1936 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1936)

(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

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MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1936

cient grounds for the issuance of such restraining order and/or temporary injunction and/or permanent injunction. (Act Apr. 24, 1935, c. 292, §1.)

4260-22. Limitation of act.—This act shall not apply to actions to enjoin the violation of open or closed shop agreements nor to actions to enjoin the violation of agreements or so-called codes of fair competition made or established pursuant to any state or Federal law. (Act Apr. 24, 1935, c. 292, §2.)

4260-23. Application of act.—The provisions of Laws 1933, Chapter 416 [§§4260-1 to 4260-15], shall not apply to actions or proceedings to which this act applies. (Act Apr. 24, 1935, c. 292, §3.)

CHAPTER 23A

Workmen's Compensation Act

PART 1

COMPENSATION BY ACTION AT LAW—MODIFICATION OF REMEDIES

4261. Injury or death of employee.

In general.

See also notes under §4326.

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

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

Evidence sustains finding that employee sustained an accidental injury from which a sarcoma resulting in his death developed, and that the injury was the cause of his death. Hertz v. W., 184M1, 237NW610. See Dun. Dig. 10396.

Death of employee in automobile of another employee at railroad crossing while on way to work, held not compensable. Kelley v. N., 190M291, 251NW274. See Dun. Dig. 10403, 10405.

Evidence supports finding that burns on face and hands caused combined degeneration of the spinal cord. Sorenson v. L., 190M406, 251NW901. See Dun. Dig. 10410.

Compensation act should receive a broad and liberal construction in interest of workman to carry out its policy. Nyberg v. L., 192M404, 256NW732. See Dun. Dig. 10385.

Death of city fireman, accidentally killed while working under orders of his chief, in attempted rescue of men asphyxiated in a well just outside city limits, held to have been due to accident arising out of and in course of his employment. Grym v. C., 193M62, 257NW661. See Dun. Dig. 10404.

Act is to be liberally construed. Keegan v. K., 194M 261, 260NW318. See Dun. Dig. 10385.

Workmen's Compensation Act would be constitutional if amended so as to deprive employer and employee of right of election. Op. Atty. Gen. (523a-13), Dec. 18, 1934.

Accident.

See notes under §4326.

Arising out of and in the course of employment.

See notes under §4326.

4262. Certain defenses excluded.

A servant who unnecessarily exposes himself to the hazards of flying particles of rock which result from the unloading of large rocks upon other rocks by a derrick equipped with a grappling contrivance, assumes the risk of injury as a matter of law. Wickman v. P., 184M431, 238NW888. See Dun. Dig. 5974.

4263. Defenses—When excluded.

Where employee is injured from defect in a simple tool, an employer not under the Workmen's Compensation Act has no need of the defenses of which he is deprived by that act. Hedicke v. H., 185M79, 239NW896. See Dun. Dig. 5888.

4267. Legal services and disbursements, etc.

Wegersley v. M., 184M393, 238NW792.

Attorney fees cannot be collected out of award unless approved by commission. 180M388, 231NW193.

PART 2

ELECTIVE COMPENSATION

4268. Not applicable to certain employments.—This Act shall not be construed or held to apply to any common carrier by steam railroad, domestic servants, farm laborers or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession or occupation of his employer; provided, that part 2 of the Compensation Act shall apply to farm labor if the employer shall have elected to accept the provisions of such part 2 by posting a written or printed statement of his election and filing a duplicate thereof with the Industrial Commission as provided by Section 4271 before the accident occurs to an employe, for which damages or compensation may be claimed, unless the employe shall signify his election, as provided by Section 4271 not to accept or be bound by the provisions of the Compensation Act, in which case said part 2 shall not apply; and, provided further, that either party may terminate his acceptance or election not to accept the provisions of part 2 of the Compensation Act as provided by Section 4272; provided, however, that the purchase and acceptance by any employer of a valid compensation insurance policy, which shall include in its coverage a classification of farm laborers, shall constitute, as to such farm laborers an election by such employer to be bound by Part 2 of the compensation Act without any further act on his part, and such election shall take effect and continue from the effective date of such policy and as long only as such policy shall remain in force. ('21, c. 82, §8; '23, c. 300, §1; Apr. 1. 1933, c. 134.)

Cited without application. 172M178, 215NW204.

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, 224NW247.

Finding that bank officer on a "good will tour" was not acting within the scope of his employment, sustained. Quast v. S., 184M329, 238NW677. See Dun. Dig. 10394.

Finding that one cleaning and painting smokestack for specified amount was employe, sustained. Fuller v. N., 248NW756. See Dun. Dig. 10395(65).

Injuries of an employee cannot be classified under both §4268 and §4327. Clark v. B., —M—, 261NW596. See Dun. Dig. 10398.

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.

Employe in industrial business was not a farm laborer, though sometimes required to do farm work for his employer. 177M503, 225NW428.

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.

In determining whether a workman is a farm laborer, nature of employment is test rather than particular item of work he is doing when injured. Hebranson v. F., 187M260, 245NW138.

Finding that one working on farm owned by creamery corporation was "farm laborer," sustained. Hebranson v. F., 187M260, 245NW138. See Dun. Dig. 10394.

Farmer electing to come under compensation act, held within such act at time of injury to one caring for sheep. Wilson v. T., 188M97, 246NW542. See Dun. Dig. 10389.

3. Casual employment—See note 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., 177M465, 225NW426.

One doing odd jobs about a house with respect to storm windows and small repairs, was a "casual." Billmayer v. S., 177M465, 225NW426.

Child of one in charge of store was not an employe while volunteering brief and uncompensated service in the store. 175M579, 222NW275.

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., 177M465, 225NW 426.

Though interior decorating for an insurance company was casual work, still it was "in the usual course of the trade, business, profession, or occupation of the employer." Cardinal v. P., 186M534, 243NW706. See Dun. Dig. 10404.

To be excluded from compensation on ground that employment was casual, employment must be both

casual and not in usual course of business. Ostlie v. D., 189M34, 248NW283. See Dun. Dig. 10394(50).

Work of installing electric wiring in apartment on second floor of building held not in usual course of employer's business. Id.

Property man in circus was "employe" of fraternal organization operating circus for one week, but his employment was "casual" and not in usual course of business. Houser v. O., 189M239, 248NW827. See Dun. Dig. 10394(50).

Cutting of timber, part of which farmer turned over to son in payment of obligation held casual and incidental to his farming. Hagelstad v. U., 190M513, 252NW430. See Dun. Dig. 10394, 10404.

To exclude an employee from compensation act, two facts must exist, employment must be casual and not in usual course of business of employer. Id.

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

1. In general.

Green v. C., 189M627, 250NW679; note under §4326.

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

Commission could not find accident "intentionally self-inflicted" because employe violated rule with respect to reporting slightest accidental injury. Clausen v. M., 186M80, 242NW397. See Dun. Dig. 10399.

Time for giving notice commences from occurence of disability and not time of accident resulting in latent injury. Clausen v. M., 186M80, 242NW397. See Dun. Dig. 10420.

Finding that death following heat stroke arose out of employment sustained. Pearson v. F., 186M155, 242 NW721. See Dun. Dig. 10404.

Compensation is legal indebtedness upon which interest accrues from date each installment should have been made. Brown v. C., 186M540, 245NW145. See Dun. Dig. 4879, 10413.

Finding that injury to office manager from accidental discharge of gun in another building did not arise out of employment, was sustained. Auman v. B., 188M256, 246NW889. See Dun. Dig. 10405.

Industrial commission on appeal from referee should have considered settlement agreement by which employee released claim to doubtful injury. Worwa v. M., 192M77, 255NW250. See Dun. Dig. 10423.

An agreement between an injured employee and his employer, to pay employee same wage weekly he was earning before injury, regardless of his ability to work, and employee to pay over to employer weekly compensation paid by latter's insurer, is not prohibited by statute nor against public policy; but it is invalid where its effect is to lessen employee's compensation prescribed by Workmen's Compensation Act. Ruehmann v. C., 192 M596, 257NW501. See Dun. Dig. 10418.

In action by employee to recover of employer part of money paid it by plaintiff, under arrangement whereby employer paid full wages and received compensation, finding of a referee of industrial commission that insurer had paid plaintiff full compensation prescribed by law presents no defense. Id.

2. Intoxication.

Evidence held insufficient to show that intoxication of employe was the natural cause of his injury. Kopp et al. v. B., 179M170, 228NW559.

4271. Presumption as to acceptance of provisions of Part 2.

Workmen's Compensation Act establishes a contractual relationship between the employer, insurer and employe, and obligations cannot be changed by legislation subsequent to a husband's death. Warner v. Z., 184M598, 239NW761. See Dun. Dig. 10388(24), 10391.

Farmer electing to come under compensation act, held within such act at time of injury to one caring for sheep. Wilson v. T., 246NW542. See Dun. Dig. 10394.

Question whether city employe may be bound by election not to be bound by terms of act, discussed. Op. Atty. Gen., Aug. 17, 1932.

Persons employed by city may not make an agreement to waive compensation for injuries sustained on account of their physical disability or otherwise. Op. Atty. Gen., Aug. 17, 1932.

Neither state, county, village, borough, town, city nor school district may elect not to be bound by Part 2 of compensation act. Op. Atty. Gen., Oct. 16, 1933.

Teacher cannot waive her legal right to compensation in her contract of employment. Op. Atty. Gen., Mar. 19, 1934.

An employee of a municipality or other subdivision of the state may elect not to be bound in a written contract of employment to that effect or by giving statutory notice, but if municipality requires such election by employee, it might constitute duress. Op. Atty. Gen. (523g-18), May 31, 1934.

Workmen's Compensation Act would be constitutional if amended so as to deprive employer and employee of right of election. Op. Atty. Gen. (523a-13), Dec. 18, 1934.

4272. Termination of acceptance or election—Notice.

A farmer who, by posting notice and filing a duplicate thereof with industrial commission, has elected to come under Workmen's Compensation Act, can come from under it only by giving written notice and filing proof thereof with commission, and he does not take himself from under act by merely failing to keep posted notice by which he elected to come under same. Margoles v. S., 191M358, 254NW457. See Dun. Dig. 10389.

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., 182M486, 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. 174M551, 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. 176 M464, 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., 176M508, 223NW787.

Evidence held to sustain finding of commission as to duration of disability. Metcalfe v. F., 187M485, 246NW 28. See Dun. Dig. 10410.

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. 179M38, 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 employe for a fractured leg, the employe was totally disabled and might be permanently partially disabled. Lund v. B., 183M 247, 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 employe was entitled to further medical aid. Lund v. B., 183M 247, 236NW215. See Dun. Dig. 10410.

Finding that one suffering hysterical paralysis rendering his right arm useless was totally disabled held supported by evidence. Rystedt v. M., 186M185, 242NW623. See Dun. Dig. 10410.

Weekly wage to be paid during temporary total disability is to be ascertained by multiplying daily wage by five and one-half. Modin v. C., 250NW73. 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, 228NW607.

6. "Necessity" for retraining.

