court. Estate of Schaefer, 189 W 395, 207 NW 690.

The court has no power under 312.06, Stats. 1931, to make an order concerning the disposition of the property, and the fact that the proceeding was between 2 administrators of 2 separate estates then in process of settlement in that court does not extend its jurisdiction. Estate of Krauss, 212 W 561, 250 NW 388.

Conveyances inter vivos are subject to the same legal principles as those in will cases involving undue influence, and conveyances inter vivos may be set aside when procured by undue influence. Estate of Fillar, 10 W (2d) 141, 102 NW (2d) 210.

312.07 History: R. S. 1849 c. 69 s. 9; R. S. 1858 c. 100 s. 9; R. S. 1878 s. 3826; Stats. 1898 s. 3826; 1901 c. 23 s. 2; Supl. 1906 s. 3826; 1925 c. 4; Stats. 1925 s. 312.07; 1969 c. 339.

312.08 History: R. S. 1849 c. 69 s. 10; R. S. 1858 c. 100 s. 10; R. S. 1878 s. 3827; Stats. 1898 s. 3827; 1925 c. 4; Stats. 1925 s. 312.08; Sup. Ct. Order, 212 W xxviii; 1969 c. 283; 1969 c. 339 s. 18; 1969 c. 411.

312.09 History: R. S. 1849 c. 69 s. 11; R. S. 1858 c. 100 s. 11; R.S. 1878 s. 3828; Stats. 1898 s. 3828; 1925 c. 4; Stats. 1925 s. 312.09; 1969 c. 339.

An executor may release a claim in favor of the estate under his general power to dispose of the estate. The burden of showing that a release was unauthorized is upon him who alleges it. Davenport v. First Cong. Society, 33 W 387.

312.10 History: R. S. 1849 c. 69 s. 12; R. S. 1858 c. 100 s. 12; R. S. 1878 s. 3829; Stats. 1898 s. 3829; 1925 c. 4; Stats. 1925 s. 312.10; 1933 c. 190 s. 12; 1969 c. 339.

312.11 History: Court Rule XI; Sup. Ct. Order, 212 W xxviii; Stats. 1933 s. 312.11; 1969 c. 283, 339; 1969 c. 411 s. 6.

312.13 History: 1871 c. 82 s. 1; R. S. 1878 s. 3268; Stats. 1898 s. 3268; 1925 c. 4; Stats. 1925 s. 287.17; 1933 c. 190 s. 16; Stats. 1933 s. 312.13; 1941 c. 245; 1957 c. 468; 1969 c. 283, 339; 1969 c. 411 s. 7.

312.15 History: R. S. 1849 c. 69 s. 18; R. S. 1858 c. 100 s. 18; R. S. 1878 s. 3834; Stats. 1898 s. 3834; 1925 c. 4; Stats. 1925 s. 312.15; 1933 c. 190 s. 18; 1969 c. 339.

312.16 History: 1864 c. 265 s. 1; R. S. 1878 s. 3835; Stats. 1898 s. 3835; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 312.16; 1933 c. 190 s. 19; 1969 c. 339.

The action may be brought on just apprehension of failure of personal assets; and sec. 3835, R. S. 1878, applies to an action to reach land conveyed by decedent in fraud of creditors. German Bank v. Leyser, 50 W 258, 6 NW 809.

Sec. 3835, R. S. 1878, is confirmatory of the common law. Miner v. Lane, 87 W 348, 57 NW 1105.

Lands which a decedent paid for and caused to be conveyed to another under circumstances which gave his then creditors a trust therein may be reached and subjected to the payment of his debts. Allen v. McRae, 91 W 226, 64 NW 889.

Where a county judge presents his claim on a bond which has been given in an estate administered in his county against a surety, whose estate was being administered, he is a creditor within sec. 3835, R. S. 1878. Richter v. Leiby, 99 W 512, 75 NW 82.

The amount realized from a homestead cannot be reached under sec. 3835, Stats. 1898. Bartle v. Bartle, 132 W 392, 112 NW 471.

In a creditor's action a discharged administrator, the estate having been administered and found insufficient to pay all allowed claims, was not a proper party; a receiver of property fraudulently conveyed by the deceased was properly appointed; the wife, having colluded with her husband, could not claim reimbursement of her individual funds used in paying some of the creditors; and having elected not to claim her allowance when her husband's estate was being administered, she was not entitled to have such allowance made to her out of the property involved in the fraudulent transfer. Baldwin v. Frisbie, 163 W 26, 157 NW 526.

See note to 287.43, citing Massey v. Richmond, 208 W 239, 242 NW 507.

The department of public welfare, for care furnished to a deceased as a mental patient in state and county hospitals, may employ the statutory remedy if the property, a homestead conveyed by the deceased to his son and subject to 46.10 (2), is liable for the payment of such claim, even though not liable for the payment of other claims. State Dept. of Public Welfare v. LeMere, 19 W (2d) 412, 120 NW (2d) 695.

312.17 History: 1864 c. 265 s. 2, 3; R. S. 1878 s. 3836; Stats. 1898 s. 3836; 1925 c. 4; Stats. 1925 s. 312.17; 1933 c. 190 s. 20; 1969 c. 339.

The fact of insufficiency of assets must be ascertained by the adjudication of the county court before the action can be tried. Where the only assets consist of an equity of redemption it must be sold by order of the court and an account thereof rendered; until this is done it is error to render judgment in such action. German Bank v. Leyser, 50 W 258, 6 NW 809.

The action is a creditor's action sui generis; it is not necessary that the creditor bringing it shall have exhausted his remedy at law, nor that an inventory of the estate be returned, nor that the action shall be authorized by the county court; it is enough if he has established his claim against the estate and that there is just reason to apprehend an insufficiency of assets. Allen v. McRae, 91 W 226, 64 NW 889.

CHAPTER 313.

Proof and Payment of Debts.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 313 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 313 are restated in a new probate code, effective April 1, 1971. For more detailed information concerning the effects of ch. 339, Laws 1969, see the editor's note printed

in this volume ahead of the histories for ch. 851.

313.01 History: R. S. 1849 c. 70; 1852 c. 162; R. S. 1858 c. 101 s. 1; 1873 c. 26; 1875 c. 234; R. S. 1878 s. 3838; 1893 c. 171; 1897 c. 104; Stats. 1898 s. 3838; 1915 c. 279; 1925 c. 4; Stats. 1925 s. 313.01; Sup. Ct. Order, 212 W xxix; 1969 c. 339.

On probate jurisdiction see notes to 253.10.

313.03 History: R. S. 1849 c. 70 s. 5 to 7; R. S. 1858 c. 101 s. 5 to 7; 1873 c. 73 s. 1, 2; R. S. 1878 s. 3840; 1889 c. 496 s. 3; Ann. Stats. 1889 s. 3840; 1893 c. 171 s. 1; 1897 c. 104; Stats. 1898 s. 3840; 1907 c. 660; 1909 c. 402; 1913 c. 393; 1915 c. 279; 1925 c. 4; Stats. 1925 s. 313.03; 1929 c. 174; 1935 c. 176, 336; 1943 c. 93; 1945 c. 508; 1951 c. 639; Sup. Ct. Order, 262 W v; 1953 c. 258; 1955 c. 10; 1957 c. 699; 1965 c. 252; 1969 c. 339; 1969 c. 366 s. 117 (2) (b).

The method provided by ch. 101, R. S. 1858, is exclusive in its character. Price v. Dietrich, 12 W 626.

A claim barred by the statute cannot be allowed. If suit be pending at the time of the death of the decedent, upon a claim against him, and it is presented as a new demand against his estate, the time is reckoned to the date of such presentation, it being the prosecution of a new remedy and not the revival of the suit. Jones v. Estate of Keep, 23 W 45.

Neglect to act on claims presented is not a bar, but they may be afterwards passed upon. Large v. Large, 29 W 60.

The county court has power to determine equitable as well as legal claims, the only exceptions being those made by the statute. Lannon v. Hackett, 49 W 261, 5 NW 474.

The presentation of a claim for care, attendance, etc., is inconsistent with the theory, on behalf of the claimant, that a portion of such care, attendance, etc., charged therein was furnished as repayment of money advanced by decedent. Fitzpatrick v. Phelan, 58 W 250, 16 NW 606.

Where a decedent was in possession of property upon which he held a mortgage under an agreement to apply the profits to the payment of the mortgage debt the right to have the profits so applied is not a claim which would be barred if not presented for allowance against his estate. Ford v. Smith, 60 W 222, 18 NW 925.

