and establish the report of the commissioners. Estate of Butts, 222 W 425, 268 NW 122.

318.12 History: R. S. 1849 c. 72 s. 7; R. S. 1858 c. 103 s. 7; R. S. 1878 s. 3944; Stats. 1898 s. 3944; 1925 c. 4; Stats. 1925 s. 318.12; 1933 c. 190 s. 43; Sup. Ct. Order, 232 W ix; 1969 c. 339.

318.15 History: 1965 c. 65; Stats. 1965 s. 318.15; 1969 c. 339.

318.24 History: R. S. 1849 c. 63 s. 5; R. S. 1858 c. 92 s. 5; R. S. 1878 s. 3956; Stats. 1898 s. 3956; 1925 c. 4; Stats. 1925 s. 318.24; 1933 c. 190 s. 55; 1969 c. 339.

The doctrine of advancement is based upon an assumed desire of the donor to equalize the distribution of his estate, but does not apply to a testator's will, the assumption there being that all advancements have been considered and that the will expresses his desires as to distribution. The amount of an advancement can be deducted from the donee's share of the estate, but the donee cannot be charged with an excess over that share. In this respect the donee of an advancement differs from a legatee indebted to an estate. Where no mention of advancements is found in the will the county court has no jurisdiction to adjudicate the validity of an agreement among the beneficiaries that prior donations to them should be treated as advancements in the distribution of the estate; but such an agreement voluntarily entered into probably may be enforcible in a court of competent jurisdiction, but not in a county court. Estate of Sipchen, 180 W 504, 193 NW 385.

Under a will whereby the testatrix devised an estate to children equally on condition that any "indebtedness" to the testatrix should be deducted from the share of each, the amount of notes which were found attached to the will within a sealed envelope, together with a memorandum showing that testatrix had given $1,500 for notes after they had become barred by the statute of limitations, was deductible from the share of a child liable on the notes. Estate of Weiss, 224 W 192, 271 NW 918.

318.24 to 318.29, relating to advancements, apply only to intestate estates. By his execution of a will the testator is conclusively presumed to have intended that all money previously given to a legatee, although intended as advancements, should not be treated as advancements in the disposition of his estate, in the absence of stating in the will that they should be so treated; and such conclusive presumption applies equally to payments made after the date of the will, since a will speaks from the time of the testator's death. Estate of Pardee, 240 W 19, 1 NW (2d) 803.

318.25 History: R. S. 1849 c. 63 s. 6; R. S. 1858 c. 92 s. 6; R. S. 1878 s. 3957; Stats. 1898 s. 3957; 1925 c. 4; Stats. 1925 s. 318.25; 1933 c. 190 s. 56; 1969 c. 339.

318.26 History: R. S. 1849 c. 63 s. 7; R. S. 1858 c. 92 s. 7; R. S. 1878 s. 3958; Stats. 1898 s. 3958; 1925 c. 4; Stats. 1925 s. 318.26; 1933 c. 190 s. 57; 1969 c. 339.

318.27 History: R. S. 1849 c. 63 s. 8, 9; R. S. 1858 c. 92 s. 8, 9; R. S. 1878 s. 3959; Stats. 1898 s. 3959; 1925 c. 4; Stats. 1925 s. 318.27; 1933 c. 190 s. 58; 1969 c. 339.

Money charged on account is not an advancement. In re Ashley, 4 W 21. Land conveyed by a deed without anything to show that an advancement was intended is not an advancement. Bullard v. Bullard, 5 W 527.

A statement in a will that certain gifts were to be treated as advancments was insufficient to make them such, where no expression was made at the time and they were not charged by the intestate or acknowledged as such by the person receiving them. Ludington v. Patton, 121 W 649, 99 NW 614.

Parol evidence is not admissible to show an advancement. Schmidt v. Schmidt's Estate, 123 W 295, 101 NW 678.

Sec. 3959, Stats. 1898, excludes all other evidence to prove the advancement. The writing required by the statute must be contemporaneous with the gift. Arthur v. Arthur, 143 W 126, 126 NW 550.

A writing executed by a child, unsigned by the father, acknowledging receipt of her share of his estate, satisfied sec. 3959; and parol testimony was admissible to show that it was fair and for an adequate consideration. Estate of Fontaine, 181 W 407, 195 NW 393.

318.28 History: R. S. 1849 c. 63 s. 10; R. S. 1858 c. 92 s. 10; R. S. 1878 s. 3960; Stats. 1898 s. 3960; 1925 c. 4; Stats. 1925 s. 318.28; 1933 c. 190 s. 59; 1969 c. 339.

318.29 History: R. S. 1849 c. 72 s. 16; R. S. 1858 c. 103 s. 16; R. S. 1878 s. 3961; Stats. 1898 s. 3961; 1925 c. 4; Stats. 1925 s. 318.29; 1933 c. 190 s. 60; 1969 c. 339.

A judgment upon a petition presenting the question of advancement is final, though the widow was not a party to the proceeding. Watkins v. Brant, 46 W 419, 1 NW 82.

The finding of the court as to advancements is like the allowance of a claim; it is one of the acts to be done in the administration and settlement of the estate. It is not an original proceeding for which notice is to be given, in addition to that for the final settlement and distribution. A finding made pursuant to the general notice is conclusive upon a judgment creditor of the heir to whom the advancement was made, and upon the world. The adjudication relates back to the death of the person from whom the heir inherited. Liginger v. Field, 78 W 367, 47 NW 613.