Retraining for a new occupation is necessary when it will materially assist employe in restoring his impaired capacity to earn a livelihood. Vierling v. S., 187M252, 245NW151. See Dun. Dig. 10410.

Evidence held sufficient to sustain a finding of referee, that retraining in poultry business will materially assist in restoring employe's impaired capacity to earn a livelihood. Vierling v. S., 187M252, 245NW151. See Dun. Dig. 10410.

Upon record, industrial commission did not abuse its discretion by vacating an order denying additional com-

pensation for retraining and granting an application of employe for permission to submit further evidence. Vierling v. S., 187M252, 245NW151. See Dun. Dig. 10421.

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., 181M301, 232NW342. See Dun. Dig. 10410.

Whether laborer suffering fracture of vertebra and inner condyle of ankle was permanently and totally disabled, held issue of fact for industrial commission. Benson v. W., 189M622, 250NW673. See Dun. Dig. 10421.

Evidence held to sustain finding that respondent was permanently and totally disabled by an injury sustained while in course of his employment. Furlong v. N., 190M 552, 252NW656. See Dun. Dig. 10404, 10410(15).

Evidence held to sustain finding that man 71 years of age was totally disabled by reason of accident. Id. See Dun. Dig. 10406.

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.

9. Death resulting from injury.

Where one engaged in hauling bottled goods in his own truck at $1.25 per hour worked at irregular hours *from June 29 to July 3 and received checks amounting* to $54.81, award of $18 per week during dependency, not to exceed $7,500 and funeral expenses paid, held proper for his death. Anderson v. C., 190M125, 251NW3. See Dun. Dig. 10412.

4275. Dependents and allowances. * * * * * * *

(11) Compensation on remarriage of widow.—In the case of remarriage of a widow without dependent children she shall receive a lump sum settlement equal to one-half of the amount of the compensation remaining unpaid, without deduction for interest, but not to exceed two full years' compensation. In case of remarriage of a widow who has dependent children the unpaid balance of compensation which would otherwise become her due shall be payable to the mother, guardian, or such other person as the Industrial Commission may order for the use and benefit of such children during dependency; provided that if the dependency of the children ceases before the equivalent of two years of the mother's compensation has been paid to the children, the remainder of the two years' compensation shall be payable in a lump sum to the mother without deduction for interest. The payments as provided herein shall be paid within sixty (60) days after written notice to the employer of such remarriage or that the dependency of children has ceased; provided, however, that no widow who remarries shall be held to be a widow without dependent children when the deceased employe leaves a dependent child or children as defined by paragraph (b) Section 4326, General Statutes 1923. (As amended Mar. 7, 1933, c. 61, §1.)

* * * * * * *

Sec. 2 of Act Mar. 7, 1933, cited, provides that the act shall take effect from its passage.

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. 174 M227, 218NW882.

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

Brother held not dependent. 177M332, 225NW117.

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., 183M334, 236NW482. See Dun. Dig. 10411.

The evidence sufficiently supports the finding that father of a 24 year old son accidentally killed in the course of his employment, was not a partial dependent of the son. Larson v. A., 184M33, 237NW606. See Dun. Dig. 10411.

An illegitimate child of a woman was a "stepchild" of man she subsequently married, entitled to compensation for his death. Lunceford v. F., 183M610, 239NW673. See Dun. Dig. 10411.

Compensation to be paid a dependent widow without children is governed by law in force at time of husband's death, including amount to be paid as a lump sum in case of remarriage. Warner v. Z., 184M598, 239NW761. See Dun. Dig. 10388(24), 10412.

Conclusive presumption obtains that widow of a workman is wholly dependent and entitled to compensation, even though living apart from him, unless it be shown that she voluntarily so lived. Conway v. T., 187M223, 244NW807. See Dun. Dig. 10411.

The $7,500 limitation on compensation for death is total to be allowed in such cases, and, where widow without children is entitled to compensation up to that amount, nothing remains for any other dependents, and they cannot come in and share in the $7,500 coming to the widow, or receive compensation in addition to $7,500 to which widow is entitled. Miller v. B., 192M242, 255 NW835. See Dun. Dig. 10412.

Circumstance that decedent's dependent widow was a member of employer-partnership did not relieve it or its insurer from liability. Keegan v. K., 194M261, 260NW 318. See Dun. Dig. 10411.

Evidence held sufficient to support finding that at time of death employee was earning and contributing to his mother's support more than $8.00 per week. Olson v. E., 194M458, 261NW3. See Dun. Dig. 10412.

(1).

Finding that wife had voluntarily been living apart from employee for three years at time of his death, held supported by evidence. Olson v. D., 190M426, 252NW 78. See Dun. Dig. 10411(33).

(11).

Amended. Laws 1933, c. 61.

Where upon remarriage of widow employer made final lump sum settlement by paying half of amount of compensation, other half became payable to a minor child. Stegner v. C., 189M290, 249NW189. See Dun. Dig. 10388.

4276. Disability or death resulting from injury—Increase of previous disability—Special compensation fund.—If an employe receives an injury which of itself would cause only permanent parital disability, but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall only be liable for the permanent partial disability caused by the subsequent injury.

Provided, however, that in addition to compensation of such permanent partial disability and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid by the state the remainder of the compensation that would be due for permanent total disability, out of a special fund known as the special compensation fund, and created for such purpose in the following manner:

A. In every case of the death of an employee resulting from an accident arising out of and in the course of his employment where there are no persons entitled to compensation, the employer shall pay to the industrial commission the sum of $300.

B. Whenever an employee shall suffer a compensable injury, which results in permanent partial disability by reason of the total loss of a member or members, or injury to a member or members resulting in less than a total loss of such member, and which injury entitles him to compensation pursuant to Mason's Minnesota Statutes of 1927, Section 4274, paragraph (c), the employer or his insurer shall, in addition to the compensation provided for in said paragraph (c), pay to the industrial commission for the benefit of the special compensation fund a lump sum, without interest deductions, equal to two per cent of the total compensation to which the employee is entitled to under said paragraph (c) for said permanent partial disability, said sum to be paid to the industrial commission as soon as the total amount of the permanent partial disability payable for the particular injury is determined by the industrial commission, or arrived at by the agreement of the parties and such amount is approved by the industrial commission.

Such sums as are paid to the industrial commission pursuant to the provisions hereof shall be by it deposited with the state treasurer for the benefit of the special compensation fund and be used to pay the benefits provided by this act. All moneys heretofore arising from the provisions of this section shall be transferred to this special compensation fund. All penalties collected for violation of any of the provisions of this act shall be credited to this special compensation fund.

The state treasurer shall be the custodian of this special fund and the industrial commission shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of paragraph A of this section, and dependency later is shown, or if deposit is or has been made pursuant to either paragraphs A or B hereof by mistake or inadvertence, or under such circumstances that justice

requires a refund thereof, the state treasurer is hereby authorized to refund such deposit upon order of the industrial commission. ('21, c. 82, §16; '23, c. 300, §5; Mar. 9, 1933, c. 75; Dec. 27, 1933, Ex. Ses., c. 21, §1; Apr. 29, 1935, c. 311, §1; Jan. 18, 1936, Ex. Ses., c. 43, §1.)

Sec. 2 of Act Dec. 27, 1933, cited, provides that the act shall take effect from its passage.

Sec. 2 of Act Apr. 29, 1935, cited, provides that the act shall take effect from its passage.

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.

That employe's physical condition was predisposing of contributing cause did not prevent compensation for heat stroke which was immediate producing cause of death. Pearson v. F., 186M155, 242NW721. See Dun. Dig. 10397.

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 employe was engaged at the time of the accident. 171M402, 214 NW265.

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. ('21, c. 82, §19; '23, c. 300, §6; Apr. 19, 1929, c. 248, §1.)

Kummer v. M., 185M501, 241NW681; note under §4319.

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 employe 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, 222NW508.

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., 176M508, 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 employe, no liability or cause of action for recovery of such expenses vests or remains in the husband of the injured employe. Arvidson v. S., 183M446, 237NW12. See Dun. Dig. 10415.

Where employer after notice of disability denied employe compensation, and, by its own doctor, advised employe to return to doctor he first consulted for treatment, commission was justified in awarding employe reasonable expenses incurred for medical and surgical treatment. Clausen v. M., 186M80, 242NW397. See Dun. Dig. 10415.

Industrial commission cannot enter upon land owned by federal government where post office is being constructed and enforce safety measures provided by §§4141 to 4187, 4279. Op. Atty. Gen., July 28, 1933.

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, 217NW 491.

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

Where employe is hurt in accident producing injury to physical structure which does not result in disability for some time, time for employe to comply with conditions in this section begins to run from occurrence of *disability or time injury manifests itself as likely to* cause disability. Clausen v. M., 186M80, 242NW397. See Dun. Dig. 10419.

Actual knowledge of occurrence of injury by employer's superintendent and foreman was knowledge of employer and dispensed with necessity of written notice. Markoff v. E., 190M555, 252NW439. See Dun. Dig. 10420.

4281. Service and form of notice.

Jurisdiction may not be acquired over a non-resident employer by mailing of notices and other papers. Kling v. P., 194M179, 259NW809. See Dun. Dig. 10420.

4282. Limit of actions.

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

Defense that compensation was barred by this section, not presented to Industrial Commission, cannot be raised on appeal. Krenz v. K., 186M312, 243NW108. See Dun. Dig. 10426.

Application for workmen's compensation for retraining rests in original proceeding, and is not an independent proceeding that will be barred by statute of limitations, ignoring original proceeding of which it is a part. Vierling v. S., 187M252, 245NW150. See Dun. Dig. 10419.

By settlement agreement and submission of same to commission for action any claim that proceeding was barred by limitations was waived. Worwa v. M., 192M77, 255NW250. See Dun. Dig. 10419.

Six-year statute of limitations ran against right to recover compensation where employer paid injured employee his full wage for some time after accident while disabled, the arrangement between the employer and the employee not constituting a proceeding or any part of a proceeding which would furnish a basis for a reopening. Lunzer v. W., —M—, 261NW477. See Dun. Dig. 10419.

Where employer has made no written report of accident, there can yet be no recovery of compensation unless proceeding before commission be commenced within six years from date of accident. Id.

4283. Examination and verification of injury.

177M555, 225NW889.

(4).

Employer which did not apply to commission cannot complain that it was refused autopsy. Brameld v. A., 186M89, 242NW465. See Dun. Dig. 10421.

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 office 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 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. ('21, c. 82, §24; 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. ('21, c. 82, §25; Apr. 26, 1929, c. 400.)

Stitz v. R., 192M297, 256NW173; note under §8812.

Worwa v. M., 192M77, 255NW250; note under §4269, note 1.

Employers' Mut. L. Ins. Co. v. E., 192M398, 256NW663; note under §4286.

When lump settlement is made in absence of a periodic award, commission has jurisdiction to entertain a petition to set aside settlement for purpose of determining whether or not compensation should be paid for subsequently appearing disability. Johnson v. P., 187M 362, 245NW619. See Dun. Dig. 10418.

