Nineteen Hundred Thirty-One

Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, construing the constitution, statutes, charters and court rules of Minnesota

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carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application shall also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license and shall be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of said corporation and shall be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. Said application shall also state whether or not said applicant is at the time of making application, or has at any previous time, been engaged or interested in, or employed by any one engaged in the business of conducting an employment agency, either in this state or any other, and if so, when and where. Said application shall also give as reference the names and addresses of at least three persons of reputed business or professional integrity located in the city or town where such applicant intends to conduct his business. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commission a schedule of the fees or charges to be collected by such employment agent for any services rendered together with all rules or regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the commission. It shall be unlawful for any employment agent to charge, demand, collect or receive a greater compensation for any service performed by him than is specified in such schedule filed with the commission.

It shall be the duty of the industrial commission, and it shall have power, jurisdiction and authority to issue licenses to employment agents, and to refuse to issue such license whenever, after due investigation, the commission or a majority of the members thereof finds that the character of the applicant makes him unfit to be an employment agent, or when the premises for conducting the business of an employment agent is found upon investigation to be unfit for such use, or whenever, upon investigation by the commission, it is found and determined, that the number of licensed employment agents or that the employment agency operated by the United States, the state or by the municipality or by two or more thereof jointly in the community in which the applicant for a permit proposes to operate is sufficient to supply the needs of employers and employees. Any such license granted by the commission may also be revoked by it upon due notice to the holder of said license, and upon due cause shown. Failure to comply with the duties, terms, conditions or provisions of Sections 1 to 18 [Mason's Minn. St., 1927, §§4254-1 to 4254-18], inclusive, of this act, or with any lawful orders of the commission, shall be deemed due cause to revoke such license. Provided, however that no employment agency duly licensed to do business at the time of the passage of this act shall be denied a renewal of his, her or its license or have his, her, or its license revoked on the ground that public necessity does not require such an agency. (As amended Apr. 23, 1929, c. 293.)

The industrial commission must issue a license unless reasons for rejecting it, pointed out by the statute, are found to exist. The commission has no power to limit the number of agencies. 173M47, 216NW323.

INJUNCTIONS AND RESTRAINING ORDERS

§4256. When restraining order or injunction not to be issued.—No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employes or between employer and employes or between employes or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, except after notice and a hearing in court and shown to be necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney; provided, that a temporary restraining order may be issued without notice and hearing upon a proper showing that violence is actually being caused or is imminently probable on the part of the person or persons sought to be restrained; and provided that in such restraining order all parties to the action shall be similarly restrained. (As amended Apr. 19, 1929, c. 260.)

CHAPTER 23A
Workmen's Compensation Act

PART 1

COMPENSATION BY ACTION AT LAW—MODIFICATION OF REMEDIES

§4261. Injury or death of employee.

See also notes under §4326.

174M359, 219NW292; 174M362, 219NW293; 174M491, 219NW869.

Liberal construction of law. 174M227, 218NW882; 177M503, 225NW428.

Accident.

See notes under §4326.

Arising out of and in the course of employment.

See notes under §4326.

§4267. Legal services and disbursements, etc.

Attorney fees cannot be collected out of award unless approved by commission. 180M 388, 231NW193.

ELECTIVE COMPENSATION

§4268. Not applicable to certain employments.

Cited without application. 172M178, 215NW 204.

1. In general.

Persons subject to and within the terms of the Wisconsin Workmen's Compensation Act are confined to it for their remedy. 176M592, 224 NW247.

2. Farm laborers.

One employed to milk, and take care of barns on dairy farm, conducted principally for supplying the dairy products and vegetables consumed by the students at a college owned and conducted by the employer, is a farm laborer. 176M100, 222NW525.

Employee in industrial business was not a farm laborer, though sometimes required to do farm work for his employer. 177M503, 225NW 428.

Employee of commercial thresherman and cornshredderman, held not a "farm laborer," though operating silo filler at time of injury. 178M512, 227NW661.

Neither task on which workman is engaged at moment of injury, nor place where it is being performed is test of whether he is "farm laborer," and carpenter repairing buildings on farm owned by bank was not a "farm laborer." 180M40, 230NW124.

3. Casual employment—See notes under §4326.

One owning home and four resident properties was not carrying on a business or occupation with respect to one doing odd jobs on the houses. Billmayer v. S., 225NW426.

One doing odd jobs about a house with respect to storm windows and small repairs, was a "casual." Billmayer v. S., 225NW426.

Child of one in charge of store was not an employee while volunteering brief and uncompensated service in the store. 175M579, 222NW 275.

One owning home and four resident properties was not carrying on a business or occupation with respect to one doing odd jobs. Billmayer v. S., 225NW426.

§4269. Agreement to be subject to provisions of Part 2.

1. In general.

The Compensation Act is contractual in the sense that neither employer nor employee is obliged to accept its provisions nor is bound by them unless he agrees to be so. 175M161, 220NW421.

2. Intoxication.

Evidence held insufficient to show that intoxication of employee was the natural cause of his injury. Kopp et al. v. B., 228NW559.

§4273. Minors have power to contract, etc.

Decedent having met death in an occupation prohibited by law at his age, the case is not within the jurisdiction of the Industrial Commission. Weber v. B., 234NW682. See Dun. Dig 10394(47).

§4274. Schedule of compensation. * * * *

(g) If any employe entitled to the benefits of the Workmen's Compensation Law is a minor and sustains injuries resulting in permanent total or permanent partial disability, the weekly earnings for the purpose of computing the compensation to which he is entitled shall be the weekly earnings which such minor would probably earn after arriving at legal age if uninjured, which probable earnings shall be approximately the average earnings of adult workmen below the rank of superintendent or general foreman in the plant or industry in which such minor was employed at the time of his injury. (G. S., §4274, subd. g, added Apr. 19, 1929, c. 250.)

