312.13; 1941 c. 245; 1957 c. 468; 1969 c. 283, 339; 1969 c. 411 s. 7; Stats. 1969 s. 323.27.

323.30 History: 1909 c. 233; Stats. 1911 s. 3927m; 1925 c. 4; Stats. 1925 s. 317.06; Sup. Ct. Order, 212 W xxxi; Sup. Ct. Order, 271 W xi; 1969 c. 283; 1969 c. 339 s. 22; Stats. 1969 s. 323.30.

323.32 History: R. S. 1849 c. 67 s. 9; R. S. 1858 c. 98 s. 9; R. S. 1858 c. 99 s. 12; R. S. 1878 s. 3803; Stats. 1898 s. 3803; 1905 c. 242 ss. 1, 2; Supl. 1906 ss. 3803, 3803a; 1907 c. 289; 1913 c. 407; Stats. 1913 s. 3803; 1925 c. 4; Stats. 1925 s. 310.22; Sup. Ct. Order, 212 W xxvi; Stats. 1933 s. 324.35; Sup. Ct. Order, 258 W x; 1969 c. 283, 339, 411; Stats. 1969 s. 323.32.

323.34 History: 1945 c. 536; Stats. 1945 s. 324.351; 1969 c. 283, 339, 411; Stats. 1969 s. 323.34.

323.36 History: 1953 c. 299; Stats. 1953 s. 324.356; 1969 c. 283, 339, 411; Stats. 1969 s. 323.36.

CHAPTER 324.

Appeals and Miscellaneous Provisions.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 324 through 1969, including the effects of chapters 283, 339 and 411, Laws 1969. Sections 324.35, 324.351 and 324.356, as amended, are redesignated as sections of ch. 319, effective July 1, 1971. Various other provisions of ch. 324 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.

324.001 History: 1953 c. 300 s. 1; Stats. 1953 s. 324.001; 1969 c. 339.

324.01 History: R. S. 1849 c. 70 s. 20, 22; R. S. 1849 c. 85 s. 24; 1853 c. 85 s. 8; R. S. 1858 c. 49 s. 8; R. S. 1858 c. 101 s. 20, 22; R. S. 1858 c. 117 s. 24; R. S. 1878 s. 4031; 1891 c. 248; Stats. 1898 s. 4031; 1907 c. 593; 1919 c. 183 s. 1; 1925 c. 4; Stats. 1925 s. 324.01; 1929 c. 439 s. 11; 1933 c. 190 s. 82; 1943 c. 93; 1951 c. 290; 1969 c. 339; 1969 c. 366 s. 117 (2) (b).

Editor's Note: Ch. 183, Laws 1919, amended sec. 4031, Stats. 1917, to permit appeals to the supreme court from the orders and judgments of county courts in counties having a population of 15,000 or over. In a series of cases decided during the period 1919-33 the supreme court applied the rule that the orders from which appeals could be taken were those made appealable by the provisions of sec. 3069 (renumbered 274.33). Citations of the cases are: Estate of Beyer, 185 W 23, 200 NW 772; Will of Hughes, 187 W 14, 203 NW 746; Estate of Harter, 187 W 90, 203 NW 720; Will of Pattison, 190 W 289, 207 NW 292; Estate of Benesch, 206 W 582, 240 NW 527; and Estate of Lewis 207 W 155, 240 NW 818. See also Will of Jansen, 181 W 83, 193 NW 972. By the amendatory legislation of 1933 (sec. 82, ch. 190, Laws 1933) the provisions of ch. 274 were incorporated by reference in 324.01; and the amended statute was taken into account in Estate of Maurer, 234 W 601, 291 NW 764, and in subsequent cases.

The allowance of a counterclaim to a claim presented amounts to disallowance of the latter pro tanto, and is appealable. Parry v. Wright, 20 W 483.

Any person acquiring an interest under an administrator's sale may appeal from an order of the county court purporting to correct the proceedings but operating to divest the title acquired under the sale. Betts v. Shotton, 27 W 667.

The son of an insane heir of a testator to whom nothing was left by the will cannot himself appeal from the order admitting the will to probate; but he may apply on behalf of his parent for the appointment of a guardian ad litem and the allowance of an appeal after the expiration of the statutory time. Marx v. Rowlands, 59 W 110, 17 NW 687.

Sec. 4031, Stats. 1898, is exclusive and an outsider cannot take an appeal on behalf of minors. Guardianship of McLaughlin, 101 W 672, 78 NW 144.

A person who claims property of an alleged incompetent under a transfer is a person aggrieved within the meaning of sec. 4031. Ziegler v. Bark, 121 W 533, 99 NW 224.

The administrator is especially recognized as the party aggrieved by the decision of the county court and the appeal therefrom. Paulson's Will, 127 W 612, 107 NW 484.

One who, having been induced by false representations to purchase land from an administrator, has demanded rescission of the sale and opposed confirmation thereof, is a "person aggrieved" by an order of the county court confirming the sale, and may appeal from such order. Greiling v. Watermolen, 128 W 440, 107 NW 339.

The fact that an heir is present in county court at the time the will was admitted to probate and makes no objection does not estop him from taking an appeal. Bovee v. Johnson, 130 W 447, 110 NW 212.

Where a son has petitioned a county court for the appointment of a guardian for his father on the ground that he was incompetent to manage his property, he is the person aggrieved and may appeal from an order denying the petition. Merrill v. Merrill, 134 W 395, 114 NW 784.

One who merely claims but has not proved that she was named as executrix in the will which was refused probate is not entitled to appeal. Powers v. Powers, 145 W 671, 130 NW 888.

Upon appeal from an allowance of attorney fees in the final settlement of an executor's accounts the time begins to run when the formal order or judgment is entered, disposing of the whole matter as to all parties, not when the court may have announced the allowance and entered the amount in the record. Will of Rice, 150 W 401, 136 NW 956, 137 NW 778.

The governor of the soldiers' home at Milwaukee may appeal from an order of the county court requiring him to appear and be examined upon the citation of a public administrator. Mallory v. Wheeler, 151 W 136, 138 NW 97.

The proponent of a will, who is named as executor, is "aggrieved" by a judgment refusing probate and may appeal, and if he believes the county court was wrong, he ought to appeal. Cowan v. Beans, 155 W 417, 144 NW 1129.

In a proper case for the appointment of an administrator de bonis non an order after due notice making such an appointment without objection must be affirmed on appeal, or the appeal must be dismissed. Will of Durkee, 164 W 41, 159 NW 555.

The administratrix with the will annexed of her deceased husband's estate could apply to the county court for a construction of the will, and from the court's order thereon. Will of McIlhattan, 194 W 113, 216 NW 130.

An administrator who had advanced money to the widow is entitled to appeal from an order disallowing the widow's application for an allowance pending administration. Estate of Sullivan, 200 W 590, 229 NW 65.

Whether an administrator has the right to appeal from an order of distribution is an open question. Estate of Bailey, 205 W 648, 238 NW 845.

A special administrator may appeal. Estate of McLean, 219 W 222, 262 NW 707.

A "decision" of the county court on the only claim against the estate of a decedent, which found the amount due therefor, and which concluded with a provision that "judgment may be entered for the amount" constituted findings of fact and an order for judgment and was not an order which prevented a judgment from which an appeal might be taken, hence was not appealable. Estate of Maurer, 234 W 601, 291 NW 764.

Only a person who is aggrieved can appeal. Estate of Crocker, 236 W 579, 295 NW 717.

Where a brother brought proceedings to have the proceeds of a policy on the life of the decedent, which had been paid to the administrator as part of the estate, declared to be the individual property of the plaintiff and his brothers, one of whom was the administrator, a judgment that the proceeds of the policy belonged to the decedent's estate was in favor of the administrator, and the brother who was administrator could not appeal as administrator. Estate of Bryngelson, 237 W 7, 296 NW 63.

An order suppressing the taking of a proposed adverse examination noticed under 326.12 is appealable under 274.33 (3) as an order refusing a provisional remedy. Estate of Briese, 238 W 6, 298 NW 57.

Where the court entered an order authorizing the administrator to accept a debtor's offer of settlement of his mortgage indebtedness to the estate, and the administrator satisfied the mortgage before any appeal was taken and without any stay of proceedings having been requested, the only question open to consideration was whether the administrator had acted in good faith in complying with the order, and hence, no proceedings having been had with respect to the question of good faith, a legatee's appeal from the order is dismissed since a review thereof would be ineffectual. Estate of Turnock, 238 W 438, 300 NW 155.

The fact that they offered no evidence on the hearing did not preclude distributees of an estate from appealing from the judgment. Estate of Pardee, 240 W 19, 1 NW (2d) 803.

Although 324.01, Stats. 1941, provides that an appeal may be taken from "any" order or judgment of the county court, the legislature did not thereby intend to give the right of appeal from orders not appealable under the provisions of 274.33. The widow of a testator and a guardian ad litem for minor children could not appeal from an order requiring an accounting by the executors in relation to the estate as of a certain date, where the order was granted at their request for an accounting. Will of Krause, 240 W 68, 2 NW (2d) 732.

Where a creditor's claim against a testator's estate was allowed, and the widow had elected to take by law and the amount of property to which her percentage was to be applied would be reduced by the claim if finally allowed, and the shares of the residuary legatees were thereby subject to diminution, both the widow and the residuary legatees were "aggrieved" so as to be entitled to appeal from the judgment allowing such claim; although had the claim been disallowed, neither she nor they would have been "adverse parties" in the sense that notice of appeal must be served upon them. (Will of Krause, 240 W 72, distinguished.) Estate of Krause, 240 W 502, 3 NW (2d) 696.

Administrators with the will annexed were entitled to have a construction of the will reviewed because of doubt whether a brother of the testator was to be considered deceased at the time of the death of the testator or whether he was to be considered an "absent" legatee whose share should be handled under 318.03. Estate of Satow, 240 W 622, 4 NW (2d) 147.

An executor has the right to appeal individually if individually aggrieved, and he has the right to appeal in his representative capacity as executor, as where the will is refused probate, or a claim against the estate is allowed, or there is a construction of the will, or a ruling affecting the distribution of the estate, adverse to the executor's views thereon. (Estate of Crocker, 236 W 579, so far as to the contrary, overruled.) Will of Hughes, 241 W 257, 5 NW (2) 791.

An unappealed determination of the county court, made in proceedings on a petition under 310.11, Stats. 1943, and construing a will as requiring the executors to offer the testator's business to a named person at the price established by the inventory in the estate, is not reviewable as an intermediate order under 274.34 on the executors' appeal from an order, made in subsequent proceedings on a petition of such named person, and commanding the executors to sell the business at such inventory price. Estate of Bosse, 246 W 252, 16 NW (2d) 832.

A judgment allowing the final account of an administratrix and adjudging that the residue in her hands consisted of a claim against O and that such claim was assigned to the heirs of the decedent, and that the administratrix was indebted to the estate in a sum consisting in part of the claim against O, did not adjudge that O was liable for the claim

nor otherwise make him a "person aggrieved" by the judgment. Estate of Stephens, 246 W 471, 17 NW (2d) 574.

A determination of the county court admitting a will to probate is a judgment, not an order. Will of Wehr, 247 W 98, 18 NW (2d) 709.

It is not decided whether an administrator de bonis non, who theoretically has no interest in a judgment of the county court construing a will, can appear in support of such judgment on appeal as a matter of right; but the supreme court may consider his brief and oral argument. Estate of White, 256 W 467, 41 NW (2d) 776.

Where the testator in his will expressly requested that a certain attorney be retained as counsel to represent the estate, and the administrator with the will annexed was willing to employ him as such counsel, such attorney had a sufficient interest in the subject matter to qualify as a "person aggrieved" by orders denying his petition to be appointed counsel, and appointing a different attorney requested by the testator's sister, so as to be entitled to appeal therefrom. Estate of Ogg, 262 W 181, 54 NW (2d) 175.

An order limiting the scope of an adverse examination under 326.12, Stats. 1951, is not appealable under 274.33 (3) as an order refusing or modifying a provisional remedy. Will of Block, 264 W 471, 59 NW (2d) 440.