4286. Payment to trustee.

Where compensation is commuted under §4285, and dependent beneficiary dies before receiving whole sum placed in trust for his benefit under §4286, depositing insurer may not recover balance unexpended at time of beneficiary's death. Employers' Mut. L. Ins. Co. v. E., 192M398, 256NW663. See Dun. Dig. 10414.

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. 175M161, 220NW421.

Death of workman from other causes while receiving compensation for injury terminates all rights to compensation to accrue to him thereafter. 176M464, 223NW 773.

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

An agreement between an injured employee and his employer, to pay employee same wage weekly he was earning before injury, regardless of his ability to work, and employee to pay over to employer weekly compensation paid by latter's insurer, is not prohibited by statute nor against public policy; but it is invalid where its effect is to lessen employee's compensation prescribed by Workmen's Compensation Act. Ruehmann v. C., 192 M596, 257NW501. See Dun. Dig. 10418.

In action by employee to recover of employer part of money paid it by plaintiff, under arrangement whereby employer paid full wages and received compensation, finding of a referee of industrial commission that insurer had paid plaintiff full compensation prescribed by law presents no defense. Id.

An appropriation to industrial commission for compensation to certain person may not be assigned. Op. Atty. Gen., May 4, 1933.

4288. Employer to insure employes—Exceptions.

Stitz v. R., 192M297, 256NW173; note under §8812, note 1.

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. 173M 354, 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. 173M354, 217NW358.

An insurer of an employer may question cancellation of alleged coinsurer's contract for purpose of showing that coinsurance was in effect at time of loss. Byers v. E., 190M253, 251NW267. See Dun. Dig. 4805.

Industrial commission may bring in alleged coinsurer as additional party for purpose of determining if coinsurance exists. Id. See Dun. Dig. 4805.

Proceedings by an injured employee or his dependent may be brought directly against employer and insurer at the same time. Keegan v. K., 194M261, 260NW318. See Dun. Dig. 10424.

Ordinarily persons employed on relief projects are not employees of county within meaning of compensation law or workmen's compensation insurance policy. Op. Atty. Gen. (523g-18), Mar. 15, 1935.

A city may carry workmens compensation insurance in a mutual company under a policy limiting liability within maximum indebtedness of such municipality as prescribed by law. Op. Atty. Gen. (489c-5), May 23, 1935.

It is optional with a municipality whether or not it shall carry insurance. Op. Atty. Gen. (523a-5), July 19, 1935.

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 insurnace 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 in-

surance 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. ('21, c. 82, §29; '23, c. 282, §2; 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.

Stitz v. R. 192M297, 256NW153; note under §8812.

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 employes. 175M577, 222NW72.

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, 224NW 253.

First day was excluded and last day included in determining time of cancellation of workman's compensation insurance policy. Olson v. M., 188M307, 247NW8. See Dun. Dig. 9625.

Where police officer injured foot resulting in osteomyelitis during period covered by one insurance carrier, and suffered another injury making a latent condition become acute during the existence of policy of another insurance carrier, evidence held to support decision requiring each insurance carrier to pay half of compensation installments. Peniston v. C., 192M132, 255NW860. See Dun. Dig. 4868d.

Where an employee, while working for same employer, sustained at two different times direct inguinal hernias from accidents and operative cures resorted to were not successful, and he is now permanently partially disabled and entitled to compensation from the employer, employer's insurer when first accident occurred, must bear an equal part with insurer who carried risk at time of second accident in payment of compensation and medical care. Carpenter v. A., 194M79, 259NW535. See Dun. Dig. 10391.

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.

Employer cannot deduct certain percentage of employee's wages and apply same on premium of employee's insurance. Op. Atty. Gen. (523a-4), June 11, 1934.

State agricultural society has no authority to take out workmen's compensation insurance for its employees. Op Atty. Gen. (4a), Mar. 27, 1935.

4290. Certain persons liable as employers—Contractors—Subcontractors, etc.—(1) Any person who creates or carries into operation any fraudulent 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 omissions 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 subcontractor shall be liable for all compensation benefits to employees, 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. ('21, c. 82, §30; 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.

Evidence held to sustain finding that owner of truck who hauled timber at an agreed price per cord was an employe. Barker v. B., 184M366, 238NW692. See Dun. Dig. 10394.

One paid by the job to wash windows of a school building under construction and nearing completion held an employe and not an independent contractor. Wass v. B., 185M70, 240NW464. See Dun. Dig. 10395.

Finding that one cleaning and painting smokestack for specified amount was employe, sustained. Fuller v. N., 248NW756. See Dun. Dig. 10395(65).

Subdivision 1.

Widow accepting compensation for death of husband held not real party in interest in an action against third party. Prebeck v. V., 185M303, 240NW890. See Dun. Dig. 10407, 10408.

Subdivision 4.

County held not be a "general contractor," "intermediate contractor" or "subcontractor" within meaning of subdivision. Op. Atty. Gen. (844c-3), June 11, 1934.

County engaging an independent contractor is not liable for liability insurance premium to insurer of county. Id.

4291. Liability of third persons—Procedure.

In general.

The public highway cannot be said to be premises within this section; and employee of one riding as guest in automobile driven by the servant of another, might maintain an action against the owner of the automobile, though he had received compensation from his employer. Liggett & Myers Tob. Co. v. D. (CCA8), 66F(2d)678.

Increased workmen's compensation insurance premiums which plaintiff had to pay in consequence of an employee's death caused by a negligent act of defendant, a subcontractor, are too remote and indirect results of such wrongful act to be recoverable. Northern States Contracting Co. v. O., 191M88, 253NW371. See Dun. Dig. 7003, 10408.

Evidence that plaintiff previously had received workmen's compensation for injury now sued for should not be admitted on new trial if evidence there produced is same as on first trial. Guile v. G., 192M548, 257NW649. See Dun. Dig. 454.

Employee struck by automobile of another employee while on a private street used by several employers in common, held not injured in an accident arising out of or in the course of employment or upon the working premises of his employer, and workmen's compensation act did not apply in action against driver of automobile. Helfrich v. R., 193M107, 258NW26. See Dun. Dig. 10405.

Farm employee having applied for and received compensation from his employer was not in a position to claim that he was employee of another farmer to whom he was loaned by his employer to repay work owed. Egan v. E., 193M165, 258NW161. See Dun. Dig. 10407.

Subdivision 1.

Employe 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, 225 NW901.

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.

Employe prosecuting a proceeding against his employer for compensation to a final decision on the merits, is barred from suing the third party. 178M313, 227NW 47.

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

Employer who wilfully assaults his employe stands in no better position than a stranger, and cannot assert that the remedy is under the compensation act. Boek v. W., 180M556, 231NW233(2).

Meat market employe, 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, 232NW114. See Dun. Dig. 10407(91).

In suit by employer against employe to recover for death of another employe, defendant may set up contributory negligence of employer and other employe. Thornton Bros. Co. v. R., 188M5, 246NW57. See Dun. Dig. 10408.

Subdivision 2.

174M466, 219NW755.

Employee of farmer receiving injuries at defendant's elevator while hauling grain from farm of one to whom his employer was trading work, having received compensation from his employer, had no right to sue proprietor of elevator for negligence. Egan v. E., 193M165, 158NW 161. See Dun. Dig. 10407.

4292. Penalties for unreasonable delay.

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

4293. Employers must report accidents—Etc.

177M555, 225NW889.

Time for giving notice commences from occurrence of disability and not time of accident resulting in latent injury. Clausen v. M., 186M80, 242NW397. See Dun. Dig. 10420.

Prohibition against admitting reports into evidence applies only to those reports submitted to Industrial Commission, not reports submitted to insurance companies or others. Hector Const. Co. v. B., 194M310, 260NW496. See Dun. Dig. 3348.

Where employer has made no written report of accident, there can yet be no recovery of compensation unless proceeding before commission be commenced within six years from date of accident. Lunzer v. W., —M—, 261NW477. See Dun. Dig. 10419.

Six-year statute of limitations ran against right to recover compensation where employer paid injured employee his full wage for some time after accident while disabled, the arrangement between the employer and the employee not constituting a proceeding or any part of a proceeding which would furnish a basis for a reopening. Id.

Reports of accident may not be disclosed to injured employe or his attorney. Op. Atty. Gen., June 15, 1932.

4295. Employer to notify commission of discontinuance of payments.—Before discontinuing the payment of compensation in any case coming under part 2 of this act, the employer shall, if it is claimed by or on behalf of the injured person or his dependents that his right to compensation still continues, or if such employee or his dependents shall refuse to sign or object to signing a final receipt, notify the Industrial Commission, in writing, of such proposed discontinuance of payment, with the date of discontinuance and the reason therefor, and that the employee or dependent, as the case may be, objects thereto, and such employer shall also file with such notice of discontinuance any medical reports in his possession bearing upon the physical condition of the injured employee at or about the time of the discontinuance of the compensation, or duly verified copies of such reports in lieu of the originals; and until such notice is given, and such reports filed, as aforesaid, the liability for the making of such payments shall continue unless otherwise ordered by the Commission; provided, that the receipt of any such notice of discontinuance, together with such reports, by the Commission, as herein provided, shall operate as a suspension of payment of compensation until the right thereto can be investigated, heard and determined, as herein provided. It is hereby made the duty of the Industrial Commission forthwith, upon receipt of any such notices of discontinuance, to notify the employee of the receipt thereof and mail him a copy of the same, together with copies of the reports filed with such notice, at his last known place of residence, and to make such investigations and inquiries as may be necessary to ascertain and determine whether the right to compensation in any such case has terminated in accordance with law, and if upon investigation it shall appear that the right to compensation in any such case has not terminated or will not terminate upon the date specified in any such notice of discontinuance, the Industrial Commission shall set down for hearing before the Commission, or some commissioner or referee, the question of the right of the employee, or dependent, as the case may be, to further compensation, such hearing to be held within 25 days of the receipt by the Commission of any such notice of discontinuance, and 8 days notice of such hearing shall be given by the Commission to the interested parties.

After the hearing by the Commission, commissioner or referee, and due consideration of all the evidence submitted, the Commission, commissioner or referee, shall promptly enter an order or award for such further amount of compensation to be paid by the employer, if any, as may be due and payable. If upon investigation it shall appear that the right to compensation in any such case has terminated, the Commission shall forthwith notify the employer in writing of such fact and the receipt of such notice by the employer shall operate to relieve him and the insurance carrier, as of the date when payment of compensation became suspended as provided by this section, from any further liability for payment of compensation in such case, subject to the right of review provided by this act, and subject to the right of the Commission, at any time prior to said review, to set aside its decision, or that of the referee, and grant a new hearing pursuant to Section 4319, General Statutes 1923.

