

CHAPTER 313.

PROOF AND PAYMENT OF DEBTS.

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|---------|---|--------|--|
| 313.01 | Adjustment of claims. | 313.18 | Order, if appeal taken; disputed claims. |
| 313.03 | Claims against decedents. | 313.19 | Further order to pay. |
| 313.04 | Delayed notice to creditors. | 313.20 | Executor's liability. |
| 313.05 | Procedure on claims. | 313.21 | Limit on time to pay debts; claims barred. |
| 313.06 | List of claims; judgment on; execution. | 313.22 | Contingent claims. |
| 313.07 | Demands not due, payment of debts. | 313.23 | Contingent claims; when allowed, how paid. |
| 313.08 | Statute of limitations. | 313.25 | Liability of heirs and legatees for claims. |
| 313.09 | Order sale of goods. | 313.26 | What property to pay debts; direction in will. |
| 313.095 | Mortgaging personalty. | 313.27 | Intestate property to pay debts. |
| 313.10 | Judgment against executor or administrator, how paid. | 313.28 | Legatees to pay debts. |
| 313.12 | Estate of joint debtor liable for whole. | 313.29 | Liability of willed property; share of after-born child. |
| 313.13 | When executor, etc., to account and pay debts. | 313.30 | Legatees hold subject to liability. |
| 313.14 | Time to pay debts fixed; extension of time. | 313.31 | Liability, affected by insolvency. |
| 313.15 | Distribution of estate. | 313.32 | How liability fixed. |
| 313.16 | Debts; order of payment. | | |
| 313.17 | Court to order payment. | | |

313.01 Adjustment of claims. It shall be the duty of the county court to receive, examine and adjust the claims and demands of all persons against every decedent whose estate is in probate.

313.03 Claims against decedents. (1) **TIME TO FILE; EXTENSION OF TIME; HEARING TIME.** Upon filing an application for administration or probate or at any time thereafter the court shall fix the time (not less than 3 months nor more than one year from the date of the order) within which claims against the decedent may be presented; and designate the term at which claims shall be examined and adjusted. The time so limited may be extended (but not beyond 2 years from the date of the letters) upon application of a claimant filed not later than 60 days after the time originally limited by order for presenting claims, and upon a showing satisfactory to the court and upon such notice as the court shall direct. Such extension may be general or limited to the applicant.

(2) **PREFERRED CLAIMS; EARLY HEARING, PAYMENT.** The court may order that all claims for funeral expenses, for the expenses of the last sickness of the decedent, and for debts having a preference under the laws of the United States, which shall have been presented within sixty days after the date of such order will be examined and adjusted at the next term following the expiration of said sixty days. Upon the allowance of such claims the court shall order them paid, provided there are sufficient funds on hand.

(3) **NOTICE; PUBLICATION.** Notice of the times within which creditors may present their claims and of the time when the same will be examined and adjusted by the court shall be given by publication, as provided in sections 324.20 and 324.26 for 3 consecutive weeks, and, where there is no waiver of notice for granting letters, or when letters have not been granted, may be given with the notice for granting letters testamentary or of administration, or in such other manner as the court may direct, the first publication to be made within 15 days of the date of said order. In addition to the foregoing, in any case wherein the decedent was at the time of death or at any time prior thereto, an inmate of any state or county institution, notice in writing of the time within which creditors may present their claims and of the time when the same will be examined, shall be sent by registered mail to the state department of public welfare, and the county clerk of the county of legal settlement not less than 30 days before such examination, upon such blanks and containing such information as the state department of public welfare may provide. At the time so fixed for examining and adjusting claims the court may, if necessary, adjourn the hearing to such other time and from time to time thereafter as may be convenient until the examination and adjustment be completed, and no hearing on claims shall be had and no judgment on claims shall be entered until after issuing letters testamentary or of administration.

(5) **HEARING; ADJOURNMENT; PROMPT JUDGMENT.** The hearing on claims or on any claim may be adjourned, when necessary from time to time, and the hearing shall be concluded as soon as practicable.

