

CHAPTER 313.

PROOF AND PAYMENT OF DEBTS.

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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. [*Supreme Court Order, effective Jan. 1, 1934*]

313.02 [*Renumbered section 313.05 sub. (1) by Supreme Court Order, effective Jan. 1, 1934*]

313.03 Claims against decedents. (1) **TIME TO FILE; EXTENSION OF TIME; HEARING TIME.** Upon filing an application for administration of the estate or probating the will of a decedent, or at any time thereafter the court shall by order 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 limited for filing claims may be extended (but not beyond 2 years from the date of the letters) upon the application of a claimant filed not later than 60 days after the expiration of the time limited 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 may be 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 where in 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.

(4) **CONTESTED CLAIMS, PLEADINGS.** If any claim is contested or an offset or counterclaim be claimed, the court shall require the issues to be made definite by pleadings or in such other manner as the court shall deem best and fix a date for trial.

(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 section 311.05 for completing the probate of small estates. [1935 c. 176, 336; 1943 c. 93; 1945 c. 508; 43.08 (2)]

Note: Where a claimant, by fraudulent representation, induced the court to enter an order extending the time for filing claims, the court had power to purge its proceedings of the consequences of such fraud while the estate was still in process of administration. In re Batz's Estate; State Bank v. Batz's Estate, 202 W 636, 233 NW 555.

The 1929 amendment to this section, relating to extension of time for filing claims against estates, is construed as manifesting legislative intent that a claimant should not be compelled to make a showing of "good cause" in order to secure such extension. Orders extending time for filing claims are not appealable as they do not prevent a final judgment from which an appeal may be taken pursuant to 274.34. [Will of Bellant, 197 W 319, 222 NW 314, and Estate of Kochanski, 185 W 234, 201 NW 239, entertaining such appeals, explained.] Estate of Benesch, 206 W 582, 240 NW 127.

Under 6.015 (1), the relations and status of a married woman and her husband as to contracts with others for their services are the same as though unmarried. Hence, spouses became obligees under a joint contract where they contracted to render services to the husband's mother living with them. Both wife and husband should join in an action to recover under such a contract; but on the wife's claim for the compensation filed against the mother's estate, objection that the husband was not joined was waived by not being raised. An attempted adjudication on the wife's claim that the husband, who was not cited, account for sums received from decedent was void as being rendered without due process. And, as a debt due from one joint obligee cannot be offset against an indebtedness due obligees jointly, it was erroneous as to the wife. However, if money received by the husband from decedent was payment for services by both spouses under the joint contract it would operate as payment to the wife. No issue of payment was raised by the executor's objection to allowance of the claim, for the proper determination of which the parties should be required by formal pleadings to frame the issues to be tried. Estate of Nitka, 208 W 181, 242 NW 504.

There was no abuse of the county court's discretion in denying the application of the successor trustee for an order extending the time for filing claims against the estate of a deceased trustee's surety, on ground that claim was contingent, as to which there was no necessity for extension within 313.22 to 313.25, Stats. 1931. Estate of Coombe, 209 W 81, 244 NW 574.

On question of value of physician's services, neither the court nor jury can consider individual view or views of persons unfamiliar with subject as proper basis for findings as against uncontradicted or unimpeached testimony of qualified expert witnesses. Estate of Watzek, 211 W 50, 247 NW 330.

Allegation of one filing claim against decedent's estate for balance due on purchase price of realty that sufficient deed had been tendered was sufficient to permit proof of such fact. Tender of deed by vendor was unnecessary, where objection by executor of purchaser's estate to vendor's claim for unpaid balance of purchase price was based only on executor's lack of information respecting any indebtedness of decedent to claimant. Estate of Kaiser, 217 W 4, 253 NW 177.

Upon default by purchaser or his legal representatives in making payment under land contract, vendor could elect to sue for unpaid purchase money which was due, and filing of vendor's claim against estate of deceased purchaser constituted election to hold estate for unpaid purchase money. Estate of Lehman, 217 W 512, 259 NW 407.