In addition to the filing of the reports required by law, all employers subject to part 2 of this act shall promptly file or cause to be filed with the Industrial Commission all current interim and final receipts for the payments of compensation made, and it is hereby made the duty of the Industrial Commission periodically to check the records of such commission in each case, and require such employers to file or cause to be filed all such receipts for compensation payments as and when due, it being the intention of this section that the Industrial Commission shall definitely supervise and require prompt and full compliance with all provisions for the payment of compensation as required by law. Any insurance carrier insuring any employer in this State against liability imposed by this Act shall be and hereby is authorized and empowered for and on behalf of said employer to perform any and all acts required of the employer under the provisions of this Act; provided, that the employer shall be responsible for all authorized acts of an insurer in his behalf and for any omission or delay or any failure, refusal or neglect of any such insurer to perform any such act, and nothing herein contained shall be construed to relieve the employer from any penalty or forfeiture provided by this act. ('21, c. 82, §35, par. 1, '25, c. 161, §9; Mar. 9, 1933, c. 74, §1.)

Sec. 2 of Act Mar. 9, 1933, cited, provides that the act shall take effect from its passage.

Stitz v. R., 192M297, 256NW173; note under §8812.

Evidence held to sustain industrial commission's decision that compensable disability terminated on certain date. Chesler v. C., 185M532, 242NW2.

Where there has been award of compensation in installments, which have been paid, and then issue is formally made whether there is right to additional compensation, decision of commission that right has terminated is final, subject only to review (by certiorari), as distinguished from rehearing. Rosenquist v. O., 187 M375, 245NW621. See Dun. Dig. 10421.

Where compensation was declared at an end and rights of parties were finally determined and fixed prior to passage of chapter 74, Laws 1933, commission has no authority to grant a new hearing under this section, since substantive rights of parties are affected. Johnson v. J., 191M631, 255NW87. See Dun. Dig. 10421.

Where an employee suffers an injury, at time reported and conceded to be compensable, and employer or insurer pays compensation for several weeks and pursuant to §4295 files with Industrial Commission interim and final receipts, latter reporting history of case for determination of commission as to whether employee's rights have been fully protected and full compensation given, transaction amounts to a proceeding within §4319, which continues commission's jurisdiction. Nyberg v. L., 192M 404, 256NW732. See Dun. Dig. 10421.

A final settlement approved by industrial commission and final payment made thereunder becomes final at expiration of time permitted for review thereof. Falconer v. C., 193M560, 259NW62. See Dun. Dig. 10418.

Lump sum settlement in 1926 carrying also weekly payment for 300 weeks, approved by the court and final receipt given by employee was a final disposition of the matter which could not be reopened in 1934, and a subsequent settlement of medical expenses under stipulation approved by the court did not constitute a reopening. Nadeau v. C., 194M285, 260NW213. See Dun. Dig. 10418.

Amendment by Laws 1933, c. 74, had no retroactive effect so as to authorize reopening compensation cases finally closed before the statute was amended. Id. See Dun. Dig. 10388.

4301. Service by mail.

Jurisdiction may not be acquired over a non-resident employer by mailing of notices and other papers. Kling v. P., 194M179, 259NW809. See Dun. Dig. 10420.

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., 178M34, 225NW921.

Burden of proof is upon employee to show that injury was suffered in accident arising in course of employment. Jensvold v. K., 190M41, 250NW815. See Dun. Dig. 10406.

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.

Where affidavits in support of a petition for rehearing indicate strongly that award was based in substantial degree upon false testimony, it is an abuse of discretion not to grant a rehearing. Meehan v. M., 191M411, 254NW 584. See Dun. Dig. 10421.

4309. Commission to make award—Who may intervene.

Findings of industrial commission in proceeding against building contractor were not admissible in action at law against farmer and building contractor, who was acting as foreman in supervising construction of barn, plaintiff seeking recovery on theory that he was invitee while aiding farmer in construction, and the only material finding by the industrial commission being that plaintiff was not an employee of the building contractor, one ending commissioner's power to proceed further. Gilbert v. M., 192M495, 257NW73. See Dun. Dig. 10425.

4313. Commission not bound by rules of evidence.

The Commission and its referees are not subject 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. 177 M555, 225NW889.

A decision of industrial commission will not be disturbed because incompetent evidence was admitted Cooper v. M., 188M560, 247NW805. See Dun. Dig. 10421 (80).

Commission is not bound by strict rules of evidence, but its findings of fact must be based only upon competent evidence. Cooper v. M., 188M560, 247NW805. See Dun. Dig. 10421(79).

Findings of industrial commission must be based upon competent evidence and cannot rest on pure hearsay. Bliss v. S., 189M210, 248NW754. See Dun. Dig. 10421n, 79.

Finding supported by competent evidence must be sustained though hearsay evidence was also received. Anderson v. C., 190M125, 251NW3. See Dun. Dig. 10426.

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., 178M34, 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., 181M533, 233NW300. See Dun. Dig. 10423.

Failure of employee to make a deposit of $10 within 20 days after service of notice of his appeal from an adverse decision of referee, did not require commission to grant a motion to dismiss such appeal. Rutz v. T., 191 M227, 253NW665. See Dun. Dig. 8954, 10385.

4317. Appeal based on fraud, etc.

175M539, 221NW910; note under §4139.

4318. Proceedings in case of default—Entry of judgment upon awards.—On at least thirty days' default in the payment of compensation due under any award made under part 2 of this act, employe or dependents entitled to such compensation may file a certified copy of such award with the clerk of the district court of any county in the state, and on ten days' notice in writing to the adverse parties, served as provided by law for service of a summons, may apply to the judge of any district court for judgment thereon. On such hearing the judge of such court shall have the right to determine only the facts of said award and the regularity of the proceedings upon which said award is based, and shall order judgment accordingly, and such judgment shall have the same force and effect, and may be vacated, set aside, or satisfied as other judgments of the same court; provided, that no judgment shall be entered on an award while an appeal is pending. There shall be but one fee of 25c charged by said clerk for services in each case under this section, and said fee shall cover all services performed by him. An employe or dependent shall be entitled to entry of judgment for only such sums as are by the award payable to him. If any such award provides for the payment of money to a person other than such employe or dependent, such other person may by the same procedure obtain an entry of judgment for such sum as is payable to him by such award. ('21, c. 82, §58; '23, c. 300, §11; Apr. 29, 1935, c. 314, §1.)

Sec. 2 of Act Apr. 29, 1935, cited, provides that the act shall take effect from its passage.

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.

Where an employer left to its insurer defense of a petition for compensation, after an award was made and reduced to judgment, insurer having become insolvent, district court had power to set aside judgment for "excusable neglect" of employer so that it might petition industrial commission for a rehearing of matter on merits. Meehan v. M., 191M411, 254NW584. See Dun. Dig. 4875d.

4319. New hearing may be granted.

Whether an employe 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, 216NW 227.

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. 174 M153, 218NW550.

The granting of a rehearing after an award rests in the sound discretion of the Industrial Commission. Delich v. T., 175M612, 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. 177 M555, 225NW889.

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

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

There is no statute limiting the time within which the industrial commission may grant a rehearing on the propriety of further allowance of medical benefits necessitated by original injury. Kummer v. M., 185M515, 241 NW681. See Dun. Dig. 10421.

Application for compensation for retraining rests in original proceeding, and is not an independent proceeding that will be barred by statute of limitations, ignoring original proceeding of which it is a part. Vierling v. S., 187M252, 245NW150. See Dun. Dig. 10419.

Upon record, industrial commission did not abuse its discretion by vacating an order denying additional compensation for retraining and granting an application of employe for permission to submit further evidence. Vierling v. S., 187M252, 245NW150. See Dun. Dig. 10421.

Word "award" is construed as synonymous with "decision" so as to allow to an employe denied compensation same right to petition for and procure a rehearing as is given to employer and insurer when compensation is allowed. Rosenquist v. O., 187M375, 245NW621. See Dun. Dig. 10421.

Industrial commission did not abuse its discretion in refusing to grant rehearing to employe whose injury was originally compensated, where medical testimony as to present condition was in dispute. State v. A. C. Ochs Brick & Tile Co., 187M586, 246NW249. See Dun. Dig. 10421.

Where the record discloses that no objection was made before industrial commission, upon jurisdictional grounds, to application to vacate an award, nor any objection that no good cause has been shown for vacation, relator-insurer will not be heard to raise question for first time in supreme court. Mark v. K., 188M1, 246NW 472. See Dun. Dig. 10426.

Granting of rehearing rests in discretion of industrial commission. Cooper v. M., 188M560, 247NW805. See Dun. Dig. 10421(81).

Industrial commission did not abuse its discretion in denying rehearing on ground of newly discovered evidence which was merely cumulative. Olson v. D., 190 M426, 252NW78. See Dun. Dig. 10421.

Granting of rehearing rests with industrial commission except where it appears that judicial discretion has been abused. Id.

Where an employee suffers an injury, at time reported and conceded to be compensable, and employer or insurer pays compensation for several weeks and pursuant to §4295 files with Industrial Commission interim and final receipts, latter reporting history of case for determination of commission as to whether employee's rights have been fully protected and full compensation given, transaction amounts to a proceeding within §4319, which continues commission's jurisdiction. Nyberg v. L., 192M404, 256NW732. See Dun. Dig. 10421.

A final settlement approved by industrial commission and final payment made thereunder becomes final at expiration of time permitted for review thereof. Falconer v. C., 193M560, 259NW62. See Dun. Dig. 10418.

Lump sum settlement in 1926 carrying also weekly payment for 300 weeks, approved by the court and final receipt given by employee was a final disposition of the matter which could not be reopened in 1934, and a subsequent settlement of medical expenses under stipulation approved by the court did not constitute a reopening. Nadeau v. C., 194M285, 260NW213. See Dun. Dig. 10414.

Six-year statute of limitations ran against right to recover compensation where employer paid injured employee his full wage for some time after accident while disabled, the arrangement between the employer and the employee not constituting a proceeding or any part of a proceeding which would furnish a basis for a reopening. Lunzer v. W., —M—, 261NW477. See Dun. Dig. 10419.

Affirmance of an order of commission denying a petition to reopen case and grant a rehearing ended case and industrial commission thereafter had no further jurisdiction to entertain another application for rehearing. Frederickson v. B., —M—, 261NW479. See Dun. Dig. 10421.

A final settlement approved by industrial commission with final payment made thereunder becomes final at expiration of time permitted for review, and commission cannot reopen. Id.

Industrial commission had no power to vacate settlement, and its award based thereon, and grant a petition for rehearing. Dorfman v. F., —M—, 261NW879. See Dun. Dig. 10421.

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.

175M103, 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. 175M 51, 220NW401.

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

Findings of commission must prevail unless they are clearly and manifestly contrary to the evidence. 174M 94, 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., 176M508, 223NW787.

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.

Findings as to cause of death based on evidence could not be disturbed. Hedquist v. P., 178M524, 227NW856.

Failure to transmit return to Supreme Court in 30 days did not oust such court of jurisdiction. Hedquist v. P., 178M524, 227NW856.

On certiorari to review decision of Industrial Commission the title of the proceeding does not change in the appellate court. Kopp v. B., 179M158, 228NW559.

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

Whether act of employe was done for purpose of saving employer's property, held a question of fact for determination of Industrial Commission. 179M272, 228NW 931.

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, 225 NW428.