(6) **TRANSFER OF CLAIMS.** Claims filed against a decedent following an order and notice to creditors shall (if such probate proceeding for any reason fails) be deemed filed upon

notice to creditors in a subsequent probate proceeding and, if the later proceeding is in a different county, such claims shall be transmitted to and filed in the proper court.

(7) SUMMARY CLOSING OF PROBATE. Nothing in this chapter shall impede the summary procedure provided by s. 311.05, 311.055 or 319.32 (1) for closing small estates.

History: 1951 c. 639; Sup. Ct. Order, 262 W v; 1953 c. 258; 1955 c. 10.

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 343, 71 NW (2d) 283.

313.04 Delayed notice to creditors. If at any time in a matter of probate it appear that any order of publication or publication thereunder required in section 313.03, has not been made, the county court shall thereupon make the order and give the notice as provided in said section.

313.05 Procedure on claims. (1) VERIFIED ACCOUNT; ALLOWANCE, CONDITION. Claims shall be accompanied by a verified account. If no objection is made to a claim, the court may allow it but no claim, objected to or not, shall be allowed unless the court is satisfied that it is just.

(2) CLAIMS OFFSET; BARRED CLAIMS. If a creditor against whom the deceased had claims presents a claim to the county court the personal representative shall exhibit the claims of the deceased in offset to the claims of the creditor, and the court shall ascertain and allow the balance against or in favor of the estate. No claim barred by the statute of limitations shall be allowed by the court in favor of or against the estate, as a set-off or otherwise. No claim for fermented malt beverages or intoxicating liquor sold at retail shall be allowed by said court against said estate, as a set-off or otherwise.

(3) CONTESTED CLAIMS. The personal representative or any interested person may contest a claim by mailing a copy of an objection to the claimant and filing a copy with the court before entry of judgment on claims and within 60 days after either the time limited by the court for filing claims or any extension of such time granted by the court. Within either such period the court may grant a petition for extension of the time for filing objections. If any claim is contested or an offset or counterclaim is claimed, the court may require the issues to be made definite and shall fix a date for pretrial conference or trial. Any contested claim may be brought on for hearing by either party on 10 days' notice served and filed, unless an earlier time be fixed by the court.

(4) MANDATORY HEARING IF CLAIM FILED ONE YEAR. The court shall on its own motion after notice to the claimant, the objector, and the personal representative set for hearing any claim, contested or uncontested, filed over one year and may disallow all or any part of such claim for nonprosecution or may allow the claim.

History: Sup. Ct. Order, 262 W x.

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]

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 Zelmet, 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 de-

termining 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.

313.06 List of claims; judgment on; execution. The court shall make a statement embracing lists of the claims presented against the decedent and those exhibited in offset and stating how much was allowed and how much disallowed in each case, together with the final balance, whether in favor of the creditor or the estate; and the same shall be signed by the judge, be recorded and stand as the judgment of the court. If the balance is in favor of the estate the payment thereof may be enforced by execution.

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 since 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 Skorzczynski, 256 W 300, 41 NW (2d) 301.

313.07 Demands not due, payment of debts. The court may allow all demands, at the then present value thereof, which are payable at a future day, including claims payable in specific articles, and may offset like demands in the same manner in favor of the estate; but this shall not prevent any executor or administrator from paying any debts, according to the terms and at the time specified in the contract.

313.08 Statute of limitations. Every claim against a decedent, proper to be filed in probate proceedings in county court, which shall not, after notice given as required by sections 313.03 and 313.04, be filed within the time limited for that purpose, shall forever be barred.

313.09 Order sale of goods. The county court, on the application of the executor or administrator, may at any time order the personal estate of any deceased person to be sold at public or private sale, when it shall appear to be necessary for the purpose of paying debts, legacies, expenses of administration, or for the preservation of the property, or when it shall be requested by all the heirs residing in this state; or the court may order such personal property to be sold at public or private sale as the executor or administrator may find most beneficial. If the order be to sell at auction the court shall direct the mode of giving notice of the time and place of sale.

