299.25 History: 1961 c. 519, 643; Stats. 1961 s. 299.25; 1965 c. 560 s. 7 (2); 1967 c. 201; 1969 c. 125, 284.

299.255 History: 1963 c. 37; Stats. 1963 s. 299.255.

299.26 History: 1961 c. 519; Stats. 1961 s. 299.26; 1963 c. 407.

299.27 History: 1961 c. 519; Stats. 1961 s. 299.27; 1969 c. 284.

299.28 History: 1961 c. 519; Stats. 1961 s. 299.28; 1963 c. 407.

299.29 History: 1963 c. 407; Stats. 1963 s. 299.29.

299.30 History: 1961 c. 519; Stats. 1961 s. 299.30; 1963 c. 407; 1969 c. 125, 284, 392, 411.

See note to 274.09, on jurisdiction on appeal, citing Milwaukee County v. Caldwell, 31 W (2d) 286, 143 NW (2d) 41.

See note to 66.12, citing Milwaukee v. Trzesniewski, 35 W (2d) 487, 151 NW (2d) 109.

299.31 History: 1961 c. 519; Stats. 1961 s. 299.31.

299.40 History: 1969 c. 284; Stats. 1969 s. 299.40.

299.41 History: 1969 c. 284; Stats. 1969 s. 299.41.

299.42 History: 1969 c. 284; Stats. 1969 s. 299.42.

299.43 History: 1969 c. 284; Stats. 1969 s. 299.43.

299.44 History: 1969 c. 284; Stats. 1969 s. 299.44.

299.45 History: 1969 c. 284; Stats. 1969 s. 299.45.

CHAPTER 300.

Municipal Court Procedure.

300.01 History: 1945 c. 441; Stats. 1945 s. 300.001; 1965 c. 617; 1967 c. 276 s. 39; 1969 c. 87; Stats. 1969 s. 300.01.

300.02 History: R. S. 1849 c. 88 s. 14; R. S. 1858 c. 120 s. 14; R. S. 1878 s. 3593; Stats. 1898 s. 3593; 1925 c. 4; Stats. 1925 s. 301.01; 1935 c. 273; 1945 c. 441; 1969 c. 87 ss. 64, 65; Stats. 1969 s. 300.02.

Jurisdiction over defendants who were served with process or who appeared is not lost by rendering a default judgment against one who was not served and who did not appear. French v. Ferguson, 77 W 121, 45 NW 817.

It is the fact of service of the summons, not the proof of such service, that gives jurisdiction. Even after attack by certiorari the return may be amended to show the fact. De Laval S. Co. v. Hofberger, 161 W 344, 154 NW 387.

300.03 History: 1969 c. 87; Stats. 1969 s. 300.03.

Legislative Council Note, 1969: (1) and (2) are based in part upon present s. 960.09, but are more detailed to insure that defendant is informed of his rights before being required to plead. The explanation of the possible penalities is somewhat analogous to the requirement in criminal cases as stated in *State v. Strickland*, 27 Wis. (2d) 623. Sub. (3) permits the justice to act immediately on pleas of guilty or no contest. Sub. (4) requires the justice to inform the defendant of his right to jury trial and set the date of the trial when the plea is not guilty; it also allows immediate trial. Sub. (5) specifies the requirements of bail. (Bill 9-A)

300.04 History: 1969 c. 87; Stats. 1969 s. 300.04.

Legislative Council Note, 1969: This new procedure provides for transfer of a case to county court when a jury trial is requested. There are no jury trials in municipal court under this bill. (Bill 9-A)

300.05 History: 1969 c. 87, 255, 392; Stats. 1969 s. 300.05.

Legislative Council Note, 1969: This section replaces present ss. 301.24 and 301.245 and adopts an affidavit of prejudice similar to that used in courts of record. Fees are similar to those in present s. 301.245. (Bill 9-A)

Editor's Note: On removal of cases from justice courts to other courts, see notes of decisions under 301.24 in Wis. Annotations, 1960.

300.055 History: 1969 c. 87; Stats. 1969 s. 300.055.

Editor's Note: This section is similar to 301.045, Stats. 1959, which was construed in State ex rel. Mitchell v. Superior Court, 14 W (2d) 77, 109 NW (2d) 522. See also: 39 Atty. Gen. 268, 39 Atty. Gen. 613, and 43 Atty. Gen. 319.