An order denying a motion to vacate a judgment on the ground of newly discovered evidence is appealable under 274.33 (2), Stats. 1953. Estate of Koos, 269 W 478, 69 NW (2d) 598.

Only an order of the county court which falls within one of the categories set forth in 274.33 is an appealable order. Under 274.33 (2), an adoption proceeding falls within the category of a special proceeding and is appealable, but no provision of 274.33 makes an order of the county court, under 48.85 an appealable order, such latter order not being a final order affecting a substantial right. Adoption of Brown, 5 W (2d) 428, 92 NW (2d) 749.

The memorandum decision of a county court in a probate proceeding, stating nothing therein that any further order was contemplated, and under which no further order was entered, constituted an "order" within 270.53 (2) so as to be appealable under 274.33 (2) as a final order affecting a substantial right in special proceeding. Estate of Baumgarten, 12 W (2d) 212, 107 NW (2d) 169.

See note to 274.01, citing Oremus v. Wynhoff, 19 W (2d) 622, 121 NW (2d) 161.

An order dismissing a petition for removal of executors is an appealable order under 274.33 (1), Stats. 1963, because it is a final order affecting a substantial right made in a special proceeding. Estate of Mayer, 29 W (2d) 497, 139 NW (2d) 111.

Ch. 324 "has traditionally been restricted to probate matters" and is not applicable to a forfeiture action for a county ordinance violation. Milwaukee County v. Caldwell, 31 W (2d) 286, 143 NW (2d) 41.

A county court order granting a claimant's petition to reopen a probate judgment allowing the final account of the executrix on the ground that certain securities were jointly owned and improperly listed as estate assets, which order appointed a special administrator without any direction with respect to receipt of any particular assets or designation as to the manner in which the securities were distributed, did not qualify as a final order, and hence an appeal therefrom would not lie. Estate of Keske, 33 W (2d) 64, 146 NW (2d) 450.

324.01 "has traditionally been restricted to probate matters" and is not applicable to a forfeiture action for a city ordinance violation. Milwaukee v. Trzesniewski, 35 W (2d) 487, 151 NW (2d) 109.

For an order to be appealable under 274.33, Stats. 1965, it must be final and must affect a substantial right. An order permitting the amendment of a claim against an estate does not finally dispose of the matter, for although the amendment be permitted, the objectant has a real remedy in the appeal from the judgment upon claims. Estate of Stoeber, 36 W (2d) 448, 153 NW (2d) 599.

324.04 History: 1919 c. 183 s. 3, 4; Stats. 1919 s. 4034, 4043c; 1925 c. 4; Stats. 1925 s. 324.04, 324.18; 1933 c. 190 s. 85, 99; Stats. 1933 s. 324.04; Sup. Ct. Order, 17 W (2d) xx; 1969 c. 339.

An appeal by an heir within 60 days after a judgment allowing a claim against an estate is not premature, on the theory that it could not be known whether the administratrix would appeal until the expiration of the 60-day period. Estate of McLean, 189 W 567, 208 NW 464.

A county court, in settling bills of exception, should adopt the practice of circuit courts. Estate of Meek, 199 W 602, 227 NW 270.

The supreme court is without jurisdiction upon failure to give notice of appeal within 60 days after orders appealed from unless the county court allows the appeal. Appellate jurisdiction cannot be conferred by consent to its exercise under stipulation waiving objection to insufficiency or irregularity of appeal. Estate of Fish, 200 W 61, 227 NW 272.

Every distributee of deceased's estate is an adverse party entitled to service of notice of appeal from the final order of distribution. Estate of Sveen, 202 W 573, 232 NW 549.

An appeal from county court not taken within the time limited by 324.04, Stats. 1929, must be dismissed where there is no order of the county court permitting the appeal. An appeal from an order of the county court transfers to the supreme court only such portions of the proceeding as are germane to the order appealed from. But the transmission to the supreme court of a case on appeal from the final judgment brings up the entire record and transfers jurisdiction from the county court. Thereafter the county court cannot allow appeal by others unless the record is returned to the county court. Estate of Bailey, 205 W 648, 238 NW 845.

The statute authorizing an appeal from a decree in organization of a sewer district and the statute relating to appeals from the county court to the supreme court afford a complete remedy for correcting errors in such adjudi-

cation. Golden v. Green Bay Met. Sewerage Dist. 210 W 193, 246 NW 505.

Judgments of a county court directing proceeds of estates, wherein there were no heirs, to be distributed to orphan asylums, were res judicata as to the state, notwithstanding the statute under which the court acted was unconstitutional, where judgments were not appealed from. In re Trustees of Milwaukee County Orphans' Board, 218 W 518, 261 NW 676.

The time for appeal from the county court to the supreme court is determined by 324.04. In re Bowler's Will, 228 W 527, 280 NW 684.

An appeal not having been perfected within the time required by law, and there being no excuse or justification for failure to perfect the appeal, it must be dismissed. Will of Stanley, 228 W 530, 280 NW 685.

Heirs who otherwise would have been entitled to share in the amount of a surcharge upon the executor's account waived their rights by joining as appellants and asking that the account of the executor be approved. Will of Roebken, 230 W 215, 283 NW 815.

274.11 (1) is rendered applicable to appeals from the county court to the supreme court by 324.04 (4). Estate of Pitcher, 240 W 356, 2 NW (2d) 729.

See note to 274.11, citing Will of Steindorff, 242 W 89, 7 NW (2d) 597.

An appeal to the supreme court from a judgment of the county court of La Fayette county in a civil action is not governed by 324.04 (1), limiting the time for taking an appeal to the supreme court from a judgment of the county court to 60 days, but is governed by the special act, ch. 237, Laws 1913, conferring civil jurisdiction on the county court of La Fayette county. Moe v. Krupke, 255 W 33, 37 NW (2d) 865.

See note to 269.51, citing Estate of White, 256, W 467, 41 NW (2d) 776.

Where the respondent not only accepted and retained the appellant's notice of appeal and briefs, before making a motion to dismiss the appeal for not having been taken within the time limited by 324.04, but also filed its own brief containing arguments on the merits, the respondent thereby participated in the proceedings in the supreme court to such an extent as to waive all objection to the court's jurisdiction of the appeal, so that jurisdiction was conferred by 269.51 (1), despite the belated taking of the appeal. Guardianship of Barnes, 275 W 356, 82 NW (2d) 211.

A county court has no jurisdiction to grant relief in 1957 from a judgment construing a will in 1928, there being no fraud in procuring the original judgment. Estate of Strange, 3 W (2d) 104, 87 NW (2d) 859.

324.05 History: R. S. 1849 c. 85 s. 29 to 32, 36; R. S. 1858 c. 117 s. 29, 30, 32, 36; 1869 c. 11; 1870 c. 70 s. 1; R. S. 1878 s. 4035; Stats. 1898 s. 4035; 1919 c. 183 s. 1; 1921 c. 29; 1925 c. 4; Stats. 1925 s. 324.05; 1933 c. 190 s. 86; 1969 c. 339.

When the bond does not run to the adverse party it is doubtful whether the appellant can be relieved under sec. 29, ch. 117, R. S. 1858. Thompson v. Thompson, 24 W 515.

Where an assignee of a sole heir filed a petition to appeal, alleging that he was such heir, without disclosing the assignment, the petition should have been denied, he having shown no right of appeal and having been guilty of bad faith. Downer v. Howard, 47 W 476, 3 NW 1.

Where the general guardian is adversely interested, the son of the insane heir may apply to the court for the appointment of a guardian ad litem and the allowance of an appeal after expiration of the time fixed therefor. Marx v. Rowlands, 59 W 110, 17 NW 687.

An appeal should be allowed where it is shown that at the time a copy of a lost will was probated the only child of the testator was living at a very great distance from the place where the court was held and where legal advice could not be obtained, and without knowledge of her rights or of what was being done with reference to the estate. Jamison v. Snyder, 79 W 286, 48 NW 261.

Leave was properly granted to take an appeal after the expiration of the period fixed by the statute on behalf of a child, born 7 months and 23 days after her mother was divorced and 4 months and 21 days after her remarriage, from an order assigning the real estate of the child's mother on the final settlement of her estate, the failure to appeal within such period being without the fault of her guardian. Shuman v. Hurd, 79 W 654, 48 NW 672.

An order allowing an appeal by a party who omitted to take an appeal from the decision of a county court in the manner prescribed will be presumed to have been made for sufficient reasons, nothing appearing in the bill of exceptions to show upon what ground it was granted. Marsh v. Briesen, 84 W 618, 54 NW 1090.

Where attorneys prepare notices of appeal and undertaking and file the same and procure an order for service and suppose that service had been made, these facts excuse failure to take an appeal within the time limited. Oakley v. Davidson, 103 W 98, 79 NW 27.

The statement in a petition that the petitioners are near relatives and heirs at law of the deceased and entitled to a distributive share in the estate is sufficient to show an interest entitling them to petition for appeal. Perry v. Scaife, 126 W 405, 105 NW 920.

The facts were sufficient to show that there was no abuse of discretion in the trial court in refusing to allow an appeal. Roemer v. Schmidt's Estate, 134 W 1, 114 NW 127.

The circumstances under which an appeal was allowed in open court, all parties being present, constituted reasonable notice. Will of Stark, 149 W 631, 134 NW 389.

An order refusing an extension will not be reversed simply because, on the same showing, the court would have refused a reversal if the order had granted the extension. Gustafson v. Whitney Brothers Co. 154 W 8, 141 NW 1008.

The petition for a new trial if filed within the prescribed time may be acted upon later. Estate of Lehmann, 183 W 21, 197 NW 350.

Although the attorneys for petitioner stated that failure to appeal was due to mistake, inadvertence, surprise or excusable neglect, no relief will lie if no facts appear in the affidavits or other moving papers from which the

statement may be supported. Belmont S. Bank v. Estate of Speth, 190 W 130, 208 NW 945.

The county court may at any time open up its judgments or orders when they were procured by fraud or when they were rendered without jurisdiction. Estate of Cudahy, 196 W 260, 219 NW 203.

The statute relating only to refunds of inheritance taxes conferred no power upon a county court to grant a late application for rehearing determination of inheritance tax. Estate of Aylward, 199 W 347, 226 NW 311.

A case can be reopened within a year for retrial only on petition and notice to the opposite party, and where justice requires revision. Reopening a case for retrial within a year is a matter of discretion, and denial must amount to abuse of discretion, before a trial court's determination can be set aside. Appeal from an order denying a motion to set aside a judgment allowing a claim against an estate could not operate as an appeal from the judgment on the merits, where the time for appeal therefrom had expired. Estate of Meek, 199 W 602, 227 NW 270.

The trial court's decision upon a petition to extend the time for appeal will not be reversed in the absence of abuse of discretion. Estate of Hilgermann, 208 W 520, 243 NW 753.

Where an attempt to appeal within the proper time failed because of errors of law of attorneys without fault of appellant, it was permissible to relieve him from default. Will of Loewenbach, 210 W 253, 246 NW 332.

A county court has power to reopen proceedings for the administration of an estate and grant a new trial, but the granting of a new trial is discretionary. But a petitioner under 324.05 cannot ask for a new trial on the ground of error, and upon a denial of his petition by the county court, sustain his right to a new trial merely by demonstrating that there was error in the proceedings. There must be present some factor apart from the merits to warrant the granting of a new trial. Estate of Walczak, 216 W 465, 257 NW 589.

Error in a judgment approving accounts of an administrator or executor does not render such judgment void or subject to collateral attack, but must be redressed only by appeal or retrial under the statute. "Fraud" such as will authorize setting aside a probate order or judgment may consist of suppression or misrepresentation of facts, the offering for probate of the will of a known incompetent, or misrepresentation to interested persons to induce them not to contest a will and thus deprive the court of the benefit of their testimony. Estate of Penney, 225 W 455, 274 NW 247.

Where an appeal from a judgment denying a motion to surcharge an executor was not timely taken, an appeal from a subsequent judgment allowing the executor's final account, which was timely taken but involved the same issues, was frivolous and the judgment must be affirmed. Estate of Dammann, 230 W 160, 283 NW 363.