313.095 Mortgaging personalty. The county court, on the application of the executor or administrator, may at any time order the personal estate of any deceased person to be mortgaged when it shall appear to be necessary for the purpose of paying debts, legacies, expenses of administration or for the preservation of the property or when it shall be requested by all the heirs residing in this state; or the court may order such personal property to be mortgaged upon a showing by the executor or administrator that such mortgaging is beneficial to the estate.

313.10 Judgment against executor or administrator, how paid. If judgment shall be rendered against an executor or administrator it shall be certified to the county court; and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate, except as provided in section 287.17.

313.12 Estate of joint debtor liable for whole. When two or more persons shall be indebted on any joint contract or upon a judgment founded on a joint contract and either of them shall die his estate shall be liable therefor, and the claim may be allowed by the court as if the contract had been joint and several or as if the judgment had been against him alone, and the other parties to such joint contract may be compelled to contribute or

to pay the same if they would have been liable to do so upon payment thereof by the deceased.

313.13 When executor, etc., to account and pay debts. Within sixty days after the entry of final order or judgment of the court upon claims filed against an estate every executor or administrator shall render an account of his administration to the county court, and such court shall thereupon direct the executor or administrator to proceed forthwith to the payment of the debts and to a final settlement of the estate in the manner prescribed by law unless one or more of the following causes of delay exists:

(1) That the personal assets in the hands of the executor or administrator are insufficient to pay the debts of the deceased and that there is real estate that can be mortgaged, leased or sold to pay such debts;

(2) That an appeal has been taken from some action of the county court which is still pending and necessarily delays the settlement of the estate;

(3) That collectible debts due the estate have not been collected;

(4) That a contingent claim has been allowed against the estate of the deceased and that the final settlement of the estate is necessarily delayed thereby, or

(5) That some other good and sufficient cause for delay exists.

Cross Reference: For collection of taxes levied on personal property of a decedent, see 70.22.

313.14 Time to pay debts fixed; extension of time. (1) If it appears to the court that any of the causes for delay mentioned in section 313.13 exists the court shall, by order, fix a time within which the executor or administrator shall pay the debts and legacies and make a final settlement of the estate and of his account as executor or administrator. At any time after the expiration of the 60-day period provided in section 313.13, the court may, upon the application of any party in interest, or upon its own motion, by order require the administrator or executor, within such time as the court may fix, to file a sworn statement, setting forth the assets remaining in his possession belonging to the estate of the deceased, the debts and legacies that remain unpaid, the reasons for the delay in the settlement of the estate, and how much additional time is necessary for a full settlement of the estate; and the court may by order fix a time and place for hearing upon such statement, notice of which shall be given by the administrator or executor in the manner provided by section 324.18.

(2) When an executor or administrator dies or becomes incapable of discharging his trust and another administrator of the same estate is appointed, the county court may for cause shown, without notice, extend the time for the payment of the debts and legacies and the settlement of the estate for 6 months beyond the time allowed the original executor or administrator, and may extend the time for a longer period, upon petition and notice as required in this section.

History: Sup. Ct. Order, 258 W vii.

313.15 Distribution of estate. When any person shall die possessed of any personal estate or of any right or interest therein, whether disposed of by will or not, the same shall be applied and distributed as follows:

(1) **ALLOWANCE TO WIDOWS.** The widow, if any, shall be allowed all her articles of apparel and ornaments, also all wearing apparel, family pictures and ornaments of the deceased, except such as may have been specifically bequeathed by the deceased, also the household furniture of the deceased, also all provisions and fuel on hand provided for family use, also other personal property to be selected by her, not exceeding in value \$400. This allowance shall be made whether the widow waives or accepts the provisions made for her in the will of her husband or when no provision is made for her, as well as when he dies intestate.

(2) **ALLOWANCE TO FAMILY.** The widow and minor children, or either, constituting the family of the deceased testator or intestate, shall have such reasonable allowance out of the personal estate or the real estate, or both, of the deceased as the county court shall judge necessary for their maintenance until an award shall be made or refused as provided in subsection (4) (a) of this section, or their shares assigned to them.

