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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 312.

Inventory and Collection of Effects.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 312 through 1969, including the effects of chapters 283, 339, and 411, Laws 1969. Sections 312.03, 312.08 and 312.11, in amended forms, are being redesignated as sections of ch. 319, on guardians and wards, the effective date being July 1, 1971. Various other provisions of ch. 312 are restated in a new probate code, effective April 1, 1971. For more detailed information concerning the effects of ch. 339, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 851.

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

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

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

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

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

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

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

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

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

the estate. Estate of Abddulah, 214 W 336, 252 NW 158.

See note to 221.45, citing Estate of Staver, 218 W 114, 260 NW 655.

Debts owing from an executor to a testator automatically become assets in the executor's hands on his acceptance of his appointment, to be treated as cash in the executor's hands. Estate of Tuttle, 242 W 144, 7 NW (2d) 575.

See note to 267.07, citing Mahrle v. Engle, 261 W 485, 53 NW (2d) 176.

The evidence supported a finding that money found tucked away in various places in the home after the death of a wife, and representing savings out of earnings of the husband which had been handed by him to the wife from time to time to run the household, was not turned over to the wife as a gift but remained the property of the husband, so that it was not an asset of the estate of the wife. Estate of Budney, 2 W (2d) 389, 86 NW (2d) 416.

See note to 230.48, citing Will of Barnes, 4 W (2d) 22, 89 NW (2d) 807.

The creation of 312.01 (4) in 1959 merely codified the doctrine of equitable conversion and did not operate to change the rule of Estate of Lefebvre, 100 W 192. Estate of Atkinson, 19 W (2d) 272, 120 NW (2d) 109.

Joint bank accounts in Wisconsin. Scheller, 37 MLR 306.

Ademption by extinction and equitable conversion. 1964 WLR 149.

312.02 History: 1881 c. 60; Ann. Stats. 1889 s. 3821a; Stats. 1898 s. 3821a; 1913 c. 539; 1925 c. 4; Stats. 1925 s. 312.02; Sup. Ct. Order, 212 W xxvii; 1969 c. 339.

The surviving partner is entitled to the firm assets, as against the administrator of the deceased partner. Shields v. Fuller, 4 W 102; Jennings v. Chandler, 10 W 21; Roys v. Vilas, 18 W 169.

A surviving partner complied with the statute when he filed an inventory omitting only a possible item for "good will," and his appraisal of the value of the partnership assets would be immaterial since the only appraisal with which the county court is concerned is that which is made by officers appointed by the court for such purpose. State ex rel. Sommer v. Stauff, 265 W 388, 62 NW (2d) 384.

The filing of an inventory under compulsion of the statute did not constitute a general and voluntary appearance which conferred on the county court jurisdiction to determine all issues which might be raised by the administratrix of the estate of the deceased partner. State ex rel. Sommer v. Stauff, 265 W 388, 62 NW (2d) 384.

312.03 History: Court Rules IX, X; Sup. Ct. Order, 212 W xxvii; Stats. 1933 s. 312.03; 1969 c. 283, 339, 411.

312.04 History: R. S. 1849 c. 69 s. 7; R. S. 1858 c. 100 s. 7; R. S. 1878 s. 3823; Stats. 1898 s. 3823; 1903 c. 265 s. 1; Supl. 1906 s. 3823; 1925 c. 4; Stats. 1925 s. 312.04; 1933 c. 190 s. 10; 1969 c. 339.

The personal representative should take possession of the realty when its rents and profits are needed (and only when needed) in the settlement of the estate. Filbey v. Carrier, 45 W 469.

The administrator of an insolvent estate is entitled to the possession of the mortgaged real estate unless prevented by some proper proceedings by the mortgagee. Crow v. Day, 69 W 637, 35 NW 45.

Where a vendee under a land contract paid the entire price and was in possession of the premises at the time of his death, his administrator cannot maintain an action for the specific performance of the contract unless the personal estate is insufficient to pay the debts. Carpenter v. Fopper, 94 W 146, 68 NW 874.