Notice must be given in the time and manner provided or claims will not be barred. Gardiner v. Estate of Callaghan, 61 W 91, 20 NW 685.

The liability of an administrator in executing his trust does not depend upon the fact that he has assets. The judgment, if any, is satisfied out of his own property. McLaughlin v. Winner, 63 W 120, 23 NW 402.

A claim by an administrator, under complicated circumstances, was valid. Gundy v. Estate of Henry, 65 W 559, 27 NW 401.

Claims of every nature, legal or equitable, are within the jurisdiction. Hall v. Wilson, 6 W 433; Gale v. Best, 20 W 44; Bayliss v. Estate of Pricture, 24 W 651; Tryon v. Farnsworth, 30 W 577; Bostwick v. Estate of Dickson, 65 W 593, 26 NW 59.

A claim against a decedent based upon a foreign judgment was disallowed on the ground that such judgment was void for want of jurisdiction; upon application made thereafter in due time, the county court should have extended the time for presenting claims so as to allow a claim to be presented based upon the original demand upon which such judgment was founded. Smith v. Grady, 68 W 215, 31 NW 477.

The claim for reimbursements of a person appointed as administrator by a county court which had no jurisdiction cannot be allowed under sec. 3838, Stats. 1898, but must be presented as a part of the expenses of administration. Brown v. McGee's Estate, 117 W 389, 94 NW 363.

Where an administrator was authorized by the county court to bring suit, costs were not a claim against the decedent. Ferguson v. Woods, 124 W 544, 102 NW 1094.

In the case of a loan by a wife to a husband, payable on demand, and the death of the wife one year thereafter, and the death of the husband 9 years afterward, the failure to file a claim on behalf of the estate of the wife against the estate of the husband until 3 years after his death barred the claim. (Stehn v. Hayssen, 124 W 583, 102 NW 1074, distinguished.) Barry v. Minahan, 127 W 570, 107 NW 488.

The court may grant the application to extend the filing time upon a verified petition alone. Seidemann v. Karstaedt, 130 W 117, 109 NW 942.

See note to section 313.08, citing Schmidt v. Grenzow, 162 W 301, 156 NW 143.

See note to 279.01, citing Payne v. Meisser, 176 W 432, 187 NW 194.

A county court wherein ancillary administration proceedings are pending may properly receive and adjust claims of nonresident creditors. Estate of Hanreddy, 176 W 570, 186 NW 744.

A notice to creditors which fails to state the address of the deceased is void and confers no jurisdiction to pass upon claims of creditors. The defect is not cured by the designation in the caption of the county in which the court sits. The notice need not state that claims not filed within the time limited will be barred. Estate of Anson, 177 W 441, 188 NW 479.

A claim for funeral expenses is not a claim against the deceased and is not barred if not presented within the time limited for filing claims. It is the duty of the court and of the representative of the deceased to protect his estate from excessive claims for funeral expenses. Estate of Kelly, 183 W 485, 198 NW 280.

A judgment allowing a claim against deceased in another state must be presented against his estate in process of administration. Estate of Walter, 183 W 540, 198 NW 375.

313.03, Stats. 1925, does not require the county court to enter an order permitting any or all creditors in default to file claims, but only such as excuse their default on a proper showing. Said section is not mandatory but permissive, and a petition by a creditor to extend the time for filing his claim is addressed to the discretion of the court, if presented within 60 days from the time limited for filing claims. Estate of Beggs, 195 W 41, 217 NW 708.

No legal claims in favor of plaintiff to the estate of the decedent were shown by evidence that plaintiff remained in decedent's home for 3 years, during which time she was kindly cared for; that decedent attempted to adopt her by proceedings which were invalid; that thereafter decedent returned her to charitable home from which he had received her; that thereafter plaintiff, then 14 years of age, consented to her adoption by others by whom she was legally adopted and with whom she thereafter lived as their daughter. Genz v. Riddle, 199 W 545, 226 NW 957.

A contract whereby an attorney was to receive funds remaining in his hands at the maker's death as compensation for services was binding on the maker's representative, where the attorney had performed. In re Beyschlag's Estate, 201 W 613, 231 NW 165.

Where a claimant, by fraudulent representation, induced the court to enter an order extending the time for filing claims, the court had power to purge its proceedings of the consequences of such fraud while the estate was still in process of administration. Estate of Batz, 202 W 636, 233 NW 555.

The 1929 amendment to 313.03, relating to extension of time for filing claims against estates, manifested a legislatve intent that a claimant should not be compelled to make a showing of "good cause" in order to secure such extension. Orders extending time for filing claims are not appealable. Estate of Benesch, 206 W 582, 240 NW 127.

The relations and status of a married woman and her husband as to contracts with others for their services are the same as though unmarried; hence spouses became obligees under a joint contract where they contracted to render services to the husband's mother living with them. Both wife and husband should join in an action to recover under such a contract; but on the wife's claim for the compensation filed against the mother's estate, objection that the husband was not joined was waived by not being raised. An attempted adjudication on the wife's claim that the husband, who was not cited, account for sums received from decedent was void as being rendered without due process. And, as a debt due from one joint obligee cannot be offset against an indebtedness due obligees jointly, it was erroneous as to the wife. However, if money received by the husband from decedent was payment for services by both spouses under the joint contract it would operate as payment to the wife. No issue of payment was raised by the executor's objection to allowance of the claim, for the proper determination of which the parties should be required by formal pleadings to frame the issues to be tried. Estate of Nitka, 208 W 181, 242 NW 504.

There was no abuse of the county court's discretion in denying the application of the successor trustee for an order extending the time for filing claims against the estate of a deceased trustee's surety, on the ground that the claim was contingent, as to which there was no necessity for extension within 313.22 to 313.25, Stats. 1931. Estate of Coombe, 209 W 81, 244 NW 574.

The allegation of one filing a claim against decedent's estate for the balance due on the purchase price of realty that a sufficient deed had been tendered was sufficient to permit proof of such fact. Tender of a deed by the vendor was unnecessary, where objection by the executor to vendor's claim for unpaid balance of the purchase price was based only on the executor's lack of information respecting any indebtedness of decedent to claimant. Estate of Kaiser, 217 W 4, 258 NW 177.

Upon default in making payment under a land contract, the vendor could elect to sue for unpaid purchase money which was due, and filing of the vendor's claim against the estate of the deceased purchaser constituted election to hold the estate for unpaid purchase money. Estate of Lehman, 217 W 512, 259 NW 407.

After filing of claims the duty of going forward with their disposition and winding up affairs of estate rests upon the administratrix. Estate of Smith, 218 W 640, 261 NW 730.

The condition that no hearing on claims shall be had until after issuing letters of administration is satisfied by letter to a special administrator. Estate of McLean, 219 W 222, 262 NW 707.

The presumption being that domestic services rendered by a daughter in her father's household, wherein she resided as a member thereof, were gratuitous, the daughter in order to establish her claim against the estate of the deceased father for such services had the burden of proving by direct and positive evidence, or the equivalent thereof, an express contract by the father to compensate her. Estate of Shimek, 222 W 98, 266 NW 798.

See note to 71.08, citing Estate of Adams, 224 W 237, 272 NW 19.

The rule that a legacy to a creditor equal to or greater than the amount of the debt will be presumed to have been intended as a satisfaction of the debt applies unless there are circumstances to take the case out of that rule. Estate of Steinkraus, 233 W 186, 288 NW 772.

The owner of a mortgage note could file a claim for the amount due on the note against the estate of the mortgagor in the county court, foreclose the mortgage by a separate action in the circuit court without litigating therein the matter of deficiency, and then recover any balance due on the note in the county court. Estate of Cawker, 233 W 648, 290 NW 281.

See note to 46.10, citing Estate of Hahto, 236 W 65, 294 NW 500.

In proceedings on claims of the mother-in-law and the sister-in-law of a decedent based on negotiable notes of $500 and $1,500 executed and delivered by the decedent for "value received," the evidence established that the decedent was under a moral obligation to pay the claimants something in addition to what they had received in the form of board and room for their 10 years of service in taking care of the decedent's home and children, and warranted a conclusion that such moral obligation was the consideration for the notes, so that the notes were legal obligations, as distinguished from mere unexecuted promises to make gifts of money. Estate of Schoenkerman, 236 W 311, 294 NW 810.