300.06 History: 1969 c. 87; Stats. 1969 s. 300.06.

Legislative Council Note, 1969: Sub. (1) is similar to present s. 960.11, which is repealed. Sub. (2) is similar to the present s. 66.114 (2), which is not repealed. (Bill 9-A)

300.07 History: 1969 c. 87; Stats. 1969 s. 300.07.

Legislative Council Note, 1969: This section is similar to s. 302.21. (Bill 9-A)

300.08 History: 1969 c. 87, 331; Stats. 1969 s. 300.08.

Legislative Council Note, 1969: This section is substantially similar to s. 254.09 except that commitment is in a jail in the county where the cause of action arose instead of in the county in which the offense was tried. Persons committed may be allowed to work under the Huber Act and the justice may stay execution for up to 30 days in order for a person to pay the forfeiture. (Bill 9-A)

300.09 History: 1969 c. 87; Stats. 1969 s. 300.09.

Legislative Council Note, 1969: This section adopts the procedure for execution used in courts of record. (Bill 9-A)

300.10 History: 1969 c. 87; Stats. 1969 s. 300.10.

Legislative Council Note, 1969: This section is based on s. 66.12 (2) specifying the appeal procedure from municipal court. Sub. (2) provides for an appeal bond. Sub. (5) provides for a trial de novo on appeal. The costs and fees for appeal are specified in s. 300.23. (Bill 9-A)

On jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03.

300.11 History: R. S. 1849 c. 88 s. 11; R. S. 1858 c. 120 s. 11; R. S. 1878 s. 3574; Stats. 1898 s. 3574; 1925 c. 4; Stats. 1925 s. 300.07; Sup. Ct. Order, 214 W vii; Sup. Ct. Order, 217 W x; 1945 c. 441; 1969 c. 87; 1969 c. 331; Stats. 1969 s. 300.11.

Comment of Advisory Committee, 1945: "Action" is used throughout this bill, rather than "case," "cause," or "suit." * * * The addition to (6) is from 302.09. There are many scattered provisions relating to docket entries. It seems impractical to move them all to 300.07 * * * . (18) is new. Many have complained of the amazing ease with which jurisdiction is lost in justice court by reason of some minor technical defect. New (18) will tend to correct that situation, as far as docket entries are concerned. New (10a) is from 300.13. (Bill 193-S)

Legislative Council Note, 1969: The docket entries required under this section are substantially similar to applicable entries required under present s. 300.07. (Bill 9-A)

A statement in the return that parties "appeared," in the absence of qualification, is taken to be a general appearance. Cron v. Krones, 17 W 401.

A docket may be put in evidence to prove a judgment without previous oral proof that it contains a record thereof. Selsby v. Redlon, 19 W 17.

It is not necessary that the docket show county or town in which court was held or that it was held at the time and place appointed in the summons, or at what hour suit was called and judgment rendered. Bacon v. Bassett, 19 W 45.

The provision that the justice enter in his docket the return of the officer is directory merely. Bacon v. Bassett, 19 W 45.

Judgment will not be reversed on certiorari because the docket does not show that security was filed although an order was filed requiring it to be given. Taylor v. Wilkinson, 22 W 40.

Jurisdiction was not lost by a docket entry that cause was adjourned to a specified day "at 10 o'clock A.P." instead of A.M. Taylor v. Wilkinson, 22 W 40.

The following entry was a valid judgment: "The court is of the opinion that the plaintiff has no cause of action. Judgment against the plaintiff for costs of suit. Costs, 13.31." Nett v. Serwe, 28 W 663.

The requirement that the justice state in his docket the fees due to each person separately is directory. Nett v. Serwe, 28 W 663.

Failure to enter a brief statement of the nature of the complaint was not fatal to jurisdiction. Coffee v. Chippewa Falls, 36 W 121.

A statement in the docket that the plaintiff, on return day of the writ, introduced an affidavit on which warrant of attachment was issued as his complaint, had the same effect as if it had been copied into docket as complaint. Ruthe v. Green Bay & M. R. Co. 37 W 344.

Where the record shows that the cause was adjourned to justice's office and that at the time specified he called the cause, without stating where, the presumption is that it was called at his office. Cassidy v. Millerick, 52 W 379, 9 NW 165.

Where the summons and pleadings show names of all the parties judgment will not be reversed because docket entry, after giving the name of one plaintiff, designated the others as "et al." Campbell v. Babbitts, 53 W 276, 10 NW 400.