1. In general.

Where there is a specific schedule for the compensation of the loss of a member and parts of a member, no additional payment may be exacted for disfigurement or disability therefrom, except for medical services to remove or cure some defect resulting from the amputation. 174 M551, 219NW867.

Death of workman from cause other than the accident while receiving compensation for injury terminates all rights to compensation to accrue to him thereafter. 176M464, 223NW773.

Where office assistant of attorney accidentally sprained wrist in operating typewriter and could not operate typewriter for three weeks, she was entitled to recover compensation and medical fees, notwithstanding that the employer paid her full salary during the period of disability and retained her in the office for such work as she could do, such payments being, in part, a gratuity. Koppe v. H. & T., 223NW787.

2. Temporary total and permanent partial disability.

Findings of permanent partial disability of 50 per cent, held sustained by evidence, the Commission not being bound by undisputed expert testimony. 228NW169.

Finding that total temporary disability from neurosis had ceased, held not sustained by evidence. 180M411, 230NW897.

Evidence held to sustain finding that when employers discontinued paying compensation to employee for a fractured leg, the employee was totally disabled and might be permanently partially disabled. Lund v. B., 236NW215. See Dun. Dig. 10410.

Discontinuance of compensation to one with a fractured leg was unwarranted where he was totally disabled at the time, and it could not be determined what his permanent disability might be, and such employee was entitled to further medical aid. Lund v. B., 236NW215. See Dun. Dig. 10410.

4. Injury to thumb or finger.

Loss of distal or first phalange of thumb and one-half lacking one-eighth of an inch of the second or proximal phalange thereof, was compensable as loss of half the thumb. 174M551, 219NW867.

5. Hernia and recurring disability

Determination of Industrial Commission against positive and unimpeached testimony of the existence of hernia reversed. 179M177, 228 NW607.

7. Permanent total disability.

The provision as to payment of compensation during period of confinement in public institution is applicable to the case of partial disability where total disability subsequently arises from non-compensable causes. Naslund v. F., 232NW342. See Dun. Dig. 10410.

8. Double disabilities.

Double disabilities coming within the 400 weeks' provisions under subdivisions 28 to 37 of §4274 relate only to total disability of at least two members. 177M589, 225NW895.

§4275. Dependents and allowances.

Father of young man killed held not a partial dependent. 173M498, 217NW679.

Subdivision 19 is operative only when there is a partial dependent. 173M498, 217NW679.

Contributions to defendants need not be literally from money earned as wages but may consist of labor. 174M227, 218NW882.

Common-law marriage and proof thereof. 175M51, 220NW401.

Brother held not dependent. 177M332, 225N W117.

Evidence held to show that parents were dependents. 180M289, 230NW652.

Evidence held to sustain finding that relator was not dependent of her brother. Hallstrom v. H., 236NW482. See Dun. Dig. 10411.

§4276. Injury increasing disability.

Where partial disability from an injury is

combined with a previous disability causing total disability the injured person is entitled to the additional compensation provided by this section. 179M388, 229NW553.

§4277. Liability of joint employers.

Where janitor performs services for several, and is injured in the service of one employer, he is entitled to compensation from such employer, based on his total regular earnings as a janitor. 171M402, 214NW265.

The term "employment," as used in section 4325, means the particular kind of employment in which the employee was engaged at the time of the accident. 171M402, 214NW265.

§4279. Medical and surgical treatment.—The employer shall furnish such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required at the time of the injury, and during the disability to cure and relieve from the effects of the injury, provided that in case of his inability or refusal seasonably to do so the employer shall be liable for the reasonable expense incurred by or on behalf of the employe in providing the same; provided further that upon request by the employe, the industrial commission may require the above treatment, articles and supplies for such further time as the industrial commission may determine, and a copy of such order shall be forthwith mailed to the parties in interest. Any party in interest, within ten days from the date of mailing, may demand a hearing and review of such order.

The commission may at any time upon the request of an employe or employer order a change of physicians and designate a physician suggested by the injured employe or by the commission itself, and in such case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The pecuniary liability of the employer for the treatment, articles and supplies herein required shall be limited to such charges therefor as prevail in the same community for similar treatment, articles and supplies furnished to injured persons of a like standard of living, when the same are paid for by the injured persons. The industrial commission may on the basis above stated determine the reasonable value of all such service and supplies, and the liability of the employer shall be limited to the amount so determined. (As amended Apr. 19, 1929, c. 248, §1.)

Where stump of thumb has a tender spot which interferes with its use due to end of nerve becoming imbedded in scar tissue, which may be cured by simple operation, employer must furnish the cure. 174M551, 219NW551.

Laws 1919, c. 354, does not limit the amount which district court may allow to injured employee for medical, surgical, and hospital treatment to $100 for each 90-day period, in view of the history of legislation relating thereto, as shown by Laws 1913, c. 467, §18 [§4330], and Laws 1915, c. 209, §7 [repealed]. 175M319, 222 NW508.

Where office assistant of attorney accidentally sprained wrist in operating typewriter and could not operate typewriter for three weeks, she was entitled to recover compensation and medical fees, notwithstanding that the employer paid her her full salary during the period of disability and retained her in the office for such work as she could do, such payments being, in part, a gratuity. Koppe v. H. & T., 223NW787.

Where a married woman is accidentally injured in the course and within the scope of her employment, and the employer and his insurer under the law have assumed liability for and have paid the medical and hospital expenses of the injured employee, no liability or cause of action for recovery of such expenses vests or remains in the husband of the injured employee. Arvidson v. S., 237NW12. See Dun. Dig. 10415.

