A bond given by a guardian appointed without jurisdiction is void as a guardian's bond but enforceable as a common-law bond as far as accounting for property received by him is concerned, but the special limitation provided in sec. 3968, Stats. 1898, applies to the sureties. Dudley v. Rice, 119 W 97, 95 NW 936.

The guardian is discharged when the ward attains his majority, and the fact that the guardian was also the guardian of other minors appointed by the same order and as to which he has given the same bond does not change the situation. Sec. 3968 applies to a bond given for a sale of real estate. Wescott v. Upham, 127 W 590, 107 NW 2.

Where a will gave a life estate in both real and personal property to the wife of the testator, and a remainder to his son upon the condition that the son pay certain legacies, and the county court required the wife to give a trustee's bond for the personal property, an assignee of the legacies, which had not been paid, was not entitled to maintain an action against the surety on the bond, when there was no proof that the real property was insufficient to pay the legacies. Otto v. United States F. & G. Co. 213 W 340, 251 NW 217.

Where assets of an estate have been withheld from the inventory because of a conspiracy between the administrator and an heir, the surety of the administrator is entitled to recover from the administrator and the heir the amount it may be compelled to pay to the estate for the default of the administrator. Martineau v. Mehlberg, 221 W 347, 267 NW 9.

An action brought under 321.02 (2) on an administrator's bond must be prosecuted for the benefit of all concerned, and not for the sole benefit of an individual creditor. Rasmussen v. Jensen, 240 W 242, 3 NW (2d) 335.

Under 321.02 (1) (c) and (4), 321.07 and 296.08 (3), the circuit court has jurisdiction of an action brought, with the permission of the county court, by the successor guardian of the person and estate of an incompetent against the sureties on the bond of a deceased guardian for the latter's breach of duty and maladministration in the conduct of the guardianship, and against the same sureties on a special bond of the deceased guardian given in connection with an application in the county court to sell the ward's real estate, and against persons claiming rights under deeds sought to be set aside, although there has been no accounting and determination in the county court. Cannon v. Berens, 244 W 271, 12 NW (2d) 53.

The filing of the contingent claim may be timely under 321.02 (3), but such claim may be barred by 313.08 for failure to file it within the time fixed by the county court for the filing of claims. Estate of Bocher, 249 W 9, 23 NW (2d) 615.

The one-year extension of the limitation on an action against the sureties on a guardian's bond, provided in 321.02 (3), applies where an accounting proceeding is pending when the ward becomes 25 years of age. (In Rew v. Marshek, 240 W 273, a headnote erroneously states that an accounting proceeding must be pending when the ward becomes "21.") Estate of Bocher, 249 W 9, 23 NW (2d) 615.

Where the complaint in an action to recover on administrator's bond alleged that the principal on the bond had defaulted in performance for which the surety had insured obligees, it showed that plaintiff obligees thereby acquired a right of action on the bond against the defendant surety, and the complaint was not subject to general demurrer for failing to allege certain procedural steps in settlement of estates involved. The complaint, showing that the defaulting administrator was appointed in 1928 and was removed in 1957, did not thereby show on its face an interval so great as to constitute laches which, as a matter of law, would defeat plaintiff obligees' action to recover on an administrator's bond, although laches might prove to be a proper defense on the trial of the action. Mudroch v. Amsterdam Cas. Co. 7 W (2d) 57, 95 NW (2d) 759.

321.03 History: R. S. 1849 c. 73 s. 6, 8; R. S. 1858 c. 104 s. 6, 8; R. S. 1878 s. 4015; Stats. 1898 s. 4015; 1907 c. 183; 1925 c. 4; Stats. 1925 s. 321.03; 1969 c. 339.

See note to 312.16, citing Richter v. Leiby, 99 W 512, 75 NW 82.

The action on the administrator's bond being in the name of the county judge, the judgment should specify the amount due each heir for whose benefit it was brought. Cook v. Nelson, 209 W 224, 244 NW 615.

321.04 History: R. S. 1849 c. 73 s. 7; R. S. 1858 c. 104 s. 7; R. S. 1878 s. 4016; Stats. 1898 s. 4016; 1925 c. 4; Stats. 1925 s. 321.04; 1969 c. 339.

Leave of court is not necessary to the bringing of an action for contribution between the sureties on an executor's bond. Hardell v. Carroll, 90 W 350, 63 NW 275.

It is not mandatory upon the court, in an application for leave to sue upon the bond of an executor, to grant the petition. Leave may be ex parte, or the court may in its discretion make an examination to determine whether or not it may be granted. Estate of Hewitt, 194 W 15, 215 NW 573.

321.05 History: R. S. 1849 c. 71 s. 12; R. S. 1849 c. 73 s. 9; R. S. 1858 c. 102 s. 12; R. S. 1858 c. 104 s. 9; R. S. 1878 s. 4017; Stats. 1898 s. 4017; 1925 c. 4; Stats. 1925 s. 321.05; Sup. Ct. Order, 245 W xi; 1969 c. 339.

321.06 History: R. S. 1849 c. 73 s. 10; R. S. 1858 c. 104 s. 10; R. S. 1878 s. 4018; Stats. 1898 s. 4018; 1925 c. 4; Stats. 1925 s. 321.06; 1969 c. 339.

321.07 History: R. S. 1849 c. 73 s. 12; R. S. 1858 c. 104 s. 12; R. S. 1878 s. 4019; Stats. 1898 s. 4019; 1925 c. 4; Stats. 1925 s. 321.07; 1969 c. 339.