Where the case was adjourned to 3 o'clock but was called at 2 o'clock, the plaintiffs appeared at 3 o'clock, filed proof of publication and asked leave to amend their complaint, and the docket recites "whereupon judgment is hereby rendered," this "whereupon" may mean at 4 o'clock. Every reasonable intendment should be made in support of the proceedings. Storm v. Adams, 56 W 137, 14 NW 69.

It is not required that the exact hour of calling the case should be entered. When the docket shows that the case was called on the return day it will be presumed that it was called at the hour specified in the process. Driscoll v. Smith, 59 W 38, 17 NW 876.

Where adjournment is by agreement to a stated day, failure in making entry thereof to state the year does not affect jurisdiction, as the current year will be understood to have been intended. Stromberg v. Esterly, 62 W 632, 22 NW 864.

Mandamus will issue to compel a justice to make entries in his docket according to the facts; but entries made therein import verity and the writ will not lie to compel him to enter therein a statement contrary to what is already shown thereby. State ex rel. Green v. Van Ells, 69 W 19, 32 NW 32.

A recess was taken at 2 o'clock P. M. until 10 o'clock A. M. of the following day, on account of the illness of the justice. This was not an adjournment. French v. Ferguson, 77 W 121, 45 NW 817.

An adjournment was implied from the following docket entry: "Defendant appeared personally and asked for an adjournment of one week, until the 27th day of April, at 1 o'clock P. M. at this, my office, Ashland, Ashland county, Wis." Johnson v. Iron B. M. Co. 78 W 159, 47 NW 363.

Prior to the amendment effective Jan. 1, 1936, the failure of a justice to enter on his docket the time and place to which a criminal case is adjourned makes the imprisonment of the accused after such adjournment unlawful. If the loss of jurisdiction can be waived by an appearance it must be voluntarily made. An appearance to avoid default on a bond and the loss of money deposited as security is not voluntary. Brosde v. Sanderson, 86 W 368, 57 NW 49.

If the docket does not show the nature of the action or of the plaintiff's claim or that there were any pleadings, and nothing in the

return to a certiorari gives any information in respect thereto, the judgment of the justice will be reversed. Jones v. Hunt, 90 W 199, 63 NW 81.

It is not essential to the jurisdiction of the justice in case of the adjournment that the docket shall show that the adjournment was for cause or the cause of the adjournment. State ex rel. Dearborn v. Merrick, 101 W 162, 77 NW 719.

There is no requirement that the justice sign entries in his docket. It is the better practice for him to do so but the absence of a signature will not affect the jurisdiction. Fulton v. Meiners, 103 W 238, 79 NW 234.

Prior to 1945, the facts essential to jurisdiction must appear wholly from the docket entries. The appellate court cannot consider either a supplemental return of matters wholly outside the record or the evidence returned by him. Crate v. Pettepher, 112 W 252, 87 NW 1104.

The word "adjournment" excludes necessary intermissions for the purpose of obtaining food and sleep which are not subject to the requirement that they be entered upon the docket with particularity. State ex rel. Dunlap v. Nohl, 113 W 15, 88 NW 1004.

An entry in the docket "summons returned and filed showing personal service" showed a personal service on the defendant; also entry that the attorney for the plaintiff appears and files a written complaint and proof of debt was held sufficient. Sullivan v. Miles, 117 W 576, 94 NW 298.

The justice's docket need show only the matters required by statute. McGheehan v. Bedford, 128 W 167, 107 NW 296.

A loss of jurisdiction by an illegal adjournment is cured by the appearance of the parties on the adjourned day and proceeding to trial. Christopher v. Jerdee, 152 W 367, 139 NW 1132.

Prior to the amendment effective Jan. 1, 1936, failure of a justice of the peace to enter in his docket the place to which an adjournment of an action is taken resulted in a loss of jurisdiction. Shefelker v. First Nat. Bank, 207 W 510, 242 NW 137.

The entries of justices of the peace in their dockets, which, in effect, finally determine the issue involved, should be treated as judgments regardless of their form. Diehl v. Heimann, 248 W 17, 20 NW (2d) 556.

300.12 History: 1969 c. 87; Stats. 1969 s. 300.12.

Legislative Council Note, 1969: This section states the minimum requirements for the transcript of a municipal court judgment. (Bill 9-A)

Editor's Note: In connection with this section see Duecker v. Goeres, 104 W 29, 80 NW 91.

