dences of their guardians in this state. [*Court Rule II part; Supreme Court Order, effective Jan. 1, 1934*]

Note: In a proceeding for the appointment of a special administrator, where the absentee had disappeared under circumstances tending to indicate suicide, the court had no authority to appoint a special administrator until the court had determined the fact of death. In re Ott's Estate, 228 W 462, 279 NW 618.

310.05 Immediate hearing. (1) WAIVER OF NOTICE. Upon making application for the probate of a will or for letters of administration, if all parties interested enter their appearance in writing, waive the notice required in sections 310.04 and 311.03, and consent to an immediate hearing, letters testamentary or of administration may be granted as if notice had been given.

(2) NONRESIDENT HEIR, LEGATEE; NOTICE OF FOREIGN CONSUL. If the application for letters testamentary or of administration shall show that any heir, devisee or legatee is a resident of a foreign country, the court shall cause the notice of hearing of such application to be given to a consul, vice consul or consular agent of such foreign country by mailing a copy of the notice in a sealed envelope, the postage prepaid, addressed to such consul, vice consul or consular agent at his post-office address, at least twenty days previous to the day appointed for hearing. The notice required by this subsection is not jurisdictional.

310.06 Proof of uncontested will. If no person shall contest the probate of a will the court may grant probate thereof on the testimony of one of the subscribing witnesses, if such witness shall testify that such will was executed in all particulars as required by the statutes and that the testator was of sound mind at the time of the execution thereof. If none of the subscribing witnesses shall reside in this state at the time fixed for proving the will or if none of them, after due diligence used, can be found in this state, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will and may admit proof of his handwriting and that of the subscribing witnesses. [*Supreme Court Order, effective Jan. 1, 1934*]

Note: In proceedings to probate a will, a witness who testifies before the subscribing witnesses have testified is guilty of perjury if he testifies falsely. Stetson v. State, 204 W 250, 235 NW 539.

A contract to withdraw pending objections made in good faith to the probate of a will in consideration of an agreement by the favored beneficiary to pay the objectors certain sums at the closing of the estate, resulting in a disposition different from the will, is determined to be void as against public policy. Taylor v. Hoyt, 207 W 520, 242 NW 141.

One of the three wills executed by the decedent within a week was offered for probate. The parties in interest were before the court. All the evidence bearing upon the mental competency of the testator and his susceptibility to undue influence was before the court. All interested parties were given an opportunity to present evidence in addition to what was offered by the proponent. No additional evidence was offered nor was it contended that any existed. Under those facts and circumstances it was competent and proper for the court to determine the validity or invalidity of all the wills and determine whether the decedent died testate or intestate so that the court could promptly proceed with the administration of the estate. In re Kalskop's Will, 229 W 356, 281 NW 646.

310.07 Foreign wills; domestic probate, effect. Any will admitted to probate without this state and in the place of the testator's domicile may be admitted to probate and recorded in this state. When a copy of any such will and the judgment admitting it to probate duly authenticated, shall be produced by the executor or other person interested therein to the county court, such court shall appoint a time and place of hearing, and cause notice thereof to be given as required by section 310.04. If on the hearing it shall appear to the court that the order or decree admitting such will to probate was made by a court of competent jurisdiction and is still in force, the copy and the probate thereof shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in this state and the subsequent proceeding may be the same. [*1935 c. 176*]

Note: The county court, in which ancillary proceedings for administration of nonresident's estate were begun after probate of his will in the state of his residence, had jurisdiction to construe the will as affecting realty in the county. In re Hebblewhite's Will, 228 W 259, 280 NW 384.

The county court, in which ancillary proceedings for administration of the estate of a nonresident were commenced after his will had been admitted to probate in the state of his residence, had jurisdiction and authority to construe the will so far as it related to a devise of real estate located in the county. Will of Ruppert, 233 W 527, 290 NW 122.

310.08 Foreign will; original probate. Where a decedent died domiciled in another state and the will of said decedent disposes of real estate in this state, any county court of a county in which any of such real estate is located, may admit said will to probate. Notice to creditors and to public administrator and state tax commission shall be given as in the case of wills of decedents domiciled in Wisconsin at time of death and an executor or administrator may be appointed. [*1935 c. 176*]

310.09 Will executed in enemy country during war time. Whenever, after a declaration of war between the United States and a foreign state or country, a copy of a will

executed in such foreign state or country, by a resident thereof, purporting to be authenticated by a court of such foreign state or country, and containing a bequest, legacy or devise of property within this state in favor of a citizen of the United States, shall be produced by the executor or other person interested therein to the county court, with or without a copy of the record admitting the same to probate, such court shall appoint a time and place of hearing, and cause notice thereof to be given as required by section 310.04. If on such hearing, had before the expiration of three months after the declaration of peace following upon such war, it shall appear to the satisfaction of the court that such will is genuine, the same may be admitted to probate, and the same, with the order so admitting the same, shall be filed and recorded, and such will shall then have the same force and effect as if it had been originally proved and allowed by said court.