The fact that the plaintiff did not exercise diligence in taking an appeal did not, as a matter of law, require a denial of the plaintiff's motion to reopen the case and grant a new trial, since what might constitute want of diligence in taking an appeal might conceivably not constitute want of diligence in moving for a new trial. Estate of Blahnik, 231 W 101, 285 NW 421.

The county court rendered its decision on October 28, made its findings of fact and conclusions of law and an order on November 4, but dated them October 28. However, the findings, conclusions of law and order were not actually signed or filed until December 21. The notice of appeal was filed on December 29. The appeal was timely, the time not commencing to run until the order was signed and filed. Estate of Campbell, 232 W 227, 286 NW 60.

A new trial in the interest of justice may be granted by a trial court on its own motion. Estate of Noe, 241 W 173, 5 NW (2d) 726.

In reopening an order determining inheritance taxes, and granting a rehearing, on a petition filed almost 6 months after the order was entered, but filed about 2 months after the petitioner had full knowledge of the essential facts, the county court did not abuse its discretion, where the court could reasonably conclude, from the petition and the record, that justice appeared to require the reopening of the case. Estate of Allen, 243 W 44, 9 NW (2d) 102.

A petition for extention of the time to appeal from a judgment of the county court was properly denied, where there was no showing that the petitioner's omission to appeal within the time allowed therefor was without fault on his part. Estate of Stephens, 246 W 471, 17 NW (2d) 574.

Whatever excuse the appellant may offer for failure to comply with the statute is for the consideration of the trial court on an application for extension of time, and the power of the supreme court, on dismissing an appeal for failure to serve notice of appeal, is limited to remanding the record for further consideration. Estate of Sweeney, 247 W 376, 19 NW (2d) 849.

The denial of a motion for extension of time to appeal from an order of the county court was not an abuse of discretion, where the attorney for the movant, claiming illness as an excuse for failure to take an appeal or to move for a rehearing within 60 days, had been in court frequently during the 60-day period and had a full-time capable associate. Estate of Doherty, 251 W 421, 29 NW (2d) 767.

The respondent's motion to dismiss an appeal on the ground that the trial court erred in extending the time for taking an appeal will not be considered where the respondent took no appeal from the order extending the time. Estate of Schultz, 252 W 126, 30 NW (2d) 714.

The record warranted the county court's determination that the parties interested in a motion for extension of time to appeal from an order appointing a general guardian for an alleged incompetent were not without fault in respect to a failure to obtain the resignation of the original guardian ad litem and the appointment of a new guardian ad litem in time for the latter to serve a notice of appeal within the 60-day period allowed by 324.04 (1), and the court's denial of the motion was not

an abuse of discretion. Guardianship of Anderson, 254 W 520, 37 NW (2d) 87.

The testatrix's next of kin and sole heir at law resided outside the state, had no actual notice of the hearing to probate the will, was not represented at the proceeding, and promptly retained counsel on learning of the admission of the will to probate. Where delay in filing a petition to reopen the matter and grant a retrial to permit contesting the will on grounds of alleged testamentary incapacity and undue influence was caused by counsel's withholding of the petition while he attempted to arrange a settlement with the beneficiaries under the will, and the petition was filed within the time limited by 324.05, judgment dismissing the petition was an abuse of discretion, especially since the record did not disclose that the rights of the beneficiaries were adversely affected by the delay. Estate of Trimpey, 257 W 481, 44 NW (2d) 308.

Under 324.05, authorizing an extension of the 60-day period permitted by 324.04 (1) for taking an appeal to the supreme court from an order or judgment of the county court, an adverse party could waive the petition and notice and give his consent to an extension during the period when the trial court was empowered to act after notice duly given, and the trial court thereby had jurisdiction to enter an extension order within such time; but if the method of procuring the extension order was irregular for not being on notice but only by stipulation, such irregularity was waived under 269.51 (1) by the adverse party's conceded participation in the appeal without first moving that it be dismissed. Estate of Schaefer, 261 W 431, 53 NW (2d) 427.

On the record made in the case, both on the trial and on motion for a new trial, the trial court did not abuse its discretion in refusing to grant a new trial to the administrator on grounds that his attorney had been neglectful in preparation for trial, had failed to heed the administrator's suggestions concerning available witnesses, and, instead of objecting to the competency of the claimants for compensation for services to testify as to their transactions with the decedent, had merely cross-examined them. Estate of Schaefer, 261 W 431, 53 NW (2d) 427.

It was not an abuse of discretion to deny an extension of time to appeal on the ground that the party was not advised of the time limit until too late to arrange finances for the appeal. Estate of Shaver, 266 W 591, 64 NW (2d) 191.

It was within the discretion of the county court to reopen proceedings in the interest of justice within one year after a will had been admitted to probate; and it was not necessary in such case that the petition for reopening, which alleged among other things the existence of evidence establishing the decedent's lack of testamentary capacity, should allege facts showing a fraud on the court or surprise or misrepresentation. Will of Strahlendorf, 272 W 435, 76 NW (2d) 334.

See note to 313.06, citing Estate of O'Brien, 273 W 223, 77 NW (2d) 609.

The provisions allowing an extension of the time for taking an appeal from the county court should be liberally construed. Estate of Steck, 273 W 303, 77 NW (2d) 715.

See note to 269.16, citing Estate of Steck, 273 W 303, 77 NW (2d) 715.

A widow who had elected to take her distributive share of the estate of her deceased husband, instead of taking under his will, and who thereafter discovered a trust agreement executed by the husband and predating the will, was not precluded by the filing of such election from petitioning the county court that such trust agreement be admitted to probate as testamentary in character and constituting the will of the husband, and that the already admitted will stand as a codicil thereto, and the widow was a "person aggrieved" by an order denying the petition on the ground that the trust agreement constituted a trust inter vivos, so as to be entitled to appeal therefrom; and likewise, the executrix appointed in the estate of the widow after her death was a "person aggrieved." Estate of Steck, 273 W 303, 77 NW (2d) 715.

After a petition for extension of time to file claims has been filed, under certain conditions the county court can reopen the case and grant a further extension. Estate of Baumgarten, 12 W (2d) 212, 107 NW (2d) 169.

The provision of 324.05, requiring that any order for a retrial be entered "within one year after the act complained of," does not preclude the supreme court, on appeal, from entering the order which this court deems the county court should have entered, or from remanding the cause with directions that the county court enter the proper order. Estate of Baumgarten, 12 W (2d) 212, 107 NW (2d) 169.

Where an objector to the admission of a will did not suggest to the county court that there was any error on the trial, nor that the record as it stood on a certain date would fail to support the order then entered admitting the will, the objector's request for leave to appeal from the order admitting the will was properly denied. Estate of Weinert, 18 W (2d) 33, 117 NW (2d) 685.

Where 5 of 9 children who joined in a waiver of notice and consent to probate of a will 4 months later asked to reopen the proceedings and contest the will, the application should have been granted where the consent was signed immediately after the funeral, the will contained an in terrorem clause and their rights were not explained to them. Estate of Korleski, 22 W (2d) 617, 126 NW (2d) 492.

324.05 is a remedial statute and should be liberally construed to accomplish its objective; hence the words "without fault" used in the statute (in connection with the showing which an aggrieved party who had omitted to appeal within the time prescribed is required to make in support of his application for extension of time to appeal), must receive a liberal construction. Estate of Seliger, 27 W (2d) 323, 134 NW (2d) 447.

324.11 History: R. S. 1849 c. 85 s. 37; R. S. 1858 c. 117 s. 37; 1860 c. 319; 1874 c. 147 s. 1; R. S. 1878 s. 4041; Stats. 1898 s. 4041; 1917 c. 566 s. 51; 1919 c. 183 s. 1; 1925 c. 4; Stats. 1925 s. 324.11; 1933 c. 190 s. 92; 1969 c. 339.

A plaintiff in an action to construe a will,

who has no interest in the controversy, is not entitled to costs. Sawtelle v. Witham, 94 W 412, 69 NW 72.

In applying the rule of sec. 4041, Stats. 1898, as to taxable costs the county court is in some measure restrained by 271.14. Donges's Estate, 103 W 497, 79 NW 786.

Costs authorized by sec. 4041 can only be made by judgment. Frame v. Plumb, 135 W 24, 114 NW 849.

The allowance of 10% attorney's fees was proper under a provision in the notes for the payment of all costs and expenses, including 10% attorney's fees, paid or incurred in collecting the notes, the contractual obligation incurred by the maker being controlling. Estate of McAskill, 216 W 276, 257 NW 177.

With reference to the allowance of executor fees out of the estate in a proceeding to construe a will, it cannot be said that an executor has no duty in good faith to present to the court his views as to the facts and the law to the end that the true intentions of the testator may be found and given effect. Will of Asby, 232 W 481, 287 NW 734.

The allowance of a claim of an heir against the estate of her deceased brother for attorneys' fees of $275, incurred by her in opposing a claim filed against the estate, was proper, where the claim opposed was a personal claim filed by a coheir who was also the administrator and where the claim opposed was disallowed to the extent of several hundred dollars. Such allowance for attorneys' fees was not limited to costs and attorneys' fees. Estate of Sheldon, 249 W 430, 24 NW (2d) 875.

In proceedings involving an appealable contested matter in county court, it was discretionary with the trial court whether to allow costs to the prevailing party; and the court's failure to allow costs to the claimants prevailing against the estate was not an abuse of discretion. Will of Gudde, 260 W 79, 49 NW (2d) 906.

Where a will bequeathed property which was not part of the estate, and other heirs objected, and the executor refused to defend the will because of other interests, the legatee defended and was entitled to receive payment of her costs and disbursements from the estate. Estate of Hoyt, 22 W (2d) 209, 125 NW (2d) 350.

324.12 History: 1881 c. 227; Ann. Stats. 1889 s. 4041a; Stats. 1898 s. 4041a; 1911 c. 663 s. 447; 1925 c. 4; Stats. 1925 s. 324.12; 1933 c. 190 s. 93; 1969 c. 339.

An order directing the payment of money to a guardian ad litem to secure attendance of witnesses on a will contest is erroneous. An allowance of $3,500 to a guardian ad litem is excessive. Frame v. Plumb, 135 W 24, 118 NW 997.

The discretion of the trial court allowing or disallowing an attorney's fee under sec. 4041a is not subject to review except in a case of abuse. Estate of Muellenschlader, 137 W 32, 118 NW 209.

Costs and compensation payable out of an estate may be refused to the guardian ad litem of an unsuccessful contestant of a will. Will of Griffith, 165 W 601, 163 NW 138.

Costs should not be allowed an unsuccessful contestant of a will. Will of Weidman, 189 W 318, 207 NW 950.

The allowance of costs to unsuccessful contestants of a will was proper where such contestants were the executors named in a prior will and the trial court determined that they had propounded it in good faith as the last will of the decedent. Estate of Miller, 265 W 420, 61 NW (2d) 813.

The allowance of costs to an unsuccessful contestant is discretionary, and there was no abuse of discretion in the determination of the trial court not to allow costs to an unsuccessful contestant who was named as an executor in a paper propounded by him as a last will. Will of Rasmussen, 1 W (2d) 615, 85 NW (2d) 383.

A contestant who objected to the probate of 2 wills but who was successful in barring only one is not entitled to costs and attorney fees. Estate of Alburn, 23 W (2d) 386, 127 NW (2d) 56.

324.13 History: 1901 c. 397; Supl. 1906 s. 4041a; 1907 c. 267; 1907 c. 660 s. 9; 1909 c. 231; 1911 c. 663 s. 447; Stats. 1911 s. 4041b; 1925 c. 4, 172; Stats. 1925 s. 324.13; 1933 c. 190 s. 94; 1945 c. 345; 1969 c. 339.

The compensation allowed to guardians ad litem and attorneys is a reasonable charge, measured by the compensation which the law allows public officers having similar duties. Estate of Wells, 156 W 294, 144 NW 174.

