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1927

(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the *1929, 1931, 1933, 1935, 1937* and *1939* General Sessions, and the 1933-34, 1935-36, 1936 and 1937 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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CHAPTER 23A

Workmen's Compensation Act

PART I

COMPENSATION BY ACTION AT LAW—MODIFICATION OF REMEDIES

4261. Injury or death of employe. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, §10, §4272-10, post.

1. 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.

Compensation is not founded upon negligence, and no question of negligence arises unless it be claimed that injury was caused by willful negligence of employee. Lewis v. C., 196M108, 264NW581. See Dun. Dig. 10396.

Decedent's death caused by poison gas used in fumigating mill where he was employed held not to arise out of and in the course of his employment because he violated his employer's instructions in entering mill. Anderson v. R., 196M358, 267NW501. See Dun. Dig. 10400.

In action for damages for pulmonary tuberculosis alleged to have been contracted while in defendant's employ though violation of §§4172, 4173, 4174, 4176, court properly ordered judgment for defendant because cause of condition was wholly within field of speculation and conjecture. O'Connor v. P., 197M534, 267NW507. See Dun. Dig. 5869.

Law in force at time accident occurred, resulting in death and right to compensation, determines rights of parties. Herzog v. C., 199M352, 272NW174. See Dun. Dig. 10388.

Substantive rights of parties are fixed by statutes in force at time of accident out of which liability arises. Schmahl v. S., 274NW168. See Dun. Dig. 10388.

Statute is a substitute for common law on subject which it covers and so far as it goes, but it does not affect rights and wrongs not within its purview or which by implication or express negation are excluded. Rosenfield v. M., 201M113, 275NW698. See Dun. Dig. 10385.

Where an injury does not fall within act, the common-law remedy is not affected by it. Id.

Act does not take away common law right of action of employer to recover from employee for injuries received by employer as a result of negligence of employee in driving automobile in course of his employment. Id.

One is not taken out of scope of act by disobedience of one of many safety regulations. Sentieri v. O., 201M 293, 276NW210. See Dun. Dig. 10400.

Covers only those who stand in relation of employer and employee. Jackson v. C., 201M526, 277NW22. See Dun. Dig. 10385.

Act is constitutional. Ruud v. M., 202M480, 279NW 224. See Dun. Dig. 10383.

Act applies only to personal injuries and not to property damage. Wicklund v. N., 287NW7. See Dun. Dig. 10396.

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.

Conflict of laws. 20MinnLawRev19.

Occupational diseases. 22MinnLawRev77.

2. Accident.

See notes under §4326.

3. Arising out of and in the course of employment.

See notes under §4326.

4262 to 4267. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, §10, §4272-10, post.

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.

Evidence held to support finding that employee removing tire from rim was not guilty of violating explicit orders of his employer in using tools with which he was injured. Chamberlain v. T., 198M274, 269NW525. See Dun. Dig. 10400.

Annotations under §4263.

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.

Annotations under §4267.

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

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

PART II

ELECTIVE COMPENSATION

4268. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, post, §4272-10.

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., 195M44, 261NW596. See Dun. Dig. 10398.

One, otherwise an employee of a township, is not deprived of right to compensation because, at time of injury, he happened to be working out relief theretofore furnished by him by government agencies. Cristello v. T., 195M264, 262NW632. See Dun. Dig. 10394.

Whether one painting cornices of a building for a lump sum, employer furnishing materials and painter the tools, was an employee or an independent contractor, held question of fact for industrial commission. Rick v. N., 196M185, 264NW685. See Dun. Dig. 10395.

An employee engaged in maintenance and upkeep of a home and whose duties include care of gardens, lawns, and like things, as well as miscellaneous duties of a caretaker, is a domestic servant. Anderson v. U., 197M 518, 267NW517, 927. See Dun. Dig. 10394.

Section excludes both domestic servants and persons whose employment is casual, and domestic servants' employment need not be casual. Id.

True test of domestic service is nature of employment and its relation to home, and it is not material that servant's wages are paid by another than one who uses premises as a home. Id.

Conflict of laws. 20MinnLawRev19.

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.

2½. Domestic servants.

Local undergraduate chapter of a national sorority held not liable for compensation, injured employee having been at time of injury engaged in domestic service. Fingerson v. A., 197M378, 267NW212. See Dun. Dig. 10394.

3. Casual employment—See note under §4326.

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 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.

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.

To be excluded from act, it must appear that employment was both casual and not in usual course of trade, business, professional, or occupation of employer. Colosimo v. G., 199M600, 273NW632. See Dun. Dig. 10394(50).

Employment by husband of owner of building of one to assist in repairing building, part of which was to be used as dwelling and part as a beer tavern to be operated by husband was casual, but in usual course of trade, business profession or occupation of employers. Id.

Several persons owning a part of two buildings under a will and holding remainder as trustees held not engaged in "business." Jackson v. C., 201M526, 277NW22. See Dun. Dig. 10393.

Compensation Act does not apply to persons whose employment is casual and not in usual course of trade, business, prpofession, or occupation of employer. Id. See Dun. Dig. 10394.

4269. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, post, §4272-10.

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.

When employer and employee consent to come under compensation act, statute becomes part of emloyment contract. Lewis v. C., 196M108, 264NW581. See Dun. Dig. 10385.

Failure to follow one of many safety rules and instructions necessarily imposed upon an underground miner using explosives may be referable to his negligence. Sentieri v. O., 201M293, 276NW210. See Dun. Dig. 10400.

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.

4. Presumption against suicide.

Circumstances attending death from explosives of an underground miner justified finding that death resulted from accident arising out of and in course of employment, and did not compel a finding of suicide. Sentieri v. O., 201M293, 276NW210. See Dun. Dig. 10399.

Dependent had burden of proving that death was caused by accident arising out of and in course of employment, and if evidence adduced indicted self-destruction on part of employee, the presumption against suicide disappeared, and it was for commission to find as a fact whether death was caused from an accident arising out of and in course of employment. Id. See Dun. Dig. 10406.

4270. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, post, §4272-10.

Act does not take away common law right of action of employer to recover from employee for injuries received by employer as a result of negligence of employee in driving automobile in course of his employment. Rosenfield v. M., 201M113, 275NW698. See Dun. Dig. 10386.

Where it appears in action by employee for personal injuries that accident arose out of and in course of employment within Workmen's Compensation Act, district court is without any jurisdiction to grant relief. Gehrke v. W., 204M445, 284NW434. See Dun. Dig. 10425(98).

4271. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, §10, post, §4272-10.

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., 188M97, 246NW542. See Dun. Dig. 10394.

A substitution of employer cannot be made without knowledge or consent of employees. Yoselowitz v. P., 201M600, 277NW221. See Dun. Dig. 10395.

Chapter 64 of Laws 1937 does not abrogate an employee's election not to be bound by the Workmen's Compensation Act made prior to its enactment. Schuler v. S., 204M456, 283NW781. See Dun. Dig. 10389.

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.

Elections of employers or employees did not become void automatically on passage of Laws 1937, c. 64. Op. Atty. Gen. (523a-17), June 7, 1937.

4272. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, §10, post, §4272-10.

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.

4272-1. Employer's right to elect abolished.—The right of an employer and employe, as it has heretofore existed under section 4271, Mason's Minnesota Statutes, 1927, to elect not to be bound by the Workmen's Compensation Act is hereby abolished as to all contracts made after the effective date of this Act except professional baseball players under contract for hire which contract gives compensation equal to or greater than that provided by the Workmen's Compensation Act provided the professional baseball club and the professional baseball player file with the Industrial Commission a written consent signed by both parties not to be bound by the Workmen's Compensation Statutes and the same approved by the Industrial Commission. On and after the effective date of this Act all employers and employes, except those excluded by Section 4 hereof, and those professional baseball players who have elected not to be bound by this Act as hereinbefore set forth, shall be subject to the provisions of the Workmen's Compensation Law, and every such employer shall be liable for compensation, medical and other benefits according to the schedules of the Workmen's Compensation Law, and all acts amendatory thereof and supplementary thereto, and shall pay compensation in every case of personal injury or death of his employe, caused by accident arising out of and in the course of the employe's employment, without regard to the question of negligence, except injury or death which is intentionally self-inflicted or when the intoxication of such employe is the natural or proximate cause of the injury, and the burden of proof of such fact shall be upon the employer. The liability herein imposed upon the employer shall extend to and bind those conducting the employer's business during bankruptcy, insolvency or assignment for the benefit of creditors. It is hereby made the duty of all employers to commence payment of compensation at the time and in the manner prescribed by the Workmen's Compensation Law without the necessity of any agreement or order of the Industrial Commission, payments to be made at the intervals when the wage was payable as nearly as may be. No agreement by any employe or dependent whether made before or after the injury or death to take as compensation an amount less than that prescribed by law shall be valid. (Mar. 12, 1937, c. 64, §1; Apr. 15, 1939, c. 265, §1.)

Sec. 2 of Act Apr. 15, 1939, provides that the act shall take effect at its passage.

Act does not abrogate an employee's election not to be bound by the Workmen's Compensation Act made prior to its enactment. Schuler v. S., 204M456, 283NW781. See Dun. Dig. 10389.

Since Sunny Rest Sanatorium is owned and operated by Polk and Norman Counties, an election not to come under the act was of no effect. Op. Atty. Gen. (556a), August 9, 1939.

4272-2. All employers shall be insured—exceptions.—Every employer except the state and the municipal subdivisions thereof liable under this Act to pay compensation shall insure payment of such compensation with some insurance carrier authorized to insure such liability in this state or obtain an order from the Industrial Commission exempting him from insuring his liability for compensation and permitting him to self-insure such liability in the manner hereinafter set forth; provided that nothing herein contained shall prevent any employer with the approval of the Industrial Commission from excluding medical and hospital benefits as required in Section 4279, Mason's Minnesota Statutes of 1927; provided, also, that an employer conducting distinct operations or establishments at different locations may either insure or self-insure such other portion of his operations which may be determined by the Industrial Commission to be a distinct and separate risk. An employer desiring to be exempted from insuring his liability for compensation shall make application to the Industrial Commission, showing his financial ability to pay such compensation, whereupon the Commission by written order may make such exemption as it deems proper. The Commission may, from time to time, require further statement of financial ability of such employer to pay compensation, and may upon ten days' notice in writing revoke its order granting such exemption, in which event such employer shall immediately insure his liability. As a condition for the granting of an exemption the Industrial Commission shall have authority to require the employer to furnish such security as it may consider sufficient to insure payment of all claims under compensation. Where the security is in the form of a bond or other personal guaranty, the Industrial Commission may, at any time, either before or after the entry of an award, upon at least ten days' notice and opportunity to be heard, require the surety to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced. (Mar. 12, 1937, c. 64, §2.)

Under §4288 a rider to a policy requiring employer to reimburse insurer in certain cases was valid. Maryland Casualty Co. v. A., 204M43, 282NW806. See Dun. Dig. 10391.

Directors of county sanatorium having building constructed under contract are obliged to see that contractor has taken out insurance, and his contract should contain a provision to this effect. Op. Atty. Gen. (523c), Feb. 2, 1939.