310.10 Lost will, how proved. Whenever any will of real or personal estate shall be lost or destroyed by accident or design the county court shall have power to take proof of the execution and validity of such will and to establish the same. The petition for the probate of such will shall set forth the provisions thereof. The circuit court shall have the same power in an action brought for that purpose.

310.11 Construction of will, notice. The notice of hearing upon a petition for the construction of a will shall be given as provided in section 324.18. [*Supreme Court Order, effective Jan. 1, 1934; Supreme Court Order, effective Jan. 1, 1940*]

Note: If, following the language and provisions of a will, step by step, there is no ambiguity, and the intent of the testator is fairly discernible, there is no legitimate occasion for resorting to rules of construction to which courts are obliged to turn for aid in solving ambiguities. Will of Trautwein, 208 W 107, 241 NW 334.

A legacy "unto the Congregational Sunday School of the State of Wisconsin" is construed under the evidence as a sufficient bequest to Wisconsin Congregational Conference. Will of Southard, 208 W 148, 242 NW 583.

In construing a will the county court had jurisdiction to determine that a trust was created thereunder for the testator's widow in accordance with an antenuptial agreement, and the judgment and determination of the court in reference thereto, not appealed from, was conclusive upon all parties. Estate of Wittwer, 216 W 432, 257 NW 626.

Under a will bequeathing in paragraph "fourth" $5,000 to the wife of the testator out of the proceeds of a life policy free from any trusts or remainders if she survived the testator, and bequeathing in paragraph "sixth" certain property to the wife in trust, and subsequently providing in paragraph "ninth" that the bequests given to the wife in trust "under paragraphs 4 and 6" should be subject to a trust in favor of a minor, the $5,000 from the proceeds of the life policy is determined to be an absolute bequest to the surviving wife, not subject to the trust subsequently created. Will of Loewenbach, 222 W 467, 269 NW 323.

Where a will provided that the amounts due the testatrix from her children at the time of her death as represented by their notes should be deducted from their respective bequests, notes in the possession of the testatrix at the time of her death, signed by her son and payable to her, although an action thereon was barred by the statute of limitations, are deductible from his share. Estate of Flierl, 225 W 493, 274 NW 422.

In the construction of wills, the early vesting of estates is favored, and absolute estates are favored over defeasible estates. In a devise to one person in fee, and in case of his death without issue to another, the death referred to is death during the lifetime of the testator, unless the language of the will shows a different intention. Will of Sauer, 226 W 270, 276 NW 293.

In proceedings brought in the county court thirty-five years after the probating and recording of a will devising real estate, rulings, whereby an amendment of a description was made and a construction of the will was made which adversely affected the title of one who long prior to such proceedings had purchased from a devisee in reliance on the record as it stood at the time of purchase, were not binding on such purchaser where he had not been given notice of the proceedings and was not a party thereto; and in a subsequent action to quiet title against such purchaser, the circuit court properly entered on a construction of the will as an original proposition to determine its effect on the purchaser's title. Malzahn v. Teagar, 235 W 631, 294 NW 36.

An unappealed judgment of the county court, made in a proceeding for the construction of a will, construing provisions relating to the treatment of debts of legatees to the testator in arriving at their proportionate shares of the estate, and adjudicating specifically as to a land contract on which a legatee was indebted to the testator, was res adjudicata in a subsequent proceeding for the construction of the will involving the same interested parties and the same subject matter. Estate of Greeneway, 236 W 503, 295 NW 761.

310.12 Letters testamentary. When a will shall have been admitted to probate the court shall issue letters testamentary thereon to the person named executor therein, if he is legally competent, accepts the trust, and gives bond when and as required by law. [*Supreme Court Order, effective Jan. 1, 1934*]

310.13 [*Renumbered 310.07 by 1935 c. 176*]

310.14 Executor's bond; separate bonds. (1) Every executor, before he shall enter upon the execution of his trust and before letters testamentary shall issue, shall give a bond to the judge of the county court in such sum as he may direct, with one or more sureties, with conditions as follows:

(a) To make and return to the county court, within three months, a true and perfect inventory of all the goods, chattels, rights, credits and estate of the deceased, whether disposed of by the will or not, which shall come to his possession or knowledge or to the possession of any other person for him;

(b) To administer, according to law and the will of the testator, all his goods, chattels, rights, credits and estate which shall at any time come to his possession or to the possession

of any other person for him, and out of the same to pay and discharge all debts, legacies and charges chargeable on the same or such dividends thereon as shall be ordered and adjudged by the county court;

(c) To render a true and just account of his administration to the county court within one year and at any other time when required by such court;

(d) To perform all orders and judgments of the county court.