The supreme court may fix the amount to be paid to attorneys out of an estate in a contested will case. Estate of Bean v. Bean, 159 W 67, 149 NW 745.

The supreme court may make a proper allowance for services and disbursements in that court of the guardian ad litem for infants who are necessary parties to a proceeding in the settlement of an estate; but such allowances in the county and circuit courts should be made by those courts. Will of Allis, 163 W 452, 157 NW 548, 158 NW 330.

Sec. 4041b, Stats. 1913, does not authorize the taxing of attorney's fees in the circuit court against the unsuccessful proponent of a will who, although named as executrix in the will which was admitted to probate, did not qualify as executrix but acted throughout in her individual capacity. Will of Lynch, 163 W 466, 157 NW 557.

Sec. 4041b does not authorize an allowance to the proponent of a will of fees for his handwriting experts to be paid out of the estate. Estate of Johnson, 170 W 436, 175 NW 917.

Where complaining beneficiaries in a proceeding against the trustee, although unsuccessful in their contention that each was entitled to cash for the full amount of the share of the trust estate which he claimed, were successful to the extent that each was held obliged to accept but a one-eighth interest in unliquidated mortgage investments instead of the one-seventh interest credited to him by the trustee, the county court erred in making allowances to the trustee for attorney fees to be retained out of the shares of such beneficiaries. Will of Manegold, 234 W 525, 291 NW 753.

Where the county court under the provision in the Soldiers' and Sailors' Civil Relief Act,

50 USC, sec. 520, appointed an attorney to represent an absent soldier in a will case, and the absentee was not liable to compensate the attorney, the county court, without aid of statute, should have allowed compensation to the attorney, to be paid out of the testator's estate, for services rendered in applying for a stay of proceedings in behalf of the absentee. Estate of Ehlke, 250 W 583, 27 NW (2d) 754.

An order allowing attorney fees and costs to the attorneys for the successful contestant of a will was proper. Estate of Feeley, 253 W 204, 32 NW (2d) 139.

A statement of the supreme court in a case decided in 1921, concerning the maximum allowance permissible to attorneys in the probate of an estate of a given value, is no longer to be considered as a guide, since the duties and responsibilities of attorneys have increased greatly in the intervening 30 years and compensation reasonable and customary in 1921 is no longer so. Estate of Teasdale, 261 W 248, 52 NW (2d) 366.

The trial court's allowance to the successful litigant for attorney fees is to be sustained unless clearly unreasonable. Considering the difficulty of the question involved, the successful appeal from the trial court's allowance of the claim, the amount of $3,090 involved, and the work done by the attorney, the trial court's allowance of $300 to the successful litigant here for attorney fees is deemed unreasonably low by $200. Estate of Marotz, 263 W 99, 56 NW (2d) 856.

The matter of attorney fees for services rendered in the administration of an estate is for determination by the court, and a stipulation as to fees, which is not a contract, but is at most a suggestion to the court as to what amounts should be allowed in the way of fees, is not binding on the court. An attorney, who accepts payment of the amounts allowed to him as fees by order of the court, cannot maintain an appeal from such order even though he may not have intended to relinquish such right. Will of Hill, 264 W 410, 59 NW (2d) 437, 60 NW (2d) 254.

See note to 318.31, citing Estate of Jorgensen, 267 W 1, 64 NW (2d) 430.

324.13 (1), relating to the allowance of a reasonable attorney's fee to the successful party on an appeal "to be paid out of the estate" of the decedent, authorizes the supreme court to make an allowance for an attorney's fee but not to charge the same against the share of the unsuccessful party in the estate of the decedent. Will of Fehlhaber, 272 W 327, 75 NW (2d) 444.

Pursuant to 251.23 (1) and 324.13 (2), Stats. 1967, fees and costs of a guardian ad litem appointed for a minor who had received a legacy under a holographic instrument, but by virtue of the case on appeal will receive nothing, are allowed out of the estate by the supreme court. Estate of Erbach, 41 W (2d) 335, 164 NW (2d) 238.

324.14 History: 1860 c. 319; R. S. 1878 s. 4042; Stats. 1898 s. 4042; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 324.14; 1933 c. 190 s. 95; 1969 c. 339.

324.15 History: R. S. 1849 c. 85 s. 37; R. S. 1858 c. 117 s. 37; 1860 c. 319; R. S. 1878 s. 4043; Stats. 1898 s. 4043; 1905 c. 137 s. 1; Supl. 1906 s. 4043; 1925 c. 4; Stats. 1925 s. 324.15; 1933 c. 190 s. 96; 1969 c. 339.

324.16 History: 1919 c. 183 s. 4; Stats. 1919 s. 4043a; 1925 c. 4; Stats. 1925 s. 324.16; 1933 c. 190 s. 97; 1953 c. 61; 1969 c. 339.

324.17 History: 1919 c. 183 s. 4; Stats. 1919 s. 4043b; 1921 c. 354; 1925 c. 4; Stats. 1925 s. 324.17; 1933 c. 190 s. 98; 1947 c. 143; 1953 c. 61; Sup. Ct. Order, 25 W (2d) ix; 1969 c. 339.

The cases triable by jury in a county court under sec. 4043b, Stats. 1921, are the same as those triable by jury in the circuit court. State ex rel. Peterson v. Circuit Court, 177 W 548, 188 NW 645.

324.17, Stats. 1925, applies only to matters which are of right triable by a jury in the circuit court, and therefore, since a jury trial in a will contest is discretionary, there can be no removal to the circuit court. Will of Weidman, 189 W 318, 207 NW 950.

A claim based upon an oral agreement which, if enforceable, entitled the claimant to the entire estate of a decedent presented an issue for a jury and the claimant upon demand was entitled to a jury trial. Kessler v. Olen, 228 W 662, 280 NW 352.

Where a claim against the estate was transferred from the county court to the circuit court for trial and the circuit court rendered judgment on the claim and the record was not yet remanded to the county court, the matter was one pending in the circuit court and an appeal from such judgment was an appeal from the circuit court, so that the time for taking the appeal was governed by the 6-months' limitation in 274.01. Will of Krause, 240 W 72, 2 NW (2d) 733.

324.18 History: Sup. Ct. Order, 232 W vi; Stats. 1939 s. 324.18; 1947 c. 45; Sup. Ct. Order, 258 W viii; Sup. Ct. Order, 271 W xi; 1965 c. 252; 1969 c. 339.

Comment of Advisory Committee, 1951: The change from "may" to "shall" in 324.18 (1) makes mailing a copy of the notice mandatory, when service is by publication, to avoid possible claims of lack of jurisdiction. See Mullane v. Central Hanover Bank & Trust Co. 70 S. Ct. 653. The long insertion is to make clear that the court has reviewed both the list of interested parties and the diligence used in securing addresses. On that foundation the validity of the notice can be established. [Re Order effective July 1, 1951]

Where the record shows a publication of only 17 days it is insufficient, and the presumption is that the court did not act upon it, in the absence of any record or evidence of hearing thereon. Chase v. Ross, 36 W 267. See also McCrubb v. Bray, 36 W 333.

Where the published notice of probate fixed the time of hearing July 24th, but the record showed that the hearing was had August 7th, in the absence of proof to the contrary it will be presumed that other business prevented the hearing on the date fixed, or that it was continued to the subsequent date for the convenience of the parties. Field v. Driving Co. 67 W 569, 31 NW 17.

Where a notice of probate was ordered to be published for 3 successive weeks, and the

affidavit of the printer stated that the notice had been published for ..... successive weeks, commencing May 9th, and the hearing was May 31st, and the order admitting the will recited the filing of an affidavit of the printer, showing that the notice required had been duly published as ordered, after a lapse of 15 years the validity of the probate may be presumed. Portz v. Schantz, 70 W 497, 36 NW 249.

A proceeding to probate a will is in rem; but it is also in personam to the extent that when the will is duly proved and allowed, such probate and allowance is conclusive upon all legatees, devisees and heirs as to the due execution of the will and that it was not obtained by fraud or undue influence. In re Valentine's Will, 93 W 45, 67 NW 12.

Without the proper publication of notice the court has jurisdiction to allow the will; but the proceedings are voidable by those not having appeared nor assented to them, though valid as to all duly notified or who appeared or assented. Heminway v. Reynolds, 98 W 501, 74 NW 350.

A statement in an affidavit of publication of notice that the first insertion was April 30th and the last May 4th will overcome a general statement in the affidavit that it was published once a week for 3 weeks. Flood v. Kerwin, 113 W 673, 89 NW 845.

Lapse of time is no bar to proceedings for the probate of a will in order to establish title to real estate. Hanley v. Kraftczyk, 119 W 352, 96 NW 820.

The statutes providing for the appointment of an adminstrator upon notice do not contemplate the giving of notice to anyone but the heirs, who may waive the same; and insofar as such proceedings are concerned, devisees under a subsequently produced will are bound by the orders or decrees of the court entered before the revocation of the appointment of the administrator. Simpson v. Cornish, 196 W 125, 218 NW 193.

When a guardian ad litem is appointed and files his consent to act, his appearance in the proceedings thereafter is an appearance for and on behalf of his ward. Estate of West, 231 W 377, 284 NW 565.

When objectors were attempting to defeat the probate of a will, offered for probate, by endeavoring to establish by testimony the contents of an alleged subsequent will, the county court should have halted the hearing and directed the subsequent will to be offered for probate, and after the giving of due notice and opportunity for all interested parties to participate, the court should have consolidated and continued the proceedings. Estate of Sweeney, 248 W 607, 22 NW (2d) 657, 24 NW (2d) 406.

The appointment by the county court of an attorney or special representative without the knowledge and consent of a party sui juris does not deprive that party of the right to be served with notice of proceedings for the construction of a will and the assignment of the estate. Estate of Kalitzky, 255 W 442, 39 NW (2d) 357.

A recognized exception to the notice requirement is made where there has been virtual or class representation of the person in question. Estate of Evans, 274 W 459, 80 NW (2d) 408, 81 NW (2d) 489.

See note to 324.29, citing Estate of Evans, 274 W 459, 80 NW (2d) 408, 81 NW (2d) 489.

Where the petition for administration was made by the minor daughter of the decedent, by guardians, neither such minor petitioner nor the decedent's divorced wife, who was not an interested person, was entitled to notice of the hearing on the petition, so that the county court did not lack jurisdiction for want of such notice. Lack of notice of hearing on the petition for administration to a guardian ad litem appointed for the minor petitioner did not render the entire administration proceeding void, whatever effect it may have had on the validity of the choice of administrators who were appointed. Estate of Bobo, 275 W 452, 82 NW (2d) 328.

324.19 History: R. S. 1849 c. 85 s. 42; R. S. 1858 c. 117 s. 42; R. S. 1878 s. 4044; Stats. 1898 s. 4044; 1925 c. 4; Stats. 1925 s. 324.19; Sup. Ct. Order, 212 W xxxv; Sup. Ct. Order, 258 W ix; 1969 c. 339.

324.20 History: R. S. 1878 s. 4045; 1887 c. 395, 429; Ann. Stats. 1889 s. 4045, 4045a; Stats. 1898 s. 4045; 1899 c. 175 s. 1; Supl. 1906 s. 4045; 1925 c. 4; Stats. 1925 s. 324.20; 1931 c. 79 s. 33; Sup. Ct. Order, 212 W xxxv; 1965 c. 252; 1969 c. 339.

324.21 History: 1856 c. 106 s. 1; R. S. 1858 c. 117 s. 61; R. S. 1878 s. 4046; Stats. 1898 s. 4046; 1925 c. 4; Stats. 1925 s. 324.21; 1969 c. 339.

The power of amendment cannot be exercised where a statute of limitation has fully run, so as to divest the title of the purchaser under an administrator's sale. Betts v. Shotton, 27 W 667.

The county court may at any time, in furtherance of justice, revoke an order which has been irregularly made or procured by fraud, provided such revocation will not disturb rights confirmed by the statute of limitations. Estate of Leavens, 65 W 440, 27 NW 324.

A record may be corrected upon the application of a remainderman after death of the life tenant so as to conform to the judgment actually pronounced and rendered. Hall v. Hall, 98 W 193, 73 NW 1000.

