232.19 History: 1965 c. 52; Stats. 1965 s. 232.19; 1969 c. 334.

232.21 History: 1965 c. 52; Stats. 1965 s. 232.21; 1969 c. 334.

CHAPTER 233.

Dower and Curtesy.

233.01 History: R. S. 1849 c. 62 s. 1; R. S. 1858 c. 89 s. 1; R. S. 1878 s. 2159; Stats. 1898 s. 2159; 1921 c. 99; 1925 c. 4; Stats. 1925 s. 233.01; 1959 c. 268; 1969 c. 339.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 233 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 233 are restated in a new probate code, effective April, 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.

A divorce cuts off the right of dower. Burdick v. Briggs, 11 W 126.

An inchoate right of dower is such an interest in land as will enable the wife to maintain an action to establish it and remove a cloud fraudulently attempted to be created upon it. A wife acquires, on marriage, an inchoate right of dower in lands of her husband which cannot be defeated by an oral agreement for their sale entered into before marriage. Madigan v. Walsh, 22 W 501.

The general presumption that a widow is entitled to dower in all land of which her husband was seized at any time during marriage would prevail against one claiming under a foreclosure of the husband's mortgage, unless it should appear that the mortgage was executed by her or was given before her marriage or was for purchase money of land. Foster v. Hickox, 38 W 408.

The receipt of an allowance out of the personal estate of the husband pending administration does not impair the right of dower, which includes one-third of the rents and profits accruing between his death and assignment of dower from the real estate to which such dower right attaches. Where the estate is solvent, the extent of the dower undisputed and the administrator has in his hands rents accruing from the real estate he may be directed to pay the widow her one-third thereof before dower is assigned. Farnsworth v. Cole, 42 W 403.

The acceptance by a wife of a deed to the fee merges her inchoate right of dower in the fee. Scheuer v. Chloupek, 130 W 72, 109 NW 1035.

Where a wife joins her husband in a deed of his land, which deed is fraudulent and void as to creditors, her right to dower is revived as against such creditors or their assigns when such deed is set aside. The fact that the wife participated in the fraud does not change this rule. Huntzicker v. Crocker, 135 W 38, 115 NW 340.

Where a husband had only a contract right to purchase property and before he acquired the title made a contract to convey, such latter contract could be specifically enforced without reference to any dower rights of the wife. Inglis v. Fohey, 136 W 28, 116 NW 851.

A devisee who, under the will, took a vested remainder in fee in land of the testator, subject only to a life estate and to a subsequent trust limited to 10 years, and who died after the life estate had ended, was during his life "seised of an estate of inheritance" within the meaning of sec. 2159, Stats. 1898, and such estate being a legal estate as against all persons except the trustees, whose term was for years only, his widow was entitled to dower. Will of Prasser, 140 W 92, 121 NW 643.

The facts were sufficient to estop a wife from claiming dower in lands conveyed by her husband after a pretended divorce and remarriage. H. W. Wright L. Co. v. McCord, 145 W 93, 128 NW 873.

The widow and heirs of a decedent are tenants in common until the assignment of dower, and prior to such assignment the widow has no vested freehold estate. Estate of Johnson, 175 W 248, 185 NW 180.

A wife's inchoate right of dower is a valuable right, and a release of it was a valid consideration, to the extent of such value, for a mortgage executed to the wife for the purchase price of her husband's land when she knew that the conveyance of the land rendered him insolvent. Share v. Trickle, 183 W 1, 197 NW 329.

The widow's dower and homestead rights, which came to her on the decedent's death, could not be used by the tortfeasor to offset the widow's pecuniary damages caused by the death. Schmutzler v. Brandenberg, 240 W 6, 1 NW (2d) 775.

The widow's interest in the homestead should be denominated in a judgment of the county court as "homestead rights," and not as a "life interest," since it would be extinguished if she should remarry. Will of Uihlein, 264 W 362, 59 NW (2d) 641.