§4280. Notice of injury, etc.

Notice provided in section 1, c. 363, Laws 1919, must be given by employer in order to start running of statute of limitations therein provided for. 173M414, 217NW491.

Evidence, held to show that sarcoma resulted from injury to leg from fall of box which employee was carrying. 180M477, 231NW195.

§4282. Limit of actions.

Proceeding held the reopening of a proceeding and not a new proceeding and not barred by this section. 177M555, 225NW889.

§4283. Examination and verification of injury.

177M555, 225NW889.

§4284. Compensation to alien dependents.—In case a deceased employee, for whose injury or death compensation is payable, leaves surviving him an alien dependent or dependents residing outside of the United States, the industrial commission shall direct the payment of all compensation due to such dependent or dependents, to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens, if such consular officer resides within the state of Minnesota, or to his designated representative residing within the state, or if the industrial commission believes that the interests of such alien dependents will be better served, and such alien dependent shall have within ninety days after the death of such alien employee filed with the commission a power of attorney designating any other suitable person residing in this state to act as attorney in fact in such proceedings, then the said industrial commission may in its discretion appoint such person. Provided that if it appears necessary during said ninety day period to institute or carry on any proceedings to enforce payment of compensation due to such dependent or dependents, the industrial commission may permit the said consular officer to commence and institute said proceeding and if during the pendency of the same, during the ninety day period following the death of the alien employee, such power of attorney is filed by said alien dependent, the industrial commission shall then summarily exercise its discretion and determine whether such attorney in fact shall be substituted to represent said alien dependent or if the said consular officer or his representative shall continue therein. Such person so appointed may institute and carry on proceedings to settle all claims for compensation and to receive for distribution to such alien dependent or dependents all compensation arising hereunder. The settlement and distribution of said funds shall be made only on order of the commission. Such person so appointed shall furnish, a good and sufficient bond, satisfactory to the commission, conditioned upon the proper application of the

moneys received by him. Before such bond is discharged, such person so appointed shall file with the commission a verified account of the items of his receipts and disbursements of such compensation.

Such person so appointed shall, before receiving the first payment of such compensation, and thereafter, when so ordered so to do by the commission, furnish to the commission a sworn statement containing a list of the dependents with the name, age, residence, extent of dependency and relationship to the deceased of each dependent. (As amended Apr. 19, 1929, c. 251.)

§4285. Payment in lump sum.—The amounts of compensation payable periodically hereunder may be commuted to one or more lump sum payments only by order of the Commission and on such terms and conditions as the Commission may prescribe.

In making such commutations the lump sum payments shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a five per cent basis. (As amended Apr. 26, 1929, c. 400.)

§4287. Compensation preferred claim.

An award under the Workmen's Compensation Act is not a "debt incurred to any laborer or servant for labor or service performed," within the meaning of Const. art. 1, §12, and is not a lien upon the employer's homestead. 175M 161, 220NW421.

Death of workman from other causes while receiving compensation for injury terminates all rights to compensation to accrue to him thereafter. 176M464, 223NW773.

Award is not assignable, and attorney fees cannot be collected out of award unless approved by commission. 180M388, 231NW193.

§4288. Employer to insure employes—Exceptions.

This section provides the exclusive method for a separation of the risks assumed by an insurer for an employer's obligation under the compensation act. 173M354, 217NW358.

There is but one risk for the purpose of compensation insurance and the parties thereto cannot without the approval of the Commission, limit the coverage to certain occupations. 173 M354, 217NW358.

§4289. Who may insure—policies.—Any employer who is responsible for compensation as provided under part 2 of this act may insure the risk in any manner then authorized by law. But those writing such insurance shall, in every case, be subject to the conditions of this section hereinafter named.

If the risk of the employer is carried by any insurer doing business for profit, or by an insurance association or corporation formed of employers, or of employers and workmen, to insure the risks under part 2 of this act, operating by the mutual assessment or other plan or otherwise, then insofar as policies are issued on such risks they shall provide for compensation for injuries or death, according to the full benefits of part 2 of this act.

Such policies shall contain a clause to the effect that as between the workman and the insurer, that notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for any purpose shall be jurisdiction of the insurer, and that the insurer will, in all things, be bound by and subject to the awards rendered against such employer upon the risks so insured.

Such policies must provide that the workman shall have an equitable lien upon any amount which shall become owing on account of such policy to the employer from the insurer, and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to said workman or dependents, thereby discharging all obligations under the policy to the employer, and all of the obligations of the employer and insurer to the workman; but such policies shall contain no provision relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise, during the period the policy is in force, if the compensation remains owing.

The insurer must be one authorized by law to conduct such business in the state of Minnesota and authority is hereby granted to all insurance companies writing such insurance to include in their policies in addition to the requirements now provided by law, the additional requirements, terms and conditions in this section provided. No agreement by an employe to pay to an employer any portion of the cost of insuring his risk under this act shall be valid. But it shall be lawful for the employer and the workman to agree to carry the risk covered by part 2 of this act in conjunction with other and greater risks and providing other and greater benefits such as additional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involves a contribution by the workman shall not prevent its validity if such plan has been approved in writing by the Industrial Commission. Any employer who shall make any charge or deduction prohibited by this section shall be guilty of a misdemeanor.