318.30 History: 1943 c. 460; Stats. 1943 s. 318.30; Sup. Ct. Order, 258 W viii; 1969 c. 339.

318.31 History: 1951 c. 367; Stats. 1951 s. 318.31; 1969 c. 339.

Inheritance taxes are to be computed on the distributions provided for by the will, not by the compromise agreement. Attorneys' fees of the contestants of the will are not deductible as expenses of administration in computing inheritance taxes. Estate of Jorgensen, 267 W 1, 64 NW (2d) 430.

The right to dispose of property by will. Scheller, 37 MLR 92.

CHAPTER 319.

Guardians and Wards.

Editor's Note: Ch. 468, Laws 1957, repealed

secs. 319.01-319.19, Stats. 1955. The list of antecedent statutes comprises: Ch. 80, R. S. 1849; Ch. 112, R. S. 1858; Ch. 170 (secs. 3962-3995), R. S. 1878; Ch. 170 (secs. 3962-3995b), Stats. 1898; Ch. 319, Stats. 1925; and various amendatory and supplementary provisions.

319.01 History: 1957 c. 468; Stats. 1957 s. 319.01.

Emancipation does not affect a minor's incapacity to contract for things which are not necessaries; hence on an issue of whether he may rescind such a contract, the fact of emancipation is immaterial. Schoenung v. Gallet, 206 W 52, 238 NW 852.

The term "mentally incompetent" to care for oneself or one's property means mental incapacity substantially total, and confinement in the home or a hospital by reason of a physical ailment where a party is unable to move about to attend to business transactions, unless the ailment is such as to cause the party to be mentally incompetent to care for himself or his property, does not comply with the statutory requirements for the appointment of a guardian. Guardianship of Mills, 250 W 401, 27 NW (2d) 375.

319.02 History: 1957 c. 468; Stats. 1957 s. 319.02.

319.03 History: 1957 c. 468; Stats. 1957 s. 319.03.

The existence of a ward is a jurisdictional fact, and nonexistence of such fact invalidates guardianship proceedings under sec. 3962, Stats. 1898. Where guardianship proceedings had been conducted in behalf of a child fraudulently represented by the widow to be the son of her deceased husband, it was proper, upon subsequent clear proof of the fraud, for the court appointing the guardian to annul its proceedings and order property alloted to the guardian out of the estate of the deceased to be turned over to the widow as sole heir. Guardianship of Reeve, 176 W 579, 186 NW 736.

319.04 History: 1957 c. 468; Stats. 1957 s. 319.04; 1959 c. 269; 1961 c. 33; 1963 c. 541.

319.05 History: 1957 c. 468; Stats. 1957 s. 319.05.

319.06 History: 1957 c. 468; Stats. 1957 s. 319.06; 1969 c. 339 s. 27.

319.07 History: 1957 c. 468; Stats. 1957 s. 319.07.

The fact that the petition failed to state the names of the persons who would be affected by the appointment of a guardian, and failed to show with whom the alleged incompetent resided and who was in possession of the property, does not render it defective, where it appears that a son of the alleged incompetent, with whom she resided at the time and who claimed to be in the lawful possession of all her property, appeared in the county court on the hearing. Ziegler v. Bark, 121 W 533, 99 NW 224.

If a petitioner knowingly fails to state names and addresses of heirs and interested persons under 319.07 (8), the court is without jurisdiction, but this is not true if the omission was due to lack of knowledge. Guardianship of Nelson, 21 W (2d) 24, 123 NW (2d) 505.

319.08 History: 1957 c. 468; Stats. 1957 s. 319.08; 1959 c. 246, 676; 1961 c. 105; 1967 c. 151; 1969 c. 339 s. 27.

The fact that the alleged incompetent does not appear at the hearing on the petition for the appointment of a guardian does not deprive the court of jurisdiction, but in such case the duty of the court is to require that the alleged incompetent be brought before the court if possible. Guardianship of Simmons, 236 W 305, 294 NW 821.

319.08 (1) places on the court an affirmative burden to produce the person unless such appearance is wholly impossible because of the proposed incompetent's disordered condition; and failure to take such affirmative steps will deprive the court of a jurisdiction to make a determination of incompetency; but such failure could not be raised in a collateral attack on the original appointment attempted during this proceeding on the guardian's final account. Guardianship of Nelson, 21 W (2d) 24, 123 NW (2d) 505.

The statutory requirement that the alleged incompetent be present at the guardianship hearing necessitates that the trial court take affirmative steps to ensure either that the alleged incompetent is present thereat or that the presence of such person is not possible. Guardianship of Claus, 45 W (2d) 179, 172 NW (2d) 643.

319.09 History: 1957 c. 468; Stats. 1957 s. 319.09.

The facts that a father is of a somewhat cold, reserved and unsympathetic nature, rather than warm-hearted and affectionate, that he has not exhibited much love or affection for his child, and that he is a traveling salesman and is absent from his home a great part of the time, do not show he is unsuitable to have its custody. Markwell v. Pereles, 95 W 406, 69 NW 798.

Where the father of minors, whose custody had been awarded to his divorced wife, applied for their guardianship after her death, the fact that for several years prior to the hearing he had lived a correct life, so far as morality and integrity are concerned, is not so conclusive upon the question of his suitableness as to preclude examination of the circumstances which led to the divorce. Guardianship of McChesney, 106 W 315, 82 NW 149.