Where the husband had only a contractual right based on his individual interest in a land contract signed by him as purchaser but not signed by his wife, and he was in default, she had no interest arising out of her rights in dower or otherwise. Olsen v. Ortell, 264 W 468, 59 NW (2d) 473.

A lien for federal income tax claimed due from a deceased husband cannot affect the widow's dower interest in real property. United States v. Ettelson, 67 F Supp. 257.

233.02 History: R. S. 1849 c. 62 s. 21; R. S. 1858 c. 89 s. 21; R. S. 1878 s. 2160; Stats. 1898 s. 2160; 1925 c. 4; Stats. 1925 s. 233.02; 1969 c. 339.

The language of sec. 2160, Stats. 1898, "residing out of this state" refers, not to the time of the husband's death, but to the time of conveyance of the land by him without her signature. She may be "residing out of this state" even though her husband be a resident of Wisconsin. Ekergren v. Marcotte, 159 W 539, 150 NW 969.

233.03 History: R. S. 1849 c. 62 s. 2; R. S. 1858 c. 89 s. 2; R. S. 1878 s. 2161; Stats. 1898 s. 2161; 1925 c. 4; Stats. 1925 s. 233.03; 1969 c. 339.

233.04 History: R. S. 1849 c. 62 s. 3; R. S. 1858 c. 89 s. 3; R. S. 1878 s. 2162; Stats. 1898 s. 2162; 1925 c. 4; Stats. 1925 s. 233.04; 1969 c. 339.

233.05 History: R. S. 1849 c. 62 s. 4; R. S. 1858 c. 89 s. 4; R. S. 1878 s. 2163; Stats. 1898 s. 2163; 1925 c. 4; Stats. 1925 s. 233.05; 1947 c. 74; 1969 c. 339.

Sec. 2163, R. S. 1878, embraces purchase money furnished by another and secured by a mortgage on the land purchased, as well as purchase money owing by the purchaser directly to the vendor and secured by a mortgage. Jones v. Parker, 51 W 218, 8 NW 124.

233.06 History: R. S. 1849 c. 62 s. 5; R. S. 1858 c. 89 s. 5; R. S. 1878 s. 2164; Stats. 1898 s. 2164; 1923 c. 231 s. 3; 1925 c. 4; Stats. 1925 s. 233.06; 1969 c. 339.

In case of sale the right of dower would attach only to the surplus. Thompson v. Lyman, 28 W 266.

The wife is a necessary party to the foreclosure of the husband's mortgage in which she joins. When the wife is not a party to the foreclosure proceedings she is not concluded by the decree from asserting her right to dower. Foster v. Hickox, 38 W 408.

Where the grantee in a conveyance by defendant's husband, made just prior to her marriage and in fraud of her dower rights, brought an action to quiet title and bar the claim for dower, and defendant by counterclaim asked to have the conveyance set aside and to recover dower and damages for withholding it, the court might render a money judgment against plaintiff for damages for withholding dower and might also, with defendant's consent, allow a gross sum in lieu of dower. Jones v. Jones, 71 W 513, 38 NW 88.

233.07 History: R. S. 1849 c. 62 s. 6; R. S. 1858 c. 89 s. 6; R. S. 1878 s. 2165; Stats. 1898 s. 2165; 1925 c. 4; Stats. 1925 s. 233.07; 1969 c. 339.

233.08 History: R. S. 1849 c. 62 s. 7; R. S. 1858 c. 89 s. 7; R. S. 1878 s. 2166; Stats. 1898 s. 2166; 1925 c. 4; Stats. 1925 s. 233.08; 1969 c. 339.

233.09 History: R. S. 1849 c. 62 s. 14; R. S. 1858 c. 89 s. 14; R. S. 1878 s. 2167; Stats. 1898 s. 2167; 1925 c. 4; Stats. 1925 s. 233.09; 1969 c. 339.

The right to make a valid antenuptial agreement settling property matters existed before secs. 2167-2171 were enacted and was not taken away by them. Such an agreement is distinct from the legal jointure provided for in sec. 2167. Bibelhausen v. Bibelhausen, 159 W 365, 150 NW 516.