After filing of claims, duty of going forward with their disposition and winding up affairs of estate rests upon administratrix. She could not properly close estate without disposing of claims filed against it. Estate of Smith, 218 W 640, 261 NW 730.

The condition that no hearing on claims shall be had until after issuing letters of administration is satisfied by letters to a special administrator. Estate of McLean, 219 W 222, 262 NW 707.

The presumption being that domestic services rendered by a daughter in her father's household, wherein she resided as a member thereof, were gratuitous, the daughter in order to establish her claim against the estate of the deceased father for such services had the burden of proving by direct and positive evidence, or the equivalent thereof, an express contract by the father to compensate her. Estate of Shimek, 222 W 98, 266 NW 798.

The provisions of chapter 313, Stats., which relate to the filing, presentation, allowance and barring of claims are not applicable to claims of the state against the estates of decedents on account of income taxes. Estate of Adams, 224 W 237, 272 NW 19.

See note to 116.29, citing Estate of Smith, 226 W 556, 277 NW 141.

The ten-year statute of limitation applies to a promissory note under seal. Alropa Corp. v. Flatley, 226 W 561, 277 NW 108.

The rule that a legacy to a creditor equal to or greater than the amount of the debt will be presumed to have been intended as a satisfaction of the debt applies unless there are circumstances to take the case out of that rule. Estate of Steinkraus, 233 W 186, 288 NW 772.

The owner of a note and mortgage could file a claim for the amount due on the mortgage note against the estate of the deceased mortgagor in the county court, foreclose the mortgage by a separate action in the circuit court without litigating therein the matter of deficiency, and then recover any balance due on the note in the proceedings initiated by the filing of a claim in the county court. Estate of Cawker, 233 W 648, 290 NW 281.

See note to 46.10, citing Estate of Hahto, 236 W 65, 294 NW 500.

In proceedings on claims of the mother-in-law and the sister-in-law of a decedent based on negotiable notes of \$500 and \$1,500 executed and delivered by the decedent for "value received," the evidence established that the decedent was under a moral obligation to pay the claimants something in addition to what they had received in the form of board and room for their ten years of service in taking care of the decedent's home and children, and warranted a conclusion that such moral obligation was the consideration for the notes, so that the notes were legal obligations, as distinguished from mere unexecuted promises to make gifts of money, and the county court properly allowed the claims against the estate. Estate of Schoenkerman, 236 W 311, 294 NW 810.

Although a provision in notes from a legatee to the testator that the sums covered

should be considered as advancements was ineffectual, yet the notes spoke for themselves according to their terms as promissory notes, and the amount due on them could be offset against the legatee's share under the will, unless the statute of limitations had extinguished them or they had been discharged. Estate of Pardee, 240 W 19, 1 NW (2d) 803.

In the usual proceeding in matters in probate, the executor or administrator represents all parties adverse to the claimant, and notice of appeal served on him is a sufficient notice to "the adverse party" within the meaning of 274.11 (1). Will of Hughes, 241 W 257, 5 NW (2d) 791.

Where a claim filed against an estate was contested, the county court could require that the statement of claim be made more definite and certain by showing the amount claimed and whether the claim was based on the value of services allegedly performed for the testatrix or whether it was a claim for damages for breach of contract for changes made by the testatrix in her will, and, if the claim was for the value of services, by showing whether it was based on contract or on quantum meruit. [Estate of Beyer, 185 W 23, Estate of Carlin, 185 W 438, explained.] Will of West, 246 W 199, 16 NW (2d) 806.

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. Any claim accompanied by a statement of account verified by affidavit, unless objection be made to such claim, may be allowed but no claim (whether objected to or not) shall be allowed until the court is satisfied that it is just.

