cied, evil of corporations acting as executors playing favorites in selecting counsel, thus tending to create a monopoly in probate business by such favorite counsel, but it was not aimed at preventing a corporate executor from selecting as its counsel to probate an estate the attorney whom the testator had requested in his will to be so selected. Estate of Ogg, 262 W 181, 54 NW (2d) 175.

An agreement, whereby a bank offered to employ the plaintiff as its attorney in probating estates in which the will was drawn by the plaintiff naming the bank as executor, was contrary to public policy as contravening 310.25. Pedrick v. First Nat. Bank of Ripon, 267 W 436, 66 NW (2d) 154.

A will appointing the testatrix's son as executor, and requesting, without expressing any reason therefor, that he retain a certain attorney, who had never met the testatrix before drafting her will and never saw her afterward, is construed as intending that the son should serve as executor even though unwilling to retain the attorney named; and under such construction, the county court properly denied a petition of such attorney for an order appointing him as the attorney for such executor, who had engaged other counsel and petitioned for the probate of the will. (Estate of Ogg, 262 W 181, distinguished.) Estate of Braasch, 274 W 569, 80 NW (2d) 759.

Where the attorney nominated by the next of kin represents them, and there might be a conflict between the interests of the estate and the heirs, this is sufficient cause to justify the court in refusing to appoint such attorney. Estate of Bobo, 275 W 452, 82 NW (2d) 328.

Where the will names the executor and the attorney and specifies as a reason that the attorney is familiar with the estate but does not indicate that the executor must retain the attorney or resign, the executor will not be compelled to employ the named attorney. Estate of Sieben, 24 W (2d) 166, 128 NW (2d) 443.

310.25, Stats. 1967, was aimed to prevent the real, or fancied, evil of corporations acting as executors playing favorites in selecting counsel, thus tending to create a monopoly in probate business by such favorite counsel, but was not aimed at preventing a corporate executor from selecting as its counsel to probate an estate the attorney whom testator had requested in his will be so selected. Estate of Thayer, 41 W (2d) 55, 163 NW (2d) 142.

Under 310.25, Stats. 1967, the next of kin is given the right to name the attorney to represent the estate unless good cause can be shown why this should not be done, the "good cause" exception being intended to cover instances where the counsel appointed by the heirs is not capable of handling the position to which he was appointed. Estate of Behr, 42 W (2d) 72, 165 NW (2d) 394.

Effect of testamentary designation of counsel for executor. Hagen, 31 MLR 231.

Direction to employ attorney for probate. 36 MLR 211.

Effect of designation of attorney for executor. 48 MLR 415.

310.27 History: 1883 c. 220; 1887 c. 180, 352; Ann. Stats. 1889 s. 1771; Stats. 1898 s. 1771a; 1923 c. 291 s. 3; Stats. 1923 s. 180.03; 1927 c. 534 s. 3; 1951 c. 731 s. 3; Stats. 1951 s. 182.003; 1955 c. 661 s. 11; Stats. 1955 s. 310.27; 1969 c. 339.

CHAPTER 311.

Administration and Administrators.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 311 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 311 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.

311.01 History: R. S. 1849 c. 68 s. 2; R. S. 1858 c. 99 s. 2; R. S. 1878 s. 3806; Stats. 1898 s. 3806; 1925 c. 4; Stats. 1925 s. 311.01; 1933 c. 190 s. 3; 1969 c. 339.

On county courts see notes to various sections of ch. 253.

Domicile once acquired is not lost by removal until another is acquired. Kellogg v. Winnebago County, 42 W 97.

The action of the court in granting letters of administration was not void for lack of jurisdiction where a will was afterwards discovered. Such letters can be revoked after the discovery of the will and all acts of the county court inconsistent with the administration of the estate under the terms of the will can also be revoked, but not on the ground that they were void for lack of jurisdiction but because they were erroneous. Perkins v. Owen, 123 W 238, 101 NW 415.

Secs. 2443 and 3806, Stats. 1898, confer jurisdiction upon the county court to act (1) when it is shown that an inhabitant of or resident in the same county has died, and (2) when it is shown that a person has died without the state having any estate within such county to be administered. Barlass v. Barlass, 143 W 497, 128 NW 58.

The county court had jurisdiction to deny probate of a will and administer the estate as intestate, where objection to such will had been filed, the issue thus made had been tried upon the evidence, and all parties interested had appeared and admitted the invalidity of the will. First T. Co. v. Holden, 168 W 1, 168 NW 402.