See note to 246.15, citing Estate of Cortte, 230 W 103, 283 NW 336, and Estate of Nickolay, 249 W 571, 25 NW (2d) 451.

233.10 History: R. S. 1849 c. 62 s. 15; R. S. 1858 c. 89 s. 15; R. S. 1878 s. 2168; Stats. 1898 s. 2168; 1925 c. 4; Stats. 1925 s. 233.10; 1969 c. 339.

233.11 History: R. S. 1849 c. 62 s. 16; R. S. 1858 c. 89 s. 16; R. S. 1878 s. 2169; Stats. 1898 s. 2169; 1925 c. 4; Stats. 1925 s. 233.11; 1969 c. 339.

The "pecuniary provision" specified in sec. 2169 does not require that there be an adequate provision for support of the wife after the husband's death. Anything of value satisfies the technical requirement. Bibelhausen Bibelhausen, 159 W 365, 150 NW 516.

Regardless of where a marriage is performed, the rights of the wife, in the absence of contract, with respect to her and her husband's personal property are governed by the law of the matrimonial domicile, and with respect to land, by the law of the situs. Where a man and wife were domiciled in Wisconsin, where an antenuptial agreement is valid, the wife was bound by the agreement so that her election to take by law instead of by will, which fulfilled the husband's obligations under the agreement, must be deemed ineffective unless the agreement was not controlling for other reasons. Estate of Knippel, 7 W (2d) 335, 96 NW (2d) 514.

Antenuptial agreements are to be construed the same as other contracts. Estate of Harris, 7 W (2d) 417, 96 NW (2d) 718.

233.12 History: R. S. 1849 c. 62 s. 17; R. S. 1858 c. 89 s. 17; 1877 c. 106 s. 1; R. S. 1878 s. 2170; Stats. 1898 s. 2170; 1925 c. 4; Stats. 1925 s. 233.12; 1969 c. 339.

An antenuptial agreement executed by the intended wife only, by which for a sufficient consideration she releases all future claims upon her intended husband's property or estate, including dower right, is not subject to an election by her after his death not to be bound thereby. The election under sec. 2170 contemplates a conveyance made by the intended husband and not assented to by the intended wife. Bibelhausen v. Bibelhausen, 159 W 365, 150 NW 516.

233.13 History: R. S. 1849 c. 62 s. 18; R. S. 1858 c. 89 s. 18; 1877 c. 106 s. 2; R. S. 1878 s. 2171; Stats. 1898 s. 2171; 1925 c. 4; Stats. 1925 s. 233.13; 1969 c. 339.

The following clause in a will made "provision" for the widow: "I direct my executors to bear constantly in mind the wants of my wife, and to set aside, use and expend whatever moneys may be necessary, consistently with her condition, to provide for her comfort and physical health; and I place no limit upon the sums which they may spend for the purposes indicated." Van Steenwyck v. Washburn, 59 W 483, 17 NW 289.

A notice of election by a widow not to take under her husband's will having been found in the office of the county court, duly filed therein as one of the papers belonging to the records of the court, the presumption is that it was properly filed. A will directed the segregation and investment of one-third of the testator's estate and gave the income thereof to the widow during her life. Before such segregation had been made the widow, at her request, received from the executor a small amount of money for her present support. She was not estopped to make such election. Beem v. Kimberley, 72 W 343, 39 NW 542.

A condition attached to a devise in trust that the devisee shall give a sufficient bond for the support of the testator's widow during her life, when followed by acceptance and filing of such bond, is a provision which deprived her of dower in the absence of regular proceedings for the assignment of dower to her. Turner v. Scheiber, 89 W 1, 61 NW 280.

Where a testator's realty, homestead and

a brewery property were heavily mortgaged and he owed large unsecured debts, and gave all his property to his widow, but expressed a desire that, if possible, she should continue his business and pay his debts out of the same, there was no intention manifested that she should take both under the will and at law. Melms v. Pabst Brew. Co. 93 W 140, 66 NW 244.

