 29 NW 211.

A conveyance to trustees to hold the title and make such conveyances thereof as are directed will be treated as if no trustees were named and as if the grants were made directly to the beneficiaries. Tyson v. Houghton, 96 W 59, 71 NW 94.

Where land was devised to trustees to manage and receive the rents, issues and profits during the term of the life of the son of testator, and to pay him a net income and upon his decease to convey the estate to his issue, it was not a passive trust. Webber v. Webber, 108 W 626, 84 NW 896.

A deed in trust whereby the grantee was to allow a certain person to occupy the land during his life and upon his decease to convey the same imposes no actual duties upon the trustee and vests an absolute legal estate in such person for life with remainder in the person to whom the conveyance was to be made. Schumacher v. Draeger, 137 W 618, 119 NW 305.

231.04 History: R. S. 1849 c. 57 s. 4; R. S. 1858 c. 84 s. 4; R. S. 1878 s. 2074; Stats. 1898 s. 2074; 1925 c. 4; Stats. 1925 s. 231.04; 1969 c. 283.

Active trusts, lawful before the statute, may still be created, subject to the limitations as to time prescribed. Passive trusts are abolished. Goodrich v. Milwaukee, 24 W 422.

A trust to convey lands to a corporation to be organized is valid as an active trust and the statute does not execute it. Gould v. Taylor O. Asylum, 46 W 106, 50 NW 422.

For an active trust which left the trustee little to do, see Smith v. Ford, 48 W 115, 2 NW 134, 4 NW 462.

A deed in trust conveyed the land with power to receive rents and profits for not more than one year, and to pay the just debts of the grantor with the rents and profits and the proceeds of the sale of so much of the land as might be necessary. After these debts were paid the trustee was to permit the wife of grantor to receive the rents and profits for her life, and she was to pay grantor's son such sums as she might deem proper. In case of her death during the son's lifetime the trustee was to pay the son such sums from the rents and profits as he might deem proper until the son arrived at the age of 25 years, and after that he was to receive the whole rents and profits for his life. Perkins v. Burlington L. & I. Co. 112 W 509, 88 NW 648.

Where the trust estate had been leased for a long term of years by the testator and the lessees had the duty to pay the taxes so that the only duty remaining to the trustee was to enforce the obligation in the lessees to pay the rent and the taxes, the trust was an active one. Patton v. Patrick, 123 W 218, 101 NW 408.

A valid active trust for a lawful purpose specified in sec. 2081, Stats. 1915, was created by an instrument, selling, assigning, granting and conveying to trustees "all her property, real and personal, in trust," empowering the trustees to manage the property, convert the same into money, collect the income therefrom, invest and reinvest the same in securities, pay such income to the grantor during her life upon her request at such times as she may desire; requiring the trustees to account semiannually to the grantor; reciting that the grantor had placed in escrow a deed of real estate to be delivered to the trustees after her death; and directing the manner of disposing of the real and personal estate before and after her death. Pietsch v. Marshall & Ilsley Bank, 164 W 368, 160 NW 184.

231.05 History: R. S. 1849 c. 57 s. 5; R. S. 1858 c. 84 s. 5; R. S. 1878 s. 2075; Stats. 1898 s. 2075; 1925 c. 4; Stats. 1925 s. 231.05; 1969 c. 283.

A deed to A, to the use of or in trust for B, vests the title in B and A takes nothing. White v. Fitzgerald, 19 W 480.

A devise to A to hold in trust for the benefit of an unincorporated society is a passive trust, which would vest the estate in the society if it had been incorporated; but this not being the case the trust is void. Ruth v. Oberbrunner, 40 W 238.

A devise to trustees to convey to a corporation when it shall be organized vests the estate in the trustees, and the possible interest of the corporation is a conditional limitation. When the corporation is organized it takes by conveyance from the trustees and not by the will. The statute does not execute the use. Gould v. Taylor O. Asylum, 46 W 106, 50 NW 422.

The execution, by voluntary act of the trustee, of the implied trust by means of a conveyance to the equitable owner has the same effect as if the conveyance to the trustee had been made to such owner, or as the reformation of the deed. A judgment creditor of the trustee cannot claim that his lien upon the land so conveyed has been defeated. Davenport v. Stephens, 95 W 456, 70 NW 661.

A conveyance to A in trust to convey to B vests the whole estate in B and A takes nothing. Tyson v. Houghton, 96 W 59, 71 NW 94.

Where land was given in trust to take care of and manage and receive the rents, issues and profits therefrom during the lifetime of the son and to pay the net income therefrom to him during his life and at his decease to convey the same to his issue, or in case he should die without issue, then the estate to descend to the heirs at law of the testator, it was not a passive trust and he was not entitled to the rents and profits therefrom. Webber v. Webber, 108 W 626, 84 NW 896.

As soon as a purely passive trust is created it is annihilated by the operation of sec. 2075, Stats. 1898. Holmes v. Walter, 118 W 409, 95 NW 380.

Sec. 2075, Stats. 1898, is not applicable to public trusts. Will of Kavanaugh, 143 W 90, 126 NW 672.

When a trust is passive for a period, the use is executed for that period; and in the case of a partially passive trust, only so much of the title is left in the trustee as is necessary to enable him to perform his duties. Boyle v. Kempkin, 243 W 86, 9 NW (2d) 589.

A provision in the trust instrument, that the interests of the beneficiaries should be deemed an interest in personal property and not in real estate, did not operate to prevent the trust from being a passive trust relating

to real estate and vesting legal title in fee simple in the premises in the beneficiaries. If the trust instrument had contained a provision that the beneficiaries were not to sell the premises during a 20-year period unless as a result of the mutual consent of all, it would not have converted the otherwise passive trust into an active trust, since such a provision in itself would confer no active duties on the trustee. Janura v. Fencl, 261 W 179, 52 NW (2d) 144.

A trust created to guarantee against default in alimony payments, and providing that on the death of the wife the property was to go to the children of the parties, was not a passive trust. Estate of Traver, 2 W (2d) 509, 87 NW (2d) 269.

231.06 History: R. S. 1849 c. 57 s. 6; R. S. 1858 c. 84 s. 6; R. S. 1878 s. 2076; Stats. 1898 s. 2076; 1925 c. 4; Stats. 1925 s. 231.06; 1969 c. 283.