An application to modify an order on the ground of fraud or mistake is addressed to the equity power of the court, and will be denied if the applicant has been guilty of laches. Weadock v. Ray, 111 W 489, 87 NW 477.

324.21 authorizes the correction of records which do not speak the truth concerning the action of the court, but it does not authorize the court to reverse or set aside its orders or vacate its judgments. Estate of Cudahy, 196 W 260, 219 NW 203.

See note to 269.46, on relief from judgments, orders and stipulations, citing Estate of Hatzl, 24 W (2d) 64, 127 NW (2d) 782, 129 NW (2d) 249.

324.22 History: 1856 c. 106 s. 2; R. S. 1858 c. 117 s. 62; R. S. 1878 s. 4047; Stats. 1898 s. 4047; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 324.22; 1929 c. 28; Stats. 1929 s. 324.22, 324.23 (2); Sup. Ct. Order, 212 W xxxv; Stats. 1933 s.

324.22; Sup. Ct. Order, 225 W vi; Sup. Ct. Order, 232 W ix; 1969 c. 339.

On discovery by the county court that the child whom the surviving wife had fraudulently claimed to be the issue of her deceased husband, and for whom the court had appointed a guardian, was not in fact the husband's child, it was proper for the court to cancel proceedings in which the guardian had received a certain sum for releasing the child's claim to certain property, and to order a refund of the money. The duty and power of the court in such a case is not impaired by mere lapse of time, so long at least as title to real property is not questioned or rights of innocent purchasers thereof are not affected. A decree of a probate court may be annulled upon clear proof that it is without foundation in law or in fact, the jurisdiction to grant such relief being primarily there rather than in a court of general equity powers. Guardianship of Reeve, 176 W 579, 186 NW 736.

324.23 History: 1856 c. 106 s. 3, 4; R. S. 1858 c. 117 s. 63, 64; R. S. 1878 s. 4048; Stats. 1898 s. 4048; 1925 c. 4; Stats. 1925 s. 324.23; 1929 c. 28; Sup. Ct. Order, 212 W xxxv, xxxvi; 1969 c. 339.

324.24 History: R. S. 1878 s. 4049; 1879 c. 246; Ann. Stats. 1889 s. 4049; Stats. 1898 s. 4049; 1925 c. 4; Stats. 1925 s. 324.24; Sup. Ct. Order, 212 W xxxvi; 1969 c. 339.

324.25 History: Court Rule XII; Sup. Ct. Order, 212 W xxviii; Stats. 1933 s. 324.25; Sup. Ct. Order, 275 W ix; 1969 c. 339.

324.26 History: R. S. 1878 s. 4050; Stats. 1898 s. 4050; 1925 c. 4; Stats. 1925 s. 324.26; Sup. Ct. Order, 258 W ix; 1969 c. 339.

Comment of Advisory Committee, 1951: The 2 inserts, in the introduction and in the form of notice, are to set up a form of notice which is most likely to reach persons whose names are known but whose addresses are unknown. [Re Order effective July 1, 1951]

A notice to creditors which fails to state the address of the deceased is void and confers no jurisdiction to pass upon claims of creditors. The defect is not cured by the designation in the caption of the county in which the court sits. The notice need not state that claims not filed within the time limited will be barred. Estate of Anson, 177 W 441, 188 NW 479.

324.27 History: R. S. 1849 c. 131 s. 27; 1856 c. 120 s. 226; R. S. 1858 c. 133 s. 32, 48; R. S. 1878 s. 4051; Stats. 1898 s. 4051; 1903 c. 120 s. 1; Supl. 1906 s. 4051; 1907 c. 660; 1925 c. 4; Stats. 1925 s. 324.27; 1929 c. 74; 1951 c. 635; 1969 c. 339.

324.29 History: 1887 c. 295; Ann. Stats. 1889 s. 4052a; Stats. 1898 s. 4052a; 1925 c. 4; Stats. 1925 s. 324.29; Court Rules III, IV; Sup. Ct. Order, 212 W xxxvi; 1945 c. 319; 1953 c. 107, 298; 1955 c. 165; 1963 c. 407; 1969 c. 339.

When a guardian ad litem is duly appointed and files his consent to act, his appearance in the proceedings thereafter is an appearance for his ward. In this case the guardian ad litem signed a written waiver for formal notice and consented that a hearing be had on the same day, and that was equivalent to a formal notice of the hearing to the guardian ad litem. However, a guardian ad litem's failure to take precaution does not affect the court's jurisdiction. Estate of West, 231 W 377, 284 NW 565.

Where a guardian ad litem for unknown minor and incompetent heirs, appointed by the county court notwithstanding that apparently the testator left no heirs, objected to the probate of an instrument as a will, and the state, interested from the standpoint of possible escheat, appeared in the county court and also in the supreme court, and the county court might properly consider the evidence received at the probate hearing, so far as competent, by whomsoever it was presented, the supreme court, on an appeal by beneficiaries under the will from a judgment denying probate, has jurisdiction to review the sufficiency of the evidence to support probate, although the testator left no heirs. Will of Knoepfle, 243 W 572, 11 NW (2d) 127.

See note to 324.13, citing Estate of Ehlke, 250 W 583, 27 NW (2d) 754.

The service of notice on an attorney, appointed by the county court as special representative of an adult legatee without the latter's knowledge or consent while absent in military service, was not a satisfactory legal substitute for service on such legatee, and under such circumstances a decree construing the will and assigning the estate was totally void, as to him, for lack of jurisdiction unless some later event or action made it binding on him. Estate of Kalitzky, 255 W 442, 39 NW (2d) 357.

Where a minor son of the petitioner and the trust beneficiary, whose income the petitioner sought to reach, was not a party to the proceeding and had no financial interest in the outcome, and the county court had no jurisdiction to hear the petition, and the income due to such beneficiary from the trust could not be reached for the purpose asked nor for the payment of fees, an order directing the trustee to pay fees to a guardian ad litem needlessly appointed was erroneous. Estate of Austin, 258 W 578, 46 NW (2d) 861.

A guardian ad litem does not represent children born after the proceeding, if the interests are adverse, and therefor the decree is not res adjudicata as to such after-born children. Estate of Evans, 274 W 459, 80 NW (2d) 408, 81 NW (2d) 489.

Guardians ad litem are not to be appointed under 324.29 (2) unless there is some necessity for one to serve a useful purpose. Estate of Strange, 7 W (2d) 404, 97 NW (2d) 199.

324.30 History: Court Rule I; Sup. Ct. Order, 212 W xxxvii; Stats. 1933 s. 324.30; 1969 c. 339.

324.31 History: 1951 c. 252; Stats. 1951 s. 324.31; 1955 c. 352; 1969 c. 339.

Editor's Note: For foreign decisions construing the "Uniform Ancillary Administration of Estates Act" consult Uniform Laws, Annotated.

324.35 History: R. S. 1849 c. 67 s. 9; R. S. 1858 c. 98 s. 9; R. S. 1858 c. 99 s. 12; R. S. 1878 s. 3803; Stats. 1898 s. 3803; 1905 c. 242

s. 1, 2; Supl. 1906 s. 3803, 3803a; 1907 c. 289; 1913 c. 407; Stats. 1913 s. 3803; 1925 c. 4; Stats. 1925 s. 310.22; Sup. Ct. Order, 212 W xxvi; Stats. 1933 s. 324.35; Sup. Ct. Order, 258 W x; 1969 c. 283, 339; 1969 c. 411 s. 9.

Where an administrator had been a nonresident for 10 years and an appointment of an administrator de bonis non was made, reciting the facts authorizing the revocation, such appointment was valid in a collateral proceeding, and a revocation was implied. Bailey v. Scott, 13 W 619.

A statutory enumeration of grounds for the removal of an executor, administrator, guardian or trustee is usually held to exclude other grounds. Their duties are continuing and the exercise of them is always subject to the supervision of the court. Their qualifications must be determined as of the time of their appointment, but their suitability must be determined when the question of removal arises, and under a different statute from that prescribing their qualification. Unsuitability may be based upon conduct preceding as well as that following appointment. Will of Zartner, 183 W 506, 198 NW 363.

The president of a bank that was a large creditor of an insolvent estate was an improper person to appoint administrator of the estate; and, matters having arisen making a clear conflict between his duty as administrator and his interest as head of the bank, he should have been removed. Estate of Dunlap, 184 W 345, 199 NW 387.

The control of county courts and courts of equitable jurisdiction in the matter of custody of children, when incidental to guardianship proceedings, was not disturbed by the enactment of the children's code. The guardian of the person of a minor has power to control the ward, and to justify interference with his control by the courts there must be positive misbehavior, want of integrity, or negligence affecting a ward's welfare. The circuit court properly transferred a habeas corpus proceeding against a guardian to the county court which had assumed jurisdiction of the guardianship matter. Guardianship of Bagley, 203 W 89, 233 NW 563.

The competency of a person nominated as the executor of a will must be determined as of the time when the appointment is made, and the competency must be determined by consideration of the provisions of 310.12, requiring the issuance of letters testamentary to such nominee if he is "legally competent," and not by consideration of the provisions of 324.35, relating entirely to removal. Estate of Svacina, 239 W 436, 1 NW (2d) 780.

At a hearing on the petition of an executor for instructions, an oral motion by devisees for his removal as executor, even though based on facts stated in his petition for instructions, could not serve as a substitute for the procedure for removal of an executor, as provided for in 324.19 and 324.35; and the county court could not acquire jurisdiction to remove him without compliance with the statutory procedure. 324.18 (3) has no application. Will of Erpenbach, 245 W 518, 15 NW (2d) 795.

The county court did not abuse its discretion in refusing to remove executors alleged to have mismanaged the estate and to have improperly diverted funds from certain corporations controlled by the executors under a will creating a trust; but the entire matter may be reviewed in a further proceeding or at the time the executors file their final account, and if advantages gained by any of the fiduciaries personally were detrimental to others interested in the estate as beneficiaries or otherwise, the rules set out in Estate of Peabody, 218 W 541, and Estate of Teasdale, 261 W 248, can be applied. Estate of Landauer, 264 W 456, 59 NW (2d) 676.

Executors, who were directors of several corporations only by virtue of stock held by the estate, were fiduciaries and, in proceedings for their removal as executors for alleged mismanagement and improper diversion of corporate funds, they should disclose all relevant information on proper showing to the court, and there was no error in directing them to produce corporate records without following 180.43, relating to the rights of stockholders to examine corporate records, such statute not being applicable here and not being exclusive. Estate of Landauer, 264 W 456, 59 NW (2d) 676.

324.351 History: 1945 c. 536; Stats. 1945 s. 324.351; 1969 c. 283, 339; 1969 c. 411 s. 10.

324.355 History: Sup. Ct. Order, 262 W xi; Stats. 1955 s. 324.355; 1969 c. 339.

Comment of Judicial Council, 1952: The public generally does not understand that the judge does not set the pace at which probate and administration proceed. While the court may have inherent power to cite persons responsible for delaying administration, it seems preferable to have a mandatory statute requiring personal representatives and lawyers to explain the delay. This rule should provide additional incentive for procrastinators to get estates closed in less than 3 years; give the judge clear authority to determine the reasons for delay in administration of estates long pending in his court; give the personal representative and attorney a fair chance to explain the delay; and permit the judge to take the steps necessary to expedite administration by dismissing the persons at fault. [Re Order effective May 1, 1953]

324.356 History: 1953 c. 299; Stats. 1953 s. 324.356; 1969 c. 283, 339; 1969 c. 411 s. 11.

324.36 History: Supt. Ct. Order, 241 W vi; Stats. 1943 s. 324.36; 1969 c. 339.

Comment of Advisory Committee: There is need of a rule whereby the invalidity of probate proceedings due to a lack of service of notice may be validated. 324.36 is intended to provide a method. The serious consequences which may result from failure of acquiring jurisdiction of an interested minor are discussed in O'Dell v. Rogers, 44 W 136, 173. Failure to obtain jurisdiction of a necessary party may be due to a total lack of service of notice or to a futile attempt to serve him. For validating this type of invalidity in civil proceedings in courts of record we have sections 269.08, 269.12 and 278.09, and perhaps other provisions. [Re Order effective July 1, 1943]

VEHICLE CODE.