A widow's rights under a will bequeathing her an income sufficient to care for her during her lifetime were forfeited by her election not to take under the will but to take under the statute. Will of McIlhattan, 194 W 113, 216 NW 130.

If the widow makes no election she can take no part of the estate except the provision made by the will, whether such part be disposed of by the will or not. Chapman v. Chapman, 128 W 413, 107 NW 668.

Property devised or bequeathed to a widow who elects to take under the statute does not become intestate estate when the will contains a residuary clause. In such case the "residue" consists of what remains of the entire estate after deducting debts, specific legacies and the widow's share. Will of Reynolds, 151 W 375, 138 NW 1019.

Where a codicil to the will of the husband directed that the wife be limited to the provisions of the antenuptial agreement, made a part of the codicil by reference and physically attached thereto, the husband did not thereby make such "provision" for her in his will as to entitle her to election under 233.13. Estate of Koeffler, 215 W 115, 254 NW 363.

A provision in a will that it was the testator's request that his wife share in his estate as thereinafter provided "although I have entered into a prenuptial agreement," whereby the wife relinquished all dower and other rights in the husband's estate, favored the wife to the extent provided in the will, but did not amount to a waiver of the prenuptial agreement by the testator nor give to the wife the right to elect under 233.13 to take the statutory dower allowance in lieu of taking the provisions made for her by the will. Will of Paulson, 254 W 258, 36 NW (2d) 95.

The election of the widow not to take under the will has the same effect as her death, and accelerates the remainders so that the beneficiaries enter directly into the enjoyment thereof; but such rule does not apply if the terms of the trust expressly provide otherwise, since the intent of the testator must prevail. Will of Borchert, 259 W 361, 48 NW (2d) 496.

233.14 History: R. S. 1858 c. 89 s. 19; 1877 c. 106 s. 3; R. S. 1878 s. 2172; 1882 c. 265; 1893 c. 75; 1895 c. 123; Stats. 1898 s. 2172; 1925 c. 4; Stats. 1925 s. 233.14; 1969 c. 339.

The widow of a testator who within one year after his death files notice that she elects to take the provision made by law is entitled to the allowance out of household furniture and other personal property not disposed of by the will which is made by sec. 3935, R. S. 1878. Application of Wilber, 52 W 295, 9 NW 162.

The widow's right to elect the provision made for her by law in lieu of that by will cannot be taken from her either by the will or by deed of release executed to her husband during coverture. Wilber v. Wilber, 52 W 298, 9 NW 163.

A widow who could neither read nor write and who was more than 70 years old released all her interest in her husband's estate (after electing to take under the statute) for a consideration equal to a little more than one-fourth of her interest therein. The executors were residuary legatees of the testator and knew the value of the estate, but did not inform her. The deed executed by her in pursuance of such agreement was voidable and after she became insane her guardian ad litem might contest its validity. Leach v. Leach, 65 W 284, 26 NW 754.

If there is a deficiency of personal property to pay the legacies provided for in a will and their payment is charged upon the reversion or the remainder, the reversion in the homestead of the testator, which has been devised to his widow for life may be sold to make payment of the legacies. Will of Root, 81 W 263, 51 NW 435.

The right to elect is strictly personal and can be exercised by the widow alone, and although she die before the time for election has expired the right to elect dies with her. A delivery of a paper constituting her election to any person with instructions to file it in the proper court creates a mere agency which is terminated by the widow's death. Church v. McLaren, 85 W 122, 126, 55 NW 152.

The proviso limits and controls the preceding provision of the statute. The words "net personal estate" means so much of the testator's personal estate as was left after payment of debts, allowances and charges and all the expenses of administration, as well as those expenses which were made necessary in construing and executing the will as those which would have been incident to the administering of the estate had he died intestate. Ford v. Ford, 88 W 122, 132, 59 NW 464.

Failure to make election within the time prescribed limits the widow's rights to the provision made for her in the will. Graves v. Mitchell, 90 W 306, 63 NW 271.