If the employer shall insure to his employes the payment of the compensation provided by part 2 of this act in a corporation or association authorized to do business in the state of Minnesota, and approved by the insurance commissioner of the state of Minnesota, and if the employer shall post a notice or notices in a conspicuous place or in conspicuous places about his place of employment, stating that he is so insured and stating by whom insured, and if the employer shall further file copy of such notice with the Industrial Commission, then, and in such case, any proceedings brought by an injured employe or his dependents shall be brought directly against the insurer, and the employer or insured shall be released from any further liability.

Provided that in case of insolvency or bankruptcy of such insurance company the employer shall not be released from liability under the provisions of this act.

The return of any execution upon any judgment of an employe against any such insurance company unsatisfied in whole or in part, shall be conclusive evidence of the insolvency

of such insurance company, and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction proceedings may be brought by the employe against the employer in the first instance, or against such employer and insurance company jointly or severally or in any pending proceedings against any insurance company, the employer may be joined at any time after such adjudication.

That the provisions of this section to the extent that the same are applicable shall apply also when an employer exempted from insuring his liability for compensation as provided in section 4288 shall insure any part of his liability for said compensation. (As amended Apr. 25, 1931, c. 352, §1.)

Sec. 2 of Laws 1931, c. 352, provides that the act shall take effect from and after July 1, 1931.

Temporary coverage given to enable plaintiff to determine whether it would renew indemnity held to have expired at time of injury to certain plaintiff's employees. 175M577, 222NW 72.

A binder and policy of insurance held not to have imposed upon the insurer liability for a premium deposit paid to former insolvent insurer. 177M36, 224NW253.

This act is not retroactive, and the rates adopted apply only to contracts of insurance entered into after July 1, 1931. Op. Atty. Gen., May 20, 1931.

§4290. Certain persons liable as employes — Contractors — Subcontractors, etc. — (1) Any person who creates or carries into operation any fraudeulent scheme, artifice or device to enable him to execute work without himself being responsible to the workman for the provisions of this act, shall himself be included in the term "employer" and be subject to all the liabilities of the employers under this act. But this section shall not be construed to cover or mean an owner who lets a contract to a contractor in good faith. Provided, however, that no person shall be deemed a contractor or sub-contractor, so as to make him liable to pay compensation within the meaning of this section, who performs his work upon the employers' premises and with the employers' tools or appliances and under the employers' directions; nor one who does what is commonly known as "piece work" or in any way where the system of employment used merely provides a method of fixing the workman's wages.

(2) Where compensation is claimed from or proceedings taken against a person under subdivision (1) of this section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.

(3) The employer shall not be liable or required to pay compensation for injuries due to the acts or ommissions of third persons not at the time in the service of the employer, nor engaged in the work in which the injury occurs, except as provided in Section 31 (4291), or under the conditions set forth in Section 66J [§4326(j)].

(4) Whenever any sub-contractor fails to comply with provisions of Section 4288, General Statutes 1923, the general contractor, intermediate contractor or sub-contractor shall be liable for all compensation benefits to employes, of all subsequent sub-contractors engaged upon the subject matter of the contract, and injured on, in, or about the premises. Any person paying such compensation benefits under the provisions of this paragraph shall be subrogated to the rights of the injured employe against his immediate employer; or any person whose liabilities for compensation benefits to the employe is prior to the liability of the person paying such compensation benefit. The liabilities arising under this paragraph may be determined by the industrial commission. (As amended Apr. 19, 1929, c. 252, §1.)

Sec. 2 of Act Apr. 19, 1929, c. 252, provides that the act shall take effect from and after July 1, 1929.

§4291. Liability of third persons—Procedure.

Subdivision 1.

Employee awarded compensation cannot subsequently sue third party subject to the act. 177M410, 225NW391.

Express company driver, accepting compensation from employer, could not recover against owner of building operating an elevator in violation of law. 178M47, 225NW901.

Taxi drivers working for different companies, were not engaged in the furtherance of a common enterprise when they collided on a city street, and one of the taxi drivers could recover from the company owning the other taxi, although he had accepted compensation from his own company. 177M579, 225NW911.

Employee prosecuting a proceeding against his employer for compensation to a final decision on the merits, is barred from suing the third party. 178M313, 227NW47.

Ignorance of law is immaterial. 178M313, 227NW47.

Employer who wilfully assaults his employee stands in no better position than a stranger, and cannot assert that the remedy is under the compensation act. Boek v. W., 231NW233(2).

Meat market employee, injured while delivering meat to a cafe in a hotel by negligence of a contractor repairing the hotel premises, held not precluded, by recovery from parties responsible for the negligence, from recovering difference between recovery and compensation, his employer not being engaged in a "related purpose" with such third persons. 181M232, 232 NW114. See Dun. Dig. 10407(91).

Subdivision 2.

174M466, 219NW755.

§4292. Penalties for unreasonable delay.

This section held not applicable to facts of case. 173M481, 217NW680.

§4293. Employers must report accidents—Etc.

177M555, 225NW889.

§4303. Commission to give hearing on claim petition.

On appeal to commission from action of referee, the commission is a fact finding body and its jurisdiction as such must be exercised, and it is not bound by the findings of fact made by the referee. Olson v. C., 225NW921.

§4304. Rehearing.

Application for a rehearing rests in the discretion of the Commission. 172M489, 216NW241.

Where record and affidavits make it clear that granting of rehearing rested in discretion of Commission its refusal of rehearing will not be disturbed on appeal. 172M603, 216NW242.

§4313. Commission not bound by rules of evidence.

The Commission and its referees are not sub-

ject to rules of evidence governing the courts. 172M549, 489, 216NW240, 241.

Proceedings are not governed by strict rules of evidence. 175M319, 221NW65.

Duty of commission to find certain facts under evidence, and review of findings. 175M489, 221NW913.