A North Dakota employer executing a contract in this state does not comply with this act by taking insurance from the North Dakota Workmen's Compensation Fund. Op. Atty. Gen. (523a), June 21, 1939.

4272-3. Liability of employer exclusive.—The liability of an employer prescribed by the preceding sections shall be exclusive and in the place of any other liability whatsoever to such employe, his personal representative, surviving spouse, parents, child or children, dependents or next of kin, or any other person entitled to recover damages at common law or otherwise on account of such injury or death, except that if an employer other than state and the municipal subdivisions thereof, shall fail to insure or self-insure his liability for compensation, medical and other benefits, to his injured employes and their dependents, as provided in Section 2 of this Act, an injured employe, or his legal representatives or his dependents in case death results from the injury, may, at his or their option, elect to claim compensation under the Workmen's Compensation Law or to maintain an action in the courts for damages on account of such injury or death; and in such action it shall not be necessary to plead or prove freedom from contributory negligence, nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employe assumed the risk of his employment, nor that the injury was due to contributory negligence of the employe, unless it shall appear also that such negligence was wilful on the part of the employe, but the burden of proof to establish such wilful negligence shall be upon the defendant.

The State of Minnesota and the several municipal subdivisions thereof, when not carrying insurance at the time of such injury or death shall be regarded and treated as self-insurers for the purposes of this Act. (Mar. 12, 1937, c. 64, §3.)

Violation of employer's orders does not defeat compensation unless it takes workman out of sphere or scope of his employment. Prentice v. T., 202M455, 278NW895. See Dun. Dig. 10400.

City employee injured in course of his employment need not give a notice to city under §1831. Op. Atty. Gen. (523g-18), Aug. 25, 1938.

4272-4. Application of act.—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, however, that an employer of farm laborers or domestics may assume the liability for compensation and benefits imposed by Sections 1 and 2 hereof

upon employers, and the purchase and acceptance by such employer of a valid compensation insurance policy, which shall include in its coverage a classification of farm laborers or domestics, shall constitute as to such employer an assumption by him of such liability without any futher act on his part, and such assumption of liability shall take effect and continue from the effective date of such policy and as long only as such policy shall remain in force. If during the life of any such insurance policy, an employe, who is a farm laborer or domestic, shall suffer personal injury or death by an accident arising out of and in the course of his employment, the exclusive remedy of such employe or his dependents shall be to accept compensation and benefits according to the Workmen's Compensation Act. (Mar. 12, 1937, c. 64, §4.)

Act excludes from its operation only those employees whose employment is both casual and not in usual course of trade, business, profession, or occupation of employer. Oberg v. D., 202M476, 279NW221. See Dun. Dig. 10394, 10404.

Caretaker of resort held not farm laborer because he was doing work on farm. Id. See Dun. Dig. 10394.

Employee of cow testing association is not a "farm laborer" and is protected by act. Op. Atty. Gen. (293b-6), Nov. 4, 1937.

4272-5. Liability of others than employer.—(1) Where an injury or death for which compensation is payable under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party being at the time of such injury or death insured or self-insured in accordance with Section 2 of this Act, the employe in case of injury, or his dependents in case of death, may, at his or their option, proceed either at law against such party to recover damages or against the employer for compensation, but not against both.

If the employe in case of injury, or his dependents in case of death, shall bring an action for the recovery of damages against such party other than the employer, the amount thereof, manner in which, and the persons to whom the same are payable, shall be as provided for by the Compensation Act, and not otherwise; provided, that in no case shall such party be liable to any person other than the employe or his dependents for any damages growing out of or resulting from such injury or death.

If the employe or his dependents shall elect to receive compensation from the employer, then the latter shall be subrogated to the right of the employe or his dependents to recover against such other party, and may bring legal proceedings against such party and recover the aggregate amount of compensation and medical expense payable by him to such employe or his dependents hereunder, together with the costs and disbursements of such action and reasonable attorney's fees expended by him therein.

The provisions of subdivision 1 of this section shall apply only where the employer liable for compensation and the other party or parties legally liable for damages were both either insured or self-insured and were engaged in the due course of business, (a) in furtherance of a common enterprise, or (b) the accomplishment of the same or related purposes in operation on the premises where the injury was received at the time thereof, and not otherwise.

(2) Where an injury or death for which compensation is payable is caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party being at the time of such injury or death insured or self-insured in accordance with Section 2 of this Act, but where the provisions of subdivision 1 of this section do not apply, or where said party or parties other than the employer are not insured or self-insured at time of such injury or death as provided by Section 2 of this Act, legal proceedings may be taken by the employe or dependents against such other party or parties to recover damages, notwithstanding the payment by the employer or his liability to pay compensation hereunder, but in such case, if the action against such other party or parties is brought by the injured employe, or, in case of his death, by his dependents, and a judgment is obtained and paid or settlement is made with such other party, either with or without suit, the employer shall be entitled to deduct from the compensation payable by him the amount actually received by such employe or dependents after deducting costs, reasonable attorney's fees and reasonable expenses incurred by such employe or dependents in making such collections or enforcing such liability; provided that in such case if such action be not diligently prosecuted by the employe, or if, for any reason, the court deem it necessary or advisable in order to protect the interests of the employer, the court may, upon application, grant the right to the employer to intervene in any such action for the prosecution thereof, as now provided by law; provided that if the injured employe, or, in case of his death, his dependent, shall agree to receive compensation from the employer or shall institute proceedings to recover the same or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all of the rights of such employe or dependents, and may maintain, or, in case an action has already been instituted, may continue the action, either in the name of the employe or dependents or in his own name, against such other party for the recovery of damages; provided that, in such case, if such action be not diligently prosecuted by the employer, or if, for any reason, the court deem it necessary or advisable in order to protect the interest of the employe, the court may, upon application, grant the right to the employe or his dependents, as the case may be, to intervene in any such action for the prosecution thereof, as now provided by law, but such employer shall, nevertheless, pay over to the injured employe or dependents all sums collected from such other party or parties, by judgment or otherwise, in excess of the amount of such compensation payable by the employer under the Workmen's Compensation Act, and costs, reasonable attorney's fees and reasonable expenses incurred by such employer in making such collection and enforcing such liability; provided that in no case shall such party be liable to any person other than the employe or his dependents for any damages growing out of or resulting from such injury or death. (Mar. 12, 1937, c. 64, §5.)

4272-6. Joint employers shall contribute.—In case any employe for whose injury or death compensation is payable under this Act shall, at the time of the injury or death, be employed and paid jointly by two or more employers liable for compensation under this Act, such employers shall contribute the payment of such compensation in the proportion of their several wage liabilities to such employe. If some of such employers shall be excluded from the Act and not liable for compensation, then the liability of such of them as are liable for compensation shall be to pay the proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employe; provided, however, that nothing in this Act shall prevent any arrangement between such employers for a different distribution as between themselves of the ultimate burden of such compensation. (Mar. 12, 1937, c. 64, §6.)

4272-7. Application of act.—All accidental injuries or deaths of employees arising out of and in the course of their employment which have and will occur under contracts of employment entered into prior to the effective date of this Act shall be governed by the Workmen's Compensation Law in force at the time of such injury or death notwithstanding any provision in this Act to the contrary. (Mar. 12, 1937, c. 64, §7.)

4272-8. Legal services an enforceable lien.—No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought

under the provisions of this Act shall be an enforceable lien against the amount paid or payable as compensation or damages, or be valid or binding in any other respect, unless the same be approved in writing by the Industrial Commission if such claim arises out of a proceeding for compensation under this Act, or by the judge presiding at the trial in an action for damages, or by a judge of the district court in settlement of a claim for damages without trial. Provided that if notice in writing be given to the employer or his insurer or the defendant, as the case may be, of such claims for legal services or disbursements, the same shall be a lien against the amount paid or payable as compensation, subject to determination of the amount and approval hereinbefore provided. (Mar. 12, 1937, c. 64, §8.)

4272-9. Act not severable.—This Act as a whole being incompatible with the Workmen's Compensation Act as it now exists, the provisions hereof are hereby declared to be inseparable and if any section, clause or part thereof shall be found invalid, then the whole Act shall be invalid. (Mar. 12, 1937, c. 64, §9.)

4272-10. Acts repealed.—Sections 4261, 4262, 4263, 4264, 4265, 4266, 4267, 4268, 4269, 4270, 4271, 4272, 4277 and 4291, Mason's Minnesota Statutes, 1927, all relating to compensation, and all acts or parts of acts inconsistent herewith are hereby repealed. (Mar. 12, 1937, c. 64, §10.)

Section 11 of Act Mar. 2, 1937, cited, provides that the act shall take effect on and after July 1, 1937.

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. 176M464, 223NW773.

Where office assistant of attorney accidentally sprained wrist in operating typewriter and could not operate typewriter for three weeks, she was entitled to recover compensation and medical fees, notwithstanding that the employer paid her full salary during the period of disability and retained her in the office for such work as she could do, such payments being, in part, a gratuity. Koppe v. H. & T., 176M508, 223NW787.

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

Act does not take away common law right of action of employer to recover from employee for injuries received by employer as a result of negligence of employee in driving automobile in course of his employment. Rosenfield v. M., 201M113, 275NW698. See Dun. Dig. 10389.

Employee is entitled to recover compensation only from his employer, and not from prior employers. Yoselowitz v. P., 201M600, 277NW221. See Dun. Dig. 10395.

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., 189M517, 250NW73. See Dun. Dig. 10410.

Degree of physical disability is not measure by which to determine amount of an award of compensation for permanent partial disability. Enrico v. O., 199M190, 271 NW456. See Dun. Dig. 10410.

Pain caused by neuroma near knee cap, which would prevent employee from working, might in itself constitute temporary total disability, without regard to loss of flexion of knee. Kruchowski v. S., 201M557, 277 NW15. 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.

4½. Injury to legs.

Where there was permanent partial disability of two legs, it was error to double compensation allowable for a partial permanent disability of one leg as provided in paragraphs 41 and 19, but compensation should be governed by paragraph 44. Smith v. K., 197M558, 267NW478. See Dun. Dig. 10410.

Where there was permanent partial disability of two legs, it was proper to double compensation allowable for a partial permanent disability of one leg as provided in paragraphs 19 and 41. Smith v. K., 197M558, 269NW633, amending opinion in 267NW478. See Dun. Dig. 10410.

4¾. Injury to eyes.

In determining extent of injuries occasioned to vision, "correction by glasses" may be taken into consideration. Foster v. S., 197M602, 268NW631. See Dun. Dig. 10410.

There was no total permanent disability arising from injuries to both eyes, where all witnesses testified that employee had enough vision to at least distinguish objects. Id.

Extent of permanent partial loss of vision should be determined without regard to possible correction by use of glasses or lens. Livingston v. S., 203M62, 279NW829. See Dun. Dig. 10410.

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 compensation 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.

Permanent total disability is largely a question of fact. Krnetich v. O., 202M158, 277NW525. See Dun. Dig. 10410.