A case for an election was presented, although a will gave all the testator's property to his widow, where if she took under the will the entire property would be consumed in the payment of mortgages and unsecured debts, but if she took under the law she would have a life estate in the homestead and a dower estate in the remaining lands free of claims for unsecured debts. Melms v. Pabst Brew. Co. 93 W 140, 66 NW 244.

Testator left his estate to trustees who were also executors in trust for his widow, making a provision for her of about one-fourth that of her dower right. The trustees on behalf of the heirs offered to increase her allowance making the provision for her equal to about one-half the value of her legal right. The widow relied upon statements made as to the value of the estate, which greatly undervalued it, and upon the good faith of the trustees in the matter. The trustees were trustees of the widow. While they did not owe her any duty to inform her of her legal rights as long as they made no effort to extinguish such right, when they approached

the widow with a proposition for a settlement it was their duty to disclose everything within their knowledge affecting her rights, hence she was entitled to maintain an action to set aside the settlement after the year limited by sec. 2172, Stats. 1898. Ludington v. Patton, 111 W 208, 86 NW 571.

The statutory provision for the widow under sec. 2172, Stats. 1898, must be deducted before the residue of the estate can be ascertained. In re Bradley's Will, 123 W 186, 101 NW 393.

A joint and several will executed by a husband and wife, giving the survivor the right to alter the provisions thereof, was not contractual so as to bar the surviving wife's right to elect to take under the law instead of under the will, even though some realty devised had been jointly owned, where there was no evidence that the wife received any property as consideration for joining in the will, and where the wife had accepted no benefits thereunder. Will of Sechler, 224 W 613, 272 NW 855.

The method prescribed by 233.14 is not the only way an election can be made. A widow who petitioned not only for a construction of her husband's will but specifically prayed for judgment determining to whom the deceased's property was to be distributed, thereby in legal effect contended that she could take under the provisions favorable to her and reject the balance. (Allen v. Boomer, 82 W 364, adhered to; Christman v. Christman, 163 W 433, distinguished.) Will of Schaech, 252 W 299, 31 NW (2d) 614. 33 NW (2d) 319.

Where the county court held that a widow was not required to elect, and the widow supported that position on appeal, and the supreme court held contrary to the county court, and further held that the widow had elected to take under the will, and remanded the cause to the county court with directions for entry of the proper judgment, the widow could not then file an election to take at law and not under the will and have her rights redetermined by the county court. State ex rel. Schaech v. Sheridan, 254 W 377, 36 NW (2d) 276.

The share of the testator's estate to which the widow becomes entitled, as a result of electing to take under the law and not under the will of her deceased husband, is exclusive, and she does not take any additional share in any remaining portion of the estate which may be left undisposed of by the will, even though she is the sole heir at law and next of kin of the deceased. In the phrase "net personal estate," the words "net estate" mean that part of the estate which remains after payment of all charges against the entire estate. In computing the widow's one-third share of the net personal estate, to which she is entitled by reason of having elected to take under the law and not under the provisions of the will, there first must be deducted from the gross personal estate the federal estate tax as well as all debts, expenses and allowances. A widow who has so elected is not entitled to claim the benefit of a clause in her husband's will directing that all federal estate taxes be paid out of the residue of the estate. Such clause remains effective as between the recipients of specific legacies and the remaindermen who take the residue, but the widow's renunciation of the will prevents such clause from being operative so as to relieve her share from the impact of the federal estate tax. Will of Uihlein, 264 W 362, 59 NW (2d) 641.

In an action by a widow to set aside transfers of personal property by her husband as fraudulent, she must allege an election within one year as well as allege fraud, or her action fails since proof of fraud alone would not increase her share of the estate. Estate of Mayer, 26 W (2d) 671, 133 NW (2d) 322.

The widow's election to take against a will. Gigure, 37 MLR 357 and 38 MLR 36.

A decade of probate law. Kroncke, 1961 WLR 82.

233.15 History: 1903 c. 264; Supl. 1906 s. 2172a; 1907 c. 427; 1913 c. 394; 1925 c. 4; Stats. 1925 s. 233.15; 1969 c. 339.