(2) CLAIMS OFFSET; BARRED CLAIMS. When a creditor against whom the deceased had claims shall present a claim to the county court the executor or administrator 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 as the same shall be found; but 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. And no claim shall be allowed by said court against said estate, as a set-off or otherwise, the consideration of which shall be the sale at retail under license issued after the enactment of this amendment of any ardent, malt, spirituous or intoxicating liquors.

(3) HEARING ON CONTESTED CLAIMS. Any contested claim may be brought on for hearing by either party on ten days' notice served and filed, unless an earlier time be fixed by the court. [Stats. 1931 s. 313.02; Supreme Court Order, effective Jan. 1, 1934; Supreme Court Order, effective July 1, 1939]

Note: Evidence that the proprietors of the boarding house had rendered valuable personal services to an aged boarder at his request, for which he voluntarily acknowledged his indebtedness to each for \$1,000, and which he did not consider included in the amount paid for board and lodging, and that they were not mere volunteers or so related to the boarder that the services were presumably gratuitous, supported a finding that there was valuable and adequate consideration for the two negotiable notes under seal for \$1,000 each, given by the boarder. Estate of McAskill, 216 W 276, 257 NW 177.

The failure of the executrix to plead the statute of limitations did not prevent her from relying upon that defense, since 313.05 requires that the county court disallow claims barred by the statute of limitations. Estate of Goyk, 216 W 462, 257 NW 448.

The presumption that services rendered by one of several relatives residing together to another are gratuitous was applicable to

While the fact that the parties in this case were not in any family relationship was important in giving rise to an initial presumption that the services were not gratuitously performed for the decedent, the inferences were against the claimant when she sought to excuse herself for not making a demand for payment during the life of the decedent. Estate of Germain, 246 W 409, 17 NW (2d) 582.

Evidence that a claimant, living with her husband in one apartment of a duplex owned by a decedent, and doing the decedent's washing, ironing and cleaning for more than 4 years and until his death, had asserted no right or claim against him during such period although he was amply able to pay for the services, and that the parties went on paying rent, and borrowed money for which they gave a note, was so inconsistent with the existence of liability from the decedent to the claimant as to warrant the county court in concluding on the whole case that the services were not rendered with the expectation of being paid for. The law regards with great suspicion the deferring of a claim for services rendered until a solvent alleged debtor is deceased and can make no answer or denial. Estate of Germain, 246 W 409, 17 NW (2d) 582.

services rendered by the claimant, niece of the wife of the deceased, who had been taken into the home of the deceased as an infant, in caring for the deceased in her home for about six years prior to his death, and, therefore, the niece in order to establish her claim had the burden of proving an express contract to pay for such services by direct and positive evidence or the equivalent thereof. Estate of Clark, 221 W 569, 267 NW 273.

County courts have no jurisdiction in probate over action for recovery from third parties of assets belonging to the estate except by way of set-off or counterclaim. Estate of George, 225 W 251, 274 NW 294.

While an executor has some authority to settle well-founded claims, he also has a duty to protect the estate against claims which are unfounded and to interpose every legal defense to a claim if he has any reason to doubt its validity. In re Kniffen's Estate, 231 W 589, 286 NW 8.

313.06 List of claims; collection. 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. [Supreme Court Order, effective Jan. 1, 1934]

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. [*Supreme Court Order, effective Jan. 1, 1934*]

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. [*1933 c. 190 s. 22*]

Revisor's Note, 1933: This section is amended to bar all claims (including contingent claims) not filed. Section 313.22 et seq. are amended to provide for proving and listing all contingent liabilities so that provision may be made for them and so that heirs and legatees may know of such liabilities. This change does away with troublesome disputes as to whether a claim is contingent or absolute. (Bill No. 123 S, s. 22)

Note: See note to 313.03, citing Estate of Batz, 202 W 636, 233 NW 555.