Commission's findings on fact question is final. Holmberg v. A., 177M469, 225NW439.

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

Finding of commission that there was no causal connection between fall and resulting cancer reversed and remanded for further evidence. Hertz v. W., 180M177, 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. 180M473, 231NW188.

Decision of fact issue by Industrial Commission will not be disturbed on certiorari. 181M546, 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. 179M321, 229NW138.

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

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., 181M301, 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., 182M244, 234NW320. See Dun. Dig. 10426(26).

Finding of Industrial Commission that one was employe at time of accident is a finding of fact which cannot be reversed if reasonably sustained by evidence. Frederick v. F., 183M243, 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., 183M531, 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., 183M541, 237NW420. See Dun. Dig., 10426 (26).

Decision of Industrial Commission will not be disturbed unless evidence and inferences permissible therefrom require reasonable minds to adopt a contrary conclusion. Farley v. N., 184M277, 238NW485. See Dun. Dig. 10426(24).

Where there is a clear conflict in the evidence as to the causal connection between a strain and a subsequent disability, Supreme Court will not disturb the finding of the Industrial Commission. Hoeflin v. R., 184M360, 238NW 676. See Dun. Dig. 10426.

A memorandum attached to a decision of the Industrial Commission may not be resorted to to show that its justifiable findings are not based upon a tenable theory. Wheeler v. W., 184M538, 239NW253. See Dun. Dig. 0426.

Finding of Industrial Commission upon questions of fact will not be disturbed when reasonable minds may reach conclusion in accord with that of commission. Brameld v. A., 186M89, 242NW465. See Dun. Dig. 10426.

Refusal of Industrial Commission to vacate award and allow additional compensation, based on competent evidence, will not be disturbed on appeal. Hanke v. N., 186 M182, 242NW621. See Dun. Dig. 10426.

Where order of industrial commission, affirmed by supreme court, provides for further proceedings, commission may proceed to determination of issue so left open. Hertz v. W., 186M173, 242NW629. See Dun. Dig. 10426.

Finding of Industrial Commission that person was employee must be sustained if reasonably supported by evidence and inferences. Carter v. W., 186M413, 243NW436. See Dun. Dig. 10426.

Where certiorari has issued to review a decision by the industrial commission, but writ has been discharged without a hearing in this court, commission is not deprived of jurisdiction of case. Johnson v. P., 187M362, 245NW619. See Dun. Dig. 10426.

Unless a consideration of evidence and inferences permissible therefrom clearly require reasonable minds to adopt a contrary conclusion, a finding by industrial commission upon a question of fact cannot be disturbed. Zitzman v. M., 187M268, 245NW29. See Dun. Dig. 10426.

Finding of fact by industrial commission cannot be disturbed unless consideration of evidence clearly requires reasonable minds to adopt contrary conclusion. Metcalf v. F., 187M485, 246NW28. See Dun. Dig. 10426.

Finding of industrial commission upon question of fact cannot be disturbed unless consideration of evidence and inferences permissible clearly require reasonable minds to adopt contrary conclusion. Palumbo v. C., 187M508, 246NW36. See Dun. Dig. 10426.

In compensation case, rehearing was ordered for new evidence as to the cause of degeneration of spinal cord. Sorenson v. L., 187M665, 246NW114. See Dun. Dig. 10421.

On certiorari to industrial commission to review an award of compensation, granted on rehearing after a previous award has been vacated, there may be reviewed order granting rehearing. Mark v. K., 188M1, 246NW472. See Dun. Dig. 1402, 10426.

A decision of industrial commission will not be disturbed because incompetent evidence was admitted. Cooper v. M., 188M560, 247NW805. See Dun. Dig. 10421-(80).

Denial of compensation by industrial commission will not be disturbed if record presents an issue of fact. Ekelund v. W., 189M228, 248NW824. See Dun. Dig. 10426(24).

Finding that injured person was an employee must stand on appeal if fairly sustained by evidence. Myers v. V., 189M244, 248NW824. See Dun. Dig. 10426(24).

A conclusion of industrial commission that death resulted from exertions in course of employment must be sustained if supported by sufficient evidence. Farrell v. R., 189M573, 250NW454. See Dun. Dig. 10426.

Court will not disturb finding of commission upon question of fact reasonably supported by evidence. Benson v. W., 189M622, 250NW673. See Dun. Dig. 10426.

A decision of the commission will not be disturbed if founded upon an inference reasonably to be drawn from the controlling facts. Jensvold v. K., 190M41, 250NW815. See Dun. Dig. 10426.

Findings of fact by industrial commission cannot be disturbed on appeal. Anderson v. C., 190M125, 251NW3. See Dun. Dig. 10426.

Decision of the industrial commission supported by adequate evidence will not be disturbed. Wallin v. G., 190 M335, 251NW669. See Dun. Dig. 10426.

Finding that disability resulted from accidental injury cannot be disturbed by court if supported by evidence. Rutz v. T., 191M227, 253NW665. See Dun. Dig. 10426.

Industrial Commission's finding of fact with reasonable support in evidence will not be disturbed. Nelson v. W., 191M225, 253NW765. See Dun. Dig. 10426.

Findings of commission on controverted questions of fact must be sustained unless they are so manifestly contrary to evidence that reasonable minds could not adopt them. Duchant v. O., 192M443, 256NW905. See Dun. Dig. 10426.

In action by employee to recover of employer part of money paid it by plaintiff, under arrangement whereby employer paid full wages and received compensation, finding of a referee of industrial commission that insurer had paid plaintiff full compensation prescribed by law presents no defense. Ruehmann v. C., 192M596, 257NW 501. See Dun. Dig. 10418.

Finding of commission as to which one of two persons was employer of injured employee cannot be disturbed where supported by evidence. Hiland v. F., 193M10, 257 NW663. See Dun. Dig. 10426.

Function of supreme court is not to make an independent finding as to relationship between parties, but to ascertain whether evidence supports finding made by commission. Olson v. E., 194M458, 261NW3. See Dun. Dig. 10426.

Whether insanity disabling employer from engaging in any occupation was connected with and a result of injuries received in accident was a question of fact. Newman v. V., 194M513, 261NW703. See Dun. Dig. 10426 (24).

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.

Motion or petition in supreme court to remand case to industrial commission for further hearing on ground of newly discovered evidence was denied where affidavits of various parties contained substantially same irreconcilable conflict of issues involved as appeared at trial. Susnik v. O., 193M129, 258NW23. See Dun. Dig. 10426(12).

4324. Costs—Reimbursements to prevailing party —Attorney's fees, etc.

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

Statutory costs denied because of deliberate and extended reference in brief for respondents to facts, outside record, said to have occurred since hearing. Whaling v. I., 194M302, 260NW299. See Dun. Dig. 2226.

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.

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

Weekly wage to be paid during temporary total disability is to be ascertained by multiplying daily wage by five and one-half. Modin v. C., 189M517, 250NW73. See Dun. Dig. 10410.

Where traveling salesman was being paid $60 to $65 weekly to cover flat allowance of $25 as wages, hotel bills, meals, and a car mileage allowance, in absence of showing that allowance resulted in profit to him, finding that his wages were $40 per week was sustained. Nelson v. W., 191M225, 253NW765. See Dun. Dig. 10410.

Driver of school bus working about 3 hours a day was a part time worker for purposes of computing daily wage. Lee v. V., 192M449, 257NW90. See Dun. Dig. 10410.

Burden is upon him who alleges it to show that normal working time is not 8 hours in determining compensation of part time worker. Id. See Dun. Dig. 10421.

4326. Definitions, continued.

(a).

134M25, 158NW717, should read 133M447, 158NW717.

(b).

An illegitimate child of a woman was a "stepchild" of man she subsequently married, entitled to compensation for his death. Lunceford v. F., 185M31, 239NW673. See Dun. Dig. 10411.

(d). Employer.

177M454, 225NW449.

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

Independent rural telephone company organized on June 25, 1913, held a de facto corporation and dependents of employee held entitled to compensation. Ebeling v. I., 187M604, 246NW373. See Dun. Dig. 10393.

If employee is given over unreservedly to the service and direction of another employer it creates relation of master and servant as between such employee and such other employer; but such new relation cannot be thrust upon servant without his knowledge and consent. Dahl v. W., 194M35, 259NW399. See Dun. Dig. 10395.

Evidence held to show that two persons operating an apartment building and dividing income were partners rather than tenants in common. Keegan v. K., 194M 261, 260NW318. See Dun. Dig. 10395.

County employing an independent contractor held not an employer. Op. Atty. Gen. (844c-3), June 11, 1934.

City is liable for compensation to members of fire department while on calls outside village limits under direction of village officers, whether or not there exists a contract with adjacent territory. Op. Atty. Gen. (688p), Aug. 29, 1934.

(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., 182M507, 234NW870. See Dun. Dig. 10395.

Evidence held to sustain finding that owner of truck who hauled timber at an agreed price per cord was an employee. Barker v. B., 184M366, 238NW692. See Dun. Dig. 10394.

Finding that teamster was employee of road contractor while driving an automobile to order feed and groceries

held sustained by evidence. Wheeler v. W., 184M538, 239 NW253. See Dun. Dig. 10393-10395.

Arrangement whereby charitable organization operating a hotel gives persons who do work several dollars a week for pocket money and incidentals held not contract of hiring. Hanson v. S., 191M315, 254NW4. See Dun. Dig. 10395.

Husband of one member of a partnership operating an apartment building held an employee of partnership. Keegan v. K., 194M261, 260NW318. See Dun. Dig. 10395.

(g) (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).

One paid by the job to wash windows of a school building under construction and nearing completion held an employee and not an independent contractor. Wass v. B., 185M70, 240NW464. See Dun. Dig. 10395.

Constable who assists sheriff at his request in making an arrest, is employee of municipality, though neither he nor the sheriff had his official position in mind at time. McFarland v. V., 187M434, 245NW630. See Dun. Dig. 10394(48).

Where in application for federal funds city agreed to assume liability for and to provide workmen's compensation for all persons employed upon project for which funds were used, city assumed same responsibility toward persons working on such project that it did to its regular employees. Michels v. C., 193M215, 258NW162. See Dun. Dig. 10394.

A deputy county auditor, while a county official, is not elected or appointed for a regular term so as to be denied benefit of workmen's compensation law. Whaling v. I., 194M302, 260NW299. See Dun. Dig. 10394(54).

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

Where sheriff calls upon city police to aid him in conducting raids and searching premises, and they are injured, the county would be liable under the Workmen's Compensation Act. Op. Atty. Gen., Nov. 10, 1931.

Persons employed by county in so-called "made work" are employees within compensation act. Op. Atty. Gen., Mar. 8, 1933.

County is not liable for injuries received by prisoner in county jail while working. Op. Atty. Gen., Mar. 13, 1933.

Volunteer firemen are entitled to benefits of workmen's compensation law. Op. Atty. Gen., Mar. 17, 1933.

Persons employed in so-called "made work" or "relief work" are employees of state or municipality and protected by act. Op. Atty. Gen., July 24, 1933.