Where a wife secured a divorce but the custody of the children was awarded to the father on the ground of his ability to support them, and no finding was made as to the wife's fitness, and after the father's death the wife endeavored to secure the custody of the children, any immoral conduct occurring before the divorce and known to and condoned by the husband was not sufficient in view of the other facts in the case to authorize a refusal of such custody to the wife. Guardianship of Tank, 129 W 629, 109 NW 565.

The paramount right of the father to the custody of his children is a mere prima facie right. The welfare of the child is now the controlling consideration; and with regard to children of tender years, especially girls, preference will ordinarily be given to the mother,

other things being equal and she not being unfit. Jensen v. Jensen, 168 W 502, 170 NW 735.

Parents' right to the custody of a child is subject to the paramount right of the child to have its welfare considered and conserved. An order changing such custody should not be conditioned upon payment to the former custodian of compensation for the care of the child. Guardianship of Bare, 170 W 543, 174 NW 906.

The right of a parent to the custody of his or her child is a substantial right. In re Alley, 174 W 85, 182 NW 360.

Since the equal-rights law (ch. 529, Laws 1921) in the absence of proceedings having been taken under it to deprive either parent of the right to the custody of the children, there is no presumption that they are living with their father. Lloyd-McAlpine L. Co. v. Industrial Comm. 188 W 642, 206 NW 914.

The court will give much consideration to the desire of an infant who has reached an age of judgment or discretion. Bellmore v. McLeod, 189 W 431, 207 NW 699.

In determining custody of a 14-year-old child, some consideration and weight should be given the child's wishes. Jones v. State, 211 W 9, 247 NW 445.

That a grandmother had a deep affection for her grandchild, and that the child was entitled to a continuance of such affection, were insufficient to warrant a court in taking from the father, who was competent to transact his own business and was not otherwise unsuitable, the part-time custody of the child. Custody of Collentine, 214 W 619, 254 NW 118.

The word "suitable" is not synonymous with the word "fit," which connotes moral rectitude as employed by our courts in custody cases, but "suitable," while embracing moral fitness, is broad enough to include all policy considerations which should be weighed by the court in determining child-custody placements, including the best interests of the minor, which is the paramount consideration in custody cases; and hence a surviving parent is not "suitable" to be awarded the custody of a child if to do so would not be for the best interests of the child. State ex rel. Tuttle v. Hanson, 274 W 423, 80 NW (2d) 387.

319.10 History: 1957 c. 468; Stats. 1957 s. 319.10.

319.11 History: 1957 c. 468; Stats. 1957 s. 319.11; 1969 c. 255 s. 65.

A guardian ad litem should be appointed when the alleged incompetent is unable to be present at guardianship proceedings. Guardianship of Nelson, 21 W (2d) 24, 123 NW (2d) 505.

319.12 History: 1957 c. 468; Stats. 1957 s. 319.12.

A guardian derives his authority entirely from the act of the court appointing him, and this must be evidenced by the record of the court. The appointment cannot be shown in part by the record and in part by matter in pais; nor can the record be contradicted. Holden v. Curry, 85 W 504, 510, 55 NW 965.

A man may be sane in the sense that it is not necessary to place him in an asylum, and yet be incompetent to manage his estate, even though he is neither a spendthrift nor a drunkard. A guardian of an incompetent is unaffected by an adjudication in another county that his ward is sane. In determining the question of competency of a person to manage his estate the status of the estate may properly be taken into account. Guardianship of Farr, 169 W 451, 171 NW 951.

The evidence supporting an appointment of a guardian of an idle spendthrift is stated in Guardianship of Reed, 173 W 628, 182 NW 329.

Delusions of a person as to his wife's fidelity and the paternity of his children are strong evidence of his legal incompetency to handle his property. Guardianship of Loker, 182 W 381, 196 NW 823.

Only with great hesitation should courts, by the appointment of a guardian, interfere with the discretion of elderly people, owing no legal duty to support anyone, in devoting the property accumulated by them to their comfort according to their own tastes. Guardianship of Warner, 232 W 467, 287 NW 803.

The proof for the appointment of a guardian must show that the alleged incompetent is incapable of taking care of himself and managing his property; the proof, to establish mental incompetency, must be clear, convincing and satisfactory; and the mental incompetency must exist at the time of the hearing or else the petition should be denied. Guardianship of Olson, 236 W 301, 295 NW 24.

The procedure for the appointment and removal of guardians of incompetents is completely covered by statute. Guardianship of Devereaux, 237 W 375, 296 NW 91.

319.125 History: Sup. Ct. Order, 25 W (2d) ix; Stats. 1965 s. 319.125.

319.13 History: 1957 c. 468; Stats. 1957 s. 319.13; 1961 c. 390; 1969 c. 80; 1969 c. 339 s. 27.

Where the damages on the breach of a guardian's bond exceed the penalty, interest upon the penalty may be recovered against the sureties. Clark v. Wilkinson, 59 W 543, 18 NW 481.

All the prescribed conditions of the bond are prospective. It is therefore no protection or security to the ward for any interference or intermeddling with his property by his guardian before he was appointed such. The appointment as guardian does not relate back so as to validate acts done by the person so appointed in relation to the property and estate of his ward previous to his appointment and when he had no authority over it. Holden v. Curry, 85 W 504, 55 NW 965.