Uncertainty as to whether ultimately there will be a deficiency after applying the proceeds of sale under a mortgage foreclosure judgment does not render the judgment creditor's claim against a deceased mortgagor's estate "contingent" within 313.22 and 313.23, Stats. 1931, so as to permit the filing and allowance thereof after expiration of the time limited for filing claims against the estate. Estate of Landerud, 209 W 674, 245 NW 862.

The purpose of the statute of nonclaim (barring claims against decedents not filed within the time fixed by order of the court) is to promote the speedy settlement of estates in the interest of the creditors, heirs and devisees and to render certain the titles to real estate; and in view of such purpose no one can waive the provisions of the statute. Estate of Lathers, 215 W 151, 251 NW 466, 254 NW 550.

A claim against the estate of a surety on the bond of a discharged administratrix was contingent until a judgment was rendered setting aside, for fraud, a decree allowing the final account of the administratrix. Clark v. Sloan, 215 W 423, 254 NW 653.

A claim for the superadded liability of a bank stockholder, accruing during the life of the stockholder by reason of the taking over of the bank by the banking commission, and not prosecuted by action against the stockholder before his death, becomes a claim against his estate, to be enforced by filing, as a claim against the estate, and such claim is subject to the statute of nonclaim, and is barred thereby if not filed within the time limited by the county court for the filing of claims, the remedy afforded by the county court being just as adequate under existing statutes as is the remedy to enforce other claims; but an action may be considered as properly tenable against the personal representative of a deceased bank stockholder if the liability accrues after the death of the stockholder while the stock is held by the personal representative. Banking Commission v. Muzik, 216 W 596, 257 NW 174.

The circuit court was not without jurisdiction to hear the suit of the city on the ground that the county court was the proper forum to determine claims against the estate of a deceased person, since the suit involved not merely a claim against the estate of the deceased city treasurer, but one against the broker and the sureties on the treasurer's bond as city treasurer, and the

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. [*Stats. 1931 s. 312.18; Supreme Court Order, effective Jan. 1, 1934*]

county court was not in a position to afford as adequate, complete and efficient a remedy as the circuit court. Milwaukee v. Drew, 220 W 511, 265 NW 683.

The legatee's action, brought to establish his right to an interest which the testator was alleged to have in a note and mortgage because of his contribution toward the loan evidenced by the note and mortgage, executed in favor of the defendant, was not barred by limitations on the ground that the action was on a contract or for relief on the ground of fraud, since the action was one to obtain an accounting by the defendant as trustee. Latsch v. Bethke, 222 W 485, 269 NW 243.

A claim against the estate of a deceased bank stockholder, based on the agreement to pay the voluntary assessment, and filed by the trustees of the trust created to carry out a plan for stabilization and consolidation, was improperly amended by making the consolidated bank a party claimant after the time for filing claims had expired; the bank being a separate entity from the trustees. Estate of White, 233 W 270, 270 NW 34.

A purely tort claim against a deceased person need not be filed against his estate in the county court but may be prosecuted by an action against his personal representative in the circuit court. School District v. Brennan, 236 W 91, 294 NW 558.

A judgment creditor's claim against an estate for the decedent's personal liability for deficiency under a mortgage foreclosure judgment obtained prior to the decedent's death in 1934 was barred by the judgment creditor's failure to file its claim in the county court within the time limited for filing claims against the estate although a deficiency was not determined in the foreclosure action until after expiration of the time limited for filing claims against the estate. Hence the circuit court properly denied a revivor of the foreclosure action and entry of a deficiency judgment against the executor [secs. 269.23, 313.22.] [Pereles v. Leiser, 119 W 347, and Schmidt v. Grenzow, 162 W 301, applied; Pereles v. Leiser, 138 W 401, and Johnson v. Landerud, 209 W 672, distinguished.] W. H. Miller Co. v. Keefe, 233 W 35, 298 NW 52.

Under the rule barring claims against estates of decedents not filed within the time limited therefor by order of the county court, claims duly filed within that time cannot be amended after the expiration of such time so as to increase the amount or nature of the relief or materially change the basis therefor. Estate of Von Nobel, 239 W 233, 1 NW (2d) 76.