In determining whether accidental injury has caused a total or a partial permanent disability, commission properly refused to adopt as a determining factor that injured employee had diligently sought such work as he was capable of performing without obtaining any. Id.

A previous disability resulting in amputation of all but upper three or four inches of left forearm, combined with subsequent injury causing a 75% limitation of motion of right arm and hand, amounts to total disability,

as matter of law, entitling unskilled laborer to compensation from special compensation fund. Green v. S., 202 M254, 278NW157. See Dun. Dig. 10410.

8. Double disabilities.

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

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.

Dependents of a workman have a separate and independent right in event of his death, and where death occurs within six years of accident, dependents are entitled to compensation for death, notwithstanding that employer and insurer made settlement with injured employee on basis of total disability, and such settlement was approved by industrial commission. Lewis v. C., 196 M108, 264NW581. See Dun. Dig. 10418.

10. Disfigurement.

Scar on face of salesman as affecting necessity of permitting examination by employer's physician. Nelson v. K., 201M123, 275NW624. See Dun. Dig. 10415.

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.

Where employee entered into an agreement to marry on a certain date and was killed several days before date set for marriage and after banns of marriage had been published by church, and 8½ months after death girl bore a child of the employee, there was no marriage and child was not entitled to compensation. Guptil v. E., 197M211, 266NW748. See Dun. Dig. 10411.

Evidence held to sustain finding that sister and half-sister were not dependents, though deceased made many contributions by way of gifts to them. Segerstrom v. N., 198M298, 269NW641. See Dun. Dig. 10411.

Respective rights and obligations as to compensation and other benefits under workmen's compensation law become fixed as of date of compensable accident. If accident causes death, such rights become fixed at time of death. Roos v. C., 199M284, 271NW582. See Dun. Dig. 10410.

A child ceases to be a dependent when he arrives at age of eighteen if he is not "physically or mentally incapacitated from earning." Merchants Trust Co. v. G., 200M281, 274NW175. See Dun. Dig. 10411.

Minor children under age of 16 years are conclusively presumed to be dependents. Id.

Act does not take away common law right of action of employer to recover from employee for injuries received by employer as a result of negligence of employee in driving automobile in course of his employment. Rosenfield v. M., 201M113, 275NW698. See Dun. Dig. 10385.

Proceeding by dependent of deceased employee, who had begun proceedings and received compensation, for purpose of securing benefits, is merely a reopening or continuation of proceedings commenced by employee and is not barred by statute of limitations, though right asserted by dependent is distinct from that asserted by employee and a full adjudication of latter's rights is no bar to assertion of dependent's right after employee's death. Johnson v. P., 203M347, 281NW290. See Dun. Dig. 10411.

(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.

(17).

Subdivision 14 should be construed with subdivision 17, and surviving partially dependent parent is entitled to thirty-five forty-fifths of original award. Peterson v. M., 195M359, 263NW117. See Dun. Dig. 10412.

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 addi-

tion 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.

Evidence held to show that disability, apart from permanent partial disability due to accidental injury, resulted from disease and old age subsequent to accident for which compensation was received. Skoog v. S., 198 M504, 270NW129. See Dun. Dig. 10403.

Section applies though previous disability and subsequent partial disability are due to accident by employee in course of continuous employment with same employer. Peterson v. H., 200M253, 273NW812. See Dun. Dig. 10410.

Where, in case of death of employee in course of his employment, there are no dependents and employer is obliged to make payment to special compensation fund, his liability is one created by statute, and proceeding to recover same must be commenced within six years from accrual of cause of action. Schmahl v. S., 200M294, 274 NW168. See Dun. Dig. 10419.

Act does not take away common law right of action of employer to recover from employee for injuries received by employer as a result of negligence of employee in driving automobile in course of his employment. Rosenfield v. M., 201M113, 275NW698. See Dun. Dig. 10385.

A previous disability resulting in amputation of all but upper three or four inches of left forearm, cambined with subsequent injury causing a 75% limitation of motion of right arm and hand, amounts to total disability, as matter of law, entitling unskilled laborer to compensation from special compensation fund. Green v. S., 202M254, 278NW157. See Dun. Dig. 10410.

Constitutionality of requirement that employer pay money into state treasury where deceased employee leaves no dependents. 23MinnLawRev555.

4277. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, §10, ante, §4272-10.

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.

An employee will not be deprived of compensation by reason of his failure to discover and treat injuries to himself where he does not know their nature or character. Kruchowski v. S., 201M557, 277NW15. 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.

Evidence held to sustain finding that employer did not obtain knowledge or notice of injury complained of within time specified by law. Utgard v. H., 202M637, 279NW 748. 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., 195M29, 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.

Dependents of a workman have a separate and independent right in event of his death, and where death occurs within six years of accident, dependents are entitled to compensation for the death, notwithstanding that employer and insurer made settlement with injured employee on basis of total disability, and such settlement was approved by industrial commission. Lewis v. C., 196 M108, 264NW581. See Dun. Dig. 10418.

A "nondisabling accident report" does not start running two-year period of limitations where employee went immediately back to work and actual partial disability did not appear until later. Pease v. M., 196M552, 265NW 427. See Dun. Dig. 10419.

"Written report of the injury" is that prescribed by §4293, and main purpose of notice is doubtless to enable commission to advise employee of his rights as required by §4294. Id. See Dun. Dig. 10420.

Two-year limitations did not apply to a seemingly trivial "non-disabling accident." Pechavar v. O., 196M558, 265NW429. See Dun. Dig. 10419.

Where, in case of death of employee in course of his employment, there are no dependents and employer is obliged to make payment to special compensation fund, his liability is one created by statute, and proceeding to recover same must be commenced within six years from accrual of cause of action. Schmahl v. S., 200M294, 274NW168. See Dun. Dig. 10419.

Neither filing of a written report of accident by employer with industrial commission, nor its furnishing medical care to relator, constituted a proceeding within meaning of statute. Mattson v. O., 201M35, 275NW403. See Dun. Dig. 10419.

Six-year limitation on proceedings by dependents commences to run from time of accident and not from time of death. Nyberg v. L., 202M86, 277NW536. See Dun. Dig. 10419.

Act contemplates only one proceeding to enforce compensation rights of both employee and his dependents arising from one casualty, and commencement of proceeding by employee during his lifetime, tolls limitation provisions relating to proceedings by dependents, proceedings by latter after death of employee being a reopening or continuance of proceeding commenced by employee. Id.

Proceeding by dependent of deceased employee, who had begun proceedings and received compensation, for purpose of securing benefits, is merely a reopening or continuation of proceedings commenced by employee and is not barred by statute of limitations, though right asserted by dependent is distinct from that asserted by employee and a full adjudication of latter's rights is no bar to assertion of dependent's right after employee's death. Johnson v. P., 203M347, 281NW290. See Dun. Dig. 10419.

4283. Examination and verification of injury.

177M555, 225NW889.

An employee will not be deprived of compensation by reason of his failure to discover and treat injuries to himself where he does not know their nature or character. Kruchowski v. S., 201M557, 277NW15. See Dun. Dig. 10415.

(1).

After an award has been made, employer's right to compel employee to submit to a physical examination by a physician selected by employer is within sound judgment and discretion of commission. Nelson v. K., 201M123, 275NW624. See Dun. Dig. 10415.

(2).

Refusal to order examination of an injured employee by a neutral physician is an administrative matter within discretion of industrial commission. Astell v. C., 201 M108, 275NW420. See Dun. Dig. 10421.

(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 employe, 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 dependent will be better served, and such alien dependent shall at any time prior to final settlement file 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 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 proceedings, and if during the pendency of the same, following the death of the alien employe, such power of attorney is filed by said alien dependent, the Industrial Commission shall then summarily exercise its discretion and determine whether such attorney in fact shall be substituted to represent said alien dependent or if the said consular officer or his representative shall continue therein. Such person so appointed may institute and carry on proceedings to settle all claims for compensation and to receive for distribution to such alien dependent or dependents all compensation arising hereunder. The settlement and distribution of said funds shall be made only on order of the commission. Such person so appointed shall furnish a good and sufficient bond, satisfactory to the commission, conditioned upon the proper application of the moneys received by him. Before such bond is discharged, such person so appointed shall file with the commission a verified account of the items of his receipts and disbursements of such compensation.

Such person so appointed shall, before receiving the first payment of such compensation and thereafter when so ordered so to do by the commission, furnish to the commission a sworn statement containing a list of the dependents, with the name, age, residence, extent of dependency, and relationship to the deceased of each dependent. In any proceedings heretofore taken to recover compensation for any alien dependent where the same have been instituted and carried on for a period of at least five years in the name of a person as petitioner, designated by power of attorney from the alien dependent, the right of such designated petitioner to conclude said proceedings or final settlement and to fully bind all parties thereby, is hereby legalized in all respects. ('21, c. 82, §24; Apr. 19, 1929, c. 251; Apr. 22, 1939, c. 416.)

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.

Dependents of a workman have a separate and independent right in event of his death, and where death occurs within six years of accident, dependents are entitled to compensation for the death, notwithstanding that employer and insurer made settlement with injured employee on basis of total disability, and such settlement was approved by industrial commission. Lewis v. C., 196M108, 264NW581. See Dun. Dig. 10412.

Lump sum settlement can be obtained only by order of industrial commission, and is solely within discretion of commission. Op. Atty. Gen. (523a-18), Aug. 4, 1938.

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.

Where new corporation was formed taking over business of several old corporations and employee of old corporation worked for new corporation with knowledge of the fact, he must recover his compensation for injuries from new corporation and not old corporation, and insurance carrier of old corporation would not be liable. Yoselowitz v. P., 201M600, 277NW221. See Dun. Dig. 10391.

Statute does not prevent employer and insurer from governing their respective rights and duties by agreement so long as stipulation does not abridge or impair protection thrown around employees by statute. Maryland Casualty Co. v. A., 204M43, 282NW806. See Dun. Dig. 10391.

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.

Whether persons working on relief are employees is question of fact, but where county binds itself in contract with state in connection with obtaining funds to carry insurance on relief workers, there is an agreement which is not ultra vires of which such employees may take advantage. Op. Atty. Gen. (523g-18), Mar. 21, 1936.

Carrying of workmen's compensation insurance is optional with board of town. Op. Atty. Gen. (523e-2), Feb. 8, 1937.

County sanatoriums and joint county sanatoriums may make provisions for compensation insurance. Op. Atty. Gen. (556a), Feb. 14, 1939.

Towns may carry workmen's compensation insurance in their discretion. Op. Atty. Gen. (523e-2), April 10, 1939.

Neither a township nor an association of townships are required to carry workmen's compensation insurance. Op. Atty. Gen. (523e-2), June 28, 1939.

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 addi-

tional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involves a contribution by the workman shall not prevent its validity if such plan has been approved in writing by the Industrial Commission. Any employer who shall make any charge or deduction prohibited by this section shall be guilty of a misdemeanor.