Where the personal debts and the funeral expenses of a deceased partner have been paid, the partnership debts discharged by a new partnership, and all the equitable and beneficial owners of the estate have assigned their interests in their distributive shares, there is no estate to administer. Estate of Kuntz, 196 W 344, 220 NW 206.

In the absence of proceedings for the administration of the mother's estate, it was permissible in the administration of the estate of the son to decree distribution of the one-half share of the mother therein directly to her 9 surviving children, subject, however, to the payment of debts of the mother and the expense of her funeral and grave marker, and payments on account thereof were properly allowed the administrator in adjudging

him liable for the amount of the children's share of the estate. Cook v. Nelson, 209 W 224, 244 NW 615.

The administrator of the estate of the deceased guardian of minors was not, by virtue of his appointment as administrator, entitled to act as guardian of such minors. Rear v. Olson, 219 W 322, 263 NW 357.

The interest of a deceased partner in the partnership property was personal property. The administrator of a deceased partner had power to sell and dispose of the personal estate without order of the court, and to pass good title thereto. Blumer Brewing Corp. v. Mayer, 223 W 540, 269 NW 693.

The county court is not without jurisdiction to appoint an administrator because the decedent left no estate, and may appoint an administrator on the petition of a creditor. Guardianship of Rundle, 245 W 274, 13 NW (2d) 921.

If a person presumed dead whose estate is being administered turns up alive, the estate proceedings are void ab initio for want of subject matter. Estate of Kammerer, 8 W (2d) 494, 99 NW (2d) 841.

The county court of the county of which a deceased prisoner in the state prison was a resident has exclusive jurisdiction to probate his will and administer his estate; the presumption is that the county of his residence at the time of his commitment continued to be his residence during the prison term. 17 Atty. Gen. 382.

311.02 History: R. S. 1849 c. 68 s. 3; R. S. 1858 c. 99 s. 3; R. S. 1878 s. 3807; 1893 c. 30; Stats. 1898 s. 3807; 1925 c. 4; Stats. 1925 s. 311.02; 1933 c. 190 s. 4; 1943 c. 261; 1969 c. 339.

It is irregular to grant administration to one not the next of kin before the end of the period during which the widow and next of kin are entitled thereto. And the court may revoke such administration. Brunson v. Burnett, 2 Pin. 185.

Where, within 30 days after the death of a testator, a petition for administration is filed, all persons interested may appear at the hearing thereof, and no right of any person in relation to the selection of the administrator is waived by a failure to file a separate petition. It is the policy of the statute to discourage the appointment of nonresidents as administrators, and even where the person entitled to a preference in the selection of an administrator nominates a nonresident, his choice may be disregarded in favor of a resident. In re Sargent, 62 W 130, 22 NW 131.

An attorney who has a claim for services rendered the administrator is not a creditor of the estate, and cannot apply for the appointment of an administrator. Wiesmann v. Daniels, 114 W 240, 90 NW 162.

Sec. 3807, Stats. 1898, is mandatory and subject only to the exceptions which are noted in it. Where a nonresident of the state being a half brother of deceased and his next of kin applied for administration within 30 days and nominated a suitable person, he was entitled to have such person appointed administrator. Welsh v. Manwaring, 120 W 377, 98 NW 214.

The fact that application for administration is not made by a person entitled to the administration or that a person not so entitled is appointed renders the proceedings voidable only in a direct proceeding and not upon collateral attack. Steinberg v. Saltzman, 130 W 419, 110 NW 198.

The appointment of an administrator of the estate of an adopted child dying intestate without issue after the death of his adoptive parent, on appearance and waiver of notice by the heirs and next of kin of his natural parents, should have been set aside on petition of the heirs and next of kin of his adoptive parent. Estate of Hood, 206 W 227, 239 NW 448.

The guardian of an intestate's son by her first marriage was properly appointed administrator in preference to a surviving second husband without interest in the estate other than fees to be earned, the son having the sole beneficial interest. Estate of Bartz, 207 W 639, 242 NW 171.

The administrator of the estate of a deceased sister of an intestate had a "cause of action" within the meaning of 311.02 (4) and was properly appointed administrator of the estate of such intestate; such appointment was also justified by 311.02 (3) providing that if there be no next of kin or creditor competent and willing to take administration the same may be committed to such other person as the court may think proper; and the county court did not abuse its discretion in refusing to vacate the appointment on motion of a surviving brother and sister, neither of whom had applied for administration although a year and a half had elapsed. One not named in the statute may be appointed administrator although there be a survivor therein named, if the appointee has interests to be protected superior or equal to the interests of such survivor. Estate of Reilly, 208 W 557, 243 NW 506.