An order or decree of distribution of a decedent's estate, although final so far as the rights of the distributees are concerned, does not prevent the county court from entertaining a contingent claim which has become absolute after the time for filing claims has expired. Banking Comm. v. Reinke, 241 W 362, 6 NW (2d) 349.

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. [1941 c. 198]

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. [Supreme Court Order, effective Jan. 1, 1934]

313.11 [Renumbered section 287.06 sub. (1) by Supreme Court Order, effective Jan. 1, 1934]

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. [1933 c. 335]

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

Note: Where will devising all testator's estate to his wife and directing that she pay his just debts, designated no particular property or class thereof to be used to pay his debts, and there was no blending of realty and personalty so as to indicate that testa-

tor intended all his property to be considered as personalty, there was no inference that he intended to charge his realty with payment of his debts, so as to authorize petition under statute to sell testator's property to pay his debts more than three years after testator's death occurred. Estate of Koebe, 225 W 342, 274 NW 262.

313.14 Time to pay debts fixed; extension of time. (1) Whenever it shall satisfactorily appear to the county court that any one or more of the causes for delay mentioned in section 313.13 exists such 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; and at any time after the expiration of the period provided in the foregoing section, for the rendering of an account of the administration of an estate, 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 statement, under oath, setting forth the assets remaining in his possession belonging to the estate of the deceased, the debts and legacies that remain unpaid, the reasons why the delay in the settlement of the estate, and what additional time is deemed requisite for a full settlement of such 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 or in such manner as the court may direct.

(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. [1933 c. 173, 335; 1933 c. 450 s. 10; Supreme Court Order, effective Jan. 1, 1940; 1943 c. 275 s. 65]

Note: Failure of an administrator to complete administration within one year, no extension having been granted for cause shown, constitutes a breach of the administrator's bond, and thereafter the risks are upon the administrator and his bondsmen, and failure to cite the administrator does not relieve them therefrom. *Coolidge v. Rueth*, 209 W 458, 245 NW 186.
Executrix who filed only partial accounting within time prescribed by statute and

who failed to render complete accounting for ten years after testator's death held liable for waste. *Will of Robinson*, 218 W 596, 261 NW 725.

Negligence in failing to settle estate within a year, in absence of order for extension for cause shown, was sufficient to subject executrix to liability for all losses occurring as result of the delay (310.14, 313.13, 313.14, 313.15, 313.26, Stats. 1929). *Estate of Onstad*, 224 W 332, 271 NW 652.

313.15 Distribution of personalty. 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 two hundred dollars. 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 income of the real estate of the deceased as the county court shall judge necessary for their maintenance during the progress of the settlement of the estate, but never for a longer period than until their shares shall be assigned to them, and in case of an insolvent estate not longer than one year after granting letters testamentary or of administration.

(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 maintenance 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) Whenever it appears by the inventory of an estate that the value of the personalty thereof exceeds the dispositions made therefrom under the preceding subdivisions of this section the county court may, in its discretion, after first providing for the payment therefrom of the funeral charges and expenses of administration, assign from the residue of such personal estate a sum or value not exceeding one thousand dollars 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 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. [1935 c. 483 s. 64; 1943 c. 514]

Note: A widow was entitled to select, as "household furniture" of her deceased husband, articles of furniture owned by him, although they were located in a summer home owned by him, and she never used the summer home nor the furniture and cooking utensils in it. 313.15 (1), whether regarded as an exemption or as a distribution statute, should be liberally construed in favor of the

widow. *Estate of Bosse*, 247 W 44, 18 NW (2d) 335.

Balance of probationer's earnings held by board of control becomes, upon probationer's decease, part of his estate, subject to administration; but where sum is nominal and he has no other property, informal disposition is practical. 20 Atty. Gen. 209.