300.13 History: R. S. 1849 c. 88 s. 249; R. S. 1858 c. 120 s. 219; R. S. 1878 s. 3575; Stats. 1898 s. 3575; 1925 c. 4; Stats. 1925 s. 300.08; 1945 c. 441; 1969 c. 87 s. 64; Stats. 1969 s. 300.13.

Legislative Council Note, 1969: This is a restatement of s. 300.08. (Bill 9-A)

300.14 History: 1969 c. 87; Stats. 1969 s. 300.14.

Legislative Council Note, 1969: Since criminal jurisdiction of the municipal court is removed by this bill along with the need to report fines, contempt penalties are to be enacted by ordinance so that the penalties need not be reported to the state. (Bill 9-A)

300.15 History: R. S. 1849 c. 88 s. 251, 252; R. S. 1858 c. 120 s. 221, 222; R. S. 1878 s. 3577; Stats. 1898 s. 3577; 1925 c. 4; Stats. 1925 s. 300.11; 1945 c. 441; 1969 c. 87; Stats. 1969 s. 300.15.

Legislative Council Note, 1969: This is a restatement of s. 300.11. (Bill 9-A)

300.16 History: 1945 c. 441; Stats. 1945 s. 300.30; 1967 c. 276 s. 40; 1969 c. 87; Stats. 1969 s. 300.16.

Comment of Advisory Committee, 1945: 300.30 is an adaptation to justice courts of the part of 269.52 which provides that where a plaintiff has mistaken his court or his remedy he shall not be summarily dismissed but his action shall be transferred to the proper court. It seems reasonable and just that when parties have tried their dispute in justice court and the action has been appealed to the circuit court, and the subject of the action is within the jurisdiction of the circuit court, the action should not be dismissed by the circuit court or the supreme court on the mere technicality that the justice did not have jurisdiction. Section 269.52 is modern. It was created in 1915 by ch. 219 and has proved its worth in many cases; see annotations. (Bill 193-S)

Legislative Council Note, 1969: This section is a restatement of present s. 300.30. (Bill 9-A)

300.17 History: 1969 c. 87; Stats. 1969 s. 300.17.

Legislative Council Note, 1969: This section is substantially the same as s. 960.03, which is repealed. (Bill 9-A)

300.18 History: 1969 c. 87, 255; Stats. 1969 s. 300.18.

Legislative Council Note, 1969: Sub. (1). The power of the municipal justice to issue warrants is continued because of the availability of the justice in areas where a judge or a court commissioner may not be available. However, because the municipal justice will not have criminal jurisdiction, it is felt that the warrants should be returnable before courts of record.

Sub. (2). If a municipal justice has been given special authorization by a county judge, he may, where a judge is not available, set bail and appoint an attorney for an indigent defendant. The exception applies only to criminal warrants issued by the justice and his action is reviewable by a judge of a court of record. (Bill 9-A)

Editor's Note: The above legislative council note was written before the enactment of ch. 255, Laws 1969.

300.19 History: 1969 c. 87; Stats. 1969 s. 300.19.

Legislative Council Note, 1969: With the limited jurisdiction proposed by this bill, actions in municipal court will be civil actions, but of a psuedo criminal type. Presently,

warrants in courts of record in criminal proceedings are issued in accordance with forms prescribed for the municipal justice in ch. 960. (Bill 9-A)

Editor's Note: The above legislative council note was written before the enactment of ch. 255, Laws 1969.

300.20 History: 1969 c. 87; Stats. 1969 s. 300.20.

Legislative Council Note, 1969: This section adopts the same cost and fee structure as in state forfeiture actions and small claims court. Sub. (3) restates present law. (Bill 9-A)

300.21 History: 1969 c. 87; Stats. 1969 s. 300.21.

Legislative Council Note, 1969: This section is similar to present s. 960.34 which is repealed by this bill. (Bill 9-A)

Editor's Note: A predecessor statute (360.34, Stats. 1939) was construed by the attorney general in an opinion published in 29 Atty. Gen. 371.

300.22 History: 1969 c. 87; Stats. 1969 s. 300.22.

CHAPTER 310.

Probate of Wills.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 310 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 310 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.