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

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

The return of any execution upon any judgment of an employe against any such insurance company unsatisfied in whole or in part, shall be conclusive evidence of the insolvency of such insurance company, and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction proceedings may be brought by the employe against the employer in the first instance, or against such employer and insurance company jointly or severally or in any pending proceedings against any insurance company, the employer may be joined at any time after such adjudication.

That the provisions of this section to the extent that the same are applicable shall apply also when an employer exempted from insuring his liability for compensation as provided in section 4288 shall insure any part of his liability for said compensation. ('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.

Standard policy of insurance held to protect employer under an accident not covered by workmen's compensation act and from judgment obtained in an action at law in state court. Globe Indemnity Co. v. B., (USCCA8), 90F(2d)774.

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., 189M134, 248NW756. See Dun. Dig. 10395(65).

Whether one painting cornices of a building for a lump sum, employer furnishing materials and painter the tools, was an employee or an independent contractor, held question of fact for industrial commission. Rick v. N., 196M 185, 264NW685. See Dun. Dig. 10395.

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. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, §10, ante, §4272-10.

1. 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.

A company owning a large warehouse and leasing part of it to another company and milk company delivering milk to employees of tenant at time of injury to employee of warehouse company, were not engaged in same or related purposes so as to confine injured employee's right to compensation and bar his cause of action against milk company for negligence. Horgen v. F., 195M159, 262NW 149. See Dun. Dig. 10407.

Where employee of a telephone company, while attempting to locate trouble on a telephone line caused by a contact between a telephone wire and a power line wire, was injured when an employee of power company attempting to remedy a similar difficulty inserted a new fuse which carried a high voltage to wire on which plaintiff was working, he is not barred from recovery against power company by accepting of compensation from his employer. Anderson v. I., 195M528, 263NW612. See Dun. Dig. 10409.

Plaintiff's employer and defendant held not to be engaged either "in furtherance of a common enterprise" or "the accomplishment of the same or related purposes," so as to make receipt of compensation a bar to recovery for defendant's negligence. Taylor v. N., 196M22, 264NW 139. See Dun. Dig. 10408.

State held not entitled to recover from railroad for injuries to grain inspector. State v. Sprague, 201M415, 276NW744. See Dun. Dig. 10408.

Conflict of laws. 20MinnLawRev19.

Recovery of damages for negligence from third party also. 20MinnLawRev323.

2. Subd. 1.

Neither electrician, nor his electric company through *him, was engaged in due course of business* in furtherance of a common enterprise, because electrician on request of employee of plate glass company undertook to assist the latter for a few minutes in moving glass, electric company and glass company being merely subcontractors engaged in totally unrelated activities. Pittsburgh Plate Glass Co. v. C., (CCA8), 98F(2d)533.

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.

Employee of a corporation repairing electric elevators, elevator operator of concern having one of two elevators repaired, owner of elevators, and corporation were engaged in the course of business (a) in furtherance of a common enterprise, and (b) the accomplishment of the same or related purposes in operation on the premises where the injury was received at the time thereof, and employee is barred from maintaining action against building owner. Seidel v. N., 202M569, 279NW570. See Dun. Dig. 10407.

Where a man employed by city at its incinerator plant was injured by alleged negligence of an employee of vendor who was delivering coal to city at plant, the employers, though both subject to part two of workmen's compensation act, were not engaged in furtherance of a common enterprise or accomplishment of same or related purposes. Tevoght v. P., 285NW893. See Dun. Dig. 10407.

3. Subdivision 2.

174M466, 219NW755.

Oil station performing services on truck of owner, and bakery for which owner worked on commission basis, held not engaged in a common enterprise or the accomplishment of the same purpose, and truck owner who fell through manhole in floor of washroom was not precluded from recovering from oil station by reason of his having received compensation from bakery. Phillips Petroleum Co. v. M. (USCCA8), 84F(2d)148.

Issue of contributroy negligence, held properly left to the jury. Id.

Defendant had burden of proving contributory negligence. Id.

Instructions given and denial of others, approved. Id.

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.

Brewing company and warheouse company held engaged in furtherance of a common enterprise and in accomplishment of related purposes and court properly assessed damages to employee of former injured on elevator in warehouse. Smith v. K., 197M558, 267NW478. See Dun. Dig. 10407.

In action by city employee against street railway company for personal injuries, evidence in regard to workmen's compensation received by plaintiff was properly excluded. Peterson v. M., 202M630, 279NW588. See Dun. Dig. 9033, 10407.

4292. Penalties for unreasonable delay.

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

4293. Employers must report accidents—Reports—Duty of physicians—Right of attorney to examine—Penalties.—It is hereby made the duty of every employer subject to the provisions of part 2 of this act to make or cause to be made a report to the Industrial Commission of any accident to any employe which occurs in the course of his employment, and which causes death or serious injury, within forty-eight (48) hours of the occurrence of such accident, and of all other accidents which occur to any employe in the course of his employment, and of which the employer or his foreman has knowledge, within seven days after the occurrence of such accident, provided that such injuries are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which the injury was sustained, which reports shall be made upon a form to be prescribed by the Industrial Commission.

The Industrial Commission shall include in the form of report prepared by it a statement that the employer will pay the compensation as required by law, to be signed by the employer or his representative, where a liability to pay compensation is admitted.

Accidents required by this section to be reported within 48 hours may be reported by telephone, telegraph or personal notice, and a written report of such accident shall then be made within seven days, or at such time as the Industrial Commission shall designate, and the commission may require such supplementary reports of any accident as it may deem necessary for the securing of the information required by law; provided that, when an accident has been reported which subsequently terminates fatally, a supplemental report shall be filed with the Industrial Commission within forty-eight (48) hours after receipt of knowledge of such death, stating that the injury has proved fatal and any other facts in connection with such death or as to the dependents of such deceased employe which the Industrial Commission may require.

Every physician or surgeon who shall examine, treat or have special knowledge of any injury to

any employe compensable under part 2 of this act shall within ten days after receipt of any request therefor, in writing, made by the Industrial Commission, report to the commission all facts within his knowledge relative to the nature and extent of any such injury and the extent of any disability resulting therefrom, upon a form to be prescribed by the commission.

It is hereby made the duty of the Industrial Commission, from time to time and as often as may be necessary, to keep itself fully informed as to the nature and extent of any injury to any employe compensable under part 2 of this act and the extent of any disability resulting therefrom and the rights of such employe to compensation; to request in writing and procure from any physician or surgeon examining, treating or having special knowledge of any such injury a report of the facts within his knowledge relative thereto.

Any employer or physician or surgeon who shall fail to make any report required by this section, in the manner and within the time herein specified, shall be liable to the state of Minnesota for a penalty of fifty ($50.00) dollars for each such failure, and such penalty shall be recovered in a civil action brought in the name of the state by the attorney general in any court having jurisdiction thereof, and it shall be the duty of the Industrial Commission, whenever any such failure to report occurs, to immediately certify the fact thereof to the attorney general, and upon receipt of any such certification the attorney general shall forthwith commence and prosecute such action. All penalties recovered by the state hereunder shall be paid into the state treasury.

No such report nor part thereof, nor any copy of the same or part thereof shall be open to the public, nor shall any of the contents thereof be disclosed in any manner by any official or clerk or other employe or person having access thereto, but the same may be used upon the hearings under this act or for state investigations and for statistics only, and any such disclosure is hereby declared to be a misdemeanor and punishable as such.

For the purpose of determining the merits of a compensation claim the Commission may, however, permit examination of its file in a compensation case by an attorney at law upon the furnishing to the Commission written authorization therefor, signed by the employe, his dependent or dependents, the employer or insurer, as the case may be.

Any employer or insurer or injured employe shall, upon request of the Industrial Commission, file with said commission all medical reports in the possession of such employer or insurer having any bearing upon the case or showing the nature and extent of disability; provided that duly verified copies of such reports may be filed with the Industrial Commission in lieu of the originals. (As amended Apr. 14, 1939, c. 241.)

177M555, 225NW889.

Pease v. M., 196M552, 265NW427; note under §4282.

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., 195M29, 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.

4294. Duties of commission when employee is injured.

Pease v. M., 196M552, 265NW427; note under §4282.

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 pay-

ments 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.

Chapter 74, Laws 1933, so amended §4295 that industrial commission retains authority and jurisdiction to vacate for cause a decision rendered thereunder and grant a rehearing pursuant to §4319, which by amendment is incorporated into §4295. *Hawkinson* v. M., 196M120, 264NW 438. See Dun. Dig. 10421.

Jurisdiction of industrial commission to vacate a decision rendered pursuant to this section was adequately raised so as to be reviewed on certiorari. Id. See Dun. Dig. 10426.

*This section relates wholly to procedure, and amend*ment by Laws 1933, c. 74, applied to further compensation liability for accident occurring prior to its passage. Hawkinson v. M., 196M120, 265NW346. See Dun. Dig. 10417.

Where no writ of certiorari had issued to review an award made by Industrial Commission, award had not been reduced to judgment, and no statute of limitations barred such relief, jurisdiction of Industrial Commission continued, and it had power, for cause, to vacate prior award and grant a new hearing. Tuomi v. G., 196M617, 265NW837. See Dun. Dig. 10421.

Amendment of §4295 by Laws 1933, c. 74, in no way modified or affected §4319, and application to commission to set aside award and grant rehearing must be made before decision has passed into judgment in district court. Maffett v. C., 198M480, 270NW596. See Dun. Dig. 10421.

To vacate a judgment entered in district court to enforce an award of industrial commission upon the ground of mistake of fact, court must be governed by same considerations and principles that govern vacation of any judgment of district court. Id. See Dun. Dig. 10422.

Respective rights and obligations as to compensation and other benefits under workmen's compensation law become fixed as of date of compensable accident. If accident causes death, such rights become fixed at time of death. Roos v. C., 199M284, 271NW582. See Dun. Dig. 10410.

Jurisdiction of the commission is retained subject to §4319 until award of commission or its referee has been reduced to judgment or supreme court has issued certiorari to review it. Id. See Dun. Dig. 10421.

Amendment by Laws 1933, c. 74, affects procedurally and not rights of parties. Id.

An award of compensation cannot be set aside and a new hearing granted thereon under §4295, if award was made prior to amendment by Laws 1933, c. 74, §1, as a rehearing could then be granted only under §4319 for cause, record not showing cause. Herzog v. C., 199M352, 272NW174. See Dun. Dig. 10421.

Failure to give notice of discontinuance of compensation payments did not as a matter of law make employer liable to continue weekly *voluntary payments started* until proceeding for further compensation began, for commission may otherwise order. McGrath v. B., 203M 326, 281NW73. See Dun. Dig. 10421.

4297. Proceedings began by petition.

Practice of demurring to a claim petition before commission is disapproved. Johnson v. P., 203M347, 281NW 290. See Dun. Dig. 10421.

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.

4302. Procedure in case of dispute.

Right of employee to compensation arises at time of injury and belongs to him alone, and right of dependents to compensation arises at time of employee's death, and is a separate and distinct right belonging to them, and employee, during his lifetime, cannot deprive his dependents of their rights by a settlement made with *employer. Nyberg v. L., 202M86,* 277NW536. See *Dun.* Dig. 10419.