If the assets of an estate are sufficient to discharge the administration expenses, debts and specific legacies the administrator de bonis non had no right to real estate and could not maintain an action to cancel a fraudulent conveyance of the deceased. Neelen v. Holzhauer, 193 W 196, 214 NW 497.

An administrator is not entitled to the possession of a decedent's homestead during the administration when the homestead is not subject to the "debts and liabilities" of the deceased. Curtis v. Gillie, 239 W 207, 300 NW 911.

The rights of an executor or an administrator in relation to the real estate of his decedent do not prevent the heirs of a deceased grantor from prosecuting an action to have the deed declared void because of the mental incompetency of the grantor. Riedi v. Heinzl, 240 W 297, 3 NW (2d) 366.

See note to 317.01, citing Estate of Rieman, 272 W 378, 75 NW (2d) 564.

312.05 History: R. S. 1849 c. 68 s. 10; R. S. 1858 c. 99 s. 10; R. S. 1878 s. 3824; Stats. 1898 s. 3824; 1925 c. 4; Stats. 1925 s. 312.05; 1933 c. 190 s. 11; 1955 c. 696 s. 57; 1969 c. 339.

A conversion after the appointment of a special administrator is not within sec. 3824, Stats. 1898. Dixon v. Sheridan, 125 W 60, 103 NW 239.

312.06 History: R. S. 1858 c. 100 s. 8; R. S. 1878 s. 3825; Stats. 1898 s. 3825; 1901 c. 23; Supl. 1906 s. 3825; 1911 c. 663 s. 446; 1925 c. 4; Stats. 1925 s. 312.06; Sup. Ct. Order, 212 W xxvii; 1955 c. 696 s. 58; 1957 c. 672; 1969 c. 339.

Though discovery may be had under sec. 3825, Stats. 1898, as amended, if the necessity for bringing an action to enforce the restoration to the estate of the property discovered results in a multiplicity of suits, an action may be brought in the circuit court for this purpose. Eisentraut v. Cornelius, 134 W 532, 115 NW 142.

A party examined under sec. 3825, as amended, at the instance of executors cannot afterward offer his testimony so taken as evidence in his own favor in an action brought against him by such executors to foreclose a mortgage that was one of the subjects of the examination. Hilton v. Rahr, 161 W 619, 155 NW 116.

In a proceeding under sec. 3825, as amended, by an administratrix claiming that defendants were in possession of money belonging to decedent, the county court has no jurisdiction to order any money held by the respondents under a bona fide claim of right turned into

court. Estate of Schaefer, 189 W 395, 207 NW 690.

The court has no power under 312.06, Stats. 1931, to make an order concerning the disposition of the property, and the fact that the proceeding was between 2 administrators of 2 separate estates then in process of settlement in that court does not extend its jurisdiction. Estate of Krauss, 212 W 561, 250 NW 388.

Conveyances inter vivos are subject to the same legal principles as those in will cases involving undue influence, and conveyances inter vivos may be set aside when procured by undue influence. Estate of Fillar, 10 W (2d) 141, 102 NW (2d) 210.

312.07 History: R. S. 1849 c. 69 s. 9; R. S. 1858 c. 100 s. 9; R. S. 1878 s. 3826; Stats. 1898 s. 3826; 1901 c. 23 s. 2; Supl. 1906 s. 3826; 1925 c. 4; Stats. 1925 s. 312.07; 1969 c. 339.

312.08 History: R. S. 1849 c. 69 s. 10; R. S. 1858 c. 100 s. 10; R. S. 1878 s. 3827; Stats. 1898 s. 3827; 1925 c. 4; Stats. 1925 s. 312.08; Sup. Ct. Order, 212 W xxviii; 1969 c. 283; 1969 c. 339 s. 18; 1969 c. 411.

312.09 History: R. S. 1849 c. 69 s. 11; R. S. 1858 c. 100 s. 11; R.S. 1878 s. 3828; Stats. 1898 s. 3828; 1925 c. 4; Stats. 1925 s. 312.09; 1969 c. 339.

An executor may release a claim in favor of the estate under his general power to dispose of the estate. The burden of showing that a release was unauthorized is upon him who alleges it. Davenport v. First Cong. Society, 33 W 387.

