CHAPTER 176

WORKMEN'S COMPENSATION ACT

Compensation Act in General:

1. **Constitutionality**
2. **Construction of law**
3. **General application**

1. Constitutionality

The act is constitutionally valid. Mathison v Mpls. St. Ry. Co. 126 M 286, 148 NW 71; State ex rel v District Court, 128, M 221, 150 NW 623.

The compensation act is not obnoxious to the various constitutional provisions invoked by defendant. State ex rel v District Court, 128 M 221, 150 NW 623.

The statute applies to the relation of employer and employee existing at the time of and which continued after its passage, and does not impair the obligations of the contract by which the relation came into existence. State ex rel v District Court, 128 M 221, 150 NW 623.

The last subdivision of G.S. 1913 s. 8229 (s. 176.06) making the third party liable for reasonable attorney's fees expended by plaintiff employer in an action to recover the amount he paid in a compensation case does not contravene any provision of the state or federal constitution. Thornton Bros. Co. v N. S. Power Co. 151 M 435, 186 NW 863, 187 NW 610.

The provisions of the workmen's compensation act have, by prior decisions, been held to contravene neither the state nor federal constitution. Ruud v Mpls. St. Ry. Co. 202 M 480, 279 NW 224. Laws 1939, Chapter 306, which added certain diseases due to the hazards of fire fighting is not unconstitutional as class legislation or a denial of equal protection of the law. Kellerman v City of St. Paul, 211 M 351, 1 NW(2d) 378.

2. Construction of Law

Where two sections of law are inconsistent, the one which best conforms to the intent and policy of the statute must stand. State ex rel v District Court, 134 M 131, 158 NW 798.

The compensation act provides for quick summary, and informal disposition of claims and manifests an intention throughout to do away with technicalities. Kraker v Nett, 148 M 139, 180 NW 1014.

When a statute is amended "to read as follows," the amendatory act is a substitute for the act amended. An amendatory act so reading repeals everything contained in the original statute not re-enacted, and the amended statute is to be construed, as to any action had after the amendment, as if the statute had been originally enacted in its amended form. State ex rel v Duluth St. Ry. Co. 150 M 364, 185 NW 388.

Intent of legislature was that employee's recovery should be speedy, certain, and definite. Kaletha v Hall Mercantile Co. 157 M 290, 196 NW 261.

Judicial construction of a statute, so long as it is unreversed, is as much a part thereof as if it had been written into it originally. Roos v City of Mankato, 199 M 284, 271 NW 582.

Substantive rights of parties under the compensation law are fixed by statutes in force at the time of accident. Schmahl v School District, 200 M 294, 274 NW 168.

Legislative intent is not to be made to depend upon the collocation or arrangement of words alone, but upon the reason and sense of the thing, as indicated by the entire context and subject matter. Rosenfield v Matthews, 201 M 113, 275 NW 698.

Rights and obligations created by compensation act are contractual, and rights granted and obligations imposed necessarily rest upon statute and are limited as granted or imposed by it. McGough v McCarthy Improvement Co. 206 M 1, 286 NW 857.

Employer's liability has for its foundation the existence of employer-employee relation. McGough v McCarthy Improvement Co. 206 M 1, 286 NW 857.

A basic thought underlying the compensation act is that business or industry shall, in the first instance, pay for accidental injury as a business expense or a part of cost of production. McGough v McCarthy Improvement Co., 206 M 1, 286 NW 857.

The compensation act, being remedial in nature, must be given liberal construction to accomplish its intended purpose. State ex rel v District Court, 128 M 43, 150 NW 211; State ex rel v District Court, 131 M 352, 155 NW 103; Kraker v Nett, 148 M 139, 180 NW 1014.

As remedial legislation the compensation act should be applied fairly and broadly, not narrowly, with a view to confer the benefits intended. Mahowald v Thompson-Starrett Co. 134 M 113, 518 NW 913.

The compensation act is liberally construed to secure to employees the benefits intended, and an employee is not necessarily placed outside the protection of the act by disobeying an order. Olson v Robinson, Straus & Co. 168 M 114, 210 NW 64.

Compensation act is to be construed broadly and liberally in favor of injured employee. Gosen v Town of Borgholm, 174 M 227, 218 NW 882; Austin v Leonard, Crossett & Riley, Inc. 177 M 503, 225 NW 428; Kalettra v Hall Mercantile Co. 157 M 290, 196 NW 261; Nyberg v Little Falls Black Granite Co. 192 M 404, 256 NW 732; Keegan v Keegan, 194 M 261, 260 NW 318.

Court should studiously avoid narrow or forced construction of third party statute, McGough v McCarthy Improvement Co. 206 M 1, 287 NW 857.

The act is highly remedial and should not be construed so as to exclude an employee from its benefits unless it clearly appears that he does not come within its protection. Nelson v Creamery Package Mfg. Co. 215 M 25, 9 NW(2d) 320.