Although a provision in notes from a legatee to the testator that the sums covered should be considered as advancements was ineffectual, yet the notes spoke for themselves according to their terms as promissory notes, and the amount due on them could be offset against the legatee's share under the will. Estate of Pardee, 240 W 19, 1 NW (2d) 803.

See note to 274.11, citing Will of Hughes, 241 W 257, 5 NW (2d) 791.

Where a claim filed against an estate was contested, the county court could require that the statement of claim be made more definite by showing the amount claimed and whether the claim was based on the value of services allegedly performed for the testatrix or whether it was a claim for damages for breach of contract for changes made by the testatrix in her will, and, if the claim was for the value of services, by showing whether it was based on contract or on quantum meruit. (Estate of Beyer, 185 W 23, and Estate of Carlin, 185 W 438, explained.) Will of West, 246 W 199, 16 NW (2d) 806.

While the fact that the parties were not in any family relationship was important in giving rise to an initial presumption that the services were not gratuitously performed for the decedent, the inferences were against the claimant when she sought to excuse herself for not making a demand for payment during the life of the decedent. Estate of Germain, 246 W 409, 17 NW (2d) 582.

Evidence that a claimant, living with her husband in one apartment of a duplex owned by a decedent, and doing the decedent's washing, ironing and cleaning for more than 4 years and until his death, had asserted no right or claim against him during such period although he was amply able to pay for the services, and that the parties went on paying rent, and borrowed money for which they gave a note, was so inconsistent with the existence of liability from the decedent to the claimant as to warrant the county court in concluding on the whole case that the services were not rendered with the expectation of being paid for. The law regards with great suspicion the deferring of a claim for services rendered until a solvent alleged debtor is deceased and can make no answer or denial. Estate of Germain, 246 W 409, 17 NW (2d) 582.

In unliquidated claims against estates of decedents, recovery of interest is allowed from the time of the filing of the claim. Estate of Bocher, 249 W 9, 23 NW (2d) 615.

Proof that the daughter, gainfully employed and maintaining her own living quarters a hundred miles from the home of her parents, returned home and cared for the mother during her last sickness at the request of the father, and later twice returned home and cared for the father immediately on learning that he was ill and in need of care and without anyone to care for him, and that the daughter thereby sacrificed a substantial amount of income, was sufficient to overcome the presumption that the services rendered by the daughter for the parents during such periods were gratuitous, warranting the allowance of her claim for reasonable compensation therefor. Proof relating to semimonthly visits made by the daughter at the home of the father for a day or 2 at a time after the death of the mother was insufficient to overcome the presumption that services rendered by the daughter at such times were gratuitous. Estate of Grossman, 250 W 457, 27 NW (2d) 365.

A proceeding in the county court on a claim filed against the estate of a decedent on a note is not a proceeding in a court of equity and is not governed by the law governing equitable actions, but it is in effect a suit on the note, wherein mere laches, less than the period of the statute of limitations, does not bar recovery thereon. Estate of Schultz, 252 W 126, 30 NW (2d) 714.

Unpaid awards of alimony and support money are proper claims against the estate of the decedent husband. Will of Skorczynski, 256 W 300, 41 NW (2d) 301.

Where a stated sum has been regularly paid for room, board and care during the decedent's lifetime, such payments are presumed to have been in full satisfaction thereof unless it is shown that the decedent expressly agreed to make additional payments. Estate of Del Marcelle, 259 W 47, 47 NW (2d) 341.

Where a deceased and the deceased's son-in-law and his wife and children lived as one common family in the home of the deceased, who was mentally incompetent but not under guardianship, and the same family arrangement continued after the deceased fractured his hip, and the son-in-law, after consulting with the deceased's children and the deceased, voluntarily rendered necessary nursing care and other additional services to the deceased until the latter's death 75 weeks later, there was no legal obligation on the part of the deceased or his estate to pay for the additional services, in the absence of an express contract with a duly appointed guardian of the deceased. Estate of Engels, 259 W 62, 47 NW (2d) 335.

In proceedings on a claim against an estate for noonday meals furnished to the decedent over a period of years at the restaurant of the claimant, who had married the decedent's son and had remarried after the son's death, the evidence warranted a finding that there never was any express or implied agreement by the decedent to pay for the meals which he received from the claimant, who kept no record of the meals furnished, made no demands for payment although she discontinued the restaurant business more than a year before the decedent's death, and borrowed money from the decedent and repaid it without withholding the value of the meals. Estate of Beilke, 263 W 372, 57 NW (2d) 402.

In proceedings on a claim against an estate for food furnished to the decedent by the husband of the decedent's stepdaughter at the request of the decedent while an inmate of a hospital, the evidence sufficiently established that the decedent had promised to pay for the food by a provision in his will, warranting the allowance of the claim where payment was not provided for in the will. Under the circumstances the failure of the claimant to keep an account or render a bill to the decedent did not raise a presumption that the food was intended as a gift. Estate of Schmidt, 266 W 182, 62 NW (2d) 908.

The fact that the claimant received regular payment of wages over a long period without demanding any additional amount is an important factor rebutting any presumption of further liability for the services. An agreement to pay an additional sum for services already rendered and fully paid for is without consideration. The burden of proving an express contract, under which the claimant could claim additional compensation, was on the claimant. Estate of Kandall, 270 W 349, 71 NW (2d) 283.

See note to 253.10, citing Monart Motors Co. v. Home Ind. Co. 1 W (2d) 601, 85 NW (2d) 478.

By filing a claim against the estate of the deceased stockholder-signer of the note and chattel mortgage in question, the claimant did not thereby ratify the note and mortgage as made, so as to preclude his filing a claim in the corporation-liquidation proceeding and therein asking for reformation, since the claimant was under the necessity of filing his claim in the estate as well as in such liquidation proceeding or being barred by the statute of limitations. In re Liquidation of La Crosse S. & G. Co. 3 W (2d) 51, 87 NW (2d) 792.

An instrument denominated a petition for extension of time to file claims, which did not specify the amount due but only referred to a note for a specified amount, could not be allowed as a claim by the county court. Estate of Baumgarten, 12 W (2d) 212, 107 NW (2d) 169.

In the case of a contract to bequeath the entire estate to claimant for a contemporaneous or future consideration, the claimant is not limited to the then value of the consideration. Estate of Cochrane, 13 W (2d) 398, 108 NW (2d) 529.

A trial court has broad discretion under 313.03 (1), Stats. 1967, for extending the time for filing of a claim against an estate, and a showing of good cause in order to secure such relief is not required. Estate of Kohn, 43 W (2d) 520, 168 NW (2d) 812.

313.04 History: 1907 c. 169; 1911 c. 663 s. 446; Stats. 1911 s. 3840m; 1925 c. 4; Stats. 1925 s. 313.04; 1969 c. 339.

313.05 History: R. S. 1849 c. 70 s. 9; R. S. 1858 c. 101 s. 9; R. S. 1878 s. 3841; 1889 c. 502; Ann. Stats. 1889 s. 3841; Stats. 1898 s. 3841; 1907 c. 419; Stats. 1911 s. 3838m, 3841; 1925 c. 4; Stats. 1925 s. 313.02, 313.05; Sup. Ct. Order, 212 W xxix; Stats. 1933 s. 313.05; Sup. Ct. Order, 229 W viii; Sup. Ct. Order, 262 W x; 1959 c. 133; 1969 c. 339.

Comment of Judicial Council, 1952: The 1952 amendment to (3) makes it clear that any interested person may object to a claim and provides that a copy of the objection to claim be mailed to the claimant as well as filed with the court. This seems the most expeditious way of advising the claimant of the objection. The court may require the issues to be made definite and makes it mandatory that the court fix a date for pretrial conference or trial; this provision came from 313.03 (4) (Stats. 1951). Some county courts have had excellent results by utilizing pretrial conferences prior to claims contests. (4) makes it mandatory for the court to set for hearing, after notice, any claim filed over one year. This provision will speed the closing of many estates now held open simply because of the failure of interested parties to bring on the contests on claims or the hearing on claims. [Re Order effective May 1, 1953]

A person indebted to an insolvent estate cannot purchase a claim and make it available as a set-off. Union Nat. Bank v. Oshkosh, 67 W 189, 30 NW 234.

Where a claim presented showed that it was based on an agreement and that it was not barred by the statute of limitations, the court could in its discretion allow an amendment to the claim, showing an agreement to pay such claim at the death of the decedent. Longwell v. Mierow, 130 W 208, 109 NW 943.