The absence of an appropriate label on a petition for a rehearing was not important though it was claimed that the proceeding was barred by §4282 in that it appeared from the pleading to be a new proceeding. 177M555, 225NW889.

§4315. Appeal—Expense—Transcript.

On appeal to commission from action of referee, the commission is a fact finding body and its jurisdiction as such must be exercised, and it is not bound by the findings of fact made by the referee. Olson v. C., 225NW921.

The view of the referee that the relator should have disclosed confidential information as to what an examination to his eye showed was not prejudicial on a trial de novo by the commission on appeal. Thompson v. L., 233NW 300. See Dun. Dig. 10423.

§4317. Appeal based on fraud, etc.

175M539, 221NW910, note under §4139.

§4318. Proceedings in case of default in payment of compensation.

172M46, 214NW765, note under §4319.

177M555, 225NW889.

The approval of a settlement in a workmen's compensation matter under the Act of 1913, c. 467, is not a judgment, as regards limitations. 176M554, 223NW926.

§4319. New hearing may be granted.

Whether an employee is entitled to a rehearing after an award rests in the discretion of the Industrial Commission. 172M46, 214NW765.

Granting or denying a new hearing is in the discretion of the Industrial Commission, and such discretion held not abused under the facts of this case. 172M521, 216NW227.

Where an award of compensation has been affirmed by the Supreme Court and remanded, the Industrial Commission is without power to grant a new hearing. 174M153, 218NW550.

The granting of a rehearing after an award rests in the sound discretion of the Industrial Commission. Delich v. T., 220NW408.

Relief against fraudulent settlement must be applied for before the Industrial Commission and not by an action in equity in district court to set it aside. 175M539, 221NW910.

An attempted appeal, when certiorari was the proper method of review, conferred no jurisdiction to render judgment and was not a bar to a reopening of the proceeding upon application of either party although the Supreme Court expressed an opinion on the merits. 177M555, 225 NW889.

Granting or refusal to grant an application for a rehearing rested in the direction of the commission. 178M464, 227NW657.

The grant of a rehearing rests in the discretion of the Industrial Commission. 179M321, 229 NW138.

§4320. Appeal to Supreme Court—Grounds—Fees.

A reasonable deduction from circumstantial evidence will be sustained on appeal. 172M439, 215NW678.

The above rule applies where a taxi driver was murdered by an intoxicated passenger arising from a quarrel over fare. Id.

220NW408, note under §4319.

Findings of Commission must remain undisturbed, if there is evidence reasonably tending to sustain them, or unless they are manifestly and clearly contrary to the evidence. The Commission is not necessarily concluded by undisputed testimony although it must assume as credible witnesses, unless inherently improbable. 175M51, 220NW401.

Writ of certiorari must be served upon the adverse party or his attorney, in view of §§9240, 9769, 9770. 172M98, 214NW795.

Findings of commission must prevail unless they are clearly and manifestly contrary to the evidence. 174M94, 218NW243.

Duty of commission to find certain facts under evidence, and review of findings. 175M489, 221NW913.

Finding on conflicting evidence that physical condition was not affected or aggravated by a fall, must be sustained. Koppe v. H. & T., 223 NW787.

An abortive appeal, although accompanied by the expression of an opinion on the merits, was not equivalent to review by certiorari wherein there would have been jurisdiction to render judgment on the merits, and there was no bar to a reopening of the proceeding on application of either party under §4319. 177M555, 225NW 889.

Findings of fact supported by evidence must be sustained. 178M279, 226NW767.

Finding as to cause of death based on evidence could not be disturbed. Hedquist v. P., 227NW856.

Failure to transmit return to Supreme Court in 30 days did not oust such court of jurisdiction. Hedquist v. P., 227NW 856.

On certiorari to review decision of Industrial Commission the title of the proceeding does not change in the appellate court. Kopp v. B., 228NW559.

Determination of Industrial Commission contrary to positive undisputed testimony reversed. 179M177, 228NW607.

Whether act of employee was done for purpose of saving employer's property, held a question of fact for determination of Industrial Commission. 179M272, 228NW931.

The Supreme Court cannot reverse where there is evidence reasonably tending to sustain the findings of fact. 174M376, 217NW292.

Findings of Commission will be sustained unless clearly without support in the evidence. 177M503, 225NW428.

Commission's findings on fact question is final. Holmberg v. A., 225NW439.

Determination of Commission must stand if reasonable minds might reach different conclusions. 177M519, 225NW652.

Finding of commission that there was no causal connection between fall and resulting cancer reversed and remanded for further evidence. Hertz v. W., 230NW481(2).

Whether carpenter sent out by employer to work on school building 135 miles from employer's residence was in course of employment in returning over week-end, held a question of fact, and finding of commission against claim for compensation was binding on supreme court. 280M473, 231NW188.

Decision of fact issue by Industrial Commission will not be disturbed on certiorari. 181M 546, 233NW245. See Dun. Dig. 10426(15).

Decision of Industrial Commission cannot be reviewed on certiorari after the expiration of thirty days from notice of determination. 179M 321, 229NW138.

Findings of the Commission having adequate support in the evidence are determinative on certiorari in the supreme court. 179M416, 229 NW561.

The court will not disturb the finding of the industrial commission that relator did not suffer an inguinal hernia where relator's testimony is both contradicted and impeached. Naslund v. F., 232NW342. See Dun. Dig. 10426.

Findings of fact by the commission must be sustained unless they are manifestly contrary to the evidence. 181M398, 232NW716. See Dun. Dig. 10426.

There being credible testimony in its support, an order of the Industrial Commission will not be reversed. Tevik v. L., 234NW320. See Dun. Dig. 10426(26).