(3) **ALLOWANCE TO MINOR CHILDREN.** The minor children shall be allowed all their articles of apparel and ornaments and if their father died intestate, leaving no widow, his household furniture, wearing apparel and ornaments, not exceeding in value two hundred and fifty dollars, and other personal property to be selected by their guardian or by the county judge for them, not exceeding in value two hundred dollars. When a person shall die, either testate or intestate, leaving children under seven years of age, having no mother, or when the mother shall die before the children shall arrive at the age of seven years and before the settlement of the estate, an allowance shall be made for the necessary mainte-

nance of such children, until they arrive at the age of seven years, out of the personal estate, if sufficient; if not sufficient, then out of the income of the real estate.

(4) ALLOWANCES FOR FUNERAL EXPENSES AND TO WIDOW AND CHILDREN. (a) If the total value of an estate exceeds the dispositions made therefrom under the preceding subsections the county court may, in its discretion, assign from the residue of such estate a sum or value not exceeding \$2,000 for the use and support of the widow and minor children of the deceased; and if there be no widow, for the support of the minor children; and if there is a widow but no minor children, for the support of the widow, in either case in such proportion as the judge may determine.

(b) The estate of any person who served in the military or naval forces of the United States in time of war, and who dies leaving an estate of less than one thousand dollars, exclusive of benefits due him or his heirs from the United States, shall not be liable for more than one hundred dollars for burial expenses in addition to the amount allowed by the United States for his burial.

(5) EXCESS TO BE APPLIED TO DEBTS. If the personal estate of any deceased person shall amount to more than the allowance mentioned in subsections (1), (2), (3) and (4) of this section, the excess shall be applied to the payment of the debts of the deceased so far as may be necessary.

(6) ALLOWANCES TO MINOR CHILDREN. The court may grant to the minor children, out of the estate of their mother, all such allowances as they would be entitled to out of the estate of their father under subsections (2), (3) and (4) (a) if he died intestate leaving no widow.

History: 1951 c. 71; 1953 c. 259.

Under (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. Estate of Dusterhoft, 270 W 5, 70 NW (2d) 239.

313.16 Debts; order of payment. (1) If, after the allowance provided for by section 313.15 has been made and after the amount of the claims against any estate shall have been ascertained by the court, it shall appear that the executor or administrator has in his possession sufficient to pay all the debts, he shall pay the same in full within the time limited for that purpose. If the assets received by the executor or administrator, and which can be appropriated to the payment of debts, shall not be sufficient he shall, after paying necessary expenses of administration, pay the debts against the estate in the following order:

- (a) The necessary funeral expenses;
- (b) The expenses of the last sickness;
- (c) Debts having a preference under the laws of the United States or laws of the state of Wisconsin;
- (d) Wages due to workmen, clerks or servants which have been earned within three months before the date of the death of the testator or intestate, not to exceed three hundred dollars to each claimant;
- (e) Debts due to other creditors.

(2) If there shall not be assets enough to pay all the debts of any one class each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all of those of the preceding class shall be fully paid.

313.17 Court to order payment. After the time limited for creditors to present their claims has expired and the amount of the indebtedness of the deceased has been ascertained by the court such court shall make an order or judgment for the payment of the debts of the deceased, in whole or in part, out of the assets in the hands of the executor or administrator for that purpose, as the circumstances of the estate shall require.

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 does not only include claims of creditors which have been allowed, but 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 Order, if appeal taken; disputed claims. If an appeal from the decision of the court in respect to any claim is pending the court may suspend the payment of debts or may order the payment in whole or in part of the other claims that have been allowed leaving in the hands of the executor or administrator sufficient assets to make a like payment upon the appealed claim.

313.19 Further order to pay. If the debts have not been paid in full under the first order for that purpose and if the assets applicable thereto have not been exhausted, or if other assets shall afterward come to the executor or administrator that ought to be

used in paying debts, the court may from time to time make further orders for the payment of the debts.