Where a partnership was dissolved and certain of the partners agreed to assume the business of the partnership and that they were to have the interest of the other partner in the partnership property and such other partner fails to convey such interest, an implied trust thereupon arises. Kyle v. Carpenter, 130 W 310, 110 NW 187.

Trusts implied by law. Fox, 7 MLR 50.

231.07 History: R. S. 1849 c. 57 s. 7; R. S. 1858 c. 84 s. 7; R. S. 1878 s. 2077; Stats. 1898 s. 2077; 1925 c. 4; Stats. 1925 s. 231.07; 1969 c. 283.

Where A gave his bond to B for money loaned for the purpose of purchasing land, and with such money purchased the land, and took the title in the name of B as security for the money and interest, there was a resulting trust in B for the use of A. Trusts resulting from operation of law may be established by parol. Rogan v. Walker, 1 W 527.

Trusts resulting from operation of law are not affected by the statute of frauds. Whiting v. Gould, 2 W 552.

When a person intrusted with the money of another to purchase land for him takes the deed to himself but used his own Christian name and the surname of the person furnishing the money, it is presumed that this was done by mistake or fraud and without the consent of the latter; and if it be claimed that a loan or advancement was intended the burden of proof thereof is upon him alleging the same. Kluender v. Fenske, 53 W 118, 10 NW 370.

In the absence of proof that the title was taken by the grantee without the knowledge of the person paying the consideration it is presumed that no trust exists. Knight v. Leary, 54 W 459, 11 NW 600.

The assignees of a land warrant, by an assignment void because made before the warrant issued, located the land in the name of the assignor and thereafter paid all taxes. The assignor had the full title and no trust resulted in favor of the assignees. Week v. Bosworth, 61 W 78, 20 NW 657.

By direction of one paying the consideration for a note and mortgage his daughter was named therein as payee and mortgagee. The delivery of the instruments to her operated at once by way of advancement in her favor, and the father could not receive payment and cancel the securities. Cerney v. Pawlot, 66 W 262, 28 NW 183.

T paid the consideration and had the land conveyed to R. R gave T a power of attorney to sell and convey. There was no trust in writing by which R was to convey to T or his wife. Campbell v. Campbell, 70 W 311, 35 NW 743.

An oral agreement by which plaintiff is to look up and locate lands and defendant to enter and pay for them and take title to himself and afterwards dispose of them for the benefit of both gives the defendant an absolute title to all lands purchased by him free from any trust in favor of the plaintiff. Watters v. McGuigan, 72 W 155, 39 NW 382.

Sec. 2077, R. S. 1878, does not seem to embrace the case of a purchase by one partner without the concurrence of his copartner, using the firm funds therefor, and taking a conveyance of the title in his own name and without the knowledge and consent of such copartner. Such a purchase does not appear to be a case where the consideration is paid by one person and the conveyance is made in the name of another. The purpose of this and the 2 next following sections, which were taken from the statute of New York, was to prevent a debtor from defrauding his creditors by buying lands and paying for them with his own money, and taking title in the name of another, for by doing so under this statute he takes the risk of losing all claim to the land, and creates a trust therein in favor of, and enforceable by, his creditors. Bosworth v. Hopkins, 85 W 50, 55 NW 424.

Where the wife furnished one-half of the purchase money, but was present when the deed was made and knew that it was taken in the husband's name, no trust resulted. Gallagher v. Gallagher, 89 W 461, 61 NW 1104.

A parol trust is not an absolute nullity, but is void at the election of the trustee. If he executes the trust the courts will protect him and also the beneficiaries in the enjoyment of its fruits. Strong v. Gordon, 96 W 476, 71 NW 886.

Where the cashier of a bank borrows money from it in order to purchase land with the consent of the stockholders and directors, no trust arises in favor of the bank upon the land so purchased. Barth v. Koetting, 99 W 242, 75 NW 395.

Where a married woman purchased property out of her separate estate and subsequently paid toward the building of a house thereon from her separate estate and afterward traded this property for other property together with some money which was invested and which secured profits, and the title to all of which property was taken in the name of the husband, although sec. 2077, R. S. 1878, would have prevented a resulting trust yet where the husband voluntarily carried out the trust by conveying the property to the wife, the conveyance was upon a sufficient consideration and was valid as against his creditors in the absence of fraud. Martin v. Remington, 100 W 540, 76 NW 614.

Where a husband takes notes and mortgages in the name of his wife for debts due him, the

title thereto is in his wife. Meier v. Bell, 119 W 482, 97 NW 186.

Where a party took title to land as an accommodation to other parties, who paid the purchase price, and it was recited in the deed that he took such title subject to a mortgage, the parties furnishing the consideration were not liable upon such mortgage as the grantee had an absolute title and did not hold in trust for them. Arnold v. Randall, 121 W 462, 98 NW 239.

Sec. 2077, Stats. 1898, applies exclusively to real estate. A note secured by a mortgage on real estate is not within its provisions. Tobin v. Tobin, 139 W 494, 121 NW 144.

If a person be furnished with partnership money to purchase land to be held by the members as tenants in common or to be held by such person upon a charitable trust for a class and he takes the title in his own name by previous consent, or with their subsequent acquiescence, no trust results in favor of the partners because resulting trusts are abolished. Richtman v. Watson, 150 W 385, 136 NW 797.

Where deeds were recorded and real estate held by a grantee in her own name without objection or protest on the part of her brother, who long afterwards claimed that he was the owner of a one-half interest in the premises because he furnished one-half of the purchase money, no resulting trust arose in the brother's favor. Fehlow v. Orvis, 191 W 128, 210 NW 270.

It is only the common-law trust for the benefit of an individual from whom the consideration for a grant issues, and resulting from the fact of payment of the consideration, and having no other foundation, that is inoperative by reason of 231.07; and the statute has no effect on trusts constructively imposed as a consequence not of payment alone, but of payment in combination with other or extrinsic equities. A resulting trust, as distinguished from a constructive trust, can arise only in favor of the payor by reason of his payment, and cannot arise in favor of a third-party beneficiary. Masino v. Sechrest, 268 W 101, 66 NW (2d) 740.

A purchase-money resulting trust is inoperative by reason of 231.07. Masino v. Sechrest, 268 W 112, 66 NW (2d) 745.