Editor's Note: The following conversion table is designed to assist in tracing the various provisions of ch. 85, Stats. 1955 into the sections of the 1957 vehicle code. It covers all sections repealed or renumbered by ch. 260 (Bill 99-S), Laws 1957. It does not show (except in the case of complete repeals) what specifically happened to a particular section of ch. 85, i.e., whether it was substantially changed or restated without change. To find that information, turn to the section and the notes printed from Bill 99-S. The notes also will show what sections of ch. 85 are covered by a particular section of the vehicle code.

Conversion Table.

Stats. 1955	*Stats. 1957*
85.01 (1) (first sentence)	341.04 (1)
(2nd sentence)	341.05 (4) and repealed in part[1]
(3rd & 4th sentences)	341.04 (3) and repealed in part[1]
(5th sentence)	Repealed[1]
(6th sentence)	341.05 (1), (3), (5)
(7th to 10th sentences)	341.30 341.10 (1)
(11th, 12th, 13th sentences)	341.31
(14th and 15th sentences)	Repealed[2]
(1a) (a) and (b)	340.01 (4)
(1a) (c)	341.04
(1b) (a), (b) and (c)	341.27
(1b) (d)	341.28 (7) (a)
(1b) (e)	341.13 (1), (3)
(1d) (a)	Repealed[3]
(1d) (b)	Repealed[4]
(2)	341.08 341.10 (2) 342.06 342.10 (1) (a)
(2a)	341.07 341.11 (2)
(3) (a) (first sentence)	341.11 (1) 341.12 (1) 342.09 (1) 342.10 (1)
(2nd sentence)	341.11 (4)
(3rd sentence)	342.10 (1) (b)
(4th sentence)	342.06 (1) (d) 342.11 (3)
(3) (b)	342.20 (2) (a) 342.13
(4) (a)	341.25 (1) (a)
(4) (ad)	342.13
(4) (am)	Repealed[5]
(4) (an) (first sentence)	341.27 (3) (a)
(2nd and 3rd sentences)	341.28 (2) (a)
(4th sentence)	341.33
(4) (ao)	Repealed[6]
(4) (b)	341.25 (1) (b)
(4) (ba)	Repealed
(4) (bb)	341.26 (2) (g)
(4) (c)	341.25 (1) (d), (e), (2)
(4) (cc) 1.	341.26 (3) (d), (g)
(4) (cc) 2.	341.26 (3) (h)
(4) (cc) 3.	341.26 (3) (c)
(4) (cc) 4.	341.26 (3) (e)
(4) (cc) 5.	341.26 (3) (f)
(4) (cc) 6.	341.30 (1) (e)
(4) (cc) 7.	Repealed[7]
(4) (cd) 1.	341.26 (1) (a)
(4) (cd) 2.	341.26 (1) (b)
(4) (cd) 3.	341.26 (1) (c)
(4) (cd) 4.	341.26 (1) (e) 1.
(4) (cd) 5.	341.26 (1) (e) 2.
(4) (cd) 6.	341.26 (1) (e) 3.
(4) (cd) 7.	341.26 (1) (d)
(4) (cd) 8.	341.05 (11)
(4) (cd) 9.	341.05 (7), (16)
(4) (cd) 10.	341.05 (8), (9), (10)
(4) (cd) 12.	341.05 (12)
(4) (cd) 13.	341.05 (12)
(4) (cm)	341.26 (3) (a)
(4) (cr) (first sentence)	341.25 (1) (h)
(2nd and 3rd sentences)	341.30
(4th sentence)	341.31 (3)
(5th sentence)	341.12
(6th sentence)	340.01 (56)
(4) (d)	341.25 (1) (h)
(4) (dm)	341.26 (2) (h)
(4) (e) 1.	341.25 (1) (g)
(4) (e) 1m.	341.05 (13)
(4) (e) 2.	341.25 (1) (f)
(4) (el)	341.26 (3) (b) and (h)
(4) (em)	341.04 (1) 341.25 (1) (i) 342.05
(4) (en)	347.35 (4) 347.36 (1)
(4) (f)	341.25 (1) (d)
(4) (g) (first 2 sentences)	341.26 (2) (a) to (f)
(3rd sentence)	341.12
(4th sentence)	341.34 (1)
(4) (g) (5th sentence)	Repealed[8]
(4) (h) (first 4 sentences)	341.28 341.31
(last sentence)	341.33 (2)

[1]See note to s. 341.04 in Bill 99-S.

[2]The 14th sentence is covered by s. 20.951 of the statutes. The 15th sentence is unnecessary in view of s. 341.31.

[3]Not necessary under new drafts.

[4]First sentence considered not necessary; last sentence covered by s. 990.001 (11) of the statutes.

[5]This provision is obsolete.

[6]The points covered by the repealed provision are covered by ss. 341.27 and 341.28, but in a somewhat different manner so as to conform to practice.

[7]This provision is now obsolete.

[8]The provision serves no purpose since the legislature never has authorized purchase of automobiles for use by conservation wardens.

Stats. 1955	*Stats. 1957*
85.01 (4) (ha) (first 2 sentences)	341.33 (3)
(last sentence)	341.28 (4) (c)
	341.31 (1) (d)
(4) (hb)	341.09 (3)
(4) (hm) (first 3 sentences)	341.28 (2) (a), (6)
	341.31 (1) (c), (2) (b)
(last 3 sentences)	342.07
	342.10 (3)
(4) (i) (first sentence)	341.62
(2nd sentence)	341.61 (2)
(3rd and 4th sentences)	341.09 (2)
(5th sentence)	341.04
	341.61
	341.62
(4) (j) (first sentence)	341.04 (2)
	341.32 (2)
	341.60
(last sentence)	341.25 (3)
(5)	341.29
	341.30 (2)
(6) (a)	341.12
	341.13 (1) (a)
(6) (ad) (first sentence)	341.14 (1)
(last 2 sentences)	346.50 (2)
(6) (b)	341.13 (2)
(6) (c) 1. (first 3 sentences)	341.15 (1), (2)
(last sentence)	341.61 (2)
(6) (c) 2. (first 2 sentences)	342.18 (1) (c)
(last sentence)	341.61 (2)
(6) (e) 1.	341.14 (2)
(6) (e) 2.	341.17 (3), (4) (c), (5)
(7)	341.12
	341.15
(8) (a) (first sentence)	342.18 (1)
(2nd sentence)	342.19 (1)[9]
(3rd sentence)	342.20 (1)
(4th sentence)	342.18 (1)
(5th & 6th sentences)	342.19 (1)
(last 2 sentences)	342.18 (1) (c)
(8) (am)	342.18 (1) (c)
(8) (b) (first 3 sentences)	342.06 (1) (f)
	342.30
(last sentence)	Repealed[10]
(8) (c)	342.19 (2)
(8) (d) (first 2 sentences)	342.34
	342.31 (1)
(3rd, 4th sentences)	342.32
(5th sentence)	Repealed
(6th sentence)	342.08
(7th sentence)	Repealed[11]

[9]The statement that the transfer of a vehicle is not valid until the department has been notified thereof is repealed. See note to s. 342.19 in Bill 99-S.

[10]See note to s. 342.30 in Bill 99-S.

[11]Covered by s. 15.65 (3) of the statutes.

Stats. 1955	*Stats. 1957*
(8) (e) (first sentence)	342.06 (2)[12]
(2nd sentence)	342.05 (4)
	342.18 (2), (3)
	342.19 (3)
	342.30 (3)
	342.34 (2)
(9)	342.09 (2)
(9a)	342.31 (2)
(10) (a)	341.16
(10) (b) (first sentence)	342.12
	342.13
(2nd sentence)	341.11 (3)
(11)	341.17
(12) (first sentence)	341.04 (3)
	341.11 (4)
	341.15 (3)
	341.16 (4)
(2nd sentence)	Repealed[13]
85.015 (1)	341.25 (1) (b)
(3)	349.18 (1)
85.02 (1) (a) (first sentence)	341.48
	341.54 (2)
(2nd sentence)	341.51 (1)
(1) (ab)	Repealed[14]
(1) (b) (first sentence)	341.54 (1)
(2nd sentence)	341.51 (3)
(1) (c)	341.50
(2)	341.49
(3)	341.47 (2)
(6) (first sentence)	341.51 (1), (2)
(2nd sentence)	341.47 (1)
	341.52
(7)	341.55
(8)	341.55
(9)	341.54 (3)
(10)	341.53
(10a)	341.48 (3)
	341.49
	341.50 (3)
(11)	341.48 (2)
	341.49 (3)
	341.54 (4)
	341.55
	341.56
85.025 (1) (first sentence)	341.48
	341.54 (2)
(2nd sentence)	341.51 (1)
(2) (first sentence)	Repealed[15]
(2nd sentence)	341.51 (1)
(3) (first sentence)	341.51
(2nd sentence)	341.52
(4)	341.55 (3), (4)
(5)	341.53
(6)	341.54 (4)
	341.55
	341.56
85.03 (1)	342.35
(2)	342.36 (1), (2)
(3)	342.37 (1), (2)

[12]Forgery of certificate of title is covered by the forgery provisions of the criminal code.

[13]See note to s. 341.04 in Bill 99-S.

[14]This provision is obsolete.

[15]The authority to prescribe forms is covered by s. 110.06 (1) of the statutes. The remainder of the repealed provision never has been followed in practice.

Stats. 1955	*Stats. 1957*
85.03 (4)	342.37 (3)
(5)	342.38 (1)
(6)	342.38 (1)
(7)	342.38 (2)
(8)	342.35
	342.38 (3)
85.04 (1)	342.06 (1) (g)
(2)	342.33
(3) (first sentence)	342.06 (1) (h)
(last 2 sentences)	342.10 (3)
(4) (first sentence)	342.06 (1) (h)
(2nd sentence)	342.10 (3)
(5)	342.06 (3)
	342.33
85.045 (1)	Repealed[16]
(2)	341.34 (1)
85.05 (1) (a)	341.40[17]
(1) (b)	341.40
(2)	341.41 (1), (2)
(3)	341.41 (3)
(4)	347.05
(5)	341.41 (1a), (4)
(6)	345.09 (1), (2)
(7)	345.09 (3)
(8)	345.09 (4)
85.055 (1)	341.42 (1), (2)
(2)	341.42 (3), (4), (5)
(3)	341.42 (5)
(4)	341.42 (6)
(5)	Repealed[18]
85.06 (1) (a)	340.01 (21)
(1) (b)	340.01 (36)
(1) (c)	Repealed[19]
(1) (d)	Repealed[19]
(1) (e)	340.01 (59)
(1) (f)	340.01 (1)
(1) (g)	340.01 (13)
(1) (h)	340.01 (62)
(1) (i)	340.01 (65)
(1) (j)	Repealed[19]
(1) (k)	Repealed[19]
(1) (l)	340.01 (7)
(1) (m)	Repealed[19]
(1) (n)	340.01 (19)
(1) (o)	340.01 (44)
(1) (p)	340.01 (49)
(1) (q)	340.01 (23)
(2) (a)	347.06 (1)
(2) (b)	347.08 (1)
(3)	347.09 (1) (a)
	347.10 (2)
(4)	347.09 (1) (b)
	347.10 (2)
(5)	347.13 (1)
	347.27
(6)	347.14
(7)	347.26 (2)
(8)	347.26 (3)
(9)	347.26 (4)
(10)	347.07 (1)
(11)	347.07 (2) (a)
(12)	347.07 (2) (b)
(13)	347.26 (5)
(14) (a)	347.25 (1)
(14) (b)	347.26 (6)
(15)	347.15
(16)	347.12
(17)	347.16
	347.17
	347.18 (2)
	347.19 (2)
(18)	347.28
	347.29
(19) (a) (first & 3rd sentences)	Repealed[20]
(2nd sentence)	347.23 (1) (a)
(19) (b) and (c)	347.23 (1) (b), (3)
(20)	347.22
(21)	347.09 (1) (c)
	347.11
	347.13 (1)
(22)	346.81 (1)
(23)	347.13
	347.14
(24)	347.24
	347.27
(25)	347.16 (1) (c)
	347.17
	347.18 (1)
(26)	347.18 (1)
	347.19 (1)
(27)	347.17
	347.19 (1)
(28)	347.06 (3)
(29)	349.02
85.063 (1)	347.43 (1)
(2)	347.43 (3)
(3)	Repealed[21]
(4)	Repealed[21]
(5) (first sentence)	347.50
(2nd sentence)	347.43 (4)
85.08 (1) (c)	340.01 (56)
(1) (d)	340.01 (37)
(1) (e)	343.01 (2) (b)
(1) (f)	Repealed[22]
(1) (g)	Repealed[22]
(1) (h)	Repealed[22]
(1) (i)	343.01 (2) (a)
(1) (j)	344.01 (2) (e)
(1) (k)	343.01 (2) (d)
(2) (a)	343.02
(2) (b)	Repealed[23]
(3) (first sentence)	343.05 (1)
(2nd sentence)	343.26
	343.38
(3a)	343.12
(4) (a)	343.05 (2) (a)
(4) (b)	343.05 (2) (b)
(4) (c)	343.05 (2) (c)
(4) (d)	Repealed[24]
(5)	Repealed[25]
(6) (a)	343.06 (1)
(6) (b)	343.06 (3)
(6) (c)	343.06 (2)
(6) (d)	343.06 (4)

[16]The repealed provision is obsolete.