(2) When two or more persons shall be appointed executors of any will the county court may take a separate bond from each, with sureties, or a joint bond from all, with sureties.

Note: See note to 317.01, citing Estate of Howey, 216 W 94, 256 NW 620.

In the absence of equitable considerations, or exceptional circumstances, an executor or administrator is personally liable to an attorney whom he employs. Juergens v. Ritter, 227 W 480, 279 NW 51.

310.15 County courts; executor's bond. If the executor shall be sole or residuary legatee instead of the bond prescribed in section 310.14 he may give a bond in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator. An executor named in any will may be exempt from giving bond, when the testator has so ordered or requested in his will, unless the county court shall order otherwise; and such court may require a bond, with sureties, of any such executor at any time pending the settlement of the estate.

310.16 Administration on failure of executor to qualify. If an executor refuses to accept the trust or for twenty days after the probate of the will, neglects to give bond as required, the court may grant letters testamentary to the other executors named, who are capable and will accept the trust and give bond. If all named executors neglect to qualify, if no executor is named or if those named are not legally competent, the court shall grant administration of the estate, with the will annexed, as provided in sections 311.02 and 311.03. [*Supreme Court Order, effective Jan. 1, 1934*]

310.17 Minor named as executor. When the person named executor is a minor at the time of proving the will, administration shall be granted with the will annexed, during his minority, unless there is another executor named who accepts the trust and gives bond; and in such case the executor who shall have letters testamentary shall administer the estate until the minor becomes twenty-one years of age, when he may be admitted as joint executor on giving the requisite bond. [*Supreme Court Order, effective Jan. 1, 1934*]

310.18 Bond and duty of administrator with will annexed. Every person who shall be appointed administrator with the will annexed shall, before entering upon the execution of the trust, give bond to the judge of the county court in the same manner and with the same conditions as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an executor would be required to do.

310.19 Power of executor who acts, and of administrator with will annexed. When all the executors appointed in any will shall not be authorized, according to the provisions of this chapter, to act as such, such as are authorized shall have the same authority to perform every act and discharge every trust required and allowed by the will, and their acts shall be as valid and effectual for every purpose as if all were authorized and should act together; and administrators with the will annexed shall have the same authority to perform every act and discharge every trust as the executors named in the will would have had, and their acts shall be as valid and effectual for every purpose.

310.20 Executors; vacancies, resignations, administrations de bonis non. (1) When an executor or administrator shall die, or his authority shall be otherwise terminated, the remaining executor or administrator may execute the trust; if there shall be no other executor or administrator the court shall grant administration of the estate not already administered. The court may accept the written resignation of any administrator or executor.

(2) Whenever an administrator de bonis non is appointed the court shall cite him and his predecessor or the latter's personal representative to appear at a stated time and place to settle the predecessor's account; upon such settlement the property of the estate shall be paid and delivered to the new administrator. [*Stats. 1931 s. 310.23; Supreme Court Order, effective Jan. 1, 1934; Supreme Court Order, effective Jan. 1, 1938*]

310.21 Service on nonresident executor or administrator. When it shall be necessary to serve upon an executor or administrator any order, notice or process of the county court, and service cannot be made in this state, such service may be made by publication, or personally without the state, in the same manner and with the same effect as is provided for the service of summons upon nonresident defendants in an action in the circuit court. [*Supreme Court Order, effective Jan. 1, 1934*]

310.22 [*Renumbered section 324.35 by Supreme Court Order, effective Jan. 1, 1934*]

310.23 [*Renumbered section 310.20 by Supreme Court Order, effective Jan. 1, 1934*]

310.24 [*Renumbered section 370.01 sub. (45) by 1933 c. 190 s. 2*]

310.25 Selection of attorney to represent estate. Whenever a firm or corporation of any kind is named as administrator or executor of an estate, he or she who is nearest of kin and who receives any interest in the estate, and if there be no bequest of any kind, then the party receiving the largest amount or interest from the estate, shall name the attorney who shall represent the estate in all proceedings of any kind or nature, unless good cause be shown before the court why this should not be done. In case of equal division in number of kin or persons having the largest and similar interest, then said executor or administrator shall select one of those named; otherwise, the majority shall govern. In case of infants; people insane or otherwise incapacitated, the natural guardian shall act in behalf of the infant; and in case of no natural guardian the guardian created by the court shall govern the selection. [*Stats. 1931 s. 311.04*]