231.08 History: R. S. 1849 c. 57 s. 8; R. S. 1858 c. 84 s. 8; R. S. 1878 s. 2078; Stats. 1898 s. 2078; 1925 c. 4; Stats. 1925 s. 231.08; 1969 c. 283.

If property conveyed to a married woman is alleged by the creditors of the husband to have been paid for with his money, she must show, at least where there are strong grounds for believing that the allegation of the creditors is true, by clear and satisfactory evidence that she purchased and paid for the property out of her separate estate. Gettleman v. Gitz, 78 W 439, 47 NW 660.

Where a trust results under secs. 2077 and 2078, R. S. 1878, in favor of creditors, one of the creditors cannot, by proceeding in equity or otherwise, obtain a preference over the others. No title is acquired by the payment of the consideration, and judgments against the person who pays it do not become liens on the land, nor does any interest therein descend to his heirs. Miner v. Lane, 87 W 348, 57 NW 1105; Blackburn v. Lake Shore T. Co. 90 W 362, 63 NW 289; Allen v. McRae, 91 W 226, 64 NW 889.

While an action was pending against a husband, the wife purchased a house and lot for a consideration of $970; of that sum the husband furnished to his wife at the time of her purchase $450, and subsequently he paid upon the note and mortgage which she had given to secure the purchase price $170. At the time of the purchase the wife had $250 and the husband $450, and it was intended that the property purchased should be occupied as a homestead. The payment of $170 was made after judgment out of money saved by the husband from his earnings. These facts rebutted the presumption of fraudulent intent. Scott v. Holman, 117 W 206, 94 NW 30.

In the case of conveyances falling under sec. 2078, Stats. 1898, no title, legal or equitable, vests in the debtor and no lien upon the property can be acquired by the docketing of a judgment or the levying of an attachment or execution, nor can any interest be conveyed in favor of the creditors existing at the time of the conveyance and in favor of all of them so that none would acquire preference over any other. State Bank of La Crosse v. Bienfang, 133 W 431, 113 NW 726.

Where the debtor owns nothing in the land, but the grantee holds the entire title as a trustee in favor of the creditors, the right of such creditors is not against the land, but, at the suit of all or of one for all, to charge the grantee with a trust to the extent necessary to satisfy their just demands. Dorrington v. Jacobs, 213 W 521, 252 NW 307.

231.09 History: R. S. 1849 c. 57 s. 9; R. S. 1858 c. 84 s. 9; R. S. 1878 s. 2079; Stats. 1898 s. 2079; 1925 c. 4; Stats. 1925 s. 231.09; 1969 c. 283.

A wife is not barred to claim land purchased with her money by her husband, who, contrary to her directions, took title in his own name, because she allowed more than 20 years to elapse after knowledge of his act without asserting her right, the husband never having asserted any right to the land or denied that, equitably, it was hers. Fawcett v. Fawcett, 85 W 332, 55 NW 405.

Where a husband buys land and pays the purchase price with money furnished by his wife, and, without her knowledge or consent, takes title in his own name, he holds merely the bare legal title in trust for her, and where, pursuant to her demand, he conveys to her, the trust in her favor is executed as of the time the purchase was made, and a pre-existing judgment against him did not become a lien on the land. Davenport v. Stephens, 95 W 456, 70 NW 661.

Where a person with the money of another and without his consent purchases and takes title to property in his own name a trust results in favor of the owner of the money and the latter may collect the money out of the property, if the rights of innocent third parties can be preserved. Wisdom v. Wisdom, 155 W 434, 145 NW 126.

The facts stated are sufficient proof of an implied trust. Beilfuss v. Dinnauer, 174 W 507, 183 NW 700.

See note to 240.06, on estate or interest in lands, citing Awe v. Domer, 183 W 268, 197 NW 718.

The trust which resulted in favor of the wife upon her husband's taking title to property paid for with her funds, but without her knowledge, was not barred by limitations or laches and hence was enforcible. Hendricks v. McCormick M. Home, 204 W 277, 234 NW 886.

231.10 History: R. S. 1858 c. 84 s. 10; R. S. 1878 s. 2080; Stats. 1898 s. 2080; 1925 c. 4; Stats. 1925 s. 231.10; 1969 c. 283.

One who procures and puts on record a deed of land in fraud of the rights of a prior grantee whose deed is not recorded becomes a trustee of the legal title. Where such title, after a transfer to an innocent purchaser, revests in such fraudulent grantee, the trust reattaches to it. Troy City Bank v. Wilcox, 24 W 671.

231.11 History: R. S. 1849 c. 57 s. 11; R. S. 1858 c. 84 s. 11; R. S. 1878 s. 2081; 1883 c. 290; 1887 c. 388; Ann. Stats. 1889 s. 2081; Stats. 1898 s. 2081; 1917 c. 170; 1925 c. 4; Stats. 1925 s. 231.11; 1933 c. 413; 1935 c. 336; 1943 c. 93; 1969 c. 283; 1969 c. 366 s. 117 (2) (b).

1. Rents and profits for life.
2. Beneficial interests of any person.
3. Charitable or public purposes.

1. Rents and Profits for Life.

Where the trust estate had been leased for a long term of years by the testator and the lessees had the duty to pay the taxes so that the only duty remaining to the trustee was to enforce the obligation in the lessees to pay the rent and the taxes, the trust was an active one. Patton v. Patrick, 123 W 218, 101 NW 408.

All trusts are abolished by 231.01, except those created for purposes enumerated in this section which refers only to active trusts and, specifically, is not applicable to passive trusts relating to land since the provisions of 231.05 pass title directly to the beneficiary or beneficiaries in the case of the creation of a passive trust relating to land. Janura v. Fencl, 261 W 179, 52 NW (2d) 144.

2. Beneficial Interests of Any Person.

A will directing executors to pay debts, taxes and insurance, keep the estate in repair, rebuild the homestead if destroyed by fire, prudently manage the estate, purchase other real estate and make improvements, creates a trust estate in the executors. Scott v. West, 63 W 529, 24 NW 161, 25 NW 18.

Where the executor is required to take, hold and manage the estate in order to pay annuities to legatees during their lives and hold the corpus of the estate for the benefit of persons living and to be born, he takes the legal title to the whole estate, in trust for the purposes mentioned. Scott v. West, 63 W 529, 24 NW 161, 25 NW 18.