321.08 History: R. S. 1849 c. 73 s. 11; R. S. 1858 c. 104 s. 11; R. S. 1878 s. 4020; Stats. 1898 s. 4020; 1925 c. 4; Stats. 1925 s. 321.08; 1969 c. 339.

CHAPTER 322.

Adoption of Adults.

322.01 History: 1955 c. 575; Stats. 1955 s. 322.01.

Legislative Council Note, 1955: This provision restates provisions now in s. 322.01 but is limited, as are the other sections in ch. 322 to the adoption of adults. The same change, in regard to the adoption by nonresidents of their relatives, is made in this section as was made in regard to the adoption of minors in s. 48.71. [Bill 444-S]

322.02 History: 1955 c. 575; Stats. 1955 s. 322.02.

Legislative Council Note, 1955: This section covers s. 322.04 (7) and a provision in s. 322.01. It differs from the provision in s. 322.01, which requires that in the case of a married petitioner his spouse must join in the petition, in that it allows the spouse to join in the petition and become an adoptive parent or, if he does not wish to become an adoptive parent, to consent to the adoption. This new provision is taken from the uniform adoption act. The committee, after careful consideration, was of the opinion that, since the adoption of adults involves considerations which differ greatly from those in the adoption of minors and frequently is a matter of establishing inheritance rights, only one spouse should be allowed to adopt just as long as the other spouse has knowledge of the adoption and consents to it. [Bill 444-S]

322.03 History: 1955 c. 575; Stats. 1955 s. 322.03.

Legislative Council Note, 1955: This section covers provisions in s. 322.01 of the present law with the same change, making the county where the petitioner resides a matter of venue, as is made in s. 48.83 on the adoption of minors. [Bill 444-S]

322.04 History: 1955 c. 575; Stats. 1955 s. 322.04.

Legislative Council Note, 1955: This section covers in summary form and by reference to ch. 48 the hearing, order, and legal effect of adoption. It should be noted that under this provision the court may make an investigation in the case of adoption of an adult if it considers that desirable; present statutes make no provision for an investigation in the case of an adult.

Since the legal effect of the adoption of an adult will be the same as that of a minor, the same changes in the law as discussed in the note to s. 48.92 will apply. [Bill 444-S]

CHAPTER 323.

Testamentary Trusts.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 323 through 1969, including the effects of chapters 283, 339 and 411, Laws 1969. Various provisions of ch. 323 are restated in the new property law effective July 1, 1971. For more detailed information concerning the effects of ch. 283, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 700.

323.01 History: 1874 c. 116 s. 2, 3; 1878 c. 119; R. S. 1878 s. 4025; Stats. 1898 s. 4025; 1909 c. 220; 1923 c. 120; 1925 c. 4; Stats. 1925 s. 323.01; 1955 c. 73; 1963 c. 269 s. 6; 1969 c. 283.

An executor entitled to hold the estate upon trusts implied from the will and which continue beyond the time his duties as executor continue is entitled to hold the estate as executor until he qualifies as trustee; and if he does not so qualify he holds as executor until settlement of hs final account. Schinz v. Schinz, 90 W 236, 63 NW 162.

Reasonable attorneys' fees for services rendered in conserving a trust estate are allowable to the trustees as expenses. Will of Rice, 150 W 401, 136 NW 956, 137 NW 778.

The title to trust property cannot vest in testamentary trustees until the bond required has been filed. Where executors who were also made testamentary trustees qualified as executors but not as trustees, and as executors they so administered the estate that the trust property was lost, they continued to hold title to the estate as executors and the sureties upon their bond as executors were liable for the loss of the trust estate. Karel v. Pereles, 161 W 598, 155 NW 152.

The power of equity courts to enforce administration of trusts is supervisory and is exercised only to carry out the settlor's intention, except where a deviation is necessary to carry out the intention as nearly as possible, but even then the rights of remaindermen will not be defeated. Will of Stack, 217 W 94, 258 NW 324.

Where a testamentary trust directed the trustee to apply the income thereof, as seemed necessary in its opinion, for the support and maintenance and comfort of a sister of the testator, a sanitorium, which, over a period of 7 years, had rendered weekly bills to the trustee for board, room and incidental expenses of the sister and her attendant, could not recover from the trustee, on the theory of implied contract, on a claim presented to the trustee on the death of the sister for medical services furnished to the sister over such period of 7 years without the knowledge of the trustee. Estate of Ray, 221 W 18, 265 NW 89, 266 NW 239.

Where each cestui que trust is entitled to an aliquot part of a definite trust fund, any of them may sue the trustee for his portion thereof without making the other cestuis que trust parties to the action. Graf v. Seymour State Bank, 221 W 122, 266 NW 222.

A trust company was guilty of a want of due diligence and ordinary care in the performance of its duties as trustee, and was liable to an estate for failure to present bonds for payment under a trust deed authorizing the mortgagor to pay the bonds before maturity at any interest-payment date on the publication of notice once each week for 3 weeks in a newspaper of general circulation in the City of Milwaukee, in which city the trust company had its place of business, where notice was so published in such a newspaper, which, however, was not examined by the trust company, and the holders of two-thirds in amount of the bonds acquired knowledge of the call for redemption and acted thereon in time to realize on their bonds before the trustee under the trust deed became insolvent, and where a recorded release of the trust deed was listed in a newspaper on the date set in the