A bond given by a supposed guardian whose appointment was without jurisdiction will be good as a voluntary bond. Dudley v. Rice, 119 W 97, 95 NW 936.

319.14 History: 1957 c. 468; Stats. 1957 s. 319.14.

319.15 History: 1957 c. 468, 663; Stats. 1957 s. 319.15.

There is no power to appoint a special guardian after a general guardian has been appointed, even though an appeal is pending from such appointment. State ex rel. Deleglise v. Parsons, 131 W 606, 111 NW 710.

319.16 History: 1957 c. 468; Stats. 1957 s. 319.16; 1969 c. 339 s. 27.

319.17 History: 1957 c. 468; Stats. 1957 s. 319.17.

319.175 History: 1969 c. 267; Stats. 1969 s. 319.175.

319.18 History: 1957 c. 468; Stats. 1957 s. 319.18.

319.19 History: 1957 c. 468; Stats. 1957 s. 319.19.

The guardian is liable to the ward for the amount collected, less the reasonable value of the ward's maintenance. Conant v. Souther, 80 W 656, 50 NW 942.

A guardian who turns over moneys of his wards to their mother, under the mistaken idea that they belonged to her, is liable for simple interest thereon after the expiration of a reasonable time from his receipt thereof. Such liability may be declared after the affirmance of a judgment against him for the principal sum which came to his hands. Taylor v. Hill, 87 W 669, 58 NW 1055.

A guardian is liable for moneys received and turned over to an attorney for investment, as well as for interest. Abrams v. United States F. Co. 127 W 579, 106 NW 1091.

An executor is not required to make any investigation of the solvency and reputation of the general guardian of the minors before making payment to him, as these are matters for the court that appoints the guardian. Estate of Hewitt, 194 W 15, 215 NW 573.

A guardian could not use moneys belonging entirely to one ward to pay more than one-fourth of taxes on homestead property in which the ward had an undivided one-fourth interest. A guardian could use moneys belonging entirely to one ward to pay interest on a mortgage against the homestead in which the ward had an undivided one-fourth interest, since it was the duty of the guardian not only to protect the interest of the ward in the homestead, but also to provide a home for the 3 other minors, who were also wards of the guardian, and their mother. Guardianship of Dejanovich, 218 W 231, 260 NW 479.

A ward has a choice between an action for tort and an accounting against one assuming to act as guardian without valid authority. Where the administrator of the estate of a deceased guardian of plaintiff and his brother, after appointment as guardian of the brother, collected the amount of a note and cashed certificates of deposit belonging to both minors, reissued certificates of deposit, and placed other money belonging to both minors in a checking account, paid the brother one-half the money when the brother became of age and placed the balance in a bank, he was liable as one converting funds to his own use for the loss to plaintiff resulting from insolvency of the bank. Rear v. Olson, 219 W 322, 263 NW 357.

The guardian, having actual, as well as imputed, knowledge of the precarious condition of both the old bank and the successor consolidated bank, was guilty of a lack of diligence in not withdrawing a deposit of his incompetent ward's funds in the consolidated bank before it went on a waiver basis, so that his account was properly surcharged with the amount of such deposit. The guardian's account was properly credited with an item representing a deposit of the ward's funds in a bank as to the financial condition of which the guardian had no personal knowledge at the time of making the deposit, which bank went on a waiver plan and issued a deferred certificate for the deposit. Matter of Filardo, 221 W 589, 267 NW 312.

Where the guardian was the chief executive officer of the bank, the bank was hard pressed to maintain the required cash reserve, and the investments were made by the guardian in frozen assets of the bank, the guardian's account was surchargeable with the losses from such investments. Matter of Filardo, 221 W 589, 267 NW 312.

Where a widow as guardian of her minor children accepted as an asset of the wards' estate her individual note and mortgage, executed on her purchase of the minors' interest in real estate left by the intestate husband and father, the widow as guardian was required to account for the note and mortgage as cash, regardless of the fact that such mortgage was a third mortgage, and that the minors' interests as well as the widow's homestead and dower interests in the property would have been lost in any event on foreclosure of the first mortgage, which did happen. As guardian of the minor children she was entitled to credit in her final account for funds she had contributed to apply on her husband's mortgage debt, and for taxes which she paid, to the extent that the wards' interests in the real estate were benefited thereby. The widow as guardian, surcharged in her final account with her individual note and mortgage as cash, was entitled to credit for items of board, clothing, medicine and medical attention furnished to the wards. Guardianship of Kueschel, 241 W 178, 5 NW (2d) 775.

A guardian represents his ward in the same way that an executor or administrator represents the decedent or his estate and the legatees or heirs. Will of Hughes, 241 W 257, 5 NW (2d) 791.

It is the duty of the guardian to invest a ward's funds in such interest-bearing securities as the statutes authorize, only when there are funds for which there is no immediate need in order to maintain the ward. Guardianship of Kueschel, 247 W 253, 19 NW (2d) 178.

Where a ward has a personal privilege to elect between alternative or inconsistent rights or claims, the privilege of election does not pass to the guardian of the estate of the ward, and the guardian cannot make the election. In view of the joint tenancy of the incompetent husband and his wife in the joint savings account, with a corresponding right of survivorship, and the legal incapacity of the guardian to exercise any personal election over the account, it is for the county court to determine what is necessary for the best interests of either party, if incompetent, and to order withdrawals from the account if funds are necessary for support of either party; and the moneys in such account should be considered in custodia legis of the court with no right either in the wife or the guardian to

make any withdrawals except on court order. Boehmer v. Boehmer, 264 W 15, 58 NW (2d) 411.