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.

It could not be first argued on employee's petition for rehearing that litigated issue was settled by pleading. Pease v. M., 196M552, 265NW427. 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 evi*dence, 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.

Whether testimony, objected to as conversation with a person since deceased, was improperly admitted, was immaterial, where only conclusion possible under all other evidence in case was that industrial commission properly denied compensation. Anderson v. R., 196M358, 267NW501. See Dun. Dig. 10421.

In arriving at a decision it is proper for commission to take into account not only interest of parties and witnesses in outcome and improbabilities involved, but also to inquire into all surrounding circumstances upon which an alleged claim of dependency is based. Segerstrom v. N., 198M298, 269NW641. See Dun. Dig. 10421.

As affecting admissibility of statement of employee as a part of the res gestae, consideration should be given to facts that at time statement was made there was an entire lack of motive for the employee to misrepresent as where injury appeared so insignificant that employee could not have given a thought to subsequent application for compensation. Jacobs v. V., 199M572, 273NW245. See Dun. Dig. 3300.

In workmen's compensation cases a liberal policy should be followed in admission of declarations as part of res gestae in order that purpose of compensation act be carried out. Certain statements made by deceased approximately forty-five minutes after accident held properly admitted as part of res gestae. Id. See Dun. Dig. 3301.

It was not error to exclude expert testimony that it was a practical route to drive from 1900 Princeton avenue, St. Paul, to the St. Paul Hotel, through intersection of Colborne and West Seventh streets, where decedent met with fatal accident. Bronson v. N., 273NW681. See Dun. Dig. 10421.

In proceeding under Workmen's Compensation Act to recover compensation for death of motorman suffering a heat stroke, it was not error to exclude from evidence records in office of vital statistics showing a high death rate due to extreme heat during the month involved. Ruud v. M., 202M480, 279NW224. See Dun. Dig. 10421.

In proceeding to obtain compensation for death of motorman suffering heat stroke refusal to admit in evidence experiment made with car operated by employee in respect to heat discharged in motorman's cab from operation of car, made several months after injury in question, was matter resting largely in discretion of commission to admit or reject. Id. See Dun. Dig. 10421.

In proceeding for death of motorman suffering heat stroke, it was not error to exclude offer of proof that no other claim for heat stroke had been made against street railway during its long operation of its street cars by electricity. Id. See Dun. Dig. 10421.

Commission did not err in excluding as conclusion of witness' testimony that injured employee was not able to hoe some corn he had planted, or walk, or lift a pail. McGrath v. B., 203M326, 281NW73. See Dun. Dig. 10421.

Where witness gave testimony which indicated that he and not a township was employer when accidental injury arose, commission was not in error when it overruled or reversed ruling of referee striking out such testimony after witness was made party to proceedings. Mooney v. T., 203M461, 281NW820. See Dun. Dig. 10421.

Statute prohibiting interested parties from testifying as to conversations with persons since deceased applies to proceedings under this act. Kayser v. C., 204M74, 282 NW801. See Dun. Dig. 10421.

Where there has been a hearing before commission on employee's claim for compensation, and later, his death having intervened, his dependents petition for compensation, claiming that his death was caused by same accident, record of hearing on employee's claim may be considered in evidence on hearing of that of his dependents. While claims are independent each of the other, proceeding for their enforcement is unitary. Susnik v. O., 286NW 249. See Dun. Dig. 10421.

Res Gestae, 22MinnLawRev391.

Evidence before administrative tribunals, 23MinnLaw Rev68.

4315. Appeals to industrial commission—Time—Notice—Fee—Transcript—Determination. — Any party in interest may, within thirty days after notice of a commissioner's or referee's award or disallowance of compensation, or other order involving the merits of the case, shall have been served on him, take an appeal to the Industrial Commission on the ground: (1) That the award or disallowance of compensation or other order appealed from is not in conformity with the terms of this act, or that the commissioner or referee committed any other error of law; (2) that the findings of fact and award or disallowance of compensation, or other order appealed from, was unwarranted by the evidence, or was procured by fraud, coercion or other improper conduct of any party in interest. The commission may, upon cause shown within said thirty days, extend the time for taking such appeal or for filing of an answer or other pleading for not to exceed thirty additional days.

Any party desiring to appeal to the commission as aforesaid shall prepare and sign a written notice, specifying the award or order appealed from and that the said appellant appeals therefrom to the Industrial Commission, and specifying the particular finding of fact which appellant claims is unwarranted by the evidence or which appellant claims was procured by fraud, coercion or other improper conduct of any party in interest, or specifying any other ground upon which the appeal is based. The appealing parties shall also within the time limited for appeal serve a copy of such written notice of appeal upon all adverse parties and file the original thereof with the Industrial Commission, with proof of service thereon by admission or affidavit. The appealing parties shall also within the time limited for appeal pay to the Industrial Commission the sum of ten dollars ($10.00), to be applied on the cost of the transcript of the proceedings appealed from, or so much thereof as may be necessary to present the question raised on such appeal. The appellant shall also be liable for any excess of said ten dollars ($10.00), in the cost of said transcript, and any part of said sum exceeding the actual cost of said transcript shall be refunded to said appellant; provided that the commission may, on cause shown, direct that a transcript be made without expense to the appellant.

Upon the filing of said notice and the paying of said appeal fee, the commission shall immediately cause the transcript of testimony and proceedings to be typewritten, which said transcript shall be certified as true and correct by the official reporter transcribing the same.

On any such appeal the commission may disregard the findings of fact of the commissioner or referee, and may examine the testimony taken before such commissioner or referee, and, if it deem proper, may hear other evidence, and may substitute for the findings of the commissioner or referee such findings of fact as the evidence taken before the commissioner or referee and the commission, as hereinbefore provided, may, in the judgment of the commission, require, and may make such disallowance or award of compensation or other order as the facts so found by it may require. The commission, at its expense, shall cause a complete record of its proceedings to be made, and shall provide a stenographer to take the testimony and record of proceedings at the hearings before a referee, commissioner or the commission, and said stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him of a reasonable charge therefor, to be fixed by the commission. (As amended Apr. 8, 1939, c. 150.)

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.

On appeal from referee to commission there is a trial de novo and commission is fact-finding body upon record before it. Sentieri v. O., 201M293, 276NW210. See Dun. Dig. 10423.

Procedure before commission is not statutory procedure governing courts, and to a great extent commission regulates its own procedure, and may approve or disapprove rulings of its referee as it deems proper. Mooney v. T., 203M461, 281NW820. See Dun. Dig. 10423.

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.

To vacate a judgment entered in district court to enforce an award of industrial commission upon ground of mistake of fact, court must be governed by same considerations and principles that govern vacation of any judgment of district court. Maffett v. C., 198M480, 270 NW596. See Dun. Dig. 10422.

Where, in absence of dependents, industrial commission determines that an employer shall make payment to special compensation fund, decision is not award of "compensation" under this section. Schmahl v. S., 274NW168.

Where, in case of death of employee in course of his employment, there are no dependents and employer is obliged to make payment to special compensation fund, his liability is one created by statute, and proceeding to recover same must be commenced within six years from accrual of cause of action. Id. See Dun. Dig. 10419.

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., 195M29, 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., 195M660, 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., 195M19, 261NW879. See Dun. Dig. 10421.

Chapter 74, Laws 1933, so amended §4295 that industrial commission retains authority and jurisdiction to vacate for cause a decision rendered thereunder and grant a rehearing pursuant to §4319, which by amendment is incorporated into §4295. Hawkinson v. M., 196M120, 264NW 438. See Dun. Dig. 10421.

By amendment of §4295 by Laws 1933, c. 74, commission retains its jurisdiction with power to open its decision made upon an accident occurring prior to passage of amendment. Hawkinson v. M., 196M120, 265NW346. See Dun. Dig. 10421.

Where no writ of certiorari had issued to review an award made by Industrial Commission, ward had not been reduced to judgment, and no statute of limitations barred such relief, jurisdiction of Industrial Commission continued, and it had power, for cause, to vacate prior award and grant a new hearing. Tuomi v. G., 196M617, 265NW837. See Dun. Dig. 10421.

Granting of a rehearing on ground of newly discovered evidence rests in discretion of industrial commission. Pechavar v. O., 198M233, 269NW417. See Dun. Dig. 10421.

Amendment of §4295 by Laws 1933, c. 74, in no way modified or affected §4319, and application to commission to set aside award and grant rehearing must be made before decision has passed into judgment in district court. Maffett v. C., 198M480, 270NW596. See Dun. Dig. 10421.

To vacate a judgment entered in district court to enforce an award of industrial commission upon the ground of mistake of fact, court must be governed by same considerations and principles that govern vacation of any judgment of district court. Id. See Dun. Dig. 10422.

When an award of compensation has been made, jurisdiction of industrial commission continues, subject to provisions of this section as long as there is a continuing right to compensation. Roos v. C., 199M284, 271NW582. See Dun. Dig. 10421.

Words "for cause" mean some such cause as fraud or surprise, and rehearing cannot be based upon very facts contained in a written statement furnished complaining party. Herzog v. C., 199M352, 272NW174. See Dun. Dig. 10421.

An award of compensation cannot be set aside and a new hearing granted thereon under §4295 if award was made prior to amendment by Laws 1933, c. 74, §1, as a rehearing could then be granted only under §4319 for cause, record not showing cause. Id.

Commission properly granted rehearing of petition for further compensation by reason of newly discovered evidence resulting from an operation. Jovanovich v. S., 201M412, 276NW741. See Dun. Dig. 10421.

Where employee appeared generally, without objection, at a rehearing ordered by commission, without application or notice, he will not be heard to question jurisdiction of commission to order rehearing when matter comes to supreme court for review. Baudek v. O., 285NW887. See Dun. Dig. 10426.

4320. Appeal to Supreme Court—Grounds—Fees.

175M103, 220NW408; note under §4319.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

Decision of fact issue by Industrial Commission will not be disturbed on certiorari. 181M546, 233NW245. See Dun. Dig. 10426(15).

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).

In reviewing award of industrial commission, evidence must be taken in its most favorable aspect to respondent. Lundeen v. K., 196M100, 264NW435. See Dun. Dig. 10426.

Jurisdiction of industrial commission to vacate a decision rendered pursuant to §4295 was adequately raised so as to be reviewed on certiorari. Hawkinson v. M., 196M120, 264NW438. See Dun. Dig. 10426.

Supreme court does not try cases de novo or make findings of fact. Rick v. N., 196M185, 264NW685. See Dun. Dig. 10426.

Supreme court cannot set aside a finding of industrial commission, if reasonable minds could, on the evidence, reach different conclusions. Id.

That attorneys for employee had issued draft on insurer for compensation and expenses of nursing created no estoppel and did not authorize supreme court to dismiss certiorari, insurer refusing to honor draft for compensation. Id.

Evidence was not properly before supreme court where it was certified by stenographic reporter rather than secretary and under seal of industrial commission. Dahley v. E., 196M428, 265NW284. See Dun. Dig. 10426.