Neither state, county, village, borough, town, city nor school district may elect not to be bound by part 2 of compensation act. Op. Atty. Gen., Oct. 16, 1933.

Minnesota Historical Society is liable under Workmen's Compensation Act for injuries to its employees but is not liable to visitors injured while on the premises. Op. Atty. Gen. (523g-17), May 2, 1934.

An employee of a municipality or other subdivision of the state may elect not to be bound in a written contract of employment to that effect or by giving statutory notice, but if municipality requires such election by employee, it might constitute duress. Op. Atty. Gen. (523g-18), May 31, 1934.

Substitute relief worker taking place of another member of same family was entitled to compensation for injuries sustained when employed as relief worker. Op. Atty. Gen. (400E), Sept. 27, 1934.

Chief of police of city of Detroit Lakes is an employee under compensation law, but whether street commissioner of that city is an employee depends on whether or not he is an official or mere employee. Op. Atty. Gen. (359a-23), Dec. 17, 1934.

Whether persons employed to maintain streets and railroads in the village are employees or independent contractors is a question of fact. Op. Atty. Gen. (523a-5), July 19, 1935.

Ordinarily persons employed on relief projects are not employees of county within meaning of compensation law or workmen's compensation insurance policy. Op. Atty. Gen. (523g-18), Mar. 15, 1935.

Application of state workmen's compensation laws to public employees and officers. 17MinnLawRev162.

Right to compensation of indigent working for municipality under scrip relief plan. 18MinnLawRev231.

(g). (2). Private employees.

Finding that window washer was employee, sustained. Carter v. W., 186M413, 243NW436. See Dun. Dig. 10395.

The fact that decedent, in doing work as a window washer, competed with other persons and companies who were engaged in the same line of work did not make him an independent contractor. Carter v. W., 186M413, 243NW436. See Dun. Dig. 10395.

Where work is simple manual labor on premises of the employer, and there is no showing that right to control was surrendered or contracted away, question of whether relation of employer and employee exists is ordinarily a question of fact. Carter v. W., 186M413, 243 NW436. See Dun. Dig. 10395.

Right to control and supervise work is one of important tests as to whether worker is employee or independent contractor. Carter v. W., 186M413, 243NW436. See Dun. Dig. 10395.

Evidence sustained finding that interior decorator was not an independent contractor. Cardinal v. P., 186M534, 243NW706. See Dun. Dig. 10395.

Under evidence that a foreign corporation sent a representative into state and employed a resident of state to sell clothing throughout state on a commission basis, finding of referee that there was a Minnesota contract of hire must be sustained. Kling v. P., 194M179, 259NW 809. See Dun. Dig. 10387.

Evidence held to sustain finding of relation of employee and employer between one driving his own truck on a well-defined route or territory, and receiving as compensation only a discount of 3c per pound, though salesman was at time required to pay for his sausage in advance. Olson v. E., 194M458, 261NW3. See Dun. Dig. 10395.

Authoritative control by employer over employee is necessary to establish relationship. Id.

——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., 182M289, 234NW452. See Dun. Dig. 5835, 10395.

Copartnership doing work for school district held independent contractor and not employee. 175M547, 221NW 911.

An agent receiving commissions as compensation, was an employee and not an independent contractor. 176M 373, 223NW608.

Person working on house held independent contractor. Holmberg v. A., 177M87, 224NW458.

Applicant for compensation must show that he was employee and not an independent contractor. Holmberg v. A., 177M469, 225NW439.

Finding that one employed to cut timber on a piecework basis, was employee and not independent contractor, sustained. 178M133, 226NW475.

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., 182M289, 234NW452. See Dun. Dig. 5835, 10395.

One caring for sheep held an employee and not an independent contractor, and that there was no relationship of bailee and bailor. Wilson v. T., 188M97, 246NW542. See Dun. Dig. 10395.

Finding that one cleaning and painting smokestack for specified amount was employee, sustained. Fuller v. N., 189M134, 248NW756. See Dun. Dig. 10395(65).

Finding that blacksmith doing jobs on hourly basis was employee, held sustained by evidence. Myers v. V., 189M244, 248NW824. See Dun. Dig. 10394.

Owner of truck engaged in hauling bottled products at fixed hourly compensation was an employee and not an independent contractor. Anderson v. C., 190M125, 251 NW3. See Dun. Dig. 10395.

One hauling ashes from laundry held not employee of laundry and not protected by compensation act. Cleland v. A., 190M593, 252NW453. See Dun. Dig. 10395.

A mason agreeing to build a wall for a certain sum, including material, was an independent contractor and not an employee. Lange v. A., 194M342, 260NW298. See Dun. Dig. 10395.

Road contactor held employer of truck drivers selected through federal reemployment service to drive trucks leased through such employment service on a yardage and mileage basis, and owner of trucks was not employer though it supervised use of trucks. Grundeman v. H., —M—, 261NW478. See Dun. Dig. 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., 177M465, 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. 177M197, 224NW840.

Injury while traveling on highway arose out of and in course of employment. 177M503, 225NW428.

Finding that hernia did not result from a strain in lifting a sack of peanuts, sustained. 177M592, 226NW203.

Finding that loss of eyesight was occasioned by a twig hitting employee in eye while chopping, sustained. 178M 133, 226NW475.

Evidence held to sustain finding that condition of employee resulted from injury under former employer. 178 M279, 226NW767.

Finding that transportation to work was regularly furnished sustained. 178M310, 227NW48.

Finding that teamster hauling bundles for commercial thresherman, but injured while pumping water for the horses on employer's farm, was injured in the course of employment of commercial thresherman, sustained. 178 M519, 227NW663.

Whether act of employee in attempting to prevent explosion of bomb was for purpose of preventing destruc-

tion of employer's property, held a question of fact for the Industrial Commission. 179M272, 228NW931.

Injury to miner held not to have resulted from accident in course of employment. 179M291, 229NW100.

Death by lightning is not compensable unless the employment accentuates the natural hazard from lightning. 179M321, 229NW138.

Finding of commission that hernia did not arise out of accident in course of employment, held contrary to the evidence. 180M353, 230NW813.

Compensation may be given for traumatic neurosis producing disability resulting from injury in course of employment. 180M411, 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. 180M473, 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. 180M 400, 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 employment, held sustained by evidence. 181M601, 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. 183M270, 236NW311. 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. 183M 309, 236NW466. See Dun. Dig. 10396, 10403.

Death of employee with unknown coronary sclerosis who suffered an initial attack of angina pectoris while under an emotional and mental strain and while engaged in severe muscular employment was compensable. Wicks v. N., 184M540, 239NW614. See Dun. Dig. 10396.

Time for giving notice commences from occurrence of disability and not time of accident resulting in latent injury. Clausen v. M., 186M80, 242NW397. See Dun. Dig. 10420.

Evidence sustains finding that employee suffered injury in automobile accident which resulted in his death. Brameld v. A., 186M89, 242NW465. See Dun. Dig. 10406.

Finding that street sweeper falling and developing hernia suffered no accidental injury in course of employment, held not contrary to evidence. Taddi v. V., 186M 218, 242NW717. See Dun. Dig. 10406.

Evidence sustains finding that employee received heat stroke and that it caused his death. Pearson v. F., 186M 155, 242NW721. See Dun. Dig. 10406.

Finding that heat stroke was accidental is sustained. Pearson v. F., 186M155, 242NW721.

Employee suffering rupture of blood vessel in brain, while lifting heavy weight, held to have suffered accidental injury. Krenz v. K., 186M312, 243NW108. See Dun. Dig. 10396.

Evidence sufficiently supports finding that permanent loss of mental faculties was not result of accidental injury. Johnson v. P., 187M447, 245NW617. See Dun. Dig. 10406.

Award of compensation for heat stroke, held justified. McDonald v. F., 187M442, 245NW635. See Dun. Dig. 10404.

Test as to whether heat stroke is accidental injury warranting compensation is whether employment was such as to expose employee to risk of sun's rays. McDonald v. F., 187M442, 245NW635. See Dun. Dig. 10396.

Finding of commission that cancerous condition was not caused or aggravated by injury, held supported by evidence. Palumbo v. C., 187M508, 246NW36. See Dun. Dig. 10406.

Evidence held to sustain finding that heatstroke to handtruck man causing his death was accidental and arose out of employment. Mudrock v. W., 187M518, 246NW113. See Dun. Dig. 10396, 10406.

Evidence held to sustain finding that erysipelas resulting in death was caused by infection when employee bumped leg on table. Bliss v. S., 189M210, 248NW754. See Dun. Dig. 10404.

Finding that exophthalmic goiter was not caused or aggravated by explosion, sustained. Cooper v. M., 188M 560, 247NW805. See Dun. Dig. 10406.

Finding that bump on head did not cause injury to eye, sustained. Ekelund v. W., 189M228, 248NW824. See Dun. Dig. 10405.

Store employee injured when bug flew into eye, held not to have sustained burden of proof that injury resulted from accident arising out of employment. Bloomquist v. J., 189M285, 249NW44. See Dun. Dig. 10405.

Death caused by pulmonary embolism following coronary thrombosis resulting from exertions, held "accidental injury" and compensable. Farrell v. R., 189M573, 250NW454. See Dun. Dig. 10397.

Whether tumor and jamming of brain tissue into opening at bottom of skull was result of jar actor received when he landed on floor instead of mattress, held question of fact for industrial commission. Heise v. B., 191 M417, 254NW462. See Dun. Dig. 10426.

Whether bronchial asthma suffered by employee in grain elevator due to fumes arising from treated grain constituted accidental personal injuries, held question of fact. Clark v. B., —M—, 261NW596. See Dun. Dig. 10396.

Whether insanity disabling employee from engaging in any occupation was connected with and a result of injuries received in accident was a question of fact. Newman v. V., 194M513, 261NW703. See Dun. Dig. 10403.

(j). Injuries out of and in course 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.

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

Finding that hernia did not result from alleged injury held sustained by the evidence. 171M302, 213NW897.

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

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.

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.

Burden of proof is on plaintiff to show that accident arose out of and in the course of the employment. 172M 185, 214NW775.

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

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

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

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

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, 216NW239.

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, 217 NW370.

Finding that injury arose out of and in course of employment as salesman sustained by evidence. 173M481, 217NW680.

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

Constable's death from accidentally discharging revolver did not arise out of employment by owner of amusement park employing him. 174M50, 218NW170.

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.

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. 174M 147, 218NW555.

Chemical poisoning held an injury arising out of and in the course of the employment. 174M147, 218NW555.

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.

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. 174M359, 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, 219 NW944.

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

An employee who went to a garage for the purpose of starting out on a collection trip and who was asphyxiat-

ed by gas while changing a tire, died by accident which arose out of and in the course of his employment. 175M 489, 221NW913.

Finding that hernia was not caused or aggravated by accident sustained. 175M553, 221NW905.

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., 176M508, 223NW787.

Condition of leg held result of accident and not arthritis. Cunnien v. W., 177M39, 224NW244.