See note to 313.03, citing Estate of Kallenbach, 184 W 171, 199 NW 152.

Claims duly filed and paid at the direction of the county judge will be credited on the executor's account, although the formal judgment on claims which was prepared and submitted was not signed by the judge. Will of Hurley, 193 W 20, 213 NW 639.

See note to 893.46, citing Estate of Patterson, 201 W 362, 230 NW 137.

Evidence that the proprietors of the boarding house had rendered valuable personal services to an aged boarder at his request, for which he voluntarily acknowledged his indebtedness to each for $1,000, and which he did not consider included in the amount paid for board and lodging, and that they were not mere volunteers or so related to the boarder that the services were presumably gratuitous, supported a finding that there was adequate consideration for the 2 negotiable notes for $1,000 each, given by the boarder. Estate of McAskill, 216 W 276, 257 NW 177.

The failure of the executrix to plead the statute of limitations did not prevent her from relying upon that defense, since 313.05, Stats. 1931, requires that the county court disallow claims barred by the statute of limitations. Estate of Goyk, 216 W 462, 257 NW 448.

The presumption that services rendered by one of several relatives residing together to another are gratuitous was applicable to services rendered by the claimant, niece of the wife of the deceased, who had been taken into the home of the deceased as an infant, in caring for the deceased in her home for about 6 years prior to his death, and, therefore, the niece in order to establish her claim had the burden of proving an express contract to pay for such services by direct and positive evidence or the equivalent thereof. Estate of Clark, 221 W 569, 267 NW 273.

While an executor has some authority to settle well-founded claims, he also has a duty to protect the estate against claims which are unfounded and to interpose every legal defense to a claim if he has any reason to doubt its validity. In re Kniffen's Estate, 231 W 589, 286 NW 8.

Under 313.05 (2) the county court has no jurisdiction in probate to enforce claims against a debtor to the estate unless the debtor files a claim against the estate. Freudenwald v. Christensen, 254 W 58, 35 NW (2d) 221.

A probate court has no jurisdiction to enforce claims against a debtor to the estate unless such debtor files a claim against the

estate. Will of Reinke, 259 W 398, 48 NW (2d) 613.

Under 313.05 (2), directing the county court not to allow claims barred by the statute of limitations, it was not necessary to file an objection on that ground in order to have the advantage of 330.21 (5) in the trial court, but the court's attention should have been directed to such sections at some stage of the proceedings if the administrator deemed them applicable to the case. Estate of Zeimet, 259 W 619, 49 NW (2d) 824.

In proceedings on a claim against the estate of a decedent for nursing and other services rendered to the decedent by a husband and a wife, who was a practical nurse, the county judge could not draw on his own experience and knowledge in fixing the value of the services, but was limited to deciding such value on the evidence presented, and hence, the evidence being undisputed that the services were worth $9 per day, judgment for the claimants should have been rendered on that basis. Will of Gudde, 260 W 79, 49 NW (2d) 906.

Where it appeared that the claimants while rendering services to the decedent were receiving outdoor relief from a county and were indebted to the county therefor, it was error for the trial court to direct that the amount allowed to the claimants for their services should be paid to the county, in the absence of an order making the county part of the proceedings. Will of Gudde, 260 W 79, 49 NW (2d) 906.

Where an heir to a one-eighth interest in an estate of $4,000 successfully litigated against the allowance of a claim for $3,090 filed against the estate, and thereby benefited the estate as a whole, when the executors failed to object to or contest the claim, the county court could properly allow to such litigant, to be paid out of the estate, a reasonable amount as reimbursement for attorney fees and expenses incurred by her in litigating the claim. Estate of Marotz, 263 W 99, 56 NW (2d) 856.

The county court's unappealed determination disallowing, for insufficiency of evidence, an employer's claim filed against the estate of a deceased employe and based on the employe's alleged taking of money from the employer, was a determination on the merits which was binding on the employer-claimant, and which operated as a bar to a subsequent action by the employer against a surety, seeking to establish the same defalcation and to recover for the same under an employes' fidelity bond, under which bond the surety, had it originally paid the employer, would have acquired a subrogee's right against the estate of the deceased employe. Monart Motors Co. v. Home Ind. Co. 1 W (2d) 601, 85 NW (2d) 478.

Where a daughter filed a claim against her mother's estate for personal services rendered, she could prove an agreement to pay and that the claim was to mature at death, without amendment of the claim. The fact that she filed a complaint specifying these additional facts at the request of the judge did not amount to an amendment of the claim after the filing period; even if considered an amendment, it merely conformed to the proof. Estate of Rule, 3 W (2d) 301, 88 NW (2d) 734.

313.06 History: R. S. 1849 c. 70 s. 11; R. S. 1858 c. 101 s. 11; R. S. 1878 s. 3842; Stats. 1898 s. 3842; 1925 c. 4; Stats. 1925 s. 313.06; Sup. Ct. Order, 212 W xxix; 1969 c. 339.

The allowance of a claim against a decedent's estate is to all intents and purposes a judgment of record, except that execution cannot issue thereon, and that the claim is merged therein. Jameson v. Barber, 56 W 630, 14 NW 859.

An order allowing a claim, while constituting a judgment as to the amount and validity thereof, is not authority to an administrator to pay the same. Estate of Lehmann, 183 W 21, 197 NW 350.

In an action against a surety on a guardian's bond, wherein the principal amount recovered equaled the full penalty of the bond, interest was recoverable on the amount of the penalty from the time of the commencement of the action, where payment was not demanded prior thereto, as against a contention that 321.05 precluded the allowance of interest. Estate of Bocher, 249 W 9, 23 NW (2d) 615.

The county court made adverse findings of fact and conclusions of law on the merits after erroneously holding that it had no jurisdiction of a claim for unpaid support money filed against the estate of a divorced decedent and the attorney for the claimant did not have an opportunity to present his arguments before the county court, full consideration was not given to the issues and a new trial should be had. Will of Skorczynski, 256 W 300, 41 NW (2d) 301.

313.06 does not purport to prescribe a mode of rendering a judgment on claims, and is no more than a direction as to the manner in which the court's action is to be recorded. Where the judge had orally rendered his decision allowing a claim for attorney fees against an estate the judicial act was complete, and nothing remained to be done in such matter except the clerical duty of reducing the judgment to writing, so that the court was without jurisdiction, after the expiration of one year from that date, to reopen the matter and grant a retrial. Estate of O'Brien, 273 W 223, 77 NW (2d) 609.

313.07 History: R. S. 1849 c. 70 s. 12, 13; R. S. 1858 c. 101 s. 12, 13; R. S. 1878 s. 3843; Stats. 1898 s. 3843; 1925 c. 4; Stats. 1925 s. 313.07; Sup. Ct. Order, 212 W xxix; 1969 c. 339.

See note to section 313.08, citing Kleinschmidt v. Kleinschmidt, 167 W 450, 167 NW 827.

See note to section 286.18, citing Dietrich v. Estate of Loney, 169 W 469, 172 NW 229.

313.08 History: R. S. 1849 c. 70 s. 14; R. S. 1858 c. 101 s. 14; R. S. 1878 s. 3844; Stats. 1898 s. 3844; 1899 c. 351 s. 42; 1907 c. 169; 1925 c. 4; Stats. 1925 s. 313.08; 1933 c. 190 s. 22; 1969 c. 339.

Revisor's Note, 1933: This section is amended to bar all claims (including contingent claims) not filed. Section 313.22 et seq. are amended to provide for proving and listing all contingent liabilities so that provision may be made for them and so that heirs and legatees may know of such liabilities. This change

does away with troublesome disputes as to whether a claim is contingent or absolute. [Bill 123-S, s. 22]

A note not barred at the death of the maker may be presented at any time within the period limited for presenting it as a claim, though the 6 years may have run at its presentation. Boyce v. Foote, 19 W 199.

Sec. 3844, R. S. 1878, is not repealed or modified by sec. 3847, and claims barred by it cannot be set off in an action by an executor or administrator. Carpenter v. Murphey, 57 W 541, 15 NW 798.

Unless notice is given as required the bar of sec. 3844 does not apply. Gardner v. Estate of Callaghan, 61 W 91, 20 NW 685.

A joint and several note executed by a decedent which does not become payable until after the expiration of the time limited for presenting claims is a proper claim to be allowed, and if not so presented there cannot be a recovery thereon against the estate. Austin v. Saveland's Estate, 77 W 108, 45 NW 955.