Finding of lack of causal connection between eye ulcer causing blindness and slight injury to eye at same point held palpably against greater weight of evidence requiring reversal of finding of commission. Pachavar v. O., 196M558, 265NW429. See Dun. Dig. 10426.

It is for triers of fact to choose not only between conflicting evidence but also between opposed inferences. Reinhard v. U., 197M371, 267NW223. See Dun. Dig. 10426.

Whether testimony, objected to as conversation with a person since deceased, was improperly admitted, was immaterial, where only conclusion possible under all other evidence in case was that industrial commission properly denied compensation. Anderson v. R., 196M358, 267NW 501. See Dun. Dig. 10426.

A finding upon question of fact cannot be disturbed unless consideration of evidence and inferences permissible therefrom clearly require reasonable minds to adopt a conclusion contrary to one at which commission arrived. Johnson v. N., 197M616, 268NW1. See Dun. Dig. 10426.

On appeal in a compensation case, supreme court does not make findings of fact. Id.

Litigants cannot sleep on their rights until they reach supreme court, and then, for the first time, object to an irregularity occurring in tribunal below. Foster v. S., 197M602, 268NW631. See Dun. Dig. 10426.

Where there is conflicting evidence or where diverse inferences may be drawn from evidence, conclusions reached by commission should not be disturbed. Id.

Unless there was clear abuse of discretion, order of commission denying rehearing for newly discovered evidence cannot be disturbed. Pechavar v. O., 198M233, 269 NW417. See Dun. Dig. 10421.

Supreme court does not disturb findings of fact unless evidence is clearly insufficient to sustain them. Benson v. H., 198M250, 269NW460. See Dun. Dig. 10426.

Where there is a conflict in the evidence and inferences raised thereby, supreme court can pass only upon question of whether or not decision below is reasonably supported by record. Chamberlain v. T., 198M274, 269NW 525. See Dun. Dig. 10426.

Industrial commission is a fact-finding body even on appeal from order of its referee. Segerstrom v. N., 198 M298, 269NW641. See Dun. Dig. 10423.

Assignment of error that the finding that conclusions of the industrial commission of Minnesota are contrary to testimony herein was not in proper form, there being nine specific findings of fact. Skoog v. S., 198M504, 270 NW129. See Dun. Dig. 361.

Findings of fact of industrial commission are entitled to very great weight and will not be disturbed unless manifestly contrary to evidence. Colosimo v. G., 199M 600, 273NW632. See Dun. Dig. 10426.

Finding of fact of industrial commission will not be overturned unless against manifest preponderance of evidence. Bronson v. N., 200M237, 273NW681. See Dun. Dig. 10426.

A finding upon a question of fact cannot be disturbed unless consideration of evidence and inferences permissible therefrom clearly require reasonable minds to adopt a conclusion contrary to one at which commission arrived. Gorman v. G., 200M122, 273NW694. See Dun. Dig. 10426.

Whether there is any evidence tending to support a given finding and whether evidence conclusively establishes a particular fact are deemed questions of law. Id.

Opposed medical opinions as to causal relation between an accident and resulting condition of workman are as much matters of fact as any other. Id.

Decision of fact issue by industrial commission denying additional compensation sustained by evidence must be affirmed. Astell v. C., 201M108, 276NW420. See Dun. Dig. 10426.

Section 9499 is not applicable to bonds required on certiorari issued to industrial commission, which are properly fixed and approved under §4320. Nelson v. K., 201M123, 275NW624. See Dun. Dig. 324, 10426.

Findings of industrial commission must remain undisturbed if there is evidence reasonably tending to sustain them, or unless they are manifestly and clearly contrary to evidence. Lothenbach v. A., 201M195, 275NW *690. See Dun. Dig. 10426.*

Industrial commission's finding on fact question cannot be disturbed unless evidence and inferences therefrom clearly require reasonable minds to adopt contrary conclusion. Sutlief v. N., 201M127, 275NW692. See Dun. Dig. 10426.

Whether there is any evidence tending to support a given finding and whether evidence conclusively establishes a particular fact are deemed questions of law. Id.

Triers of fact must choose not only between conflicting evidence but also between opposed inferences. Hill v. U., 201M569, 277NW9. See Dun. Dig. 10426.

A finding of commission as to extent of an employee's injuries, upon conflicting evidence in which it finds some support, will not be disturbed. Kruchowski v. S., 201M 557, 277NW15. See Dun. Dig. 10426.

Fact-finding body is commission and not court. Krnetich v. O., 202M158, 277NW525. See Dun. Dig. 10426.

Findings of fact of commission will not be disturbed unless evidence clearly requires a contrary conclusion. Henz v. A., 202M213, 277NW923. See Dun. Dig. 10426.

Finding that employee suffering a heat stroke sustained an accidental injury arising out of and in course of his employment was a finding of an ultimate fact, rather than a mere legal conclusion. Ruud v. M., 202M480, 279 NW224. See Dun. Dig. 10426.

If a relator deems a finding insufficient because not particularizing items upon which ultimate fact is based, remedy is by motion to commission for additional or modified findings. Id. See Dun. Dig. 10426.

Findings of fact of commission will not be disturbed unless evidence clearly requires a contrary conclusion. Utgard v. H., 202M637, 279NW748. See Dun. Dig. 10426.

Where decision of industrial commission is supported by evidence, it will not be disturbed although commission could reasonably have arrived at a different conclusion. Erickson v. G., 203M261, 280NW866. See Dun. Dig. 10426.

Whether bilateral sacroiliac arthritis or pain in back was caused by twisting of body to prevent a fall after stubbing toe while carrying a heavy timber was a question of fact for the commission. Id.

An order of commission refusing to dismiss an appeal taken by an employee from a decision of a referee denying compensation does not involve merits and is not reviewable by certiorari. Vokich v. I., 203M433, 281NW 713. See Dun. Dig. 10426.

It is for triers of fact to choose not only between conflicting evidence but also between opposed inferences, and it is only where inferences upon which challenged finding rests is not itself reasonably supported that there should be a reversal. Kayser v. C., 203M578, 282NW801. See Dun. Dig. 10426.

A negative finding of industrial commission that employee did not suffer accidental injury to foot as testified by him held supported by evidence though uncontradicted. Spies v. S., 284NW887. See Dun. Dig. 10426.

If after an impartial consideration of evidence and of inferences which may fairly and reasonably be drawn therefrom, reasonable minds might reach different conclusions upon the question, findings of commission must stand. O'Reilly v. M., 285NW526. See Dun. Dig. 10426(24).

A finding upon a question of fact cannot be disturbed unless consideration of evidence and inferences permissible therefrom clearly require reasonable minds to adopt a conclusion contrary to one at which the commission arrived. Westereng v. C., 285NW717. See Dun. Dig. 10426.

Fact that medical expert for employer is exceptionally qualified does not permit court to pass aside less experienced physician testifying for employee. Id. See Dun. Dig. 10426.

Where a party litigant failed to object to a rehearing because of a failure to show cause for its granting and partakes therein, he cannot for first time raise question in supreme court. Baudek v. O., 285NW887. See Dun. Dig. 10426.

Findings of commission as to disability and its termination, as well as all other findings, are entitled to great weight and will not be disturbed unless manifestly contrary to evidence. Id. See Dun. Dig. 10426(24).

A decision for the affirmative of a fact issue cannot stand on conjecture, even that of expert witnesses. Susnik v. O., 286NW249. See Dun. Dig. 10426.

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).

Supreme court may determine that relator on certiorari was not employee of respondent, where raised by respondents in brief and argument, though not raised by relator on certiorari. Benson v. H., 198M250, 269NW460. See Dun. Dig. 10426.

Where there is no dispute as to character and kind of service performed or as to relation of alleged employee to corporation, it is duty of supreme court to declare what law governs as to whether relator is an employee. Id.

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.

* * * * * * * *

(b) "Child" or "children" shall include posthumous children, all other children entitled by law to inherit as children of the deceased and the child or children of a person who shall have been adjudged to be his or their father by a court of competent jurisdiction in any state of the United States; also stepchildren who were members of the family of the deceased at the time of his injury and dependent upon him for support. (As amended Feb. 9, 1937, c. 18, §1.)

* * * * * * *

Sec. 2 of Act Feb. 9, 1937, cited, provides that the Act shall take effect from its passage.

(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.

(c). Husband or widower.

Where employee entered into an agreement to marry on a certain date and was killed several days before date set for marriage and after banns of marriage had been published by church, and 8½ months after death, girl bore a child of the employee, there was no marriage and child was not entitled to compensation. Guptil v. E., 197M211, 266NW748. 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.

Whether one painting cornices of a building for a lump sum, employer furnishing materials and painter tools, was an employee or an independent contractor, held question of fact for industrial commission. Rick v. N., 196M185, 264NW685. See Dun. Dig. 10395.

A substitution of employers cannot be made without knowledge or consent of employee. Yoselowitz v. P., 201 M600, 277NW221. See Dun. Dig. 10395.

Relation of employer and employee may be terminated at any time by agreement of parties, and if employee has notice or knowledge of substitution of a new employer and thereafter continues his employment, he will be deemed to have accepted new employer and to have terminated relations which existed with old one. Id. See Dun. Dig. 10395.

Where one was employed to maintain township roads at an hourly rate, and was given an increased rate when directed to use machine for removal of snow because of need for an assistant, road maintainer and not township was employer of the assistant. Mooney v. T., 203M461, 281NW820. 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.

As affecting right of county to carry workmen's compensation insurance, it would seem that operators of highway machine rented by county on hourly basis, rental being paid to the owner of the equipment, are not employees of the county. Op. Atty. Gen. (125a-61), Mar. 17, 1937.

Employees in Mineral Springs Sanatorium are entitled to benefits of act, and county may provide for compensation insurance. Op. Atty. Gen. (523g-8), Apr. 1, 1937.

Employees of county sanatoriums and joint county sanatoriums are entitled to benefits of act. Op. Atty. Gen. (556a), Feb. 14, 1939.

Conflict of laws, 20MinnLawRev19.

(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. 10396.

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.

No one may become employee of another without such other's consent, expressed or implied, relationship being purely contractual. Jackson v. C., 201M526, 277NW22. 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. L., 194M302, 260NW299. See Dun. Dig. 10394(54).

One otherwise an employee of a township is not deprived of right to compensation because, at time of injury, he happened to be working out relief theretofore furnished him by government agencies. Cristello v. T., 195M264, 262NW632. See Dun. Dig. 10394.

Evidence held to sustain finding that truck driver hauling gravel for township road was employee of township and not of truck owner as independent contractor, though truck owner paid employee. Dahnert v. O., 196 M478, 265NW291. See Dun. Dig. 10395.

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.

If members of city fire department have gone outside of corporate limits of city, pursuant to direction of city authority, or with consent of such authority, they are entitled to benefits of compensation act. Op. Atty. Gen. (688h), Sept. 21, 1935.

Weight of authority is to effect that relief employees are not public employees. Op. Atty. Gen. (523g-18), Nov. 19, 1935.