A traumatic hernia is compensable. Klika v. Independent School Dist. No. 79, 161M461, 202NW30 followed. 177M98, 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. 177M376, 225NW284.

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

Finding of casual connection between injury from blow on head and subsequent death from pneumonia sustained. Olson v. C., 178M34, 225NW921.

Finding that death resulted from encephalitis and not sunstroke, sustained. Hedquist v. P., 178M524, 227NW856.

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

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

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

Employer who wilfully assults his employee cannot assert that the latter's remedy is under the compensation act. Boek v. W., 180M470, 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.

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., 183M275, 236NW 305. 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., 183M275, 236NW305. 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., 183M309, 236NW466. See Dun. Dig. 10396.

Though interior decorating for an insurance company was casual work, still it was "in the usual course of the trade, business, profession, or occupation of the employer." Cardinal v. P., 186M534, 243NW706. See Dun. Dig. 10404.

Injuries to one driving his car to work held not to arise out of employment, though such car was occasionally used to make deliveries for employer. Lorenz v. W., 187M444, 245NW615. See Dun. Dig. 10405.

Death of employee when foreman turned air hose on him as a practical joke arose out of and in coure of employment. Barden v. A., 187M600, 246NW254. See Dun. Dig. 10404.

Injury to salesman going outside his territory on fishing trip did not arise out of his employment, though he posted signs and advertising matter for employer while on trip. Loucks v. R., 188M182, 246NW893. See Dun. Dig. 10405.

Employer is liable for injuries sustained by an employee while performing work assigned to him, although performed for a third party. Melhus v. S., 188M304, 247 NW2. See Dun. Dig. 10405.

Evidence as to murder of night watchman in vacant 10 story building held to rest in conjecture and speculation and to be insufficient to support finding that death arose out of employment. Sivald v. F., 188M483, 247NW 687. See Dun. Dig. 10405.

This section excludes results caused by act of third person intended to injure employee because of reasons personal to him. Id. See Dun. Dig 10402(86).

Death of employee by asphyxiation while preparing his car to use upon employer's business occurred in course of his employment. Grina v. S., 189M149, 248NW 732. See Dun. Dig. 10404.

Property man in circus was "employee" of fraternal organization operating circus for one week, but his employment was "casual" and not in usual course of business. Houser v. O., 189M339, 248NW827. See Dun. Dig. 10394(50).

Burden is upon employee to prove that injury resulted from accident arising out of employment. Bloomquist v. J., 189M285, 249NW44.

Evidence held to sustain finding that condition of eye was result of original injury suffered in course of employment. Lawrence v. B., 189M522, 250NW75. See Dun. Dig. 10406.

Finding that county highway maintenance man kicked by his horse while on his farm at a distance from highway when he drove home for lunch was injured in an accident arising out and in course of his employment, held sustained by evidence. Green v. C., 189M627, 250NW 679. See Dun. Dig. 10404.

Finding that salesman receiving injury at home while repairing employer's car was not injured in accident arising out of employment, held sustained by evidence. Jensvold v. K., 190M41, 250NW815. See Dun. Dig. 10405.

Evidence held to sustain finding that death to one holding bottled goods resulted from cut on finger and infection. Anderson v. C., 190M125, 251NW3. See Dun. Dig. 10404.

Injury to chauffeur, working under orders of officer of corporation and also as personal chauffeur for officer and wife, suffered while furniture was being hauled to cottage of officer, held caused by accident arising out of employment, though he was permitting another experienced chauffeur to drive at time of collision with bridge, occasioned by being sun-blinded. Byam v. I., 190 M132, 250NW812. See Dun. Dig. 10404.

Death of employee in automobile of another employee at railroad crossing while on way to work, held not compensable. Kelley v. N., 190M291, 251NW274. See Dun. Dig. 10403, n. 6.

Evidence held to support finding that branch manager who, during a trip to summer home of friend to seek information as to qualification of a person he intended to hire, departed from scope of employment when he remained as guest and engaged in pastime of fishing when accident occurred. Hoskins v. A., 190M397, 251NW909. See Dun. Dig. 10405.

A man of advanced years is as much within the protection of the workmen's compensation act as is a young man, age being but a factor to be considered in determining whether accident is proximate cause of disability. Furlong v. N., 190M552, 252NW656. See Dun. Dig. 10406.

Injury received by employee while crossing highway toward his home after alighting from truck regularly furnished by employer to transport employees to and from work arose out of and in course of employment. Markoff v. E., 190M555, 252NW439. See Dun. Dig. 10404.

Whether employee's disability resulted from a previous infectious condition or from an accidental injury was, under conflicting medical testimony, a question of fact for determination of industrial commission. Rutz v. T., 191M227, 253NW665. See Dun. Dig. 10426.

Burden of proving that accident arises out of and in course of employment is upon claimant. Henry v. O., 191M271, 253NW110. See Dun. Dig. 10403.

Where an employee is killed (1) within his usual working hours, (2) at usual place of his employment, and (3) while using a tool, machine, or vehicle regularly furnished by employer, and there is no evidence as to whether at time of accident employee was serving his employer or whether he was pursuing personal business, a presumption arises that employee was acting within course of his employment. This presumption sustains the burden of proof until rebutted by satisfactory evidence. Id.

A farm laborer working for monthly wage and on duty at all times is covered by compensation in attending to his personal wants on premises, and even when in cottage furnished for use of his family on the farm. Margoles v. S., 191M358, 254NW457. See Dun. Dig. 10404.

Finding that fatal accident to officer of real estate corporation from accidental discharge of gun which he had brought to office for purpose of sale did not arise out of or in course of employment, held sustained by evidence. Hicken v. E., 191M439, 254NW615. See Dun. Dig. 10405.

Evidence that employee's disability is due to progress of an arthritic condition of his back and not to an accident supports finding of Industrial Commission denying compensation. Duchant v. O., 192M443, 256NW905. See Dun. Dig. 10406.

Driver of a school bus, fatally injured on his way to schoolhouse to get pupils and take them to their homes met his death by an accident arising out of and in course of his employment. Lee v. V., 192M449, 257NW90. See Dun. Dig. 10404.

Evidence held to sustain finding that investigator of industrial commission was acting in course of employment while stepping off of a street car into path of automobile. Hardy v. S., 193M46, 257NW497. See Dun. Dig. 10404.

Death of city fireman, accidentally killed while working under orders of his chief, in attempted rescue of men asphyxiated in a well just outside city limits, held to have been due to accident arising out of and in course of his employment. Grym v. C., 193M62, 257NW661. See Dun. Dig. 10404.

As a general rule an injury suffered by an employee in going to or returning from employer's premises where work of his employment is carried on does not arise out of his employment so as to entitle him to compensation. Helfrich v. R., 193M107, 258NW26. See Dun. Dig. 10405.

Employee struck by automobile of another employee while on a private street used by several employers in common, held not injured in an accident arising out of or in the course of employment or upon the working premises of his employer, and workmen's compensation act

did not apply in action against driver of automobile. Id.

An employee whose regular services are performed at a stated place is not under compensation act while coming to or going therefrom; but, if subject to emergency calls, after his regular day's labor is ended, he is under act from time he leaves his home on such call until he returns. Nehring v. M., 193M169, 258NW307. See Dun. Dig. 10403.

Where an employee suffered injury at hands of third persons, who, angered at their inability to gain admittance to an entertainment given by employer, following a safety rally, attacked another employee of company, and injured employee came to attacked employee's assistance, and, after leaving scene of hostilities, was attacked by third person and suffered injury complained of, at time injury was received respondent was a guest and not an employee of relator and hence injury was not suffered in course of employment, being attacked for reasons purely personal to him. Lehman v. B., 193M462, 258NW821. See Dun. Dig. 10405.

Death of advertising solicitor from monoxide poisoning while repairing his automobile in garage, held not to arise out of and in course of his employment. Soule v. R., 194M365, 260NW360. See Dun. Dig. 10405.

Where salesman was found dead in his overturned truck in territory assigned to him, presumption arises that he was within course of his employment at time of accident. Olson v. E., 194M458, 261NW3. See Dun. Dig. 10406.

As question is pending before industrial commission, attorney general will not determine whether or not PWA workers, FERA workers and SERA workers are employees of the state. Op. Atty. Gen. (523g-18), June 4, 1934.

City is liable for compensation to members of fire department while on calls outside village limits under direction of village officers, whether or not there exists a contract with adjacent territory. Op. Atty. Gen. (688p), Aug. 29, 1934.

"Personal injuries arising out of and in the course of employment." 15MinnLawRev792.

——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.

Traveling salesman working in another state for corporation located in Minnesota, was within Minnesota Compensation Act. Brameld v. A., 186M89, 242NW465. See Dun. Dig. 10387.

Evidence sustained finding that injury to traveling salesman arose in course of his employment. Brameld v. A., 186M89, 242NW465.

One working in plant in another state operating under different name for business reasons held employee entitled to compensation. Melhus v. S., 188M304, 247NW2. See Dun. Dig. 10395, 10426.

(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. 177M589, 225NW 895.

(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. 177M503, 225NW428.

One operating a silo filler for commercial thresherman and cornshredderman, held not a "farm laborer." 178M 512, 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." 180M 49, 230NW274.

A farmer threshing for his neighbors may be a "commercial thresherman." 178M519, 227NW663.

4327. Occupational diseases—How regarded—Compensation, etc.

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

Chronic benzol poisoning is an occupational disease covered by par. 7, of subd. 9, and is compensable when disability results from employment in a process involving use of a benzol preparation. Funk v. M., 192M440, 256NW889. See Dun. Dig. 10398.

Existence of disease in body of workman at time of accident does not prevent recovery of compensation if accident accelerates disease to a degree of disability, accident having occurred in course of employment and at place where workman was employed. Susnik v. O., 193 M129, 258NW23. See Dun. Dig. 10397.

Bronchial asthma produced by chemical poisoning in a grain elevator from breathing fumes caused by treatment of grain is not a compensable disease. Clark v. B., —M—, 261NW596. See Dun. Dig. 10398.

Injuries of an employee cannot be classified under both §4268 and §4327. Id.

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. 175M319, 221NW65.

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

175M319, 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. 176M554, 223NW926.

4330–1. Settlement of claims.—An employe or dependent may by a stipulation or agreement settle a claim for compensation with the employer or his insurer, but no such settlement shall be of any force or validity whatsoever until such settlement has been reduced to writing, signed by the parties, approved by the Industrial Commission, and an award has been made thereon by the Commission. All awards pursuant to such settlement shall be subject to reopening in accordance with Section 4319, Mason's Minnesota Statutes of 1927, notwithstanding any statement or agreement to the contrary which may be contained in any such settlement. Such settlement shall be approved by the Industrial Commission only where the terms thereof execpt as to the amount conform to the Compensation Act.

The matter of the approving or disapproving proposed settlements shall rest in the discretion of the Industrial Commission and the burden of showing that any proposed settlement is fair, reasonable and in conformity with the act except as to the amount shall be on the parties. (Act Apr. 29, 1935, c. 313, §1.)

Sec. 2 of Act Apr. 29, 1935, cited, provides that the act shall take effect from its passage.