The bar of sec. 3844 does not merely affect the remedy but extinguishes the right of recovery as to all claims. Austin v. Saveland's Estate, 77 W 108, 45 NW 955.

A disallowance of a claim by the probate court of another state and the affirmance thereof by an appellate court on the ground that the claim was barred by the statute of limitations will be given effect in this state. Sanborn v. Perry, 86 W 361, 56 NW 337.

The limitation provision of sec. 3844, Stats. 1898, applies to nonresident as well as to resident creditors, and to property and rights involved in an ancillary administration as well as to those involved in a domiciliary administration. (Morgan v. Hamlot, 113 US 449, and other cases cited.) Winter v. Winter, 101 W 494, 77 NW 883.

A judgment allowing a claim against a deceased person in proceedings to settle his estate in the court in Minnesota is within sec. 3844. Fields v. Estate of Mundy, 106 W 383, 82 NW 556.

Sec. 3844 cannot be pleaded as a limitation in an action against the estate of a surviving partner for an accounting. Stehn v. Hayssen, 124 W 583, 102 NW 1074.

As there is no exception in the statute relating to married women, a claim by a wife for money loaned to the husband is barred, if not presented against his estate. An estate which is the creditor of another estate is a person having a claim within the meaning of this section. Barry v. Minahan, 127 W 570, 107 NW 488.

Personal liability on a mortgage note is extinguished if the note is not presented as a claim. A judgment for deficiency against the executor or the heirs thereon is erroneous. Schmidt v. Grenzow, 162 W 301, 156 NW 143.

A claim based on the written agreement of a decedent to pay a certain sum within 60 days after the death of his mother is one which will be barred under sec. 3844, Stats. 1915, unless presented within the time limited, the only uncertainty being as to the time when the obligation will mature. Kleinschmidt v. Kleinschmidt, 167 W 450, 167 NW 827.

A claim filed in due time, based upon promissory notes of the decedent, not only prevents them from becoming barred, but it enables the payee to plead such notes as a counterclaim after the time for filing claims in county court has expired, in an action begun in a federal court by decedent during his lifetime to cancel them for fraud. Estate of Gillin, 169 W 58, 171 NW 758.

See note to 313.03, citing Estate of Kelly, 183 W 485, 198 NW 280.

The fact that a petition to the county court to establish a trust in a portion of the property of a decedent is not presented until after the time for filing claims has expired does not bar relief. Estate of Woehler, 196 W 301, 220 NW 379.

See note to 313.03, citing Estate of Batz, 202 W 636, 233 NW 555.

The purpose of 313.08, Stats. 1931, is to promote the speedy settlement of estates in the interest of the creditors, heirs and devisees and to render certain the titles to real estate; and in view of such purpose no one can waive the provisions of the statute. Estate of Lathers, 215 W 151, 251 NW 466, 254 NW 550.

A claim for the superadded liability of a bank stockholder, accruing during the life of the stockholder by reason of the taking over of the bank by the banking commission, and not prosecuted by action against the stockholder before his death, becomes a claim against his estate, and such claim is subject to 313.08, and is barred if not filed within the time limited by the county court for the filing of claims; but an action may be considered as properly tenable against the personal representative of a deceased bank stockholder if the liability accrues after the death of the stockholder while the stock is held by the personal representative. Banking Comm. v. Muzik, 216 W 596, 257 NW 174.

The circuit court was not without jurisdiction to hear the suit of the city on the ground that the county court was the proper forum to determine claims against the estate of a deceased person, since the suit involved not merely a claim against the estate of the deceased city treasurer, but one against the broker and the sureties on the treasurer's bond as city treasurer, and the county court was not in a position to afford as adequate, complete and efficient a remedy as the circuit court. Milwaukee v. Drew, 220 W 511, 265 NW 683.

The legatee's action, brought to establish his right to an interest which the testator was alleged to have in a note and mortgage because of his contribution toward the loan evidenced by the note and mortgage, executed in favor of the defendant, was not barred by limitations on the ground that the action was on a contract or for relief on the ground of fraud, since the action was one to obtain an accounting by the defendant as trustee. Latsch v. Bethke, 222 W 485, 269 NW 243.

A claim against the estate of a deceased bank stockholder, based on the agreement to pay the voluntary assessment, and filed by the trustees of the trust created to carry out a plan for stabilization and consolidation, was improperly amended by making the consolidated bank a party claimant after the time for filing claims had expired; the bank being

a separate entity from the trustees. Estate of White, 223 W 270, 270 NW 34.

A purely tort claim against a deceased person need not be filed against his estate in the county court but may be prosecuted by an action against his personal representative in the circuit court. School District v. Brennan, 236 W 91, 294 NW 558.

A judgment creditor's claim against an estate for the decedent's personal liability for deficiency under a mortgage foreclosure judgment obtained prior to the decedent's death in 1934 was barred by the judgment creditor's failure to file its claim in the county court within the time limited for filing claims against the estate although a deficiency was not determined in the foreclosure action until after expiration of the time limited for filing claims against the estate. Hence the circuit court properly denied a revivor of the foreclosure action and entry of a deficiency judgment against the executor. (Pereles v. Leiser, 119 W 347, and Schmidt v. Grenzow, 162 W 301, applied; Pereles v. Leiser, 138 W 401, and Johnson v. Landerud, 209 W 672, distinguished.) W. H. Miller Co. v. Keefe, 238 W 35, 298 NW 52.

Under the rule barring claims against estates of decedents not filed within the time limited therefor by order of the county court, claims duly filed within that time cannot be amended after the expiration of such time so as to increase the amount or nature of the relief or materially change the basis therefor. Estate of Von Nobel, 239 W 233, 1 NW (2d) 76.

Under 313.08, 313.22, 313.23, 313.25, as amended by ch. 190, Laws 1933, contingent claims against the estate of a decedent, like other claims, must be filed in the county court, within the time fixed by the court and 313.03 for the filing of claims, and, if not so filed, are barred by 313.08. Estate of Bocher, 249 W 9, 23 NW (2d) 615.

Where the time for filing claims against the estate of a decedent had expired, a motion to amend a claim on a lost note, by substituting a note based on a different promise to pay a different amount at a different time, was properly denied, since the proposed amendment would have materially altered the original claim as filed. Estate of Mayer, 253 W 32, 32 NW (2d) 213.

The complaint was properly dismissed as to the heirs of deceased guarantors of the notes sued on, where the estates of such guarantors had been duly administered and notice to creditors duly given and the time for filing claims against the estates had long since expired without any claim ever having been filed against either estate by or on behalf of anyone on the guaranty or on the notes, and the heirs were not parties to the guaranty or to the notes. Bank of California v. Hoffmann, 255 W 165, 38 NW (2d) 506.

Because the bar of 313.08 does not become absolute until the possibility of filing a petition for extension of time within the permissive 60-day period has been extinguished, 324.05 may be utilized as part of the process to accomplish this authorized extension of time in order to prevent a miscarriage of justice. Estate of Baumgarten, 12 W (2d) 212, 107 NW (2d) 169.

As to foreign creditors seeking their remedy in federal courts, see the following: Morgan v. Hamlet, 113 US 449; Security T. Co. v. B. R. Nat. Bank, 187 US 211; and Barber A. Co. v. Morris, 132 F 945.

313.09 History: R. S. 1849 c. 71 s. 4; R. S. 1858 c. 102 s. 4; R. S. 1878 s. 3837; Stats. 1898 s. 3837; 1925 c. 4; Stats. 1925 s. 312.18; Sup. Ct. Order, 212 W xxix; Stats. 1933 s. 313.09; 1969 c. 339.

A sale, mortgage or pledge for his personal debt is a breach of trust; and the vendee, etc., with notice is liable to account. But an administrator cannot avoid the same nor can an administrator de bonis non. Weir v. Mosher, 19 W 311; Stronach v. Stronach, 20 W 129.

An administrator is a trustee, and as such holds the legal title to the personal property of the deceased, and, like a trustee, will be protected by the court where he exercises ordinary care in the performance of his duties and acts in good faith. An administrator, in the sale of personal property, is not required to warrant or guarantee the title, the soundness of the articles, or their value; and the doctrine of caveat emptor strictly applies. Shupe v. Jenks, 195 W 334, 218 NW 375.