A bond reciting that the obligor had bargained and sold to the obligee an undivided one-half of lots and parcels of land, and that its condition was that the obligor should account and pay over to the obligee one-half of all moneys received by him from the sale of such lands as made, and upon demand convey to the obligee the undivided half of lots unsold, created a valid express trust. Bostwick v. Estate of Dickson, 65 W 593, 26 NW 549.

Where land was devised to trustees to manage and receive the rents, issues and profits and to pay to testator's son during his lifetime, and then to convey to his issue at his death, a valid trust was created. Webber v. Webber, 108 W 626, 84 NW 896.

Officers and directors of a corporation are not trustees of an express trust, although the articles of incorporation fully set out the nature of the trust imposed upon them. Boyd v. Mutual F. Asso. 116 W 155, 90 NW 1086, 94 NW 171.

The devisee of land which is subject to the payment of a legacy is not a trustee of an express trust, so that the action may be barred by the statute of limitations. (Williams v. Williams, 82 W 393, 52 NW 429, as far as it conflicts with this, overruled.) Merton v. O'Brien, 117 W 437, 94 NW 340.

A trust created for the purpose mentioned in sec. 2081 (5), Stats. 1898, is valid if fully expressed and clearly defined upon the face of the instrument creating it, unless it violates the prohibition against suspension of the power of alienation. Holmes v. Walter, 118 W 409, 95 NW 380.

The person for whose benefit a trust may be created under sec. 2081 (5), Stats. 1898, must be other than a trustee. Danforth v. Oshkosh, 119 W 262, 97 NW 258.

Where a partnership was dissolved, and certain of the partners agreed to assume the business of the firm and to have the title to the partnership property, and the other partner fails to convey the legal title to his share in such partnership property, the transaction did not create an express trust but did create an implied trust. Kyle v. Carpenter, 130 W 310, 110 NW 187.

A trust made for convenience in making deeds to purchasers, which deeds are to be made under the direction of the grantor, is an express trust. Illinois S. Co. v. Kunkel, 146 W 556, 131 NW 842.

Sec. 2081 (5) is not applicable to trusts in personal property. Will of Evenson, 161 W 627, 155 NW 145.

See note to 231.04, citing Pietsch v. Marshall & Ilsley Bank, 164 W 368, 160 NW 184.

The fact that the trust does not prescribe any definite time for its termination and is not by its terms limited to a life or lives in being and 30 years thereafter, does not violate 231.11 (5), as the limitations apply only when future estates are created, or the accumulation of rents and profits or their disposition provided for. Baker v. Stern, 194 W 233, 216 NW 147.

To be valid, a trust requires that a beneficiary be named or designated; it is not necessary that the beneficiary exist or be ascertainable at the time the trust is created, but he must be ascertainable within the time limited by the rule against perpetuities. An instrument, to be an effective exercise of a power of appointment reserved to a testatrix by her will, would have to be executed with the formalities required of a will. Estate of Kessler, 271 W 512, 74 NW (2d) 146.

The charity doctrine and gifts for charitable purposes. Zollman, 10 MLR 178.

Why charitable trusts fail. Crow, 24 MLR 126.

The cy pres doctrine in Wisconsin. Geronime, 49 MLR 387.

3. Charitable or Public Purposes.

A bequest for the education and tuition of worthy indigent females is sufficiently certain both as to the object of the bequest and the beneficiaries. Dodge v. Williams, 46 W 70, 50 NW 1103.

A bequest of money to a religious society with a direction that one-half of the interest thereof be used in defraying the expenses of the society "and the balance distributed and used for the relief of the resident poor" is valid and is sufficiently definite and certain. Webster v. Morris, 66 W 366, 28 NW 353.

It is no objection to the validity of a bequest for a public charity that its beneficiaries are uncertain. Sawtelle v. Witham, 94 W 412, 69 NW 72.

Indefiniteness of beneficiaries who can invoke judicial authority to enforce the trust, want of a trustee if there be a trust in fact, or indefiniteness in details of the particular purpose declared, the general limits being reasonably ascertainable, or indefiniteness of mode of carrying out the particular purpose, does not militate against the validity of a trust for charitable uses. A trust for promotion of temperance is a proper subject for a charitable trust. Harrington v. Pier, 105 W 485, 82 NW 345.

A bequest for masses is a charitable bequest and valid, although certain persons are mentioned in such bequest. Will of Kavanaugh, 143 W 90, 126 NW 672.

A testamentary trust, giving property to a trustee to be distributed to such charities within a county as it might deem needy and worthy, is valid. In re Monaghan's Will, 199 W 273, 226 NW 306.

The operation of 231.11 (7) (c), (d) is dependent on the discovery of a general charitable purpose in a trust or other gift. Nelson v. Madison Lutheran Hospital & Sanatorium, 237 W 518, 297 NW 424.

A testamentary gift in trust for a charitable purpose will not be permitted to fail because the donee to which the will directs the property to be conveyed is not a legal entity capable of taking title thereto, but in such case the general purpose of the donor will be carried into effect in the nearest practical manner. Estate of Thronson, 243 W 73, 9 NW (2d) 641.

When it appears that if the main purpose of a will creating a trust cannot be accomplished by continuing the management of the trust according to the directions of the will but may be accomplished by deviating the management from that specified by the will, such deviation should be ordered by the court having supervision of the trust in order to effect the main purpose. Estate of Robinson, 248 W 203, 21 NW (2d) 391.

A will giving a fund to a city in trust, to be used by it for the erection and maintenance of an old people's home where elderly people might enjoy the comforts of life at reasonable rates, was a charitable trust, and where, because of the inadequacy of the fund and the fact that the city already owned and operated a home for elderly people, it was impossible to erect and maintain another home in the manner specified in the will, the court, under 231.11 (7) (d) could change the mode of effectuating the bequest within the general purpose, although the will provided that the fund should be used for no purposes except those outlined therein. In the circumstances, it was the duty of the court to apply the trust property to a purpose which approximates as nearly as possible the purpose to which the testatrix intended the property to be applied. Fairbanks v. Appleton, 249 W 476, 24 NW (2d) 893.

231.12 History: R. S. 1849 c. 57 s. 12; R. S. 1858 c. 84 s. 12; R. S. 1878 s. 2082; Stats. 1898 s. 2082; 1925 c. 4; Stats. 1925 s. 231.12; 1969 c. 283.