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. [1935 c. 336]

Note: The right of the trustees of a home for the needy to receive a legacy to an inmate who had contracted to transfer to the trustees all her property, then owned or thereafter acquired, was subject to the expenses of guardianship proceedings where the inmate was mentally incompetent at the time of the legacy, and to the expenses of probate proceedings where the inmate died before the trustees received the legacy. Estate of Jacobus, 214 W 143, 252 NW 583. See note to 49.25, citing 27 Atty. Gen. 751. Sec. 191, USCA, relating to the distribution of insolvent estate, takes precedence over 313.16. 28 Atty. Gen. 507.

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.

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. [Supreme Court Order, effective Jan. 1, 1934]

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. [Supreme Court Order, effective Jan. 1, 1934]

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.

Note: In the absence of alleging that there has been any order or judgment by the county court for the payment of the debts of a decedent in whole or in part, a creditor cannot maintain an action against an administrator under this section. Rasmussen v. Jensen, 240 W 242, 3 NW (2d) 335.

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. [Supreme Court Order, effective Jan. 1, 1940]

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. [1933 c. 190 s. 23]

Revisor's Note, 1933: No good reason is apparent for leaving the presentation of contingent claims optional. There are good reasons why all such claims should be made known or be barred before debts are paid or assets distributed. Section 313.08 is amended to bar all claims not presented. The decedent may be liable as guarantor of a secured note

and that fact be unknown to the heirs or legatees. The land or other collateral may depreciate; and years after the estate was probated, a large liability arises. See also 313.31. Some have confused "contingent liability" with "debts not due." (Bill No. 123 S. s. 23)

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. [1933 c. 190 s. 24]

Revisor's Note: See Revisor's Note to 313.08.

Note: Where a corporation had filed a claim against the estate of its deceased president based upon its contingent liability to pay notes in the hands of bona fide holders signed without authority by such president, the surety on a bond to protect such holders, given by the corporation in an action to enjoin collection of the notes, lost no rights by waiting until it had made its payments upon the bond to present a petition to be subrogated to the rights of its principal under the latter's contingent claim. Estate of Bienenstok, 208 W 676, 242 NW 572.

Under 313.22 and 313.23 a contingent claim against a decedent's estate which has not been allowed as debt must nevertheless be presented to the county court and proved, and where it does not become absolute until after the closing of the estate and distribution of the assets, it must nevertheless be presented to the county court if the estate is still in the hands of the court. Banking Comm. v. Reinke, 241 W 362, 6 NW (2d) 349.

313.24 [Repealed by 1933 c. 190 s. 25]

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. [1933 c. 190 s. 26]

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. [1933 c. 190 s. 27]

Note: The last clause was enacted, no doubt, for the express purpose of repelling the inference which necessarily arises from the direction to pay debts or specific legacies and a gift over of the residue. Egan v. Sells, 203 W 119, 233 NW 569.

that the devisee pay the estate a specified sum, and after making certain bequests disposed of the residue, "including" said sum, is construed as subjecting the sum paid to payment of the specific bequests. Will of Fouks, 206 W 69, 238 NW 869.

A will which devised realty on condition

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. [1933 c. 190 s. 28]

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. [1933 c. 190 s. 29]

Note: A will, providing in effect that a debt owing to the testator by his brother should be forgiven and that the mortgage securing such debt should be satisfied, created a specific legacy, exempt under 313.28 from liability for the testator's debts if there was other sufficient estate and it should appear necessary in order to effect the testator's intention, and in such case a special administrator, properly in possession of the note and mortgage and alleging insufficient assets to pay the testator's debts, could enforce the same by action of foreclosure in the circuit court without awaiting a final determination of legatees' liabilities by the county court under 313.32. Brener v. Raasch, 239 W 300, 1 NW (2d) 181.

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. [1933 c. 190 s. 30]

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. [1933 c. 190 s. 31]

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. [1933 c. 190 s. 32]

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. [1933 c. 190 s. 33]