On the petition of heirs for the appointment of an administrator, wherein it appeared that one heir was an incompetent and that the only other heir was a nonresident, the county court did not abuse its discretion in appointing a suitable third person not nominated by either petitioner. Estate of Edwards, 234 W 40, 289 NW 605.

The county court may appoint an administrator, although decedent left no estate, on the petition of a creditor. Guardianship of Rundle, 245 W 274, 13 NW (2d) 921.

Where a petition for administration asserted the fundamental jurisdictional facts of death and residence, then, even if such petition was made by one who was not entitled to administration, the appointment of an administrator would be revocable, but the proceeding would not be void. The petition may be made by the general guardians of a minor who was the sole heir of the decedent. Estate of Bobo, 275 W 452, 82 NW (2d) 328.

311.03 History: R. S. 1849 c. 68 s. 20; R. S. 1858 c. 99 s. 20; 1871 c. 72; R. S. 1878 s. 3808; Stats. 1898 s. 3808; 1925 c. 4; Stats. 1925 s. 311.03; 1933 c. 190 s. 5; Sup. Ct. Order, 232 W vii; 1969 c. 339.

The appointment of an administrator of an intestate estate without any notice being given, as required by sec. 3808, Stats. 1898, and without the appointment of a guardian ad litem for minor heirs, is invalid even though the application for the appointment of such administrator was made by the general guard-

ian of such minors. Hubbard v. Chicago & Northwestern R. Co. 104 W 160, 80 NW 454.

311.04 History: R. S. 1849 c. 68 s. 4, 19; R. S. 1858 c. 99 s. 4, 19; R. S. 1878 s. 3809; Stats. 1898 s. 3809; 1901 c. 24 s. 1; Supl. 1906 s. 3809; 1919 c. 195; 1925 c. 4; Stats. 1925 s. 311.05; 1945 c. 509; Stats. 1945 s. 311.04; 1953 c. 300; 1969 c. 339.

Where the cashier of a bank was acting for and at the request of an administrator in procuring sureties, his possession of the bond was in legal effect the possession of the administrator. Belden v. Hurlbut, 94 W 562, 69 NW 357.

311.05 History: 1925 c. 230; 1925 c. 454 s. 14; Stats. 1925 s. 311.075; 1933 c. 190 s. 6; Stats. 1933 s. 311.04; 1945 c. 509; Stats. 1945 s. 311.05; 1953 c. 551, 661; 1957 c. 197; 1963 c. 203; 1969 c. 276 s. 590 (1); 1969 c. 339.

The estate of a deceased wife is not liable for the expense of her last sickness when she is survived by a husband, who is liable for all necessaries provided for her during her lifetime. Estate of Phalen, 197 W 336, 222 NW 218; Grasser v. Anderson, 224 W 654, 273 NW 63.

Streamlining probate—a proposal to expand summary settlement. Sullivan and Hack, 51 MLR 150.

Summary settlement of small estates. Fox, 1948 WLR 453.

311.06 History: R. S. 1849 c. 68 s. 5; R. S. 1858 c. 99 s. 5; 1874 c. 172 s. 1; R. S. 1878 s. 3810; Stats. 1898 s. 3810; 1925 c. 4; Stats. 1925 s. 311.06; 1945 c. 509; 1947 c. 82; 1951 c. 86; 1969 c. 339.

Pending appeal from an order allowing or disallowing a will none but a special administrator can be appointed. In re Fisher, 15 W 511.

The circuit court has no jurisdiction, pending the probate of a will, to enjoin the sale of the testator's personal estate by his widow, in an action by the children. Their proper remedy is to apply under sec. 3810, Stats. 1919, for the appointment of a special administrator. Pietraszwicz v. Pietraszwicz, 173 W 523, 181 NW 722.

The county court as a court of probate and acting as such in appointing a special administrator has no jurisdiction except as conferred on it by statute, and 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. Guardianship of Rundle, 245 W 274, 13 NW (2d) 921.

A demurrer to the complaint in an action to recover property for the benefit of an estate, begun in the circuit court by a creditor and legatee before the executor had qualified and before the will had been admitted to probate, was sustained on jurisdictional grounds. Application should have been made to the county court for the appointment of a special administrator. O'Neill v. Jessen, 254 W 518, 36 NW (2d) 684.

311.07 History: R. S. 1849 c. 68 s. 6, 7; R. S. 1858 c. 99 s. 6, 7; R. S. 1878 s. 3811; Stats. 1898 s. 3811; 1925 c. 4; Stats. 1925 s. 311.07; 1945 c. 509; 1969 c. 339.