Notice to interested parties is not a jurisdictional requirement for a valid sale of a ward's real estate, since, under 319.19 (5) (b) notice to interested parties of a pending sale is a matter within the discretion of the court. Guardianship of Breault, 22 W (2d) 114, 125 NW (2d) 397.

Guardianship vs. trusteeship. Beckett, 36 WBB, No. 1.

319.191 History: Court Rules IX, X; Sup. Ct. Order, 212 W xxvii; Stats. 1933 s. 312.03; 1969 c. 283; 1969 c. 339 s. 18; 1969 c. 411 s. 4; Stats. 1969 s. 319.191.

Editor's Note: See the editor's note printed in this volume at the beginning of ch. 312.

319.192 History: Court Rule XI; Sup. Ct. Order, 212 W xxviii; Stats. 1933 s. 312.11; 1969 c. 283, 339; 1969 c. 411 s. 6; Stats. 1969 s. 319.192.

Editor's Note: See the editor's note printed in this volume at the beginning of ch. 312.

319.195 History: 1959 c. 259; Stats. 1959 s. 319.195.

319.21 History: 1957 c. 468; Stats. 1957 s. 319.21.

319.26, Stats. 1935, does not justify an order which requires the estate of an incompetent son to support his mother in the absence of evidence that the mother was a member of the son's family. Guardianship of Heck, 225 W 636, 275 NW 520.

After compensation payments are made to a veteran or his guardian, the compensation estate is administered in accordance with the laws of the state in which the veteran resides. The U.S. veterans' administration retains supervisory control over the estate to the extent only that it can object to use of compensation estate that is improper under the laws of veteran's resident state. 27 Atty. Gen. 847.

319.215 History: 1957 c. 468; Stats. 1957 s. 319.215.

Where a guardian had contracted for the care of his ward, a mere volunteer who assisted in his care without the authority or knowledge of the guardian cannot recover for the services on the ground that they were necessary. Schramek v. Shepeck, 120 W 643, 98 NW 213.

The provision of sec. 3979, Stats. 1898, that certain contracts, gifts, sales and transfers "shall be void" does not apply to wills. Estate of Bean v. Bean, 159 W 67, 149 NW 745.

319.19, Stats. 1945, did not make an incompetent mother not under guardianship, nor her estate after her death, liable for services rendered by a daughter in caring for the mother while living in the home of the mother. Estate of Marotz, 260 W 155, 50 NW (2d) 472.

Attorney's services in re-examination of an incompetent under 51.11 may be a "necessity" under 319.215, but this is for the county court to determine, and the approval of payment for such services on one re-examination does not require that such payment be approved for a second unsuccessful proceeding within 3 months of the first. Guardianship of Hayes, 8 W (2d) 32, 98 NW (2d) 430.

319.22 History: 1957 c. 468; Stats. 1957 s. 319.22.

Sec. 3995b, Stats. 1898, is the only statute barring claims against persons under guardianship (other than the general statutes of limitations); and a claim is not barred by it in a case where no petition was filed and no order fixing a time and place for the examination and adjustment of claims, or fixing a time after which, if not presented, claims should be barred. Gardner v. Young's Estate, 163 W 241, 157 NW 787.

A transcript of a judgment properly entered by confession on the note of the incompetent could be entered in the court having jurisdiction of the guardianship proceedings notwithstanding the time limited by order of the court for presenting claims against the estate of the incompetent had expired prior to the entry of such judgment in accordance with the statutes of 1931. Guardianship of Kohl, 221 W 385, 266 NW 800.

319.41, Stats. 1941, is a statute of limitation, and is therefore a "special case" within the meaning of 330.01, providing that civil actions can only be commenced within the periods prescribed in ch. 330, except when, in "special cases," a different limitation is provided by statute. Hence, after the entry of an order of court fixing the time within which claims against an incompetent might be filed, a claim based on a debt could be enforced in no other way and would be barred if not filed within the time fixed. Guardianship of Thornton, 243 W 397, 10 NW (2d) 193.

The provision in 319.41, Stats. 1941, that in the adjustment of claims against a ward all statutes relating to "claims" against estates of decedents shall apply does not import into such section the provisions in 313.15 authorizing an allowance for the support of the family of a decedent out of the decedent's personal estate before application thereof to the payment of the decedent's debts; hence such provisions are not applicable so as to authorize an allowance for the support of the wife of the ward to be made and paid prior to the payment of a claim of the state for support furnished to the incompetent in a public institution. Guardianship of Schneider, 244 W 323, 12 NW (2d) 138.

Milwaukee county can recover from an inmate of its county hospital for the insane, or his estate, under 319.41. Guardianship of Brennan, 245 W 235, 14 NW (2d) 28.

Where an order entered in a guardianship proceeding fixed the time within which to file claims against the ward at less than the required minimum of 3 months under 313.03, a subsequent ex parte order extending the time, made without any notice to the guardian or creditors or any other interested party as required by 313.03, could not cure the defect in the original order; and hence, as to an unpaid promissory note executed by the ward prior to guardianship, the holder was not barred from bringing an action to recover thereon by the fact that he had not filed a claim in the guardianship proceeding. Liberty v. Breault, 10 W (2d) 193, 102 NW (2d) 115.