310.01 History: R. S. 1849 c. 66 s. 12, 13; R. S. 1858 c. 97 s. 12, 13; R. S. 1878 s. 3784; Stats. 1898 s. 3784; 1925 c. 4; Stats. 1925 s. 310.01; Sup. Ct. Order, 212 W xxiii; 1969 c. 339.

310.02 History: R. S. 1849 c. 66 s. 14, 15; R. S. 1858 c. 97 s. 14 to 16; R. S. 1878 s. 3785; Stats. 1898 s. 3785; 1925 c. 4; Stats. 1925 s. 310.02; Sup. Ct. Order, 212 W xxiv; 1969 c. 339.

310.03 History: R. S. 1849 c. 66 s. 17; R. S. 1858 c. 97 s. 17; R. S. 1878 s. 3786; Stats. 1898 s. 3786; 1925 c. 4; Stats. 1925 s. 310.03; 1933 c. 190 s. 1; 1969 c. 339.

See note to 310.031, citing Will of Rice, 150 W 401, 136 NW 956.

On an appeal from a judgment on the probate of wills executed by the surviving maker of an unprobated joint will, executed by her and her husband, where it appears that knowledge of the execution and the contents of the unprobated joint will came to the county court and to counsel for the proponents and the contestants, and the record discloses no reason for the failure to probate, and where it also appears that after the death of the husband there was a conference of the parties in interest, followed by the administration of the husband's estate as an intestate estate, the supreme court must presume that there was sufficient reason for not probating the joint will. Will of Faulks, 246 W 319, 17 NW (2d) 423.

310.031 History: R. S. 1849 c. 66 s. 15, 16; R. S. 1858 c. 97 s. 16, 17; R. S. 1878 s. 4505; Stats. 1898 s. 4505; 1925 c. 4; Stats. 1925 s. 346.58; 1955 c. 696 s. 191; Stats. 1955 s. 310.031; 1969 c. 339.

Sec. 4505, Stats. 1898, establishes a public policy requiring the establishment of every valid will even though all the parties interested consent to disregard its provisions. Will of Rice, 150 W 401, 136 NW 956, 137 NW 778.

310.04 History: R. S. 1849 c. 66 s. 18; R. S. 1858 c. 97 s. 18; R. S. 1878 s. 3787; Stats. 1898 s. 3787; 1925 c. 4; Stats. 1925 s. 310.04; Sup. Ct. Order, 212 W xxiv; Sup. Ct. Order, 232 W vii; 1959 c. 290; 1969 c. 339.

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

"Probate courts are authorized by our constitution, and by statute are given broad jurisdiction in respect to the administration of estates, and that jurisdiction attaches when invoked by the proper person, by filing a petition for administration setting up the essential facts." Estate of Walter, 183 W 540, 543, 198 NW 375, 376.

310.045 History: Court Rule II part; Sup. Ct. Order, 212 W xxiv; Stats. 1933 s. 310.045; Sup. Ct. Order, 241 W vi; Sup. Ct. Order, 258 W vi; Sup. Ct. Order, 262 W x; 1965 c. 295; 1969 c. 339.

Comment of Judicial Council, 1952: The 1952 amendment eliminates the necessity of showing names and post-office addresses of persons interested if the petition is for a statutory certificate or for an ex parte order in proceedings already pending. These matters do not require notice and the reason for showing names and post-office addresses on petitions is to advise the court as to what persons are entitled to notice and the addresses of such persons. The last sentence is taken in part from section 12 of the Model Probate Code. It is important during the early stages of operation under the new rule to avoid unfortunate loss of jurisdiction through defects. [Re Order effective May 1, 1953]

See note to 318.06, citing Estate of Steuber, 270 W 426, 71 NW (2d) 272.

Petitioner, a sister of testator, who was not an heir or named in the will, could petition for probate of the will where alterations in the will could be construed as making her a beneficiary if the alterations did not have the effect of revoking the will. Estate of Helgert, 29 W (2d) 452, 139 NW (2d) 81.

Implications of the Helgert case. 50 MLR 153.

310.05 History: 1905 c. 336 s. 1; Supl. 1906 s. 3787a; 1911 c. 663 s. 444; 1925 c. 4; Stats. 1925 s. 310.05; 1929 c. 155; 1947 c. 150; 1969 c. 339.

Where the will was on file in the county court at the time a waiver of notice of hearing of application for probate was presented, the court had jurisdiction over the parties, under (1), at the time the will was admitted to probate, although they had signed the