311.075 History: 1945 c. 509; Stats. 1945 s. 311.075; 1969 c. 339.

311.08 History: R. S. 1849 c. 68 s. 8; R. S. 1858 c. 99 s. 8; R. S. 1878 s. 3812; 1895 c. 164; Stats. 1898 s. 3812; 1925 c. 4; Stats. 1925 s. 311.08; 1945 c. 509; 1953 c. 300; 1969 c. 339.

311.09 History: R. S. 1849 c. 68 s. 9; R. S. 1858 c. 99 s. 9; R. S. 1878 s. 3813; Stats. 1898 s. 3813; 1925 c. 4; Stats. 1925 s. 311.09; 1945 c. 509; 1947 c. 82; 1953 c. 300; 1961 c. 26; 1969 c. 339.

A special administratrix may intervene in an action against her intestate to have a judgment against him vacated and thus to obtain the release of property seized on execution. Jefferson County Bank v. Robbins, 67 W 68, 29 NW 209.

On an appeal by a special administrator, a general administrator, subsequently appointed, will, on motion, be substituted as appellant. Estate of McLean, 219 W 222, 262 NW 707.

311.10 History: 1887 c. 195; Ann. Stats. 1889 s. 3813a; Stats. 1898 s. 3813a; 1903 c. 85; Supl. 1906 s. 3813a; 1907 c. 660; 1913 c. 627; 1913 c. 773 s. 63; 1925 c. 4; Stats. 1925 s. 311.10; 1931 c. 75; Sup. Ct. Order, 212 W xxvi; 1945 c. 509; 1953 c. 300; 1969 c. 339.

Where it did not appear that a decedent left no debts or that final judgment in her estate had been rendered, the county court had no jurisdiction under 311.10 (1), Stats. 1941, to appoint a special administrator to settle the account of the decedent as guardian of an incompetent, and judgment purporting to settle the account of the deceased guardian as presented by such special administrator is accordingly reversed on the appeal of the surety of the deceased guardian. Guardianship of Rundle, 245 W 274, 13 NW (2d) 921.

311.11 History: R. S. 1849 c. 68 s. 15; R. S. 1858 c. 99 s. 15; R. S. 1878 s. 3814; Stats. 1898 s. 3814; 1925 c. 4; Stats. 1925 s. 311.11; 1969 c. 339.

If the record shows that the executor or former administrator has not ceased to be such, an appointment of an administrator de bonis non is void. The order of license following a petition alleging that petitioner is administrator is not conclusive, since the record shows the defect. Frederick v. Pacquette, 19 W 541.

Grant of administration, with prior administration in force, is void. Chase v. Ross, 36 W 267.

In the absence of anything in the record to the contrary it is presumed that reason existed for the appointment of an administrator. Oakes v. Estate of Buckley, 49 W 592, 6 NW 321.

An administrator de bonis non may maintain an action in the circuit court to recover unadministered assets, possession of which was taken and retained by defendant after the executor's death. Meyer v. Garthwaite, 92 W 571, 66 NW 704.

A proceeding by the widow of a deceased administrator for appointment as administratrix of his decedent's estate must be deemed a proceeding under sec. 311.11, Stats. 1925, for the appointment of an administrator de bonis non. Estate of Fink, 191 W 349, 210 NW 834.

311.12 History: R. S. 1849 c. 68 s. 16; R. S. 1858 c. 99 s. 16; R. S. 1878 s. 3815; Stats. 1898 s. 3815; 1925 c. 4; Stats. 1925 s. 311.12; 1969 c. 339.

An order appointing an administrator, and necessarily finding intestacy, did not bar the probate of a will subsequently presented, although the time for appeal from such order had expired. Estate of Yahn, 258 W 280, 45 NW (2d) 702.

Sec. 311.12, Stats. 1955, authorizing the county court to revoke letters of administration where a will of the deceased is duly approved and allowed by the court, does not preclude such court from revoking letters of administration in all other situations, the authority of the court to revoke letters of administration being inherent to the general powers of the court. Estate of Eannelli, 274 W 193, 80 NW (2d) 240.

Where a will is found after administration proceedings have been commenced for the administration of the estate of a decedent as an intestate, the will must be presented to the county court in which the administration is pending. Estate of Hertzfeld, 10 W (2d) 333, 102 NW (2d) 838.