The adjudication of claims filed against a

ward's estate was not required by statute as a prerequisite to the approval of a sale of the ward's real estate, where the guardian had not challenged any such claim prior to the proposed sale and the court could properly assume that they would be allowed. Guardianship of Breault, 22 W (2d) 114, 125 NW (2d) 397.

A claim for support of an insane person accruing before appointment of a guardian can be filed in county court. A claim accruing during guardianship cannot be filed in county court, but the district attorney must start an action in order to collect it. 13 Atty. Gen. 505.

319.23 History: 1957 c. 468; Stats. 1957 s. 319.23.

The objection that an action cannot be maintained in the name of the ward by his general guardian but only by the ward personally or in his name by his guardian ad litem must be taken either by demurrer or answer or it is waived. Webber v. Ward, 94 W 605, 69 NW 349.

A guardian or administrator is a "party in interest" when his ward or the estate which he represents has rights which may be seriously affected. Estate of Edwards, 234 W 40, 289 NW 605.

319.24 History: 1957 c. 468; Stats. 1957 s. 319.24.

The guardian having exposed the incompetent's estate to substantial loss under the circumstances stated, the trial court properly denied the guardian credit on accounting for fees claimed as compensation for his services. Matter of Filardo, 221 W 589, 267 NW 312.

The court must determine from all the facts and circumstances in each case what fees are just and reasonable. The court cannot arbitrarily fix a fee schedule and, without permitting evidence of the reasonable value of the services rendered by the guardian, determine a just and reasonable compensation. A guardian shall be allowed reasonable attorney fees as well as other expenses. Guardianship of Messer, 242 W 66, 7 NW (2d) 584.

In this case, charging interest at 3%, rather than at the legal rate, on amounts surcharged to the guardian, representing the difference between the fees or compensation claimed by him and the amount allowed, was within the discretion of the county court, in view of the guardian's good faith and the reasonable character of the questions raised over his fees, as well as his understanding with the former county judge and the prevailing low rates of interest. Guardianship of Messer, 246 W 426, 17 NW (2d) 559.

One of the tests in determining the compensation of a guardian is the character of the services rendered, and where a guardian has been derelict in its duty, that is to be taken into consideration in determining its compensation. Guardianship of Barnes, 275 W 356, 82 NW (2d) 211.

In a guardianship, a contingent fee, regardless of the percentage, must be tested for reasonableness in view of the actual circumstances under which the successful services were rendered and to some extent by the various elements which go into determining a reasonable fee. Guardianship of Schott, 23 W (2d) 213, 127 NW (2d) 19.

319.245 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 s. 5; Stats. 1969 s. 319.245.

Editor's Note: See the editor's note printed in this volume at the beginning of ch. 312.

319.25 History: 1957 c. 468; Stats. 1957 s. 319.25; 1961 c. 65; 1965 c. 48.

Charges by a guardian of minor children for their support prior to the existence of the guardianship are allowed only when they are supported by the strongest equities. Olsen v. Thompson, 77 W 666, 47 NW 20.

If annual reports of a guardian are merely filed in the county court, and no judicial action taken thereon, they are still subject to supervision, allowance or disallowance by the court when closing the estate; but if these intermediate reports are examined on notice to interested parties any determination by the court on questions raised and presented on the hearing become conclusive unless appealed from. Will of Pattison, 190 W 289, 207 NW 292.

Attorney's fees incurred by the ward in a suit to challenge the status of incompetency may be necessaries under 319.25, Stats. 1967, and hence payable out of the estate. Guardianship of Claus, 45 W (2d) 179, 172 NW (2d) 643.

319.251 History: R. S. 1849 c. 67 s. 9; R. S. 1858 c. 98 s. 9; R. S. 1858 c. 99 s. 12; R. S. 1878 s. 3803; Stats. 1898 s. 3803; 1905 c. 242 ss. 1, 2; Supl. 1906 ss. 3803, 3803a; 1907 c. 289; 1913 c. 407; Stats. 1913 s. 3803; 1925 c. 4; Stats. 1925 s. 310.22; Sup. Ct. Order, 212 W xxvi; Stats. 1933 s. 324.35; Sup. Ct. Order, 258 W x; 1969 c. 283, 339; 1969 c. 411 s. 9; Stats. 1969 s. 319.251.

Editor's Note: See the editor's note printed in this volume at the beginning of ch. 324.

319.252 History: 1945 c. 536; Stats. 1945 s. 324.351; 1969 c. 283, 339; 1969 c. 411 s. 10; Stats. 1969 s. 319.252.

Editor's Note: See the editor's note printed in the volume at the beginning of ch. 324.

319.253 History: 1953 c. 299; Stats. 1953 s. 324.356; 1969 c. 283, 339; 1969 c. 411 s. 11; Stats. 1969 s. 319.253.

Editor's Note: See the editor's note printed in this volume at the beginning of ch. 324.

319.26 History: 1957 c. 468; Stats. 1957 s. 319.26; 1959 c. 269; 1961 c. 622; 1967 c. 295.

A contract of marriage, although a civil contract, creates a status in society rather than regulates the control of property. A female under guardianship may marry, if otherwise competent, and her marriage terminates the authority of her guardian. Roether v. Roether, 180 W 24, 191 NW 576.

The marriage of a ward terminated the guardianship so far as the ward's person was concerned. Thereafter the guardianship was solely of the ward's property. Guardianship of Perkins, 249 W 486, 24 NW (2d) 897, 26 NW (2d) 34.