GENERAL PROVISIONS

4331 to 4334–1. [Repealed.]

Repealed by Act Apr. 29, 1935, c. 315, §2, effective on and after July 1, 1935.

Explanatory note: "Laws 1921, c. 82, §32," should read "Laws 1921, c. 82, §33," as section 32 referred by legislature is not pertinent. See §4293.

4337–1. Application of act to state employees—powers and duties of Industrial Commission and attorney general.—The Workmen's Compensation Act of Minnesota shall apply to all employees of the State of Minnesota employed in any department thereof. It shall be the primary duty of the Industrial Commission to defend the state and its several departments against workmen's compensation claims whenever, after investigation, it shall deem such defense necessary or advisable. But the Attorney General may at any time and at any stage of a compensation proceeding take over and assume such defense, and upon request of the Industrial Commission or any department of the state, shall take over and assume such defense. For the purpose of such defense, the Industrial Commission shall have authority to provide for medical examinations of injured employes, procure the attendance at hearings of expert and other witnesses and do any other act necessary to a proper defense. All expenses incurred in such defense shall be charged to the department involved and be paid out of the State Compensation Revolving Fund.

The Commission shall have power to employ not to exceed two attorneys and one stenographer and their salaries shall be apportioned among the several departments of the state in the proportion that the amount of compensation paid during the fiscal year by any such department bears to the total amount of compensation paid by all departments during such year, and the salaries shall be paid out of the State Compensation Revolving Fund. ('27, c. 436, §1; Apr. 29, 1935, c. 315, §1.)

Persons employed by State Livestock Sanitary Board to assist its veterinarian are "employees" of the state. 179M425, 229NW560.

Determination as to which of two successive employers was liable for occupational blindness held to be determined from conflicting medical expert testimony. Farley v. N., 184M277, 238NW485. See Dun. Dig. 3326(36), 10398.

4337–1a. Laws repealed.—Sections 4331, 4332, 4333, 4334 and 4334-1 of Mason's Minnesota Statutes of 1927, and all acts or parts of acts inconsistent therewith, are hereby repealed. (Act Apr. 29, 1935, c. 315, §2.)

4337–1b. Effective July 1, 1935.—This act shall take effect and be in force on and after July 1, 1935. (Act Apr. 29, 1935, c. 315, §3.)

4337–2. Same—Reports by heads of state departments to industrial commission.

Explanatory note.: "Laws 1921, c. 82, §32" evidently should read "Laws 1921, c. 82, §33." See §4293.

4337-5. Same—Payment of compensation awarded.

Any overpayment made to an employe during period of healing may be deducted from the compensation due the employe for the permanent disability sustained or for any medical expenses the employe may have incurred. Op. Atty. Gen., Aug. 25, 1931.

Act is constitutional insofar as is applies to railroad and warehouse commission. Op. Atty. Gen., May 16, 1933.

4337-6. State compensation revolving fund established.—In order to facilitate the discharge by the state of its obligations under the workmen's compensation act, there is hereby established a revolving fund to be known and designated as the State Compensation Revolving Fund. The sum of $32,000.00 is hereby appropriated from monies in the state treasury not otherwise appropriated for the purpose of taking care of claims for compensation which are now due or may accrue between now and July 1, 1935 to injured employes under the Workmen's Compensation Act who are actually employed and who receive their salaries direct from the revenue fund and are not to be used in the payment of compensation of injured employes in departments of the state supported in whole or in part by fees or where such employes are employed in departments where the salaries of such employes are fixed by any managing or governing board which board controls the expenditure of appropriations made to such department.

The unexpended balance of said sum, if any, remaining on July 1, 1935, together with the sums to be paid into said fund by the several state departments and divisions thereof as hereinafter provided, shall constitute said fund. The state treasurer shall be the custodian of said fund, and no monies for awards of compensation benefits shall be paid out of said fund except in the manner now provided for payment of awards by the Industrial Commission pursuant to Chapter 436, General Laws 1927, [§§4337-1 to 4337-5], provided, however, that monies required to be paid out in accordance with paragraphs one and two of Section two hereof may be paid out upon the warrants of the Industrial Commission. (Act Apr. 5, 1933, c. 161, §1.)

There is no appropriation which would warrant any state department from entering into agreement with federal government to assume liability for injuries to federal emergency relief workers, and in absence of such appropriation no such agreement may be made. Op. Atty. Gen. (523g-6), June 4, 1934.

Signing of application for approval of emergency relief administration work projects, containing an agreement to carry workmen's insurance to protect workers, would be entering into a contract between the state and the federal government, which contract must be signed by the department of administration and finance and no other department of the state government, and even such department would have no authority to sign such an application in the absence of an appropriation by the legislature. Op. Atty. Gen. (517n), June 7, 1934.

4337-7. Payments to be made from fund.—Out of said fund shall hereafter be made all of the following payments in the following order:

(1) The actual cost to the Industrial Commission of the administration of the Workmen's Compensation Act in its application to the employes of the several state departments and divisions thereof.

(2) All necessary expenses incurred by the Industrial Commission or the Attorney General's office in defending against or investigating any claim against the state for compensation.

(3) All awards made by the Industrial Commission for compensation and medical, hospital and other expenses to injured state employes or their dependents. (Act Apr. 5, 1933, c. 161, §2.)

4337-8. Departments to pay into fund.—Every state department wherein the salaries of its employes are fixed by a managing or governing board, which board controls the expenditures of appropriations made to such departments, and which said departments are hereby declared to be self-sustaining departments for the purposes of this act, and every state department or division thereof which, since the passage of Chapter 436, General Laws 1927, has been and now is substantially financially self-sustaining by reason of income and revenue from its activities, shall within 30 days after the passage of this act, or as soon thereafter as funds therefor are available, but not later than July 1, 1933, pay into said revolving fund such sum as has heretofore been paid by the state to employes of said department or division, or to the dependents of such employes, since the passage of and pursuant to Chapter 436, General Laws 1927, and the sums to be so paid back and departments or divisions thereof which shall pay the same are hereby determined and fixed as follows:

Agricultural Society	$ 4,035.17
Division of Game and Fish	8,311.93
Railroad and Warehouse Commission	11,395.16
University of Minnesota	14,852.41
Rural Credits	5,392.21

(Act Apr. 5, 1933, c. 161, §3.)

4337-9. Maintenance of fund.—This fund shall be maintained as follows:

(1) Every state department wherein the salaries of its employes are fixed by a managing or governing board, which board controls the expenditures of appropriations made to such departments, and which said departments are by section (3) hereof declared to be self-sustaining departments for the purpose of this act, and every state department or division thereof which is substantially financially self-sustaining by reason of income and revenue from its activities shall at the end of every fiscal year pay into such fund such sum as the Industrial Commission shall certify has been paid out of said revolving fund during said year to employes of said departments or divisions thereof or to dependents of said employes on account of compensation, medical, hospital or other expenses as enumerated in Section two hereof, provided that on and after July 1, 1935, the State Highway Department shall reimburse said fund for moneys paid to its employes or their dependents at such times and in such amounts as the Industrial Commission may by order require.

(2) Departments or divisions of the state which are not self-sustaining to any substantial degree shall at the end of every biennium beginning June 30, 1935 pay into said fund such sum as the Industrial Commission shall certify has been paid out of said revolving fund during said biennium to employes of said departments or divisions or the dependents of said employes on account of compensation, medical, hospital or other expenses as enumerated in section two hereof. It is hereby made the duty of the heads of such departments of the state to anticipate and make provision for said payments by including them in their budget requests to the legislature.

(3) Departments or divisions thereof which are partially self-sustaining shall at the end of every fiscal year pay into said fund such proportion of the sum which the Industrial Commission shall certify has been paid out of said revolving fund during said year to employes of said departments or divisions thereof or the dependents of said employes on account of compensation, medical, hospital or other expenses as enumerated in section two hereof, as the total of their income and revenue bears to their annual cost of operating, and at the end of every biennium be-

ginning June 30, 1935, shall pay the balance of the sums so certified and during said biennium shall anticipate and make provision for such payments by including the same in their budget requests to the legislature. (Act Apr. 5, 1933, c. 161, §4; Apr. 29, 1935, c. 312, §1.)

Sec. 2 of Act Apr. 29, 1935, cited repeals §4337-10, effective July 1, 1935.

Sec. 3 of said act provides that the act shall take effect on and after July 1, 1935.

(1).

Provision that department substantially financially self-sustaining shall at the end of each fiscal year pay into fund such sum as industrial commission shall certify has been paid out, as appearing in Laws 1935 c. 312, was not retroactive in nature but did cover period from July 1, 1934, to June 30, 1935. Op. Atty. Gen. (523a-28), July 24, 1935.

4337-10. [Mason's 1934 Supp.] [Repealed.]

Repealed by Act Apr. 29, 1935, c. 312, §2, effective July 1, 1935.

Sec. 6 of Act Apr. 5, 1933, cited, provides that the act shall take effect on its passage.

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. (R. L. '05, §1835; G. S. '13, §3953; Apr. 16, 1931, c. 176.)

4345. Persons who may be admitted to the 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 Minnesota National Guard mustered into Federal service in 1916 and served on the Mexican Border, shall be admitted unless she shall have been married to her soldier husband prior to the year September 1, 1922 and then only in the event that by reason of physical disabilities, infirmities or old age she is unable to support herself and has no other adequate means of support; and no wife, widow or mother shall be admitted unless she shall have been a resident of the State of Minnesota no less than five (5) years next preceding the date of her application, and no wife, widow or mother shall be admitted unless she shall have attained the age of fifty-five (55) years at the time of making such application, provided however that a widow eligible to admission, except that her soldier husband did not serve in a Minnesota regiment or was not a resident of Minnesota at time of his death, may be admitted, who has resided in this state not less than fifteen years next preceding the date of her application for admission.

Provided, however, that in case such widow had been married to her soldier husband who was a veteran of the Civil War, since prior to January 1, 1870 and had lived with her husband until his death in 1919, and such widow is now past eighty years of age and has been a bona fide resident of the State of Minnesota for more than six years last past and is otherwise eligible to admission, is hereby declared to be eligible to admittance to the soldiers' home of the State of Minnesota.

Provided further that in case such wife, widow or mother who had previously been a resident of Minnesota for not less than ten years, and who has lost her residence in this state by removal therefrom for the benefit of her health or the health of her husband or son and who has returned to this state for the purpose of making it her home, may be admitted to said soldiers' home after having been a resident of this state not less than one year next preceding the date of her application, provided such applicant is otherwise eligible to admission under the provisions of this section, and provided further, that all soldiers of the Minnesota National Guard and who heretofore have lost or hereafter may lose an arm or leg or his sight or may become permanently disabled from any cause while in the line and discharge of duty and are not able to support themselves, may be admitted to the home under such rules and regulations as the board of trustees may adopt, and any soldier of the Minnesota National Guard suffering from illness or injury sustained from any cause in the line and discharge of military duty shall be admitted to the soldiers' home hospital for medical treatment and