313.093 History: 1957 c. 524; Stats. 1957 s. 313.093; 1963 c. 498; 1969 c. 339; 1969 c. 500 s. 30 (3) (g).

313.095 History: 1941 c. 198; Stats. 1941 s. 313.095; 1965 c. 334; 1969 c. 339.

313.10 History: R. S. 1849 c. 70 s. 16; R. S. 1858 c. 101 s. 16; R. S. 1878 s. 3846; Stats. 1898 s. 3846; 1925 c. 4; Stats. 1925 s. 313.10; Sup. Ct. Order, 212 W xxix; 1969 c. 339.

313.12 History: R. S. 1849 c. 70 s. 19; R. S. 1858 c. 101 s. 19; R. S. 1878 s. 3848; Stats. 1898 s. 3848; 1925 c. 4; Stats. 1925 s. 313.12; 1969 c. 339.

Where tenants in common have mortgaged land for their joint debt either of them, on paying the debt, has a claim for one-half thereof against the other and, if deceased, against his estate. But if the land goes to sale for the debt and he then pays it he has no such claim, since the sale is a payment and discharge of the debt. McLaughlin v. Estate of Curts, 27 W 644.

An indebtedness owing by a partnership may be proved as a claim against the estate of one of the partners. W. E. Smith L. Co. v. Estate of Fitzhugh, 167 W 355, 167 NW 455.

See note to 113.06, citing Estate of Bloomer, 2 W (2d) 623, 87 NW (2d) 531.

A surviving obligor on a mortgage on joint property, who pays more than his share of the debt, is entitled to contribution from the estate. Estate of Rosenthal, 34 W (2d) 402, 149 NW (2d) 585.

Liability for payment of joint mortgage debt as between estate of deceased co-owner and survivor. 42 MLR 555.

313.13 History: 1873 c. 73 s. 3; R. S. 1878 s. 3849; Stats. 1898 s. 3849; 1925 c. 4; Stats. 1925 s. 313.13; 1927 c. 473 s. 53; 1933 c. 335;

Sup. Ct. Order, 271 W x; 1943 c. 20 s. 1; 1969 c. 276 s. 590 (1); 1969 c. 339.

Comment of Judicial Council, 1956: 313.13 now provides that the final account shall be filed within 60 days of the entry of the final judgment on claims; the difficulty is that there is no time limit on the entry of the final judgment on claims. This amendment establishes a definite time limit for filing the final account by requiring it to be filed after 15 months of probate. The 15-month period was chosen to allow for the filing of a federal estate tax return where necessary. [Re Order effective Sept. 1, 1956]

The mere fact that more than half the assets consisted of uncollected accounts does not prevent an order for the payment of debts from being made if there be sufficient available funds to pay them. Perkins v. Shadbolt, 44 W 574.

A failure to render an account is a breach of the administrator's bond. Johannes v. Youngs, 45 W 445.

The jury in fixing the loss, if any, on account of the payment of interest on claims filed, occasioned by the failure to sell stock, must consider the provisions of 313.13, Stats. 1925. Shupe v. Jenks, 195 W 334, 218 NW 375.

Where a will devising all testator's estate to his wife and directing that she pay his just debts, designated no particular property or class thereof to be used to pay his debts, and there was no blending of realty and personalty so as to indicate that testator intended all his property to be considered as personalty, there was no inference that he intended to charge his realty with payment of his debts, so as to authorize a petition to sell testator's property to pay his debts more than 3 years after testator's death occurred. Estate of Koebel, 225 W 342, 274 NW 262.

313.14 History: R. S. 1849 c. 69 s. 31; R. S. 1849 c. 70 s. 30, 33, 34; 1851 c. 250 s. 1; 1852 c. 168 s. 1; 1853 c. 71 s. 1; R. S. 1858 c. 101 s. 32 to 36; 1873 c. 73 s. 3; R. S. 1878 s. 3850, 3851; Stats. 1898 s. 3850, 3851; 1925 c. 4; Stats. 1925 s. 313.14, 313.15; 1929 c. 173 s. 2; 1929 c. 516 s. 13; Stats. 1929 s. 313.14; 1933 c. 173, 335; 1933 c. 450 s. 10; Sup. Ct. Order, 232 W vii; 1943 c. 275 s. 65; Sup. Ct. Order, 258 W vii; Sup. Ct. Order, 271 W x; 1969 c. 339.

An estate is to be administered according to the will though a final settlement within the time prescribed by sec. 3850, R. S. 1878, is thereby rendered impossible. The statute does not apply to a case where the executor is required to hold the estate during the continuance of 2 lives in being at the death of the testator. Scott v. West, 63 W 529, 24 NW 161, 25 NW 18.

If an executor has used all reasonable care and diligence in administering an estate and it has been impossible to completely do so within the time limited by sec. 3850 it is proper to refuse to remove him. Ford v. Ford, 88 W 122, 59 NW 464.

The duties of the executor may be extended beyond the time limited by sec. 3850, Stats. 1898, if necessary to close up the estate. Lindemann v. Rusk, 125 W 210, 104 NW 119.

After the expiration of the time limited the executor must still care for the property and conserve the estate. He must, however, justify any unusual or undue delay in closing the estate. Will of Hurley, 193 W 20, 213 NW 639.

Failure of an administrator to complete administration within one year (one year being the statutory limit at that time), no extension having been granted for cause shown, constitutes a breach of the administrator's bond, and thereafter the risks are upon the administrator and his bondsmen, and failure to cite the administrator does not relieve them therefrom. Coolidge v. Rueth, 209 W 458, 245 NW 186.

An executrix who filed only a partial accounting within the time prescribed by statute and who failed to render a complete accounting for 10 years after the testator's death is liable for waste. Will of Robinson, 218 W 596, 261 NW 725.

Negligence in failing to settle an estate within a year (one year being the statutory limit at that time), in the absence of an order for extension for cause shown, was sufficient to subject the executrix to liability for all losses occurring as result of the delay. Estate of Onstad, 224 W 332, 271 NW 652.

313.15 History: R. S. 1849 c. 68 s. 1; R. S. 1858 c. 97 s. 31; R. S. 1858 c. 99 s. 1; R. S. 1878 s. 3935; Stats. 1898 s. 3935; 1901 c. 76 s. 1; Supl. 1906 s. 3935; 1909 c. 56; 1913 c. 536, 542; 1919 c. 411; 1925 c. 4; Stats. 1925 s. 318.01; 1929 c. 173 s. 2, 4; Stats. 1929 s. 313.15; 1935 c. 483 s. 64; 1943 c. 514; 1949 c. 210, 211; 1951 c. 71; 1953 c. 259; 1959 c. 265; 1969 c. 339.

Amounts paid to the widow and afterwards allowed to her by the court are properly credited to the administrator in his account. He may advance money to her for her support before an allowance, taking the responsibility of an allowance being made. King v. Whiton, 15 W 684.

Before the probate of the will a reasonable allowance may be made to the widow. Golder v. Littlejohn, 30 W 344.

The widow is entitled to make her selection without an order of court. Tomlinson v. Nelson, 49 W 679, 6 NW 366.

Under sec. 3935 (1), R. S. 1878, where the widow renounces the provision made for her by will she is entitled to the benefit of this provision. Application of Wilber, 52 W 295, 9 NW 162.

The widow must affirmatively show such a selection in order to establish her title to any article of personal property of the estate, in an action by her involving such title. Wilcox v. Matteson, 53 W 23, 9 NW 814.

The provisions in regard to allowances apply to all estates. A testator cannot dispose of his property so as to prevent the exercise of this power of the court. Baker v. Baker, 57 W 382, 15 NW 425.

The administrator has no right to expend money of the estate in the support and education of the children without an allowance therefor. In so doing he acts wholly upon his personal responsibility, and must account for such sums. In re Fitzgerald, 57 W 508, 15 NW 794.

A testator's widow, under a will naming her

as sole devisee for life, took possession of the estate, but surrendered it and her own exemption within a year to the administrator de bonis non for the benefit of creditors, reserving nothing for herself or her infant children. The estate was solvent. An allowance to her for support during the time required to settle the estate was proper. Estate of Henry, 65 W 551, 27 NW 351.

The amount of the allowance is within the court's sound discretion and may be changed from time to time for causes arising since it was made. If the estate is ample an allowance may be made for the expense of giving a child a proper education in addition to the cost of his maintenance. Ford v. Ford, 80 W 565, 50 NW 409.

Where the funeral for a married woman was furnished upon the credit of her separate estate, a claim against such estate could be proved independently of the liability of the husband who had ordered the funeral. Schneider v. Breier's Estate, 129 W 446, 109 NW 99.