Finding of Industrial Commission that one was employee at time of accident is a finding of fact which cannot be reversed if reasonably sustained by evidence. Frederick v. F., 236NW322. See Dun. Dig. 10426.

A finding of the Industrial Commission upon a question of fact cannot be disturbed unless consideration of the evidence and the inferences permissible therefrom clearly require reasonable minds to adopt a conclusion contrary to the one at which the commission arrived. Jones v. E., 237NW419. See Dun. Dig. 10426(24), (25), (26), (27), (28).

There is evidence to support negative finding of the Industrial Commission, and it will not be disturbed. Klugman v. C., 237NW420. See Dun. Dig., 10426(26).

§4321. Supreme Court to have original jurisdiction.

Where an award of compensation has been affirmed by the Supreme Court and remanded, the Industrial Commission is without power to grant a new hearing. 174M153, 218NW550.

§4324. Costs—etc.

Award of attorney's fees by commission approved by supreme court. 180M388, 231NW193.

§4325. Definitions.

Where janitor performs services for several, and is injured in the service of one employer, he is entitled to compensation from such employer, based on his total regular earnings as a janitor. 171M402, 214NW265.

The term "employment" means the particular kind of employment in which the employee was engaged at the time of the accident. 171M402, 214NW265.

Employee might be employed under terms that would permit his reward to be in something other than money. 174M227, 218NW882.

§4326. Definitions, continued.

(d).

177M454, 225NW449.

Company furnishing instrumentality to another, together with trained employees to manage the same, remained employer of the men so furnished. 179M416, 229NW561.

(g) Employee.

President of company who owned all excepting two "qualifying shares" was not an "employee." 176M422, 223NW772.

Employee of one who received a stated sum per car for loading stock and seeing to its transportation for a shipping association was not an employee of the shipping association. 177M462, 225NW448.

President of corporation held not an employee entitled to compensation for injuries. 179M304, 229NW101.

Finding that employee working in creamery was employee of creamery and not of manager and butter maker who paid her. Janosek v. F., 234NW870. See Dun Dig. 10395.

(1) Public employees.

Driver of street flusher held employee of contractor and not of the city. 179M277, 228NW935.

Compensation law covers a municipal employee only when under the same circumstances the employee of a non-municipal employer would be covered. 181M601, 233NW467. See Dun. Dig. 10394(48).

Township paying village a certain amount per run made by fire deparment was not an "employer" of the individual firemen; but was "employer" where it paid volunteer village firemen direct. Op. Atty. Gen., Feb. 1, 1929.

(2) Independent contractors.

Advertising aviator held employee and not independent contractor. 173M414, 217NW491.

Person cutting, piling and loading on a car held an employee and not an independent contractor. Reigel v. J., B. F., 234NW452. See Dun. Dig. 5835, 10395.

Copartnership doing work for school district held independent contractor and not employee. 175M547, 221NW911.

An agent receiving commissions as compensation, was an employee and not an independent contractor. 176M373, 223NW608.

Person working on house held independent contractor. Holmberg v. A., 224NW458.

Applicant for compensation must show that he was employee and not an independent contractor. Holmberg v. A., 225NW439.

Finding that one employed to cut timber on a piece-work basis, was employee and not independent contractor, sustained. 178M133, 226NW 475.

Painter and decorator repairing store for tenants of building at a compensation of 50 cents an hour, held an employee and not an independent contractor. 179M395, 229NW340.

Person cutting, piling and loading on a car held an employee and not an independent contractor. Reigel v. F., 234NW452. See Dun. Dig. 5835, 10395.

Casual employment.

See notes under §4268.

One doing odd jobs about a house with respect to storm windows and small repairs, was a "casual." Billmayer v. S., 225NW426.

(h) Accidental injuries.

Injury to city employee, while driving his horses to work in the morning, hitched to a dump cart owned by the city, did not arise out of and in the course of his employment. 224NW 840.

Injury while travelling on highway arose out of and in course of employment. 225NW428.

Finding that hernia did not result from a strain in lifting a sack of peanuts, sustained. 226NW203.

Finding that loss of eyesight was occasioned by a twig hitting employee in eye while chopping, sustained. 226NW475.

Evidence held to sustain finding that condition of employee resulted from injury under former employer. 226NW767.

Finding that transportation to work was regularly furnished sustained. 227NW48.

Finding that teamster hauling bundles for commercial thresherman, but injured while pumping water for the horses on employer's farm, was injured in course of employment of commercial thresherman, sustained. 227NW663.

Whether act of employee in attempting to prevent explosion of bomb was for purpose of preventing destruction of employer's property, held a question of fact for the Industrial Commission. 228NW931.

Injury to miner held not to have resulted from accident in course of employment. 229NW100.

Death by lightning is not compensable unless the employment accentuates the natural hazard from lightning. 229NW138.

Finding of commission that hernia did not arise out of accident in course of employment, held contrary to the evidence. 230NW813.

Compensation may be given for traumatic neurosis producing disability resulting from injury in course of employment. 230NW897.

Finding of commission that carpenter sent 135 miles to work on school building was not in course of employment when injured while returning in his own automobile over week end sustained. 231NW188.

Miner who was directed to work elsewhere on account of a threatened cave-in, but who, in disobedience of orders, returned to such dangerous place and was there killed, held not in the course of his employment, and compensation could not be allowed for his death. 231NW214.

Finding that police officer, injured while traveling on a motorcycle to assume duty at place he was detailed by superior officer, received such injuries accidentally arising out of and in the course of his employment, held sustained by evidence. 233NW467. See Dun. Dig. 10404.