231.13 History: R. S. 1849 c. 57 s. 13; R. S. 1858 c. 84 s. 13; R. S. 1878 s. 2083; Stats. 1898 s. 2083; 1925 c. 4; Stats. 1925 s. 231.13; 1969 c. 283.

Secs. 2083 and 2089, Stats. 1898, apply only to real property and do not exempt from liability for a debt the income of personal estate held in trust for the debtor which is payable to him absolutely and without condition. Williams v. Smith, 117 W 142, 93 NW 464.

Spendthrift trusts in Wisconsin. Binder, 36 MLR 167.

231.14 History: R. S. 1849 c. 57 s. 14; R. S. 1858 c. 84 s. 14; R. S. 1878 s. 2084; Stats. 1898 s. 2084; 1925 c. 4; Stats. 1925 s. 231.14; 1969 c. 283.

A trust which provided that the trustee should have no duties to perform for 20 years, but that, if any property remained in the trust at the end of 20 years, the trustee should then sell it and divide the proceeds, was passive in its entirety, but the contingent power of sale in the trustee was valid under 231.14. Any beneficiary, or heir of an intestate beneficiary, would be entitled to maintain a partition action during such 20-year period. Janura v. Fencl, 261 W 179, 52 NW (2d) 144.

231.15 History: R. S. 1849 c. 57 s. 15; R. S. 1858 c. 84 s. 15; R. S. 1878 s. 2085; Stats. 1898 s. 2085; 1925 c. 4; Stats. 1925 s. 231.15; 1969 c. 283.

231.16 History: R. S. 1849 c. 57 s. 16; R. S. 1858 c. 84 s. 16; R. S. 1878 s. 2086; Stats. 1898 s. 2086; 1925 c. 4; Stats. 1925 s. 231.16; 1969 c. 283.

Under secs. 2086 and 2087, Stats. 1898, if a trust in lands is created and the lands at the same time granted or devised subject to the execution of the trust, the trustee takes only such interest as the purposes of the trust require, and the cestui que trust takes the entire title as against the world, but as against the trustees he takes the beneficial equitable interest, subject only to the execution of the trust according to its terms. In re Prasser's Will, 140 W 92, 121 NW 643.

Title to a trust estate passes under the will creating the trust to the named trustees without any court order assigning the property to

them. Estate of Trowbridge, 244 W 519, 13 NW (2d) 66.

231.17 History: R. S. 1849 c. 57 s. 17; R. S. 1858 c. 84 s. 17; R. S. 1878 s. 2087; Stats. 1898 s. 2087; 1925 c. 4; Stats. 1925 s. 231.17; 1969 c. 283.

Cestuis que trust under wills granting the entire legal estate to executors or trustees have a legal estate in the lands devised against all persons except such executors or trustees and those claiming under them. Scott v. West, 63 W 529, 24 NW 161, 25 NW 18.

231.18 History: R. S. 1849 c. 57 s. 18; R. S. 1858 c. 84 s. 18; R. S. 1878 s. 2088; Stats. 1898 s. 2088; 1925 c. 4; Stats. 1925 s. 231.18; 1969 c. 283.

231.19 History: R. S. 1849 c. 57 s. 19; R. S. 1858 c. 84 s. 19; R. S. 1878 s. 2089; Stats. 1898 s. 2089; 1925 c. 4; Stats. 1925 s. 231.19; 1969 c. 283.

Secs. 2089 and 2083, Stats. 1898, apply only to real estate and do not exempt from liability for debt the income of the personal estate held in trust which is payable to a cestui que trust absolutely and without condition. Williams v. Smith, 117 W 142, 93 NW 464.

Where the instrument which creates a trust does not expressly or by implication waive its termination, parties in interest may terminate it subject to the restraints of secs. 2089 and 2091, Stats. 1898. Holmes v. Walter, 118 W 409, 95 NW 380.

Where a will provides that the trustee shall not have power to sell or convey certain real estate during the lives of the wife and the youngest child, that they shall receive the rents thereof and distribute the income as provided, assignment by the beneficiaries of their interest in the income could not be of any validity and the property could not be discharged from the trust. Patton v. Patrick, 123 W 218, 101 NW 408.

Under a testamentary trust whereby income was to be devoted to education and support of the beneficiary until he should reach the age of 25, when the principal with unexpended accumulations of income should go to the beneficiary, with provisions for gifts over if the beneficiary did not reach such age, the interest of the beneficiary in the trust fund was a sum in gross, assignable, and therefore subject to satisfaction of a judgment against the beneficiary, whether interest was vested or contingent. Meyer v. Reif, 217 W 11, 258 NW 391.

See note to 230.35, citing Estate of Tantillo, 24 W (2d) 19, 127 NW (2d) 798.

Spendthrift trusts in Wisconsin. Binder, 36 MLR 167.

231.20 History: R. S. 1849 c. 57 s. 20; R. S. 1858 c. 84 s. 20; R. S. 1878 s. 2090; Stats. 1898 s. 2090; 1919 c. 47; 1925 c. 4; Stats. 1925 s. 231.20; 1969 c. 283.

The express trust recognized by sec. 2090, Stats. 1878, must be created or declared by an instrument in writing executed conformably to the statutes. Pavey v. American Ins. Co. 56 W 221, 13 NW 925; Strong v. Gordon, 96 W 476, 71 NW 886.

231.201 History: 1953 c. 530; Stats. 1953 s. 231.201; 1955 c. 660; 1957 c. 506; 1969 c. 283; 1969 c. 285 s. 28.

231.205 History: 1931 c. 216; Stats. 1931 s. 231.205; 1955 c. 85; 1957 c. 404; 1963 c. 269; 1969 c. 283.

The donor's reservation of trust income to himself during his lifetime, and his reservation of the power to revoke the trust, and his reservation of investment control, limited to approval or disapproval of the trustee's recommendations within 30 days thereafter, did not make the trustee the donor's mere agent nor impart testamentary character to the trust, and his reservation of the power of appointment did not make the trust invalid, nor change its character from that of an inter vivos trust to that of a last will and testament, and where the testator expressly stated in his will that it was not his intention that the residue of his estate should be received by the trustee as a testamentary trustee but as the trustee of a "distinct legal entity already in existence," it could not be said that the existing trust was incorporated in the will by reference. Estate of Steck, 275 W 290, 81 NW (2d) 729.