311.13 History: R. S. 1849 c. 68 s. 17; R. S. 1858 c. 99 s. 17; R. S. 1878 s. 3816; Stats. 1898 s. 3816; 1925 c. 4; Stats. 1925 s. 311.13; 1969 c. 339.

311.14 History: R. S. 1849 c. 68 s. 18; R. S. 1858 c. 99 s. 18; R. S. 1878 s. 3817; Stats. 1898 s. 3817; 1925 c. 4; Stats. 1925 s. 311.14; 1969 c. 339.

Various sections of the statutes relative to the revocation of letters of administration upon the presentation of a will serve to protect a bona fide purchaser of property who relies upon the official acts of a court having jurisdiction of the subject matter. Simpson v. Cornish, 196 W 125, 218 NW 193.

Where an administratrix whose letters were revoked because improperly issued was personally interested in a matter in dispute between 2 groups of heirs, she should not be allowed attorneys' fees and disbursements in liquidating such matter. The amount of compensation to her for services is within the discretion of the county court. Estate of Eannelli, 274 W 193, 80 NW (2d) 240.

311.16 History: R. S. 1878 s. 3819; 1887 c. 320; 1889 c. 70; Ann. Stats. 1889 s. 3819; Stats. 1898 s. 3819; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 311.16; 1933 c. 190 s. 8; 1947 c. 150; 1969 c. 339.

Where the next of kin nominates a suitable person for administrator, the public administrator can only administer the estate until such nomination. Welsh v. Manwaring, 120 W 377, 98 NW 214.

Where the county court makes an appointment under sec. 3819, Stats. 1898, it is not open to collateral attack for want of jurisdiction under claim that the intestate left no estate in Wisconsin. Jordan v. Chicago & Northwestern R. Co. 125 W 581, 104 NW 803.

Under P. & L. Laws 1870, ch. 120, and P. & L. Laws 1871, ch. 471, a public administrator may cite and examine the governor of the Soldiers' Home at Milwaukee. Mallory v. Wheeler, 151 W 136, 138 NW 97.

CHAPTER 312.

Inventory and Collection of Effects.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 312 through 1969, including the effects of chapters 283, 339, and 411, Laws 1969. Sections 312.03, 312.08 and 312.11, in amended forms, are being redesignated as sections of ch. 319, on guardians and wards, the effective date being July 1, 1971. Various other provisions of ch. 312 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.

312.01 History: R. S. 1849 c. 69 s. 1 to 5; R. S. 1858 c. 100 s. 1, 2, 4, 5; R. S. 1878 s. 3821; Stats. 1898 s. 3821; 1903 c. 139 s. 1; Supl. 1906 s. 3821; 1919 c. 679 s. 100; 1925 c. 4; Stats. 1925 s. 312.01; 1929 c. 516 s. 13; Sup. Ct. Order, 212 W xxvi; 1953 c. 300; 1959 c. 267, 415; 1959 c. 660 s. 74; 1969 c. 339.

Revisor's Note, 1959: No change has been made in the language created by chapters 267 and 415. The only purpose of this section is to preserve (1), (2) and (3) as created by chapter 267, renumber (2) as created by chapter 415 to be (4) and repel any implication that chapter 415 restores the old language that chapter 267 had already repealed and recreated. [Bill 669-S]

If the deceased was an adverse possessor of land claiming title, though having no paper title, his right is real property. Bates v. Campbell, 25 W 613.

The failure to file an inventory within 3 months is a breach of the bond, upon which action lies by the county judge on behalf of a creditor. Johannes v. Youngs, 45 W 445.

The fact that an executor has included in the inventory notes or other claims against himself does not estop him to deny his indebtedness thereon or authorize a court to treat such claims as moneys in his hands which he may be summarily required to pay over. Lynch v. Divan, 66 W 490, 29 NW 213.

Tax certificates are real property, and pass to the heirs. Madler v. Kersten, 170 W 424, 175 NW 779.

The values established by an appraisal of an estate pursuant to sec. 3821, Stats. 1919, for all purposes of administration and distribution prevail for such purposes over any special appraisement for income tax purposes. Will of Matthews, 174 W 220, 182 NW 744.

That the administrator inventoried certain cattle as property of the estate was not conclusive against her subsequent claim of ownership of one-half. An inventory is not conclusive, but is merely presumptive evidence of facts therein stated. In re Langenbach's Estate, 201 W 336, 230 NW 141.

As to a note payable to the husband only but purchased with joint funds, the remedy of the wife was to file a claim against his estate, not to petition to strike the note from the inventory. As to notes and mortgages running to husband and wife jointly, the wife properly petitioned to strike such items from the inventory instead of filing a claim against