Whether persons working on relief are employees is question of fact, but where county binds itself in contract with state in connection with obtaining funds to carry insurance on relief workers, there is an agreement which is not ultra vires of which such employees may take advantage. Op. Atty. Gen. (523g-18), Mar. 21, 1936.

Employees of state relief agency created for temporary purposes are employees of a department of state entitled to benefits of workmen's compensation act payable out of state compensation revolving fund. Op. Atty. Gen. (523g-19), Apr. 1, 1936.

Employees of municipalities working on project as a result of agreement between rural habilitation corporation and municipality, working out seed loan notes, are entitled to benefits of compensation act. Op. Atty. Gen. (523a-25), Oct. 1, 1936.

As affecting right of county to carry workmen's compensation insurance, it would seem that operators of highway machine rented by county on hourly basis, rental being paid to the owner of the equipment, are not employees of the county. Op. Atty. Gen. (125a-61), Mar. 17, 1937.

Employees in Mineral Springs Sanatorium are entitled to benefits of act, and county may provide for compensation insurance. Op. Atty. Gen. (523g-8), Apr. 1, 1937.

County employees using sprayers in weed eradication under contract between state and county were not "state employees". Op. Atty. Gen. (322b), Mar. 22, 1938.

Employees of county sanatoriums and joint county sanatoriums are entitled to benefits of act. Op. Atty. Gen. (556a), Feb. 14, 1939.

Operator of a weed spraying machine operating under an arrangement with in association of township officers, charging each customer a certain amount for his time and cost of chemicals, held an independent contractor. Op. Atty. Gen. (523e-2), June 28, 1939.

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.

No contract of employment of employee of an electric company with glass company arose from request for assistance in lifting glass from truck, though an employee of glass company told another employee of electric company that persons assisting would be paid. Pittsburgh Plate Glass Co. v. C., (CCA8), 98F(2d)533.

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.

Member of religious order teaching at a parochial school was an employee of the school, though all of her earnings were turned over to the order, which guaranteed her maintenance for life. Sister Odelia v. C., 195M 357, 263NW111. See Dun. Dig. 10395.

Fact that employee hires others to assist or furnishes his own tools is not decisive of question whether he is employee or independent contractor. Rick v. N., 196M 185, 264NW685. See Dun. Dig. 10395.

Whether one painting cornices of a building for a lump sum, employer furnishing materials and painter tools, was an employee or an independent contractor, held question of fact for industrial commission. Id.

Treasurer, vice president, member of the executive committee, and director of corporation, receiving a salary only as an officer was not employee. Benson v. H., 198 M250, 269NW460. See Dun. Dig. 10394.

One employed by husband of owner of building to make repairs so that part of building could be used by husband as a beer tavern, and part as a dwelling for husband and wife, held an employee of wife as well as husband. Colosimo v. G., 199M600, 273NW632. See Dun. Dig. 10395.

Canvassers selling corsets held shown to be employees of both manager and his wife at office in building where orders were delivered, though corsets were made by

manufacturer in another state. Whalen v. B., 200M171, 273NW678. See Dun. Dig. 10395.

Evidence held not to justify invocation of doctrine of estoppel on question of relationship of president to his corporation, though insurance premium was based on pay roll. Hansen v. T., 201M216, 275NW611. See Dun. Dig. 10395.

One employed by janitor of building at his own expense to assist in putting up screens was not an employee of owners of building, though it was contemplated that janitor might from time to time require assistance. Jackson v. C., 201M526, 277NW22. See Dun. Dig. 10395.

President and director of corporation held an employee thereof. State v. Rowe, 280M172, 280NW646. See Dun. Dig. 10395.

Evidence tending to show that relator arranged for and undertook a job of hauling to be performed by his son with relator's truck, looked after performance of work and negotiated for a new price for its performance after son quit and that party for whom hauling was done settled for same and paid relator balance due under contract after son's death, sustains a finding that the son was employed by relator. Laughren v. L., 285NW531. See Dun. Dig. 10395.

——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., 177M55, 224NW458, Kittson's Estate, 225NW439.

Applicant for compensation must show that he was employee and not an independent contractor. Holmberg v. A., 177M55, 224NW458, 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., 195M21, 261NW478. See Dun. Dig. 10395.

Burning of brush for a highway contractor was not menial labor which could not be subject of an independent contract. Becker v. N., 200M272, 274NW180. See Dun. Dig. 5835.

Exclusion of evidence of a collateral hauling job performed about two years prior to one in issue held not to be error within rule that admissibility of evidence is not so much a question of law as of sound, practical judgment to be determined with reference to facts of particular case, issue being whether deceased was an employee or an independent contractor. Laughren v. L., 285NW531. 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.

Word "accident" is used with a restricted meaning, and negligence is not necessarily excluded. Globe Indemnity Co. v. B., (USCCA8), 90F(2d)774.

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. 178M616, 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 destruction 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.

Finding that exophthalmic goiter was not caused or aggravated by explosion, sustained. Cooper v. M., 188M 560, 247NW805. See Dun. Dig. 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 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., 195M44, 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.

Sudden death from arteriosclerosis with thrombosis held not compensable, such a death coming in course of an employee's usual work, without extraneous cause, even overexertion not being accidental. Stanton v. M., 195M457, 263NW433. See Dun. Dig. 10396.

Sudden death from stoppage of heart action resulting from hypertrophy incidental to high blood pressure, coupled with arteriosclerosis was not compensable, not being accidental. McCarty v. C., 196M391, 265NW42. See Dun. Dig. 10396.

Evidence held to sustain finding that permanent partial disability of thumb was result of accident for which claim was filed. Pease v. M., 196M552, 265NW427. See Dun. Dig. 10406.

Finding of lack of causal connection between eye ulcer *causing blindness and slight injury to eye at same point* held palpably against greater weight of evidence requiring reversal of finding of commission. Pechavar v. O., 196M558, 265NW429. See Dun. Dig. 10406.

Disability resulting from infection is compensable if infection was introduced through portal made by injury in course of treatment, though not introduced at same time as injury. Id.

Evidence held to sustain finding that husband's death was due to a fall suffered in course of his employment, lighting up tuberculosis of spine. Reynolds v. C., 199 M25, 270NW912. See Dun. Dig. 10404.

Proof required to sustain relation of cause and effect between an accidental injury and subsequent death of injured person must be such as to take case out of realm of conjecture, but if evidence furnishes a reasonable basis for an inference that injury is cause of death, that is sufficient. Jacobs v. V., 199M572, 273NW245. See Dun. Dig. 10405.

Although employee is afflicted with a disease which would eventually result in his death, dependents are not barred from right to compensation if he actually suffered an accident which arose out of and in course of his employment, and if such accident intensified or aggravated his condition or affliction so as to be a contributing cause of his death, even though accident would not have caused or hastened death of a normal person. Id.

Evidence held to warrant finding that bump on leg caused death of an employee suffering from diabetes. Id. See Dun. Dig. 10406.

Evidence held to sustain finding that encephalitis did not result from injury to nose. Gorman v. G., 200M122, 273NW694. See Dun. Dig. 10406.

Evidence held not to warrant disturbance of a finding that infectious condition and death was not caused or aggravated by an accidental injury consisting in accidentally scratching head of pimple. Lothenbach v. A., 201M195, 275NW690. See Dun. Dig. 10396.

Dependent had burden of proving that death was caused by accident arising out of and in course of employment, and if evidence adduced indicated self-destruction on part of employee, presumption against suicide disappeared. Sentieri v. O., 201M293, 276NW210. See Dun. Dig. 10406.

Sunstroke was accidental though onset was slow and gradual. Ueltschi v. C., 201M302, 276NW220. See Dun. Dig. 10396.

Evidence held to sustain decision that a tubercular infection which developed in knee and subsequent death from pulmonary tuberculosis were due to an injury to leg. Nyberg v. L., 202M86, 277NW536. See Dun. Dig. 10403.

Evidence sustains finding that heat stroke suffered by motorman was an accidental injury arising out of and in course of employment. Ruud v. M., 202M480, 279NW 224. See Dun. Dig. 10404.

Evidence held to sustain finding that employee did not suffer accidental injuries on date specified. Utgard v. H., 202M637, 279NW748. See Dun. Dig. 10406.

Evidence held to sustain finding that multiple neuritis was not caused by injury to ankle. Id. See Dun. Dig. 10406.

A heatstroke was properly held an "accident", agency of causation having been set in motion during course and because of deceased's employment, there being no independent intervening cause unrelated to his employment, though collapse did not occur until next day after employment was ended. La Crosse v. C., 203M146, 280NW 285. See Dun. Dig. 10406.

Whether bilateral sacroiliac arthritis or pain in back was caused by twisting of body to prevent a fall after stubbing toe while carrying a heavy timber was a question of fact for the commission. Erickson v. G., 203M 261, 280NW866. See Dun. Dig. 10406.

Evidence held to sustain finding that employee had recovered from injuries from kick by horse and that hypertrophic arthritis was not result of accident. McGrath v. B., 203M326, 281NW73. See Dun. Dig. 10406.

Where cause of total disability from coronary thrombosis must be determined by inference, and that cause may be inferred with equal probability to have arisen from other factors as well as from employment, commission correctly decided that employee had not proved disability caused by an injury arising out of his employment. Addington v. S., 203M281, 281NW269. See Dun. Dig. 10406.

Burden of proof is upon employee to establish the accident. Spies v. S., 284NW887. See Dun. Dig. 10406.

A negative finding of industrial commission that employee did not suffer accidental injury to foot as testified by him held supported by evidence though uncontradicted. Id. See Dun. Dig. 10406.

Evidence held to sustain finding that death from a brain hemorrhage was traceable to accident wherein employee received an injury to his head. O'Reilly v. M., 285NW526. See Dun. Dig. 10396.

An actual aggravation of an existing infirmity is compensable even though accident would have caused no injury to a normal person. Westereng v. C., 285NW717. See Dun. Dig. 10397.

Evidence held to sustain finding that disabled condition of employee after certain date was due to arthritis, sciatic neuritis and heart disease and that none of these conditions was caused or aggravated by injury sustained. Baudek v. O., 285NW887. See Dun. Dig. 10406.

Evidence held sufficient to sustain inference that accident was contributing cause of death nearly four years later. Susnik v. O., 286NW249. See Dun. Dig. 10406.

Occupational diseases. 22MinnLawRev77.

(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.

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

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

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.

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. 174M147, 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 asphyxiated 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 causal 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 or 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 fish*ing 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.

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.

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.

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.*

Burden of proving that accident arises out of and in course of employment is upon claimant. Henry v. O., 191M92, 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.

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.

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 cot-

tage 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.

Evidence held to support finding that deceased met his death outside course of his employment and from hazards not connected with a special errand previously performed. Lundeen v. K., 196M100, 264NW435. See Dun. Dig. 10405.

Evidence held to sustain finding that traveling salesman injured in an accident between 1 and 2 A. M. on Sunday was not entitled to compensation. Dahley v. E., 196M428, 265NW284. See Dun. Dig. 10405.

Decedent's death caused by poison gas used in fumigating mill where he was employed held not to arise out of and in the course of his employment because he violated his employer's instructions in entering mill. Anderson v. R., 196M358, 267NW501. See Dun. Dig. 10400.