Evidence held to sustain finding that deceased was struck by an automobile crank in the course of his employment, and that this caused acute appendicitis, from which death ensued. 236NW 311. See Dun. Dig. 10404.

An injury sustained by an employee who slips on the street as he returns in the course of his employment to his employer's place of business at the close of the day is a street accident arising out of his employment. 236NW466. See Dun. Dig. 10396, 10403.

Injuries occurring in another state.

Where resident of Minnesota was engaged in building roads in the state, and employed plaintiff on a road in Iowa and had him come to Minnesota after he completed the road in Iowa, and he was injured in Minnesota, the Minnesota Compensation applied. 171M366, 214NW55.

Minnesota compensation act governed where salesman resident in Minnesota was injured in South Dakota, the employer having a branch office in Minneapolis and the principal office in Chicago. 173M481, 217NW680.

(k) Singular and plural.

Double disabilities coming within the 400 weeks' provisions under subdivisions 28 to 37 of §4274 relate only to total disability of at least two members. 225NW895.

(m) Farm laborers and commercial threshermen and balers.

See notes under §4268.

Employee in industrial business was not a farm laborer, though sometimes required to do farm work for his employer. 225NW428.

One operating a silo filler for commercial thresherman and cornshredderman, held not a "farm laborer." 227NW661.

Engineer of threshing outfit owned by farmer and used by him to thresh his own grain and that of his neighbors, held an employee of a "commercial thresherman." 230NW274.

A farmer threshing for his neighbors may be a "commercial thresherman." 227NW663.

§4327. Occupational diseases — How regarded.

Contracting pneumonia by city fireman held not "accident." 173M564, 218NW126.

§4330. Laws repealed.

Readjustment of settlement under law as it stood in 1920. 221NW65.

Medical and hospital expenses covering more than 90 days and amounting to more than $100 was allowable by the court under Laws 1919, c. 354. 221NW65.

Disability allowances to city employees, see Laws 1929, c. 106.

222NW508; note under §4279.

The approval of a settlement in a workmen's compensation matter under the Act of 1913, c. 467, is not a judgment, as regards limitations. 223NW926.

GENERAL PROVISIONS

§4337-1. State employees—Application of workmen's compensation act—Highway department excepted.

Persons employed by State Livestock Sanitary Board to assist its veterinarian are "employees" of the state. 229NW560.

Contracting pneumonia by city fireman held not "accident." 173M564, 218NW126.

Where employee suffered chemical poisoning and commission finds there was "accidental injury," Supreme Court will assume that there was injury to the physical structure of the body at the time of the injury. 174M147, 218NW555.

Finding that hernia was not caused or aggravated by accident sustained. 175M553, 221NW 905.

The law supposes accident as against suicide until the contrary is shown. 175M489, 221NW913.

Attorney's office assistant, held to have received injury through accident when she sprained or twisted her wrist in quickly raising her left hand from the table to the keyboard of a typewriter, producing such intense pain that she could not operate the typewriter for three weeks. Koppe v. H. & T., 223NW787.

Condition of leg held result of accident and not arthritis. Cunnien v. W., 224NW244.

A traumatic hernia is compensable. Klika v. Independent School Dist. No. 79, 161M461, 202 NW30 followed. 17798, 244NW459.

In relation to the injury, it is sufficient if the accident is the incitation. 177M98, 224NW459.

Findings that paralytic condition resulted from cerebral hemorrhage while acting as member of volunteer fire department, sustained. 177 M376, 225NW284.

Finding that cancer of the stomach was not the result of accidental injuries, sustained. 177 M519, 225NW652.

Finding of casual connection between injury from blow on head and subsequent death from pneumonia sustained. Olson v. C., 225NW921.

Finding that death resulted from encephalitis and not sunstroke, sustained. Hedquist v. P., 227NW856.

Evidence held to show that injuries from inhalation of injection of poisonous substances in the distillation of coal was an "accident." 180 M192, 230NW486.

Evidence held to support finding that sarcoma resulted from striking of leg by falling box. 180M477, 231NW195.

Evidence held to sustain finding of accidental death where insured while pushing a heavy truck, slipped and burst an artery in the brain. Clay v. N., 236NW305. See Dun. Dig. 10406 (88).

Burden was on insurer claiming that bursting of artery in brain was not accidental to show that arteries were diseased. Clay v. N., 236NW 305. See Dun. Dig. 10406(85).

Evidence held to justify finding that city salesman sustained an accidental fall causing injury from which he died. Johnston v. N., 236NW 466. See Dun. Dig. 10396.

(j) Injuries arising out of employment.

Correction—Following line 8 of the last note in the first column on page 971 of the main edition should be inserted "cludes an injury which cannot fairly be traced to the em-"

See also notes under §4261.

172M439, 215NW678.

Death hastened by and due to an aggravation of an existing infirmity by the use of a general anesthetic in performing an operation made necessary by an accident, is compensable. 174M94, 218NW243.

Chemical poisoning held an injury arising out of and in the course of the employment. 174M 147, 218NW555.

Burden is on plaintiff to show that accident arose out of and in course of employment. 172 M185, 214NW775.

Finding that death did not result from accident arising out of and in the course of employment sustained. 172M185, 214NW775.

Finding that fatal shooting of employee by a fellow employee was for reasons personal to the victim, and not because he was an employee, sustained. 172M178, 215NW204.

That the deceased was affected with heart disease predisposing him to an injury does not prevent compensation. 174M359, 219NW292.

Evidence held not to require finding that fall was a contributing cause of death three months later from decompensation of the heart. 174M 359, 219NW292.