In an action under 233.15 for a construction of a will or contesting its validity, the time between the commencement and the final determination of the action is no part of the one-year within which she may make her election under 233.14. Will of Schaech, 252 W 299, 31 NW (2d) 614, 33 NW (2d) 319.

233.16 History: 1921 c. 263; Stats. 1921 s. 2172b; 1925 c. 4; Stats. 1925 s. 233.16; 1959 c. 268; 1969 c. 339.

233.17 History: R. S. 1858 c. 89 s. 20; R. S. 1878 s. 2173; Stats. 1898 s. 2173; 1925 c. 4; Stats. 1925 s. 233.17; 1969 c. 339.

Sec. 2173, Stats. 1898, does not apply where the will has been authoritatively construed to give the widow certain personal property, which she has retained, and she has failed to elect. Willey v. Lewis, 113 W 618, 88 NW 1021.

233.18 History: R. S. 1849 c. 62 s. 24; R. S. 1858 c. 89 s. 24; R. S. 1878 s. 2175; Stats. 1898 s. 2175; 1925 c. 4; Stats. 1925 s. 233.18; 1927 c. 473 s. 41; 1969 c. 339.

Where a verdict was rendered against 3 defendants, assessing damages for withholding dower, it was error to take judgment against one only. Thrasher v. Tyack, 15 W 256.

One entitled to dower in lands adversely occupied may sue therefor without previous demand, but is not entitled to damages for withholding possession before suit begun. Possession under a sheriff's deed, purporting to convey merely the interest which the judgment debtor had on a certain day, is not adverse to the dower right of such debtor's wife prior thereto. In such case the statute of limitations does not run against her. Cowan v. Lindsay, 30 W 586.

A widow may recover damages for the withholding of dower against an alienee of the husband or against one who has become vested of his title by operation of law. Munger v. Perkins, 62 W 499, 22 NW 511.

Where the grantee in a deed, made by a defendant's husband just before the marriage and in fraud of her dower rights, brought an action to quiet title and bar dower and the defendant by counterclaim asked to have the deed set aside and to recover dower and dam-

ages for withholding it, the court might render a money judgment against plaintiff for damages for withholding dower and might also, with defendant's consent, allow a gross sum in lieu of dower. Jones v. Jones, 71 W 513, 38 NW 88.

233.19 History: R. S. 1849 c. 62 s. 25, 26; R. S. 1858 c. 89 s. 25, 26; R. S. 1878 s. 2176; Stats. 1898 s. 2176; 1925 c. 4; Stats. 1925 s. 233.19; 1969 c. 339.

Where the action for dower is against other persons than the heirs of the deceased husband, the damages for mesne profits are to be estimated only from the time the dower was demanded of them. Thrasher v. Tyack, 15 W 256.

A dower interest is a continuation of the estate of the husband, and is held by him by appointment of law. Hence, although certain proceedings may be necessary to fix the extent or amount of the interest, when that is done the interest must necessarily vest, by relation or otherwise, from the death of the husband. This principle is fully recognized by the statute giving the widow one-third of the mesne profits from the death of the husband. Therefore, the fact that she may receive an allowance out of her husband's estate, under sec. 1, ch. 99, R. S. 1859, does not destroy or impair her right of dower or right to such mesne profits. Farnsworth v. Cole, 42 W 403.

233.20 History: R. S. 1849 c. 62 s. 27; R. S. 1858 c. 89 s. 27; R. S. 1878 s. 2177; Stats. 1898 s. 2177; 1925 c. 4; Stats. 1925 s. 233.20; 1969 c. 339.

233.21 History: R. S. 1849 c. 62 s. 28; R. S. 1858 c. 89 s. 28; R. S. 1878 s. 2178; Stats. 1898 s. 2178; 1925 c. 4; Stats. 1925 s. 233.21; 1969 c. 339. .