[17]Exemption from driver licensing covered by s. 343.05.

[18]Adequate rule-making authority conferred by s. 110.06.

[19]The repealed definitions are unnecessary in the new vehicle code.

[20]See note to s. 347.23 in Bill 99-S.

[21]See note to s. 347.43 in Bill 99-S.

[22]The repealed definitions are unnecessary in the new vehicle code.

[23]Adequate rule-making authority conferred by s. 110.06.

[24]The repealed section is obsolete.

[25]The repealed provision is unnecessary.

Stats. 1955	*Stats. 1957*
85.08 (6) (e)	343.06 (5)
(6) (f)	343.06 (7)
(6) (g)	343.06 (8)
(6) (h)	343.06 (9)
(6) (i)	343.06 (10)
(6) (j) (first sentence)	343.06 (6)
(rest of section)	343.09
(6) (k)	343.06 (2)
	343.10 (3)
(6m)	343.35
(7)	343.07 (1)
(7m)	343.07 (2)
(8) (a)	343.14 (1)
(8) (b)	343.14 (2)
(8) (c)	343.14 (2) (e)
	343.15 (1)
(9) (a) (first sentence)	343.08 (1) (a)
(2nd sentence)	343.08 (2)
	343.17 (2)
(3rd & 4th sentences)	343.08
(9) (b)	343.08
	343.17 (2)
(9) (c)	343.15 (2)
(10)	343.15 (3)
	343.25 (2)
(11)	343.25 (3)
	343.26
(12) (a)	343.16 (1)
(12) (b)	Repealed[26]
(12) (c)	343.16 (1)
(12) (d)	343.16 (2)[27]
(12) (e)	Repealed[26]
(12) (f)	343.16 (4)
(12) (g)	343.16 (5)
(13)	343.17 (1)
	343.23 (1) (b)
(14)	343.18
(15) (a) (first sentence)	343.13
(2nd sentence)	343.17 (2)
(15) (b)	343.34 (1)
(16)	343.19 (1)
(17) (b)	343.20
(17) (c)	343.14 (1)
(17) (d)	343.17 (1)
(18)	343.21
(19) (first sentence)	343.22 (1)
(2nd & 3rd sentences)	343.21 (1) (f)
(20)	343.23
(21)	343.25 (1)
	343.35 (1)
(22) (a)	340.01 (40)[28]
(22) (b)	343.26 (3)
(23) (a)	343.31 (2)
	343.32 (1) (c)
(23) (b)	Repealed[29]
(24) (a) (first sentence)	343.28 (2)
(2nd sentence)	343.29 (2)
(24) (b) (first sentence)	343.28 (1)
(2nd sentence)	343.29 (1)
(24) (c)	343.28
	343.29
(24) (d)	343.36 (1), (2)
(24b)	343.27 (1), (2)
(24c)	343.30 (2)
(25) (a)	343.31 (1) (a)
(25) (b)	343.31 (1) (b)
(25) (c)	343.31 (1) (c)
(25) (d)	343.31 (1) (d)
(25) (e)	343.31 (1) (e)
(25) (f)	343.31 (1) (f), (g)
(25) (g)	Repealed[30]
(25a)	343.39 (1) (b)
(25c) (a)	343.10 (1)
(25c) (am)	343.10 (2)
(25c) (b) (first sentence)	343.10 (4)
(2nd sentence)	343.10 (1)
(last 2 sentences)	343.10 (3)
(25c) (c) (first sentence)	343.10 (4)
(2nd sentence)	343.10 (5)
(25c) (d)	343.30 (3)
	343.31 (1) (h)
(25c) (e)	343.10 (6)
(26)	343.38 (1)
	343.21 (1) (e)
(26m)	340.01 (40)[31]
(27) (a)	343.30 (1)
(27) (b)	343.32 (2)
(27) (c)	343.32 (1) (a)
(27) (d)	343.32 (1) (b)
(27) (e)	343.32 (1) (d)
	344.25
(27) (g)	Repealed[32]
(28)	343.33
(29)	343.38 (1)
	343.21 (1) (e)
(30)	343.32 (3)
(31)	343.38 (1) (c)
(32)	343.35 (1), (3)
(33) (first 2 sentences)	343.16 (3)
(3rd sentence)	343.34 (2)
(34)	343.37
(34a)	343.40
(35) (a)	343.43 (1) (a)
(35) (b)	343.43 (1) (b)
(35) (c)	343.43 (1) (c)
(35) (d)	343.35 (2)
(35) (e)	343.14 (3)
(35) (f)	343.43 (1) (e)
(35) (g)	343.05 (3)
	343.12 (3)
	343.19 (2)
	343.22 (2)
(35) (h)	343.43 (1) (f)

[26]The repealed provisions are obsolete.

[27]The $2 limitation on the physician's fee was dropped. See note to s. 343.16 in Bill 99-S.

[28]The term "operating privilege" is used whenever suspension or revocation is involved and "operating privilege" is defined to include the privilege granted a nonresident to operate a vehicle in this state.

[29]See note to s. 343.39 in Bill 99-S.

[30]See note to s. 343.31 in Bill 99-S.

[31]The term "operating privilege" is used with reference to reinstatement after suspension or revocation and "operating privilege" is defined to include the privilege of an unlicensed person to secure a license.

[32]The repealed provision is unnecessary in view of the definition of "local ordinance which is in conformity therewith."

Stats. 1955	*Stats. 1957*
85.08 (38)	343.45 (1)
(39)	343.45 (2)
(40)	343.46 (1), (2), (3)
(41) (a)	Repealed[33]
(41) (b)	343.05 (3)
	343.12 (3)
	343.19 (2)
	343.22 (2)
	343.43 (2)
	343.45 (3)
	343.46 (4)
(42)	343.30 (5)
(43)	Repealed[33]
85.09 (1) (a)	340.01 (8)
(1) (b)	344.01 (2) (a)
(1) (c)	343.01 (2) (b)
(1) (d)	344.01 (2) (b)
(1) (e)	340.01 (37)
(1) (f)	340.01 (40)
(1) (g)	344.01 (2) (c)
(1) (h)	340.01 (42)
(1) (i)	Repealed[34]
(1) (j)	344.01 (2) (d)
(1) (jm)	344.22
(1) (k)	344.01 (2) (e)
(1) (l)	344.01 (2) (f)
(2) (a)	344.02
	110.06
(2) (b)	344.03
	227.17
(2) (c)	344.04
(3)	344.06
(4)	344.08
(5) (a)	344.12
	344.13 (1), (3)
	344.14 (1)
(5) (am)	344.13 (2)
(5) (b) 1.	344.14 (2) (a)
(5) (b) 2.	344.14 (2) (b)
(5) (b) 3.	344.14 (2) (c)
(5) (b) 4.	344.14 (2) (d)
(5) (c)	344.15 (1), (2), (3)
(5) (d)	344.15 (4)
(5) (e)	218.01 (6m)
(6) (a)	344.14 (2) (e)
(6) (b)	344.14 (2) (f)
(6) (c)	344.14 (1), (2) (g)
(6) (d)	344.14 (2) (h)
(6m)	344.16
(7)	344.18
(8)	344.19
(9)	344.17
(10)	344.20
(11)	344.21
(12)	344.05
(13) (a)	344.25 (intro. par.)
(13) (b)	344.25 (2)
(14)	344.26 (1), (2)
(15)	344.26 (3)
(16)	344.27
(17)	344.24
(18)	344.29
	344.30
(19)	344.31
(20)	344.32
(21)	344.33
(22)	344.34
(23)	344.35
(24)	344.36
(25)	344.37
(26)	344.38
(27)	344.39
(28)	344.40 (2)
(29)	344.41
(31)	344.45 (1)
(31m)	344.46 (1), (3)
(32) (a)	344.47
	343.44
(32) (b)	344.45 (2)
(32) (c)	344.48
(32) (d)	344.46 (2)
(33)	344.14 (2) (i), (j)
	344.25 (1)
(35)	Repealed[35]
(36)	Repealed[35]
(37)	344.07
(38)	Repealed[35]
(39)	Repealed[35]
85.095	345.05
85.10 (1)	340.01 (73)
(2)	340.01 (35)
(3)	340.01 (4)
(4) (first sentence)	340.01 (33)
(4) (a)	340.01 (45)
(4) (b)	340.01 (30)
(4) (c)	340.01 (32)
(5)	340.01 (34)
(5a)	340.01 (18)
(6)	340.01 (72)
(7)	340.01 (53)
(8)	340.01 (16)
(9)	Repealed[35]
(10)	Repealed[35]
(11)	340.01 (70)
(11a)	340.01 (17)
(12)	340.01 (57)
(13)	Repealed[36]
(14)	340.01 (3)
(15)	Repealed[36]
(16)	340.01 (42)
(17)	340.01 (41)
(18)	340.01 (43)
(19)	340.01 (69)
(20)	340.01 (26)
(21) (a)	340.01 (22)
(21) (b)	340.01 (63)
(21) (c)	340.01 (2)
(21) (d)	340.01 (46)
(21) (e)	340.01 (54)
(21) (f)	340.01 (15)
(21) (g)	346.02 (8)
(22)	340.01 (25)
(23)	340.01 (10)
(24)	340.01 (58)
(25)	340.01 (55)
(26)	Repealed[36]
(27)	Repealed[36]
(28)	340.01 (6)
(29)	340.01 (50)
(30)	Repealed[36]
(31)	340.01 (67)

[33]The repealed provisions are unnecessary.
[34]Covered by s. 990.01 (26) of the statutes.
[35]The repealed provisions were considered obsolete or unnecessary.
[36]The repealed definitions were considered unnecessary in the revised vehicle code.