Reservation of power by settlor. Baldwin, 1943 WLR 127.

231.21 History: R. S. 1849 c. 57 s. 21; R. S. 1858 c. 84 s. 21; R. S. 1878 s. 2091; Stats. 1898 s. 2091; 1909 c. 245; 1925 c. 4; Stats. 1925 s. 231.21; 1969 c. 283.

Additional funds cannot be granted to a beneficiary of a trust under a will on the basis of social standing or convenience, but only when the beneficiary is unable to take care of himself and if the rights and interests of others in the trust will not be thereby prejudiced. Beneficiaries were not entitled to additional funds under the statute, where they had annual incomes of $700, and their husbands had incomes substantial in amount. Estate of Adams, 216 W 77, 255 NW 886.

Under 231.21 (2) a judgment extending the 5-year period, prescribed in the instant testamentary trusts, within which to pay the son's notes to the testatrix out of his designated share of the trust income, would be unauthorized, since it would be an invasion of the rights of others in the trust, and since the son had no interest which could be appropriated to him, no interest which could be sold, and nothing which could be used as a security for a loan. Trust Estate of Boyle, 232 W 631, 288 NW 257.

Where the interests of infant grandchildren of the settlor were contingent on, and to take effect on, their reaching the age of 30 years, and no provision was made for the payment of any income to them as such, but one-half of the income was to be paid to the settlor's son, and the other half was to be retained by the trustees and added to the corpus, an appropriation of funds to pay for the education of the infant beneficiaries out of such other half of the income was unauthorized under 231.21 (2), as contrary to the intent of the settlor, and as prejudicial to the rights of those beneficiaries who would receive the estate in case the contingent interests should fail to materialize. Boyle v. Marshall & Ilsley Bank, 242 W 1, 6 NW (2d) 642.

The remaindermen, having conveyed their

interest to the life beneficiary of the trust, could not urge that their rights and interests would be prejudiced by an allowance to the life beneficiary out of the corpus. Estate of North, 242 W 72, 7 NW (2d) 705.

A valid trust having been set up as to the remainder in the real estate deeded by the settlor to the trustee, the settlor and the trustee could not by mutual agreement cut off the rights of the beneficiaries which vested on the delivery of the deed, and a subsequent deed which the trustee gave to the settlor was void as being in contravention of the trust, the trust being irrevocable in the absence of reservation of power to revoke. Boyle v. Kempkin, 243 W 86, 9 NW (2d) 589.

Where, under testamentary trusts, half of the income was to be paid to the testatrix's son during his life and during such time the other half was to be added to the corpus of the trusts, and the corpus never would belong to the son, and there was no provision which would warrant the payment of the son's income taxes, an invasion of the corpus to pay the son's delinquent income taxes would be contrary to the will and prejudicial to the rights of others in the trusts. Estate of Boyle, 252 W 511, 32 NW (2d) 333.

The settlor of a trust cannot, except under circumstances not here existing, revoke the trust unless it has reserved such power. American Nat. Red Cross v. Banks, 265 W 66, 60 NW (2d) 738.

Where a testator by his will set up a trust primarily for the benefit of an adult, incompetent son who was a charity patient in a public mental institution and for whose support the testator was not liable, and the will also made a named bible society a contingent beneficiary, and expressly declared that the trust fund was to be conserved for benefits not provided at public expense, and that only certain specified extra comforts and necessities were to be financed by the trust, the state department of public welfare was not entitled as a matter of right under 231.21 (2) to a requested order directing the trustee to pay to the department the principal of the trust fund and its accumulated interest, nor to an adjudication that the society has no interest in the trust fund. Will of Wright, 12 W (2d) 375, 107 NW (2d) 146.

231.22 History: R. S. 1858 c. 84 s. 22; R. S. 1878 s. 2092; Stats. 1898 s. 2092; 1925 c. 4; Stats. 1925 s. 231.22; 1969 c. 283.

231.23 History: R. S. 1858 c. 84 s. 23; R. S. 1878 s. 2093; Stats. 1898 s. 2093; 1925 c. 4; Stats. 1925 s. 231.23; 1969 c. 283.

On the election of the widow not to take under the will, and the death of testator's brother, the purposes of the trust and the estate of the trustees had ceased, and the trust should be terminated and the property distributed. Will of McIlhattan, 194 W 113, 216 NW 130.

Under a will creating a trust and providing for the payment of certain income to the testator's widow for life, and to the testator's mother for life, and for the support and education of any surviving issue of the testator, and further that the trust should terminate on the widow's death, and that the trust estate should then go to any surviving issue of the testator but, if the testator died without issue surviving him, to go to the testator's surviving brothers and sisters, the purposes of the trust had ceased and there was no object in continuing it until the widow's death, after the widow's election not to take under the will, and the death of the testator's mother, and where there was a surviving son of the testator so that any contingent claim of the testator's brothers and sisters was thereby defeated, and the son was of full age and competent; and in such circumstances the son, as sole remaining beneficiary, should now enter directly into the enjoyment of the remainder, and the trust should be terminated. Will of Borchert, 259 W 361, 48 NW (2d) 496.

No express provision for the termination of the trust was required where the general scheme of the trust was evident, and the subject of the same and the persons to be benefited were sufficiently clear so that a court of equity could judicially determine the same and superintend the execution of the trust. Wyse v. Puchner, 260 W 365, 51 NW (2d) 38.

Where the entire property or beneficial interest of "enemy" nationals, as beneficiaries of a trust created by will, vested in the attorney general of the United States as successor to the alien property custodian in accordance with the terms of an authorized and proper vesting order, the purposes of the trust could not be carried out according to the will, and there would be no object in continuing the trust; hence, such attorney general was entitled to an order granting his petition for termination of the trust. Will of Solbrig, 7 W (2d) 44, 96 NW (2d) 97.

231.24 History: R. S. 1858 c. 84 s. 24; R. S. 1878 s. 2094; Stats. 1898 s. 2094; 1925 c. 4; Stats. 1925 s. 231.24; 1969 c. 283.

Upon the death of the surviving trustee of an express trust his successor may be appointed by the circuit court without notice or a formal hearing. Reigart v. Ross, 63 W 449, 23 NW 878.