313.20 Executor's liability. Whenever an order or judgment shall have been made by the county court for the payment of the debts in whole or in part the executor or administrator, after the time fixed for the payment shall arrive, shall be personally liable to the creditors for their debts or the dividend thereon as for his own debt; and he shall be liable on his bond, and the same may be put in action on the application of a creditor whose debt or dividend shall not be paid as above mentioned.

313.21 Limit on time to pay debts; claims barred. The court may by order limit the time for paying the debts of the decedent; and notice thereof shall be given to creditors in the manner provided by section 324.20 or in such other manner as the court may direct. If, after such notice has been given, any creditor neglects to demand payment from the executor or administrator, within two years from the time limited by the notice, or if the notice is given after such time, within two years from the date the notice is given, the claim of such creditor shall be barred.

313.22 Contingent claims. Contingent claims against a decedent's estate which cannot be allowed as debts shall, nevertheless, be presented to the court and proved, and they shall be embraced in a statement like that provided in section 313.06. The court may order the executor or administrator to retain in his hands sufficient estate to pay contingent claims when the same become absolute; or if the estate is insolvent, sufficient to pay a percentage thereof equal to the dividends of the other creditors.

313.23 Contingent claims; when allowed, how paid. When a contingent claim, which was duly presented, shall become absolute it may be allowed, upon due proof made within one year after it becomes absolute, in the same manner as other claims. If such contingent claim shall be allowed the creditor shall be entitled to receive payment thereon to the same extent as other creditors.

313.25 Liability of heirs and legatees for claims. When a contingent claim shall have become absolute and been allowed, and the executor or administrator shall not have sufficient assets to pay such claim, the creditor may recover such part of his claim as the executor or administrator has not assets to pay from the heirs, devisees or legatees who have received property from the estate that was liable for the payment of the debts of the decedent.

313.26 What property to pay debts; direction in will. If a testator makes provision by his will or designates therein the property to be appropriated for the payment of his debts, the expenses of administration or family expenses, they shall be so paid; but a general direction to pay his debts out of his property shall not subject the homestead to the payment thereof.

313.27 Intestate property to pay debts. If the provisions made by the will are not sufficient to pay the debts, expenses of administration and family expenses, such part of the estate, real or personal, which is not disposed of by the will, shall be first appropriated for those purposes.

313.28 Legatees to pay debts. The estate, real and personal, given by will, when required for that purpose, shall be held liable for the payment of debts, expenses of administration and family expenses in proportion to the several devises and legacies; except that specific devises and legacies, and the persons to whom made, shall be exempted if there is other sufficient estate and it shall appear necessary in order to effect the intention of the testator.

313.29 Liability of willed property; share of after-born child. When the property given by will is liable for the payment of debts and expenses, or is liable to be taken to make up the share of a child as provided in sections 313.28, 238.10, 238.11 and 238.12, the executor shall retain the possession of the same until such liability is settled and the devises and legacies so liable shall be assigned by the courts. Any devisee or legatee may petition such court to have such liability settled and his devise or legacy assigned to him.

313.30 Legatees hold subject to liability. Before such liability is determined, devisees and legatees hold the estate given to them by will, subject to the liabilities mentioned in section 313.29, and must contribute, according to their respective liabilities, to the executor or to any devisee or legatee from whom estate willed to him has been taken for the payment of debts or expenses or to make up the share of a child omitted in the will. Heirs who have received property, not disposed of by will, shall be liable to contribute among themselves in like manner as the devisees or legatees.

313.31 Liability, affected by insolvency. If any person liable to contribute according to section 313.30 shall be insolvent, the others shall be severally liable for the loss occasioned by such insolvency in proportion to, and to the extent of, the estate they have received; and if any person so liable to contribute shall die, not having paid his share, his estate shall be liable for the same as if it had been his proper debt.

313.32 How liability fixed. The county court may, by judgment for that purpose, settle the amount of the several liabilities as provided in the preceding sections and adjudge how much and in what manner each person shall contribute, and may issue execution to enforce its judgment as circumstances may require. The claimant may also have a remedy by any proper action.