An order of the county court, made after the death of an insane ward, was without jurisdiction and void so far as purporting to determine the rights of interested parties and administer and dispose of the estate of the ward in the guardianship proceedings without any administration proceedings in probate being had. Guardianship of Barnes, 271 W 6, 72 NW (2d) 384.

319.27 History: 1957 c. 468; Stats. 1957 s. 319.27.

It seems that guardian's accounts cannot be adjusted after death of the ward in a proceeding to which the guardian and the heir of the ward are the only parties, without administration of the ward's estate. Israel v. Silsbee, 57 W 222, 15 NW 144.

A ward cannot maintain an action at law for moneys in the hands of the guardian until his accounts have been settled in the county court. Kugler v. Prien, 62 W 248, 22 NW 396.

The direction of the county court upon the settlement of a guardian's accounts has the effect of a judgment and is conclusive as to to the amount due the ward. O'Connor v. Decker, 95 W 202, 70 NW 286.

A guardian was not discharged from liability on a bond obligating him to pay over the amount found due from him on termination of a trust because the administrator and trustee of an estate took an assignment of a claim against a failed bank, where funds were deposited unless the payments made equaled the liability on the bond. Cable v. Smith, 200 W 288, 227 NW 266.

Upon the death of a ward the powers of her guardian ceased, and the guardian could only account and turn over the funds representing a legacy to her to the representative of her estate, and it was error for the county court to order otherwise. Estate of Jacobus, 214 W 143, 252 NW 583.

Where the county court had no jurisdiction to appoint, its appointment of a special administrator to settle the account of a deceased guardian was void, and hence such appointee was not a "personal representative" within the provision in 319.08, Stats. 1941, authorizing the court to cite the personal representative of a deceased guardian to settle the latter's account. Guardianship of Rundle, 245 W 274, 13 NW (2d) 921.

In a proceeding to settle the final account of a guardian an interested party may not challenge collaterally the jurisdiction of the court that made the initial guardianship appointment nor the sufficiency of the evidence supporting the finding of incompetency in the initial proceeding which led to the appointment of the guardian. Guardianship of Nelson, 21 W (2d) 24, 123 NW (2d) 505.

319.28 History: 1957 c. 468, 672; Stats. 1957 s. 319.28; 1969 c. 339 s. 27.

319.29 History: 1957 s. 468; Stats. 1957 s. 319.29.

319.295 History: 1887 c. 293; Ann. Stats. 1889 s. 3979a; Stats. 1898 s. 3979a; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 319.20; 1929 c. 175; 1933 c. 190 s. 67; 1935 c. 336; 1943 c. 93; 1957 c. 13; 1957 c. 468 s. 6m, 6n; Stats. 1957 s. 319.295; 1963 c. 222; 1969 c. 366 s. 117 (2) (b).

Sales under sec. 3982, Stats. 1898, may be made of the homestead of an insane ward. Johnson v. Door County, 158 W 10, 147 NW 1011.

319.20 (2), Stats. 1939, furnishes no authority for reserving $250 of guardianship assets for the payment of a living ward's burial expenses to the exclusion of the state's claim under 46.10 (7). Guardianship of Henes, 236 W 635, 296 NW 60.

319.31 History: 1955 c. 416; Stats. 1955 s. 319.52; 1957 c. 468 s. 10; Stats. 1957 s. 319.31.

A person under conservatorship can request the conservator to put assets into joint tenancy with a third person. 319.31 (3) does not prevent the conservator from doing so with the court's approval. Estate of Evans, 28 W (2d) 97, 135 NW (2d) 832.

319.32 History: 1945 c. 169; Stats. 1945 s. 319.48; 1947 c. 387; 1957 c. 468 s. 8; Stats. 1957 s. 319.32; 1967 c. 136.

319.33 History: 1947 c. 203; Stats. 1947 s. 319.50; 1953 c. 84; 1957 c. 468 s. 9; 1957 c. 699 s. 19, 20; Stats. 1957 s. 319.33; 1963 c. 222.

Editor's Note: For foreign decisions construing the "Uniform Veterans Guardianship Act" consult Uniform Laws, Annotated.

319.61 History: 1957 c. 467; Stats. 1957 s. 319.61; 1967 c. 46.

Draftsman's Note, 1967: [As to sub. (7)] The definition includes a guardian appointed in another state. It excludes both a natural guardian and the guardian of the person of a minor.

[As to sub. (9m)] The only change is the inclusion in the definition of "annuity contracts" and the requirement that the policy or contract be issued by an insurance company authorized to do business in Wisconsin. The latter requirement is intended for the protection of the minor. Another provision of this bill authorizes the custodian to pay premiums out of the custodial property. [Bill 131-S]

Editor's Note: For foreign decisions construing the "Uniform Gifts to Minors Act" consult Uniform Laws, Annotated.

319.62 History: 1957 c. 467; Stats. 1957 s. 319.62; 1967 c. 46.

Revisor's Note, 1957: Par. (a) is similar to 319.60 (2) (a). That subsection leaves in doubt the consummation of the gift of a security which has been registered in the name of a custodian but has not been delivered to him. Par. (a) accordingly omits any requirement of delivery to the custodian of a security in registered form as a prerequisite to a completed gift.