Finding that injury to automobile salesman in accident happening while driving a prospective purchaser on an errand for the prospective purchaser did not arise out of nor in the course of his employment held sustained by the evidence. 174M362, 219NW293.

Evidence. 174M420, 219NW556.

Injury to cook near rear door of restaurant on premises of employer while on way to work was compensable. 174M491, 219NW869.

Finding that death from heart trouble resulted from blow or pressure over heart, held sustained by evidence at variance with expressed medical views. 175M42, 219NW944.

An employee who went to a garage for the purpose of starting out on a collection trip and who was asphyxiated by gas while changing a tire, died by accident which arose out of and in the course of his employment. 175M489, 221 NW913.

Employee is not deprived of compensation because service in which he was engaged at time of injury was beyond the usual scope of his employment. 173M441, 217NW370.

Finding that hernia did not result from al-

leged injury held sustained by the evidence. 171 M302, 213NW897.

Evidence held to show hernia result of strain and compensable. 171M254, 214NW29.

Death from abscess of brain held not occasioned by injury occurring 20 months prior thereto. 171M382, 214NW57.

Burden of proof is on plaintiff to show that accident arose out of and in the course of the employment. 172M185, 214NW775.

Finding that death did not arise out of and in the course of the employment sustained. 172 M185, 214NW775.

Predisposition of a bone to fracture does not prevent compensation when it does occur from an accidental fall, even though such a fall would not have fractured a bone of ordinary strength. 172M94, 214NW923.

The circumstances attending an automobile trip undertaken after ten o'clock at night held to justify a holding that the employee was not in the course of his employment. 172M551, 216 NW239.

Finding that infection causing death did not result from injury received in course of employmen held sustained by evidence. 172M549, 216 NW240.

Sunstroke may constitute an "accident," and apoplexy due in part to an increased blood pressure caused from heavy lifting is an "accident." 172M489, 216NW241.

Finding that injury arose out of and in course of employment as salesman sustained by evidence. 173-481, 217NW680.

Constable's death from accidentally discharging revolver did not arise out of employment by owner of amusement park employing him. 174M 50, 218NW170.

Where one employed to unload car on piece *work basis, after quitting for the evening* went into foundry and without being asked to do so assisted in lifting a heavy object and was injured, held that the injury arose out of the employment. 174M156, 218NW545.

Meaning of phrase "out of and in course of" employment. 180M400, 231NW214.

Employer who wilfully assaults his employee cannot assert that the latter's remedy is under the compensation act. Boek v. W., 231NW233(2).

Where it was necessary for an employee to cross railroad track to go from one part of his employer's premises to another he was entitled to compensation for injuries by being struck by a train. 181M90, 231NW803.

Evidence held to show that death of employee from tetanus was due to an accident in the course of employment, though the death could not be traced to any particular one of several wounds. 181M359, 232NW621. See Dun. Dig. 10406.

CHAPTER 24

Soldiers' Home, Relief, Etc.

§4344. Soldiers Home—who may be admitted.—The Minnesota Soldiers' Home shall be maintained at Minneapolis, under the management of seven Trustees, one of whom shall be a woman, to be known as the "Soldiers' Home Board," as a home for honorably discharged soldiers, sailors and marines of the United States who served in the Mexican War, the War of the Rebellion, the Spanish-American War, or the Philippine Insurrection, or the Boxer Rebellion, or members of the Minnesota National Guard mustered into Federal Service in 1916, and served on the Mexican border, or the war of 1917 and 1918 commonly called the "World War," and for persons who actually served in any campaign against the Indians in this state in the year 1862, whether as soldiers of the United States or not. But no person shall be admitted to the Home who has not been a resident of the state for three years next preceding the date of his application, unless he served in a Minnesota regiment, or was credited to the state, or served in the Indian Campaign as aforesaid. Nor shall any person be admitted unless he is without adequate means of support, and is unable, by reason of wounds, disease, old age or infirmity to properly maintain himself. (*As amended Apr. 16, 1931, c. 176.*)

§4345. Admission to soldiers home.—The object of the soldiers' home shall be to provide a home for all honorably discharged ex-soldiers, sailors and marines who served in the army or navy of the United States during the War of the Rebellion, or the Mexican War, or in the war begun in the year 1898 between the Kingdom of Spain and the United States or the Philippine Insurrection, or the Boxer Rebellion, or members of the Minnesota National Guard mustered into Federal service in 1916 and served on the Mexican Border, or the war of 1917 and 1918 commonly called "The World War," who now are or may hereafter become citizens of the State of Minnesota. All persons who are otherwise entitled under the provisions unable to earn their living, who, by reason of wounds, disease, or old age or infirmities are unable to earn their living, and who have no adequate means of support. No applicant shall be admitted to the soldiers' home who has not been a resident of the State of Minnesota for three years next preceding the time of having his application, unless he served in a Minnesota regiment or was accredited to the State of Minnesota. All persons who are otherwise entitled under the provisions of this section to admission to said soldiers' home who actually served in any campaign against the Indians within the United States shall be entitled to admission to such soldiers' home, notwithstanding such person was not regularly enlisted, mustered into or discharged from the military service of the United States.

The board of trustees are hereby authorized to admit wives with their husbands, and the widows or mothers to those who are, or if living, would be, eligible to admission under this act, but no wife or widow of a soldier of the war of the Rebellion, or of a soldier who actually served in any campaign against the Indians within the United States shall be admitted unless she shall have been married to her soldier husband prior to the year 1905 and no wife or widow of an honorably discharged ex-soldier, sailor or marine, who served in the army or navy of the United States in the war begun in the year 1898 between the Kingdom of Spain and the United States or the Philippine Insurrection, or the Boxer Rebellion, or members of the Minne-