The allowance to the widow and minor children out of the income from real estate must be paid out of the net income, namely, what is left after first paying taxes, insurance and repairs. Niland v. Niland, 154 W 514, 143 NW 170.

The doctrine of equitable conversion applies to descent of personalty. Estate of Bisbee, 177 W 77, 187 NW 653.

Under sec. 3935 (2), Stats. 1921, the power of the court to grant allowances to the widow terminated when she received all the specific gifts in her favor. Estate of Lyons, 183 W 276, 197 NW 710.

Under 318.01 (2), Stats. 1927, the widow was entitled to an allowance for her support during progress of settlement of estate, which should be paid when and as there are funds available for that purpose. Schultz v. Sullivan, 200 W 590, 229 NW 65.

A widow was entitled to select, as "household furniture" of her deceased husband, articles of furniture owned by him, although they were located in a summer home owned by him, and she never used the summer home nor the furniture and utensils in it. Estate of Bosse, 247 W 44, 18 NW (2d) 335.

A diamond brooch and necklace, acquired by a deceased husband as pledges to secure a loan made by him, and kept by him in satisfaction of the loan on default thereon, and kept in a safety deposit box, were not "ornaments" of the deceased within the meaning of 313.15 (1). Estate of Pengelly, 247 W 616, 20 NW (2d) 558.

Under 313.15 (4) (a) the court may grant an additional allowance to the minor children of a testator out of the proceeds of real estate in the hands of the executor, as well as out of the personal estate (reviews legislative history of the section). Estate of Dusterhoft, 270 W 5, 70 NW (2d) 239.

Normally, in the absence of some indication of a contrary intent in the will, the debts, expenses, and general or cash legacies are payable primarily out of the testator's personal estate, and real estate specifically devised may not be resorted to even for debts and expenses unless the personal estate is insufficient. Estate of Esch, 4 W (2d) 577, 91 NW (2d) 233.

A postnuptial agreement waiving rights in the husband's estate does not bar granting of the widow's allowance during probate. Estate of Beat, 25 W (2d) 315, 130 NW (2d) 739.

See note to 215.14, citing Estate of Fucela, 26 W (2d) 476, 132 NW (2d) 553.

313.15 (2) does not require that an allowance must be ordered in every solvent estate in which an application therefor is made. Estate of Mayer, 29 W (2d) 497, 139 NW (2d) 111.

Where a widow had not lived with husband for many years, had already received a substantial sum of money and was self-supporting, it was not an abuse of discretion to deny her an allowance under 313.15 (2) or (4). Estate of Jankewicz, 29 W (2d) 713, 139 NW (2d) 662.

The balance of a probationer's earnings held by the board of control becomes, upon the probationer's decease, part of his estate, subject to administration; but where the sum is nominal and he has no other property, informal disposition is practical. 20 Atty. Gen. 209.

313.16 History: R. S. 1849 c. 70 s. 35 to 37; R. S. 1858 c. 101 s. 37 to 39; R. S. 1878 s. 3852; Stats. 1898 s. 3852; 1911 c. 17; 1925 c. 4; Stats. 1925 s. 313.16; 1929 c. 173 s. 3; 1935 c. 336; 1969 c. 339.

Where the administrator makes payment of proper and necessary counsel fees or other proper expenses of administration he can charge the same in his account and have it allowed at a reasonable amount; and such claim will have a priority over the general debts of the decedent. Miller v. Tracy, 86 W 330, 56 NW 866.

Costs against an administrator in an unsuccessful action brought by him are a part of the necessary expenses of administration. Ferguson v. Woods, 124 W 544, 102 NW 1094.

Where the funeral for a married woman was furnished upon the credit of her separate estate, a claim against such estate could be proved independently of the liability of the husband who had ordered the funeral. Schneider v. Breier's Estate, 129 W 446, 109 NW 99.

The interdependence between the court having jurisdiction of a domiciliary administration and all other courts having jurisdiction of ancillary administrations of the same estate requires the assets within the control of each to be distributed pro rata to all creditors, if the entire assets in all jurisdictions are insufficient to pay all creditors in full. The manner in which such insolvency of the estate is brought to the attention of the court is immaterial. Estate of Hanreddy, 176 W 570, 186 NW 744.

See note to 313.03, citing Estate of Kelly, 183 W 485, 198 NW 280.

313.16, Stats. 1927, was not intended to abrogate the common-law doctrine with respect to a debt contracted by a husband on account of services rendered his wife during her last sickness. (The rule of Schneider v. Estate of Breier, 129 W 446, 109 NW 99, will not be extended to include expenses of last sickness.) Estate of Phalen, 197 W 336, 222 NW 218.

The right of the trustees of a home for the

needy to receive a legacy to an inmate who had contracted to transfer to the trustees all her property, then owned or thereafter acquired, was subject to the expenses of guardianship proceedings where the inmate was mentally incompetent at the time of the legacy, and to the expenses of probate proceedings where the inmate died before the trustees received the legacy. Estate of Jacobus, 214 W 143, 252 NW 583.

See note to 215.14, citing Estate of Fucela, 26 W (2d) 476, 132 NW (2d) 553.

See note to 49.25, citing 27 Atty. Gen. 751.

Sec. 191, Title 31, USC, relating to the distribution of an insolvent estate, takes precedence over 313.16, Stats. 1939. 28 Atty. Gen. 507.

Reimbursement of husband for funeral expenses out of separate estate of deceased wife. Witmer, 10 MLR 72.

313.17 History: R. S. 1849 c. 70 s. 38; R. S. 1858 c. 101 s. 40; R. S. 1878 s. 3853; Stats. 1898 s. 3853; 1925 c. 4; Stats. 1925 s. 313.17; 1969 c. 339.

An order or judgment for payment entered without notice to the executor or administrator is not open to collateral attack, but is conclusive as to all questions necessarily adjudicated, including the sufficiency of assets to pay the amount adjudged. Roberts v. Weadock, 98 W 400, 74 NW 93.

Although no formal order appears in the record, it is presumed, there being no showing to the contrary, that the necessary formalities were completed. Will of Dennett, 196 W 275, 220 NW 538.

The provision that after the time limited for creditors to present their claims has expired and the "amount of the indebtedness of the deceased" has been ascertained the county court shall make an order or judgment for the payment of the debts, the quoted term includes not only claims of creditors which have been allowed, but also includes, among other types of indebtedness, for which no claim need be filed judgments of the circuit court rendered against executors or administrators. Casey v. Trecker, 268 W 87, 66 NW (2d) 724.

313.18 History: R. S. 1849 c. 70 s. 39, 40; R. S. 1858 c. 101 s. 41, 42; R. S. 1878 s. 3854; Stats. 1898 s. 3854; 1925 c. 4; Stats. 1925 s. 313.18; Sup. Ct. Order, 212 W xxx; 1969 c. 339.

313.19 History: R. S. 1849 c. 70 s. 41; R. S. 1858 c. 101 s. 43; R. S. 1878 s. 3855; Stats. 1898 s. 3855; 1925 c. 4; Stats. 1925 s. 313.19; Sup. Ct. Order, 212 W xxx; 1969 c. 339.

313.20 History: R. S. 1849 c. 70 s. 42; R. S. 1858 c. 101 s. 44; R. S. 1878 s. 3856; Stats. 1898 s. 3856; 1925 c. 4; Stats. 1925 s. 313.20; 1969 c. 339.

After the estate has been fully settled and the order of distribution made, one of the heirs may maintain an action against the administrator personally for his distributive share, if not paid according to the order. The remedy here provided is cumulative. Williams v. Davis, 18 W 115.

An action cannot be maintained on a claim against an estate until its allowance and order of payment; after that the administrator is personally liable. Price v. Dietrich, 12 W 626; White v. Fitzgerald, 19 W 480.

In the absence of alleging that there has been any order or judgment by the county court for the payment of the debts of a decedent, a creditor cannot maintain an action against an administrator under 313.20. Rasmussen v. Jensen, 240 W 242, 3 NW (2d) 335.

313.21 History: R. S. 1849 c. 70 s. 43, 44; R. S. 1858 c. 101 s. 45, 46; R. S. 1878 s. 3857; Stats. 1898 s. 3857; 1925 c. 4; Stats. 1925 s. 313.21; Sup. Ct. Order, 232 W vii; 1969 c. 339.