233.22 History: R. S. 1849 c. 62 s. 29; R. S. 1858 c. 89 s. 29; R. S. 1878 s. 2179; Stats. 1898 s. 2179; 1925 c. 4; Stats. 1925 s. 233.22; 1969 c. 339.

233.23 History: R. S. 1849 c. 62 s. 30; R. S. 1858 c. 89 s. 30; R. S. 1878 s. 2180; Stats. 1898 s. 2180; 1921 c. 31; 1925 c. 4; Stats. 1925 s. 233.23; 1943 c. 316; 1947 c. 371; 1957 c. 210, 705; 1959 c. 165, 268; 1961 c. 193; 1969 c. 339.

Editor's Note: Chapter 193, Laws 1961, which repealed the amendment of 233.23 made by chs. 210 and 705, Laws 1957, and ch. 165, Laws 1959, contained a provision stating that the section, as amended by ch. 268, Laws 1959, was preserved.

CHAPTER 234.

Landlords and Tenants and General Provisions.

234.01 History: 1866 c. 74; R. S. 1878 s. 2181; Stats. 1898 s. 2181; 1925 c. 4; Stats. 1925 s. 234.01; 1969 c. 284.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 234 through 1969, including the effects of ch. 284, Laws 1969. Various provisions of ch. 234 (including the provisions of 234.21—234.25) are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the effects of ch. 284, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 700.

234.02 History: R. S. 1858 c. 91 s. 1; R. S. 1878 s. 2182; Stats. 1898 s. 2182; 1925 c. 4; Stats. 1925 s. 234.02; 1969 c. 284.

Where judgment is rendered against the landlord the tenant may attorn to the stranger, notwithstanding his failure to notify the landlord as provided in sec. 1, ch. 91, R. S. 1858, where there has been no collusion between the parties. In such case the landlord is not bound by the judgment as to title or right of future possession, but is remitted to his action of ejectment. Stridde v. Saroni, 21 W 173. See also: Chase v. Dearborn, 21 W 57; Schrieber v. Carey, 48 W 208, 9 NW 124.

A landowner's agreement to give a cropper one-half of crops for working premises was a contract for services with title to crops remaining in the landowner until division, rendering the cropper's chattel mortgage, given after having breached the agreement, ineffective as against the owner. Herried v. Broadhead, 211 W 512, 248 NW 470.

234.03 History: R. S. 1849 c. 62 s. 34; R. S. 1858 c. 89 s. 34; R. S. 1858 c. 91 s. 2; R. S. 1878 s. 2183; Stats. 1898 s. 2183; Spl. S. 1920 c. 15; 1921 c. 14; 1923 c. 29; 1925 c. 4; Stats. 1925 s. 234.03; 1935 c. 78; 1943 c. 113; 1969 c. 284.

One holding under a mortgagee, after default, is a tenant at will or from year to year. Hennesy v. Farrell, 20 W 42.

A provision in a land contract, that in case of default of payment the vendee might be proceeded against as a tenant at sufferance is inoperative where he has taken possession and paid part of the purchase money. He is not a tenant, as he has equities that will defeat ejectment or forcible detainer, and he cannot be summarily expelled. Diggle v. Boulden, 48 W 477, 4 NW 678.

Where a lessee holds possession after the expiration of his term by agreement with the subsequent lessee to hold till he shall notify him to remove he is a tenant at will of the lessee. Gunsolus v. Lormer, 54 W 630, 12 NW 62.

Defendant worked his father's farm on shares in 1882. In the spring of 1883 it was arranged between him and his brother and their parents that the brother and parents should move upon a new farm, leaving the defendant upon the old place, and that the brothers should work together and pay up a mortgage debt on the 2 farms, and each pay half of the father's small debts, and that when the parents died the sons should be paid for so doing. There was no agreement as to how long this arrangement should continue. Defendant worked upon the old farm, paid some interest upon one of the mortgages, and made some improvements. He became merely a tenant at will, subject to be removed by the father or his grantee. Webb v. Seekins, 62 W 26, 21 NW 814.

Where tenants have denied the landlord's right to possession and claim to hold adversely no notice to quit is necessary in order to main-