231.25 History: R. S. 1849 c. 57 s. 25; R. S. 1858 c. 84 s. 25; R. S. 1878 s. 2095; Stats. 1898 s. 2095; 1925 c. 4; Stats. 1925 s. 231.25; 1969 c. 283.

In an action brought by a trustee of an inter vivos trust for approval of his account and for discharge from liability as trustee, after his resignation and after the court's appointment of his successor, the allowance to him, out of the trust, of expenses for attorney fees and guardian ad litem fees was proper, where the trust instrument contemplated that the trustees might resign and the record warranted the view that the plaintiff's resignation as trustee was justifiable, although the plaintiff did not proceed by petition, in accordance with 231.25 for the court's acceptance of his resignation. Uihlein v. Albright, 244 W 650, 12 NW (2d) 909.

231.26 History: R. S. 1849 c. 57 s. 26; R. S. 1858 c. 84 s. 26; R. S. 1878 s. 2096; Stats. 1898 s. 2096; 1925 c. 4; Stats. 1925 s. 231.26; 1969 c. 283.

The failure of the trial court to remove

trustees, whose removal for alleged unsuitability was sought on the ground, among others, that one was past 70 years of age and that another had removed his residence to the state of Michigan, was not an abuse of discretion in the circumstances of the case. Welch v. Welch, 235 W 282, 290 NW 758, 293 NW 150.

The trial court did not abuse its discretion in removing a testamentary trustee who had sold his individual property to himself as trustee, and who had retained a portion of the interest paid on mortgages held by him as trustee, although the will creating the trust granted broad powers to him. Will of Gabel, 267 W 208, 64 NW (2d) 853.

A petition for the removal of testamentary trustees is addressed to the sound discretion of the trial court, and its action will not be reversed in the absence of an abuse of such discretion. In determining whether there has been an abuse of discretion, the supreme court does not balance evidence on appeal as if it were a trial court; and to disturb the findings of a trial court, they must be contrary to the great weight and clear preponderance of the evidence. Estate of Gehl, 5 W (2d) 91, 92 NW (2d) 372.

231.27 History: R. S. 1849 c. 57 s. 27; R. S. 1858 c. 84 s. 27; R. S. 1878 s. 2097; Stats. 1898 s. 2097; 1925 c. 4; Stats. 1925 s. 231.27; 1969 c. 283.

231.28 History: 1872 c. 132; R. S. 1878 s. 2098; Stats. 1898 s. 2098; 1925 c. 4; Stats. 1925 s. 231.28; 1947 c. 506; 1965 c. 252; 1969 c. 283.

The requirement of notice in the case provided for by sec. 2098, R.S. 1878, excludes it in other cases. Upon the death of a surviving trustee of an express trust the circuit court may appoint his successor. Reigart v. Ross, 63 W 449, 23 NW 878.

The language of sec. 2098, R.S. 1878, is plain and covers every case where a trustee appointed by the party who created the trust declines to act; it is to be read as part of every will which contains nothing indicating a contrary intent. Sawtelle v. Witham, 94 W 412, 69 NW 72.

231.29 History: 1872 c. 132; R. S. 1878 s. 2099; Stats. 1898 s. 2099; 1925 c. 4; Stats. 1925 s. 231.29; 1969 c. 283.

231.295 History: 1876 c. 14 s. 1; R. S. 1878 s. 4280; Stats. 1898 s. 4280; 1925 c. 4; Stats. 1925 s. 331.31; 1951 c. 247 s. 59; Stats. 1951 s. 231.295; 1969 c. 283.

If a receiver appointed by a foreign court is a trustee of an express trust within the meaning of sec. 4280, R.S. 1878, it does not apply to him, because it is confined to cases where there is a trust estate, a part of which is situated in this state. But the statute was not intended to apply to a mere officer of a foreign court. Filkins v. Nunnemacher, 81 W 91, 51 NW 79.

A receiver of the estate of a Minnesota absentee, appointed by a Minnesota court, is not a "trustee" within the meaning of 331.31, Stats. 1945. Mueller v. First Wisconsin Nat. Bank, 249 W 35, 23 NW (2d) 475.

A foreign trust company designated as trustee in a deed of trust covering property in Wisconsin, as well as other property, may record such deed of trust in this state and exercise the same powers over a trust estate as a resident trustee. 18 Atty. Gen. 45.

231.30 History: 1872 c. 132; R. S. 1878 s. 2100; Stats. 1898 s. 2100; 1925 c. 4; Stats. 1925 s. 231.30; 1969 c. 283.

231.31 History: 1885 c. 448; Ann. Stats. 1889 s. 2100a; Stats. 1898 s. 2100a; 1925 c. 4; Stats. 1925 s. 231.31; 1969 c. 283.

So far as sec. 2100a, Stats. 1917, merely empowers the circuit court to order, for certain specified reasons, a sale of real estate which is the subject of a trust, it is merely declaratory of the common law. Upham v. Plankinton, 166 W 271, 165 NW 18.

The provisions of 231.31, Stats. 1939, apply to testamentary and similar express trusts, but do not apply to a trust created by a trust mortgage for the benefit of mortgage bondholders nor to a disposition of the property acquired by the mortgage trustee at the foreclosure sale. Newlander v. Riverview Realty Co. 238 W 211, 298 NW 603.

If the property conveyed to the city for the lawful public purpose of being maintained as an historical museum was held by the city in trust, its transfer by the city to the State Historical Society for the same purpose was not controlled by statutory provisions applying to private trusts as distinguished from public trusts. State ex rel. State Historical Society v. Carroll, 261 W 6, 51 NW (2d) 723.

231.33 History: 1933 c. 318; Stats. 1933 s. 231.33; 1951 c. 37; 1969 c. 283.

Comment of Advisory Committee, 1951: 231.33 is amended so that it applies to all courts instead of county courts only. (Bill 90-S)

An estate was ready to be closed except for the sale of the home on the happening of the first contingency commanding it, but the coexecutors had not co-operated and probably could not. An order appointing a trustee to hold the fee subject to the widow's estate for life or less, as the occurrence of the contingencies might determine, and then to sell the premises and administer or distribute the proceeds as in the will and the order provided, was within the discretion permitted the county court. Estate of Audley, 256 W 433, 41 NW (2d) 378.