Relationship of master and servant must exist and be in force when accident occurs. Reinhard v. U., 197M371, 267NW223. See Dun. Dig. 10403.

Whether a film salesman was acting in course of his employment when returning to stopping place on regular state highway held a question of fact, he having departed from such regular highway for a frolic and having returned to it. Id.

Evidence held to sustain finding of commission that employee in automobile had departed from his employment at time of accident. Johnson v. N., 197M616, 268 NW1. See Dun. Dig. 10403.

Burden is upon employee to show that injuries arose out of and in course of his employment. Thompson v. G., 198M547, 270NW594. See Dun. Dig. 10403,10406.

An employee is not within protection of act when as a voluntary accommodation to his employer he performs duties outside scope of his employment. Id.

Where employee living at home with his parents was employed by a corporation of which his father was president, and place of business was family home, was injured while putting a storm door on a room used by him as his own bedroom, finding that injuries did not arise out of and in course of his employment, held supported by evidence. Id.

In a compensation proceeding, where medical testimony as to causal connection between relator's present disability and an accident arising out of his employment, was in sharp conflict, and it was asserted that employee's medical experts based their opinions on absence of symptoms conclusively proved to exist, there was sufficient evidence to support denial of compensation. Gardner v. S., 199M172, 271NW597. See Dun. Dig. 10406.

Death of automobile salesman on a return trip to employer's place of business arises out of and in course of his employment. Jeffers v. B., 199M348, 272NW168. See Dun. Dig. 10403.

Stopping of automobile salesman for supper at home of his wife's folks did not take him out of his employment. Id. See Dun. Dig. 10404.

A city canvasser selling corsets was acting in course of her employment while going from territory assigned to her to employer's office in evening to attend meeting for instructions. Whalen v. B., 200M171, 273NW678. See Dun. Dig. 10404.

Where accidental injury does not occur upon premises of employer, nor while employee is actually engaged in work of employment, nor at a place where his presence is required in performance of his work, it is difficult for dependents of an employee killed in an accident to prove that it arose out of and in course of his employment, but law places such burden upon one seeking compensation. Bronson v. N., 200M237, 273NW681. See Dun. Dig. 10403.

Evidence held to sustain finding of commission that radio broadcaster and continuity writer killed in an automobile accident at 1:10 in the morning was not acting within the scope of his employment and was not on his way to radio station at time of accident. Id. See Dun. Dig. 10405.

Whether diabetic gangrene and resultant death was result of bump on leg held question of fact. Sutlief v. N., 201M127, 275NW692. See Dun. Dig. 10406.

Agency of causation having been applied during course of employment, it is immaterial that, without an independent, intervening cause unrelated to employment, culmination in sunstroke collapse did not occur until immediately after employment of deceased was at an end for the day. Ueltschi v. C., 201M302, 276NW220. See Dun. Dig. 10403.

Evidence sustained finding that disability from prior injury to back was not due to nor aggravated by, nor in any way attributable to, an accidental injury suffered while employed by defendant. Hill v. U., 201M569, 277 NW9. See Dun. Dig. 10406.

When employee in discharge of his duties is required to go upon highway he continues under protection of act while on homeward portion of his journey, though his employment has been terminated. Howlett v. M., 202M247, 277NW913. See Dun. Dig. 10403.

Evidence held to sustain finding that perthes' disease was not aggravated by injury to hip. Henz v. A., 202M 213, 277NW923. See Dun. Dig. 10397.

Violating order against riding on conveyor did not take employee out of course of his employment where he jumped upon conveyor to take him to a point where work required that he set a case for the diversion of goods. Prentice v. T., 202M455, 278NW895. See Dun. Dig. 10400.

Death of one employed as a caretaker by man and his wife operating resort property, killed while crossing railroad tracks which he was required to cross in going to place where he was directed to work, arose out of and in course of his employment. Oberg v. D., 202M476, 279NW221. See Dun. Dig. 10403.

Where employee on vacation outside his territory as a field man was killed while driving there to another place under what amounted to specific directions from his employer to go "at the earliest possible moment" to attend to an urgent matter for his employer, he was, as a matter of law, in course of his employment, since employer's business was at least a concurrent cause of necessity for journey, although employee also served a purpose of his own in returning to his territory. Fox v. A., 203M245, 280NW856. See Dun. Dig. 10404.

A salesman who had finished his work in his territory and was riding with employer's representative to a point outside of his territory was not in course of his employment, and workmen's compensation act was no defense in an action for injuries. Pettit v. S., 203M270, 281NW44. See Dun. Dig. 10395.

Where traveling salesman residing in St. Peter had duty to perform in New Ulm for his employer, but took his daughter through New Ulm to Pipestone for a purpose personal to him, he was not acting in the course of his employment while on his return from Pipestone to New Ulm, where he intended to take care of his employer's business. Kayser v. C., 203M578, 282NW801. See Dun. Dig. 10405.

Where road grader contractor regularly furnished transportation from place of work to camp, employee was under act while returning to camp after work for the day was completed. Gehrke v. W., 204M445, 284NW434. See Dun. Dig. 10404.

One losing train fare and attempting to steal train ride instead of wiring to employer for money departed from course and scope of his employment. Kaselnak v. F., 285NW482. See Dun. Dig. 10405.

An injury arises out of employment when there is apparent to rational mind a causal connection between conditions under which work is required to be performed and resulting injury; but excludes an injury which cannot fairly be traced to employment as a contributing proximate cause thereto. Id. See Dun. Dig. 10403.

An employee who fractured a shoulder by falling on ice while returning to place of her employment after a visit to a physician pursuant to direction of employer to obtain medical attention to an injury suffered in course of her employment, was entitled to compensation. Fitzgibbons v. C., 285NW528. See Dun. Dig. 10403.

Where employment exposed an employee to risk of injury from others, injury resulting from horseplay by such persons, in which employee did not participate and tried to avoid, arises out of and in course of employment.. McKenzie v. R., 285NW529. See Dun. Dig. 10403(99).

An express messenger employed in a baggage car was within his employment while seeking protection from the cold in another baggage car nearby during the time he was waiting for the baggage car in which he was to work to be attached to a train. Id. See Dun. Dig. 10403.

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.

Business of air lines company operating between St. Paul and Chicago, held localized in Minnesota, where trips commenced and ended in St. Paul except for short lay-over in Chicago, and assignments of work and payments of salaries were made in St. Paul, so that copilot's right to compensation for injuries during employment was governed by the Minnesota compensation act exclusively, though the accident occurred in Wisconsin and his contract of employment was made in Iowa. Severson v. H., (CCA8), 105F(2d)622.

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.

Where there was permanent partial disability of two legs, it was proper to double compensation allowable for a partial permanent disability of one leg as provided in paragraphs 19 and 41. Smith v. K., 197M558, 269NW633, amending opinion in 267NW478. See Dun. Dig. 10410.

(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.

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

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.

An employee whose principal employment is that of a caretaker of resort property is not a farm laborer simply because at moment he is doing work on a farm. Oberg v. D., 202M476, 279NW221. See Dun. Dig. 10394.

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

(9) * * * * * * *.

24. The following occupational diseases due to the hazards of fire fighting, myocarditis, coronary sclerosis, and pneumonia or its sequelae in firemen.	24. Active duty with organized fire department.

(Added to Subd. (9) Apr. 20, 1939, c. 306.)

(10) * * * * *

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., 195M44, 261NW596. See Dun. Dig. 10398.

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

Occupational diseases. 22MinnLawRev77.

(3).

Sudden death from arteriosclerosis with thrombosis held not compensable, such a death coming in course of an employee's usual work, without extraneous cause, even overexertion not being accidental. Stanton v. M., 195M457, 263NW433. See Dun. Dig. 10396.

4327-1. Report by physicians and investigation and control of occupational diseases.—Any physician having under his professional care any person whom he believes to be suffering from poisoning from lead, phosphorus, arsenic, brass, silica dust, carbon monoxide gas, wood alcohol or mercury or their compounds, or from anthrax or from compressed-air illness or any other disease, contracted as a result of the nature of the employment of such person shall, within five days, mail to the state department of health a report, stating the name, address and occupation of such patient, the name, address and business of his employer, the nature of the disease and such other information as may reasonably be required by said department. The department shall prepare and furnish the physicians of this state suitable blanks for the reports herein required. No report made pursuant to the provisions of this section shall be admissible as evidence of the facts therein stated in any action at law or in any action under the workmen's compensation act against any employer of such diseased person. The state department of health is authorized to investigate and to make recommendations for the elimination or prevention of occupational diseases which have been reported to it or which shall be reported to it in accordance with the provisions of this section. Said department is also authorized to study and provide advice in regard to conditions that may be suspected of causing occupational diseases, provided information obtained upon investigations made in accordance with the provisions of this section shall not be admissible as evidence in any action at law to recover damages for personal injury or in any action under the workmen's compensation act; provided further, that nothing herein contained shall be construed to interfere with or limit the powers of the department of labor and industry to make inspections of places of employment or issue orders for the protection of the health of the persons therein employed. Whenever upon investigation by the state board of health said board reaches a conclusion that a condition exists which is dangerous to the life and health of the workers in any industry or factory or other industrial institutions, it shall file a report thereon with the state depart-

ment of labor and industry. (Act Apr. 20, 1939, c. 322.)

4330. Laws repealed.

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

175M319, 222NW508; note under §4279.

Readjustment of settlement under law as it stood in 1920. 175Minn319, 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.

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 except 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.

Administrative employees of State Relief Agency are employees of state. Op. Atty. Gen. (523g-19), Apr. 6, 1936.

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.

Employees of state relief agency created for temporary purposes are employees of a department of state entitled to benefits of workmen's compensation act payable out of state compensation revolving fund. Op. Atty. Gen. (523g-19), Apr. 1, 1936.

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 beginning 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.

There is hereby appropriated from the Trunk Highway Fund of the Department of Highways in the State Treasury not otherwise appropriated the sum of $74,013.12, to be credited to the State Compensation Revolving Fund, and to be used in connection with the payment of workmen's compensation claims of employes of the Department of Highways of the State of Minnesota which, with $75,986.88 already appropriated, totals $150,000.00; the latter sum to constitute the State Compensation Revolving Fund and to be used and maintained as herein provided. (Apr. 5, 1933, c. 161, §4; Apr. 29, 1935, c. 312, §1; Jan. 20, 1939, c. 3.)

Act Jan. 20, 1939, cited, adds the second paragraph to subdivision (3).

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.

Relief funds appropriated to executive council may not be appropriated and expended in reimbursement to state compensation revolving fund for injuries sustained by employees of executive council. Op. Atty. Gen. (928c-16), July 23, 1937.

Department of executive council is not "substantially, financially self-sustaining," and compensation revolving fund should be reimbursed out of appropriations by the legislature. Id.

(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. [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 23AA

Minnesota Unemployment Compensation Law

4337-21. Declaration of Public Policy.—As a guide to the interpretation and application of this Act, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burdens. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in