The Model Act limits the class of eligible custodians to the donor, adult members of the minor's family and guardians of the minor. This act adds banks with trust powers to the class of eligible custodians, original or successor. Both the Model Act and 319.67 (1) of this act limit the class of eligible individual successor custodians to adult members of the minor's family and guardians.

Par. (c) adds to the Model Act by enabling a donor to make a gift of money for the purpose of its investment, immediate or ultimate,

in accordance with the "prudent man" rule. It permits a donor to take advantage of the gift tax exclusion authorized by Internal Revenue Code of 1954, Section 2503 (b), at a time when market conditions may not seem appropriate for immediate investment. It simplifies the mechanics of a gift, and avoids a double stock transfer tax on it, when a donor does not already own the security in which he wants the gift invested. It enables a donor to put the custodian in funds with which to exercise stock rights or to "round out" a block of a security to be purchased by the custodian with the proceeds of interest, dividends or sale of other securities. [Bill 355-S]

Draftsman's Note, 1967: [As to sub. (1) (c)] Simply uses the broader term "financial institution" which includes savings and loan associations and credit unions. Notice that the financial institution need not be an insured one; the donor has discretion as to the type of financial institution in which he places a gift of money since any gift benefits the minor. [Bill 131-S]

319.63 History: 1957 c. 467; Stats. 1957 s. 319.63; 1967 c. 46.

319.64 History: 1957 c. 467; Stats. 1957 s. 319.64; 1967 c. 46.

Revisor's Note, 1957: Subs. (1), (2) and (4) follow closely 319.60 (4) (a).

Sub. (3) is included to make clear the enforceable duty of the custodian to expand income or principal when necessary for the support, maintenance or education of the minor.

The words "general use" in the phrase "support, maintenance, education and general use and benefit" in 319.60 (4) (a) are omitted as being too broad (See Section 266.2 (a) of the New York Property Law).

Sub. (9) is derived from Section 266.1 of the New York Personal Property Law. It is similar to 319.60 (4) (c). [Bill 355-S]

Draftman's Note, 1967: The amendment of sub. (5) makes it clear that the custodian may keep money in a financial institution to which the donor paid or delivered it, whether or not the institution is insured.

The amendment of sub. (7) requires the deposit of all other money in an insured institution.

[As to sub. (10)] Changes from the present statute are: (1) Adds a reference to annuity contracts; (2) requires that a policy on a life other than the minor be payable to the custodian as custodian, and (3) provides that the custodian may pay premiums out of custodial property. [Bill 131-S]

319.65 History: 1957 c. 467; Stats. 1957 s. 319.65.

319.66 History: 1957 c. 467; Stats. 1957 s. 319.66; 1967 c. 46.

Revisor's Note, 1957: This section is similar to 319.60 (4) (d).

This modification of the comparable provisions of the Model Act is intended to clarify the words "purporting to be" and "purporting to act," which some have feared might absolve third persons from any responsibility to identify the person who represents himself as being a custodian. For example, X might "purport" to be Y and give instructions with respect to property held by Y as custodian for a minor. The use of the phrases "purports to act as" and "purports to act in the capacity of" removes any such possible ambiguity. [Bill 355-S]

319.67 History: 1957 c. 467; Stats. 1957 s. 319.67; 1967 c. 46.

Revisor's Note, 1957: Sub. (1) is derived from Section 267.1 of the New York Personal Property Law and is similar to 319.60 (7). [Bill 355-S]

Draftsman's Note, 1967: Sub. (1) is amended to allow a custodian to designate a successor to take effect upon his resignation, death or legal incapacity; the old provision required him to resign upon making such a designation. Also empowers a minor over 14 to make a designation if the custodian has not done so.

Sub. (2) provides for the taking effect of the designation of the successor.

Sub. (3) requires the transfer of custodial property to the successor.

Sub. (4) provides that the guardian of the minor becomes successor custodian if the designated successor is not eligible, dies or becomes legally incapacitated. A petition to the court will still be necessary if the minor has no guardian and the nomination of a proper successor has not been made.

Sub. (5) is amended to permit a successor custodian to petition the court for the removal of another successor designated by an instrument bearing an earlier date, or designated by the minor, and for the designation of petitioner as successor. It continues to provide for removal for cause shown or for giving bond. Without the amendment serious conflicts might arise. [Bill 131-S]

319.68 History: 1957 c. 467; Stats. 1957 s. 319.68.

Revisor's Note, 1957: Sub. (1) is derived from Section 268.1 of the New York Personal Property Law and is similar to 319.60 (11).

Sub. (2) is derived from section 268.2 of the New York Personal Property Law. [Bill 355-S]

319.69 History: 1957 c. 467; Stats. 1957 s. 319.69.

319.70 History: 1957 c. 467; Stats. 1957 s. 319.70.

319.71 History: 1957 c. 467; Stats. 1957 s. 319.71.

319.75 History: 1961 c. 424; Stats. 1961 s. 319.75.

319.76 History: 1965 c. 53; Stats. 1965 s. 319.76.

CHAPTER 320.

Trust Fund Investments.

320.01 History: 1935 c. 363, 511; 1935 c. 520 s. 7, 12; Stats. 1935 s. 320.01; 1937 c. 131, 152; 1939 c. 513 s. 54; 1941 c. 244, 246, 257; 1947 c. 362; 1947 c. 411 s. 6; 1947 c. 612 s. 1, 32; 1949 c. 205; 1951 c. 404, 579; 1953 c. 164, 590; 1955