231.34 History: 1945 c. 458; Stats. 1945 s. 231.34; 1969 c. 283.

The attorney general can question an order terminating a charitable trust even though so much time has elapsed that no party could appeal, if he was not notified of and did not participate in the proceedings. Estate of Goodrich, 271 W 59, 72 NW (2d) 698.

231.35 History: Sup. Ct. Order, 271 W v; Stats. 1957 s. 231.35; 1969 c. 283.

Comment of Judicial Council, 1956: See comment to 323.10.

231.36 History: 1959 c. 278; Stats. 1959 s. 231.36; 1969 c. 283; 1969 c. 339 s. 27.

The mere fact that a trustee is given discretion does not authorize him to go beyond

the bounds of reasonable judgment; hence, in general, a court does not favor a construction which confers arbitrary or capricious authority on the trustee. The general duty of a trustee to exercise reasonable care and judgment requires that even a broad discretion be exercised upon judicious and responsible consideration, subject to review by the supreme court for abuse of discretion. In re Trust of Salimes, 43 W (2d) 140, 168 NW (2d) 157.

231.40 History: 1957 c. 300; Stats. 1957 s. 231.40; 1961 c. 49, 651; 1969 c. 283.

Editor's Note: For foreign decisions construing the "Uniform Principal and Income Act" consult Uniform Laws, Annotated.

The provision in 231.40 (5) (a) that all dividends on shares of a corporation forming a part of the principal which are payable in the shares of the corporation shall be deemed principal, is not unconstitutional as applied to stock dividends received subsequent to the passage of the act by the trustee of a previously existing testamentary trust. Will of Allis, 6 W (2d) 1, 94 NW (2d) 226.

Trustees who were also the life beneficiaries of the trust were not empowered under a clause permitting them discretionary authority to determine how receipts were to be apportioned as between principal and interest to assign to themselves gain realized on the sale of capital assets which were part of the trust corpus. Will of Clarenbach, 23 W (2d) 71, 126 NW (2d) 614.

Probate and trust accounting problems. Inding, 46 MLR 458.

Tax accounting problems of trustees. Hinners, 47 MLR 147.

Discretionary power to allocate receipts to income or principal; abuse of discretion. 48 MLR 262.

The creation of general and specific bequests of securities and the rules for the distribution of accessions to securities. Dunaj, 52 MLR 271.

Discretion of trustees to allocate receipts as income or principal. Wydeven, 1965 WLR 391.

231.45 History: 1959 c. 259; Stats. 1959 s. 231.45; 1965 c. 156; 1969 c. 276 s. 598 (1); 1969 c. 283, 483.

231.46 History: 1961 c. 403; Stats. 1961 s. 231.46; 1969 c. 283.

231.47 History: 1961 c. 403; Stats. 1961 s. 231.47; 1969 c. 283.

Pouring over into testamentary trust of another. 45 MLR 463.

231.49 History: 1931 c. 173; Stats. 1931 s. 207.15; 1933 c. 487 s. 244a; Stats. 1933 s. 206.52; 1955 c. 73 s. 1, 2; 1955 c. 586; 1963 c. 269; Stats. 1963 s. 231.49; 1969 c. 283; 1969 c. 339 s. 27.

Testamentary nature of revocable inter vivos and life insurance trusts. 1956 WLR 313.

231.50 History: 1961 c. 407; Stats. 1961 s. 231.50; 1969 c. 283; 1969 c. 285 s. 26; 1969 c. 339 s. 27.

Termination of inter vivos trusts under state law and the internal revenue code, section 2038. Leary, 47 MLR 323.

Revocation of inter vivos trusts under 231.50. Bauhs, 48 MLR 376.

231.51 History: R. S. 1849 c. 58 s. 14; R. S. 1858 c. 85 s. 14; R. S. 1878 s. 2113; Stats. 1898 s. 2113; 1925 c. 4; Stats. 1925 s. 232.13; 1965 c. 52; Stats. 1965 s. 231.51; 1969 c. 283.

231.52 History: 1949 c. 333; Stats. 1949 s. 232.496; 1965 c. 52; Stats. 1965 s. 231.52; 1969 c. 283.

231.55 History: 1965 c. 65; 1965 c. 433 s. 114; Stats. 1965 s. 231.55; 1969 c. 283.

231.60 History: 1963 c. 541; Stats. 1963 s. 231.60; 1969 c. 283.

CHAPTER 232.

Powers of Appointment.

Editor's Notes: (1) Ch. 232, Stats. 1963, on powers of appointment, except secs. 232.13, 232.496, 232.52, 232.53 and 232.56, was repealed and recreated by ch. 52, Laws 1965. Sec. 232.13 was renumbered 231.51; sec. 232.496 was renumbered 231.52; sec. 232.52 was renumbered 230.16; sec. 232.53 was renumbered 230.17; and sec.232.56 was renumbered 235.525. The legislative histories of the sections comprising ch. 232, before 1965, and notes of decisions construing some of the sections will be found in Wis. Annotations, 1960. The notes of the committee of the State Bar of Wisconsin which prepared ch. 52, Laws 1965, are on file in the Legislative Reference Library; Professor Richard W. Effland of the Law School of the University of Wisconsin served as research reporter to the committee.

(2) The legislative histories which follow start with citations of ch. 52, Laws 1965, and include the effects of ch. 334, Laws 1969. Under the terms of ch. 334, the several sections of ch. 232 are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the effects of ch. 334, see the editor's note printed in this volume ahead of the histories for ch. 700.

232.01 History: 1965 c. 52; Stats. 1965 s. 232.01; 1969 c. 334.

Powers of appointment; the new Wisconsin law. Effland, 1967 WLR 583.

232.03 History: 1965 c. 52; Stats. 1965 s. 232.03; 1969 c. 334.

232.05 History: 1965 c. 52; Stats. 1965 s. 232.05; 1969 c. 334.

232.07 History: 1965 c. 52; Stats. 1965 s. 232.07; 1969 c. 334.

232.09 History: 1965 c. 52; Stats. 1965 s. 232.09; 1969 c. 334.

232.11 History: 1965 c. 52; Stats. 1965 s. 232.11; 1969 c. 334.

232.13 History: 1965 c. 52; Stats. 1965 s. 232.13; 1969 c. 334.

232.15 History: 1965 c. 52; Stats. 1965 s. 232.15; 1969 c. 334.

232.17 History: 1965 c. 52; Stats. 1965 s. 232.17; 1969 c. 334.