313.22 History: R. S. 1849 c. 70 s. 45, 46; R. S. 1858 c. 101 s. 47, 48; R. S. 1878 s. 3858; Stats. 1898 s. 3858; 1925 c. 4; Stats. 1925 s. 313.22; 1933 c. 190 s. 23; 1969 c. 339.

A claim for the failure of title to property purchased of the widow before administration was contingent. Hall v. Wilson, 6 W 433.

A contingent claim, within the meaning of the statutes, is one where the absolute liability depends upon some future event which may never happen, and which therefore renders such liability uncertain and indeterminable. Austin v. Saveland's Estate, 77 W 108, 45 NW 955; Davis v. Davis, 137 W 640, 119 NW 334.

See note to 313.08, citing Kleinschmidt v. Kleinschmidt, 167 W 450, 167 NW 827.

The plaintiffs' causes of action in tort for injuries sustained in an automobile collision in which a decedent driver was involved were not "contingent claims" required to be filed against his estate and hence the failure so to file did not operate to bar the plaintiffs' actions brought against the administratrix of the decedent's estate. Lounsbury v. Eberlein, 2 W (2d) 112, 86 NW (2d) 12.

313.23 History: R. S. 1849 c. 70 s. 47, 48; R. S. 1858 c. 101 s. 49, 50; R. S. 1878 s. 3859; Stats. 1898 s. 3859; 1925 c. 4; Stats. 1925 s. 313.23; 1933 c. 190 s. 24; 1969 c. 339.

The statute does not require that a claim shall be presented as a condition precedent to the maintenance of an action against a testamentary trustee who holds the proceeds of land sold by an administrator in fraud of the heirs of the estate administered, such proceeds coming to the trustee after the administrator's death. Biron v. Scott, 80 W 206, 49 NW 747.

The right of action for substantial damages for breach of covenant against incumbrances which run with the land is distinct from the technical breach occurring at the time of the delivery of the deed. The cause of action in the former case does not accrue until an eviction. In re Hanlin's Estate, 133 W 140, 113 NW 411.

Where a corporation had filed a claim against the estate of its deceased president based upon its contingent liability to pay notes in the hands of bona fide holders signed without authority by such president, the surety on a bond to protect such holders, given by the corporation in an action to enjoin collection of the notes, lost no rights by waiting until it had made its payments upon the bond

to present a petition to be subrogated to the rights of its principal under the latter's contingent claim. Estate of Bienenstok, 208 W 676, 242 NW 572.

Under 313.22 and 313.23 a contingent claim against a decedent's estate which has not been allowed as debt must nevertheless be presented to the county court and proved, and where it does not become absolute until after the closing of the estate and distribution of the assets, it must nevertheless be presented to the county court if the estate is still in the hands of the court. Banking Comm. v. Reinke, 241 W 362, 6 NW (2d) 349.

313.25 History: R. S. 1849 c. 70 s. 50; R. S. 1858 c. 101 s. 52; R. S. 1878 s. 3861; Stats. 1898 s. 3861; 1925 c. 4; Stats. 1925 s. 313.25; 1933 c. 190 s. 26; 1969 c. 339.

313.26 History: R. S. 1849 c. 66 s. 30, 31; R. S. 1858 c. 97 s. 30, 31; R. S. 1878 s. 3862; Stats. 1898 s. 3862; 1925 c. 4; Stats. 1925 s. 313.26; 1929 c. 516 s. 13; 1933 c. 190 s. 27; 1969 c. 339.

As between legatees and the next of kin the latter are first liable to pay debts out of personal property. And the heir is chargeable before the devisee as to realty. If the will appropriates specific property to pay debts these rules apply only where there is a deficiency of such property. McGonigal v. Colter, 32 W 614.

The homestead of an insane ward is not exempt under sec. 3862, from sale to provide for the payment of the cost of his support and maintenance. Johnson v. Door County, 158 W 10, 147 NW 1011.

A testamentary declaration that "debts, expenses of last sickness, and funeral expenses be first paid" is not specific enough to charge testator's homestead with general debts, but suffices under sec. 2880, when secs. 2880 and 3862 are construed together, to subject it to the payment of expenses of last sickness and burial. Will of Borchardt, 184 W 561, 200 NW 461.

The last clause of 313.26 was enacted, no doubt, for the express purpose of repelling the inference which necessarily arises from the direction to pay debts or specific legacies and a gift over of the residue. Egan v. Sells, 203 W 119, 233 NW 569.

A will which devised realty on condition that the devisee pay the estate a specified sum, and after making certain bequests disposed of the residue, "including" said sum, is construed as subjecting the sum paid to payment of the specific bequests. Will of Fouks, 206 W 69, 238 NW 869.

In a will which in paragraph "First" directed the payment of the testatrix's debts, funeral expenses, and costs of administration, and which in paragraph "Second" made several bequests, and which in paragraph "Third," devising the testatrix's farm, provided that "This devise is also subject to the payment of provisions I have made in paragraphs First and Second," paragraph "Third", is construed as not exonerating the testator's personal estate from primary liability for the payment of debts, funeral and administration expenses, and the mentioned bequests, and as charging on the farm only the balance of such items remaining unpaid after exhaustion of the personal property. Estate of Esch, 4 W (2d) 577, 91 NW (2d) 233.

See note to 313.15, citing Estate of Esch, 4 W (2d) 577, 91 NW (2d) 233.

313.27 History: R. S. 1849 c. 66 s. 32; R. S. 1858 c. 97 s. 32; R. S. 1878 s. 3863; Stats. 1898 s. 3863; 1925 c. 4; Stats. 1925 s. 313.27; 1933 c. 190 s. 28; 1969 c. 339.

313.28 History: R. S. 1849 c. 66 s. 33; R. S. 1858 c. 97 s. 33; R. S. 1878 s. 3864; Stats. 1898 s. 3864; 1925 c. 4; Stats. 1925 s. 313.28; 1933 c. 190 s. 29; 1969 c. 339.

Devisees are not required to contribute to payment of debts until the personal estate is exhausted. McGonigal v. Colter, 32 W 614.

Where specific devises and bequests of the testatrix did not leave sufficient residue out of which to pay debts of the testatrix, and one-half of certain income was given to the husband, and the other half to the daughter of the testatrix, in the absence of intention on part of the testatrix to prefer the husband over the daughter, the husband was not entitled to an order directing the executrix to pay debts, funeral expenses, and expenses of administration out of the portion of the estate from which he derived no income. Estate of Fish, 200 W 61, 229 NW 535.

A will, providing in effect that a debt owing to the testator by his brother should be forgiven and that the mortgage securing such debt should be satisfied, created a specific legacy, exempt under 313.28 from liability for the testator's debts if there was other sufficient estate and it should appear necessary in order to effect the testator's intention, and in such case a special administrator, properly in possession of the note and mortgage and alleging insufficient assets to pay the testator's debts, could enforce the same by action of foreclosure in the circuit court without awaiting a final determination of legatees' liabilities by the county court under 313.32. Brener v. Raasch, 239 W 300, 1 NW (2d) 181.

See note to 313.15, citing Estate of Esch, 4 W (2d) 577, 91 NW (2d) 233.

313.29 History: R. S. 1849 c. 66 s. 34; R. S. 1858 c. 97 s. 34; R. S. 1878 s. 3865; Stats. 1898 s. 3865; 1919 c. 679 s. 101; 1925 c. 4; Stats. 1925 s. 313.29; 1933 c. 190 s. 30; 1969 c. 339.

313.30 History: R. S. 1849 c. 66 s. 35; R. S. 1858 c. 97 s. 35; R. S. 1878 s. 3866; Stats. 1898 s. 3866; 1925 c. 4; Stats. 1925 s. 313.30; 1933 c. 190 s. 31; 1969 c. 339.

313.31 History: R. S. 1849 c. 66 s. 36; R. S. 1858 c. 97 s. 36; R. S. 1878 s. 3867; Stats. 1898 s. 3867; 1925 c. 4; Stats. 1925 s. 313.31; 1933 c. 190 s. 32; 1969 c. 339.

313.32 History: R. S. 1849 c. 66 s. 37; R. S. 1858 c. 97 s. 37; R. S. 1878 s. 3868; Stats. 1898 s. 3868; 1925 c. 4; Stats. 1925 s. 313.32; 1933 c. 190 s. 33; 1969 c. 339.

Sec. 3866, R. S. 1878, applies only to such actions as are expressly authorized by ch. 165. Ernst v. Nau, 63 W 134, 23 NW 492.