312.10 History: R. S. 1849 c. 69 s. 12; R. S. 1858 c. 100 s. 12; R. S. 1878 s. 3829; Stats. 1898 s. 3829; 1925 c. 4; Stats. 1925 s. 312.10; 1933 c. 190 s. 12; 1969 c. 339.

312.11 History: Court Rule XI; Sup. Ct. Order, 212 W xxviii; Stats. 1933 s. 312.11; 1969 c. 283, 339; 1969 c. 411 s. 6.

312.13 History: 1871 c. 82 s. 1; R. S. 1878 s. 3268; Stats. 1898 s. 3268; 1925 c. 4; Stats. 1925 s. 287.17; 1933 c. 190 s. 16; Stats. 1933 s. 312.13; 1941 c. 245; 1957 c. 468; 1969 c. 283, 339; 1969 c. 411 s. 7.

312.15 History: R. S. 1849 c. 69 s. 18; R. S. 1858 c. 100 s. 18; R. S. 1878 s. 3834; Stats. 1898 s. 3834; 1925 c. 4; Stats. 1925 s. 312.15; 1933 c. 190 s. 18; 1969 c. 339.

312.16 History: 1864 c. 265 s. 1; R. S. 1878 s. 3835; Stats. 1898 s. 3835; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 312.16; 1933 c. 190 s. 19; 1969 c. 339.

The action may be brought on just apprehension of failure of personal assets; and sec. 3835, R. S. 1878, applies to an action to reach land conveyed by decedent in fraud of creditors. German Bank v. Leyser, 50 W 258, 6 NW 809.

Sec. 3835, R. S. 1878, is confirmatory of the common law. Miner v. Lane, 87 W 348, 57 NW 1105.

Lands which a decedent paid for and caused to be conveyed to another under circumstances which gave his then creditors a trust therein may be reached and subjected to the payment of his debts. Allen v. McRae, 91 W 226, 64 NW 889.

Where a county judge presents his claim on a bond which has been given in an estate administered in his county against a surety, whose estate was being administered, he is a creditor within sec. 3835, R. S. 1878. Richter v. Leiby, 99 W 512, 75 NW 82.

The amount realized from a homestead cannot be reached under sec. 3835, Stats. 1898. Bartle v. Bartle, 132 W 392, 112 NW 471.

In a creditor's action a discharged administrator, the estate having been administered and found insufficient to pay all allowed claims, was not a proper party; a receiver of property fraudulently conveyed by the deceased was properly appointed; the wife, having colluded with her husband, could not claim reimbursement of her individual funds used in paying some of the creditors; and having elected not to claim her allowance when her husband's estate was being administered, she was not entitled to have such allowance made to her out of the property involved in the fraudulent transfer. Baldwin v. Frisbie, 163 W 26, 157 NW 526.

See note to 287.43, citing Massey v. Richmond, 208 W 239, 242 NW 507.

The department of public welfare, for care furnished to a deceased as a mental patient in state and county hospitals, may employ the statutory remedy if the property, a homestead conveyed by the deceased to his son and subject to 46.10 (2), is liable for the payment of such claim, even though not liable for the payment of other claims. State Dept. of Public Welfare v. LeMere, 19 W (2d) 412, 120 NW (2d) 695.

312.17 History: 1864 c. 265 s. 2, 3; R. S. 1878 s. 3836; Stats. 1898 s. 3836; 1925 c. 4; Stats. 1925 s. 312.17; 1933 c. 190 s. 20; 1969 c. 339.

The fact of insufficiency of assets must be ascertained by the adjudication of the county court before the action can be tried. Where the only assets consist of an equity of redemption it must be sold by order of the court and an account thereof rendered; until this is done it is error to render judgment in such action. German Bank v. Leyser, 50 W 258, 6 NW 809.

The action is a creditor's action sui generis; it is not necessary that the creditor bringing it shall have exhausted his remedy at law, nor that an inventory of the estate be returned, nor that the action shall be authorized by the county court; it is enough if he has established his claim against the estate and that there is just reason to apprehend an insufficiency of assets. Allen v. McRae, 91 W 226, 64 NW 889.

CHAPTER 313.

Proof and Payment of Debts.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 313 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 313 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