Stats. 1955	*Stats. 1957*
85.10 (32)	Repealed[36]
(33)	349.17 (2)
(34)	Repealed[36]
(35)	340.01 (51)
(36) (a)	Repealed[36]
(36) (b)	Repealed[36]
(36) (c)	340.01 (20)
	348.01 (2) (a)
(37)	340.01 (38)
(38)	340.01 (39)
(39)	340.01 (68)
(40)	Repealed[37]
(41)	340.01 (8)
(42)	340.01 (12)
(45)	340.01 (29)
85.11	Repealed[38]
85.12 (1)	349.02
(2)	346.04 (1)
(3)	346.04 (2)
(4)	346.02 (5)
(5)	346.03
(6)	346.02 (2), (4)
85.13 (1)	346.63 (1)
(2)	340.01 (35), (73)
	346.63 (3)
(3)	346.65 (2)
85.14 (1) (first sentence)	346.61
(2nd sentence)	349.09
(2)	346.42
85.141 (1) (a)	346.67
(1) (b)	346.74 (5)
(2) (a)	346.67
(2) (b)	346.74 (5)
(3)	346.67
(4) (a)	346.68
(4) (b)	346.74 (3)
(5) (a)	346.69
(5) (b)	346.74 (3)
(6) (a)	346.70 (1), (2)
(6) (ag)	346.70 (3)
(6) (am)	346.70 (3)
(6) (ar)	346.70 (1)
(6) (b)	110.04 (1)
(6) (c)	346.70 (4)
	346.74 (4)
(8) (a)	110.04 (3)
(8) (b)	346.70 (2)
(9)	346.71
(10)	346.73
(11)	110.04 (2)
(12)	349.19
85.15 (1)	346.05 (1), (3)
(2)	346.09 (1)
(3)	346.15
(4)	346.06
(5)	346.13 (2)
85.16 (1)	346.07 (1)
(2)	346.13 (1)
(3)	346.07 (2)
(4)	346.07 (3)
(5)	346.09 (2)
(6)	346.10
(7)	Repealed
(8)	Repealed
(9)	Repealed
(10)	346.24 (3)
(11)	346.11
(12) (a)	346.48
(12) (b) (first sentence)	347.25 (2)
(2nd sentence)	346.48 (2)
85.17 (1)	346.31 (2)
(2)	346.31 (3), (4)
	346.32
(2a)	346.31 (3), (4)
(3)	346.31 (1)
(4)	346.33 (1) (a)
(5)	346.33 (1) (b), (c), (3)
85.175	346.34
85.176	346.35
85.177	346.35
85.18 (1)	346.18 (1)
(4)	346.18 (3)
(5)	346.18 (2)
(6)	346.20
(7)	346.19 (1) (d)
(8)	346.47 (1)
(9)	346.18 (4)
	346.47 (1)
(10)	346.18 (5)
(11)	346.21
(12)	346.05 (2)
85.19 (1)	346.51
(2) (a)	346.54
(2) (b)	346.54 (1) (c)
(2) (c)	349.13 (2) (d)
(3) (a)	346.52 (1) (a)
(3) (b)	346.52 (1) (b)
(3) (c)	346.52 (1) (c)
(3) (d)	346.52 (1) (d)
(3) (e)	346.52 (1) (e)
(3) (f)	Repealed[39]
(3) (g)	346.52 (1) (f)
(4) (a)	346.53 (1)
(4) (b)	346.53 (2)
(4) (c)	346.52 (1) (g)
(4) (d)	346.53 (3)
(4) (e)	346.53 (4)
(4) (f)	346.52 (2)
(4) (g)	346.52 (1) (h)
	346.53 (6)
(4) (h)	Repealed[40]
(4) (i)	346.54 (1) (d)
(4) (j)	346.53 (5)
(5)	346.55 (2)
(6)	349.13 (3)
(7)	349.13 (2) (a)
(8)	346.50 (1) (a)
(9)	346.55 (1)
(10)	346.55 (3)
85.20 (1)	346.19 (1)
85.20 (2)	Repealed
85.21	346.90
85.215	344.51
85.216	344.52
85.22 (1)	346.12
(2)	Repealed[41]
85.23	346.94 (1)
85.24	346.94 (2)
85.25	346.20 (2)
85.26	346.78
85.27	346.78

[37]Covered by s. 990.01 (26) of the statutes.

[38]This provision was enacted at a time when road rights of motor vehicle operators were much less secure than at present. The provision no longer is needed.

[39]See note to s. 346.51 in Bill 99-S.

[40]The repealed provision is covered by ss. 346.52 (1) (h) and 346.53 (6).

[41]See note to s. 346.12 in Bill 99-S.

Stats. 1955	*Stats. 1957*
	346.79 (4)
	346.94 (10)
85.28	Repealed
85.29	346.94 (4)
85.30 (1)	346.94 (5)
(2)	346.94 (6)
85.31	346.87
	346.33 (2)
85.32	346.14
85.33	347.21 (3)
85.34 (1)	346.88 (1)
(2)	346.88 (2)
(3)	346.89 (1)
(4)	346.89 (2)
85.35 (1)	346.88 (3)
(2)	347.42
(3)	346.88 (3)
85.355 (first sentence)	346.94 (7)
(2nd sentence)	346.95 (2)
85.36	347.39
85.37	347.03
85.38	348.10 (2)
85.39 (1)	346.92 (1)
(2)	346.92 (2), (3)
(3)	346.94 (3)
85.395	346.62 (1)
85.40 (1) (a)	346.57 (4) (e), (g)
(1) (b)	346.57 (4) (f)
(1) (c)	346.57 (4) (a)
(1) (d)	346.57 (4) (b)
(1) (e)	346.57 (4) (c)
(1) (g)	346.57 (4) (h)
(1) (h)	346.57 (4) (h)
(1) (i)	346.58 (2)
(2) (a)	346.57 (2)
(2) (b)	346.57 (3)
(2) (c)	346.58 (1)
(3) (a)	349.11 (1), (2)
(3) (b)	349.11 (1), (3)
(3) (c)	349.11 (5)
(3) (d)	349.11 (6)
(3) (f)	349.11 (5)
(3) (g)	340.01 (26)
(4)	345.13
(5)	346.03
	347.25 (1)
(6)	346.59
85.41 (1)	349.11 (4)
(2)	346.57 (5)
85.44 (1)	346.24 (1)
(2)	346.23 (1)
(3)	346.23 (2)
(4)	346.25
(5)	346.28 (2)
(6)	346.28 (1)
(7)	346.29 (1)
(8)	346.94 (9)
(9)	346.29 (2)
(10)	346.26
(11)	349.18 (4)
85.445	348.05 (2) (i)
	348.06 (1)
	348.07 (2) (b), (c)
	348.26 (4)
	348.27 (7)
85.45 (1)	348.02 (2), (3)
	347.04
	349.15 (1)
(2) (a)	348.05
(2) (b)	348.07
(2) (c)	348.07
	348.08
(2) (d)	348.06
(3) (first 2 sentences)	348.26 (3)
	348.27 (6)
(3rd sentence)	348.08 (2)
(4th sentence)	348.08 (1) (b)
(4)	347.21 (1), (2)
	348.08 (2)
(5)	347.49
(6)	347.46 (2)
85.46 (1)	348.15 (1) (b)
	348.16 (1) (b)
(2)	349.15 (2)
(3)	Repealed[42]
85.465	348.18
85.47 (1) (a) (first sentence)	348.15 (2)
(2nd sentence)	348.15 (2) (b), (c)
(3rd sentence)	348.15 (3)
(1) (b)	348.15 (1) (a)
(1) (c)	348.15 (3) (a), (b)
(1) (d)	348.15 (3) (c), (4)
(2)	349.15 (3)
85.48 (1)	348.16
(2)	349.15 (3)
(6)	348.16 (3)
85.49	348.15 (2) (a)
	348.16 (2) (a)
85.50	348.185
85.51	341.32 (2)
85.52	348.19
85.53 (1) (a) (first 2 sentences)	348.25 (4)
	348.26 (2)
(3rd, 4th sentences)	348.27 (2)
(5th sentence)	348.25 (2)
(1) (b)	348.27 (4)
(1) (c)	348.25 (3), (5)
(2)	348.26 (2)
(3) (a)	348.26 (5)
(3) (b)	348.25 (5)
(4)	348.25 (5)
(5)	348.26 (2)
(6)	348.27 (3)
(7)	341.32 (3)
85.54 (1) (first 2 sentences)	349.16
(1) (last 4 sentences)	348.175
(2)	348.17 (2)
	349.16 (1) (c)
(3)	349.16 (1) (b), (2)
(4)	348.15 (3) (a), (b)
85.55	349.17
85.56	347.47 (2)
85.57	347.45
85.58	Repealed[44]
85.59	347.45 (2)
85.60	Repealed[44]
85.61	347.46 (1)

[42]The repealed provision is obsolete.

[44]The repealed provisions are largely obsolete and the subject matter is adequately covered by s. 347.45.

Stats. 1955	*Stats. 1957*
85.62	Repealed[45]
85.63	347.47 (1)
85.64	348.10 (1)
85.65	348.09
85.66	347.20
85.665 (first sentence)	348.10 (3)
(2nd sentence)	348.11 (1)
85.67 (1)	347.35
	347.36
(2) (first sentence)	347.38 (1), (2)
(2nd sentence)	347.25 (1)
	347.38 (4)
(3)	347.38 (4)
(4)	347.40
(5)	347.35 (3)
	347.36
(6)	347.47 (2)
(7)	347.41
85.68	349.07 (1), (2), (3)
85.69	346.46
85.70	346.02 (7)
85.71	349.08 (1), (2)
85.72	349.08 (5)
85.73	349.08 (3)
85.74	349.08 (4)
85.75 (1)	346.37
(2)	346.39
(3)	346.37 (2)
(4)	346.40
85.76	349.10 (1)
85.77	349.10 (2)
85.78	349.10 (2)
85.79	349.10 (3)
85.80	345.06
85.801	349.25
85.81 (1)	346.64 (1)
(2)	346.64 (2)
(3)	346.62 (2)
	346.63 (2)
	346.65 (3)
(4)	340.01 (73)
85.82	349.24
85.83	345.12
85.831	345.14
85.84 (first sentence)	349.03
(2nd sentence)	349.06
(3rd, 4th sentences)	345.15
85.845	349.14
85.85	349.03 (1) (a), (2)
85.86	349.03 (1)
85.90 (1)	348.21 (4)
	348.22
(2) (a)	Repealed[46]
(2) (b)	348.21 (4)
(2) (c)	348.21 (4)
(3)	348.20
85.91 (1)	346.17 (1)
	346.22 (1)
	346.30 (1)
	346.36
	346.43 (1)
	346.49 (1)
	346.56 (1)
	346.60 (1)
	346.74 (1)
	346.82 (2)
	346.95 (1)
	348.21 (1)
(2)	346.17 (2)
	346.22 (2)
	346.30 (2)
	346.43 (2)
	346.49 (2)
	346.56 (2)
	346.60 (2)
	346.82 (3)
	346.95 (2)
	347.30 (2)
	348.11 (1)
(2a)	348.11 (2)
	348.21 (2)
(2b)	348.21 (3)
(3)	346.30 (3)
	346.43 (3)
	346.60 (3)
	346.65 (1)
(4)	346.56 (1)
(5)	346.74 (2)
85.915	345.16
85.92 (1) (first sentence)	346.44 (1)
(2nd sentence)	Repealed[47]
(2)	346.45
85.93	204.30 (4)
85.94	345.07
85.95	345.08
86.35 (2)	86.35 (3)
110.09 (4)	341.47 to 341.56

[45]The repealed provision is unnecessary in view of the definition of "axle" in ss. 348.15 and 348.16.

[46]The repealed provision has never served any purpose because of a modification in the original bill creating s. 85.90. See Bill 522-S, 1951 session, and amendments thereto.

[47]See note to s. 346.44 in Bill 99-S.

CHAPTER 340.

General Provisions.

340.01 History: 1957 c. 260, 514, 554; 615, 684; Stats. 1957 s. 340.01; 1959 c. 244, 249, 542, 558; 1961 c. 240, 387; 1963 c. 209, 320, 503; 1965 c. 334, 344, 354, 485; 1967 c. 92 s. 22; 1967 c. 292; 1969 c. 276 s. 602 (1); 1969 c. 464, 500.

1. Authorized emergency vehicle.
2. Automobile.
3. Business district.
4. Crosswalk.
5. Dealer.
6. Distributor.
7. Divided highway.
8. Farm truck.
9. Gross weight.
10. Highway.
11. Hours of darkness.
12. Implement of husbandry.
13. Intersection.
14. Manufacturer.
15. Mobile home.
16. Motor truck.
17. Motor vehicle.
18. Pedestrian.
19. Private road or driveway.
20. Residence district.
21. Right of way.
22. Roadway.
23. Safety zone.