A law should receive such fair and liberal construction as to make it a workable one, thereby giving force and effect to the legislative purpose. Radermacher v St. Paul City Ry. Co. 214 M 427, 8 NW(2d) 466.

3. General Application.

Injury to employee working in another state before adoption of Minnesota compensation law comes under laws of that state. Johnson v Nelson, 128 M 158, 150 NW 620.

The statute applies to employments existing before its adoption which continued after its adoption. State ex rel v District Court, 128 M 221, 150 NW 623.

The right to recover compensation for the death of an employee is a new and distinct right created by the death, and the law in effect at the time of the death governs the amount recoverable. State ex rel v District Court, 131 M 96, 154 NW 661.

The right to compensation is contractual, not based on tort nor on fault. State ex rel v District Court, 139 M 205, 166 NW 185.

A traveling salesman, employed in connection with the business of a foreign corporation localized in this state, is within the Minnesota act, though injured by an accident outside of the state. State ex rel v District Court, 139 M 205, 166 NW 185; Stansberry v Monitor Stove Co. 150 M 1, 183 NW 977.

One employed by a shipper of pulpwood and owner of a dock on navigable waters in a port in this state to load pulpwood on a vessel moored at the dock

for shipment to another state is engaged in work of a maritime nature, and an injury to him while so employed does not come within the compensation act of this state. Soderstrom v Curry & Whyte, 143 M 154, 173 NW 649.

An employer subrogated to the rights of a dependent who sues a third party causing the death of his employee is not absolved from liability when his rights against the third party are fixed, but is liable as before to the dependent until satisfaction. Metropolitan Milk Co. v Mpls. St. Ry. Co. 149 M 181, 183 NW 830.

A judgment in favor of a defendant in a workmen's compensation proceeding cannot be pleaded in bar to an action predicated on alleged negligence of defendant, which was not material in the former. Nor could the judgment be pleaded as an estoppel, because none of the findings on which it was rendered determined the questions of defendant's negligence or plaintiff's contributory negligence. Katzenmeier v Doeren, 150 M 521, 185 NW 938.

The workmen's compensation act intended summary and inexpensive relief. Babich v Oliver Iron Mining Co. 157 M 122, 195 NW 784.

Compensation act provides exclusive remedy for industrial accidents and occupational diseases coming under it. For diseases not covered by the act due to the omission of a statutory duty by the employer the employee has an action at law for damages. Donnelly v Mpls. Mfg. Co. 161 M 240, 201 NW 305.

The relation of employer and employee is contractual and no one can become the employee of another without the consent of the other. Erickson v Kircher, 168 M 67, 209 NW 644.

Where an employer assigns an employee to perform services for and under the control of another without disturbing the relation of employer and employee between them he is liable for compensation for injury sustained by the employee in the task. O'Rourke v Percy Vittum Co. 166 M 251, 207 NW 636.

The term "employment" means the particular kind of employment in which the employee was engaged at the time of the accident. Anderson v Roberts-Karp Hotel Co. 171 M 402, 214 NW 265 .

Violation of law as defense. Moore v McNulty Co. 171 M 75, 213 NW 546.

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 J. E. Barr Pack. Corp. 182 M 486, 234 NW 682.

The compensation act establishes a contractual relationship between the employer, insurer, and employee, and obligations cannot be changed by legislation subsequent to a husband's death. Warner v Zaiser, 184 M 598, 239 NW 761.

Workmen's compensation liability in this state arises from the contract of employment and is a legal indebtedness upon which interest at the legal rate accrues from the date when each instalment of compensation should have been made. Brown v City of Pipestone, 186 M 540, 245 NW 145.

The compensation act becomes a part of the contract of employment as to every employer and employee under the act. Stitz v Ryan, 192 M 197, 256 NW 173.

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 Consumers Ice & Fuel Co. Inc. 192 M 596, 257 NW 501.

Relationship of master and servant must exist and be in force when accident occurs, Reinhard v Universal Film Exch. Inc. 197 M 371, 267 NW 223.

Substantive rights of parties are fixed by statutes in force at time of accident out of which liability arises. Schmahl v School District, 200 M 294, 274 NW 168.

Where the cause of disability must be determined by inference and may be inferred with equal probability to have arisen from other factors, as well as his employment, the employee has not proved that it arose out of his employment. Addington v State, 203 M 281, 281 NW 269.

Where the employment exposed an employee to the risk of injury from the horseplay of others, in which he did not participate, an injury so resulting arises out of and in course of the employment. McKenzie v Ry. Exp. Agcy. Inc., 205 M 231, 285 NW 529.

Acts necessary for the convenience or comfort of an employee, though strictly personal to himself, are incidental to the employment. McKenzie v Ry. Exp. Agcy. Inc. 205 M 231, 285 NW 529.

The employer is liable to an employee for compensation for an injury if the employment exposes him in a special degree to the risk. McKenzie v Ry. Exp. Agcy. Inc. 205 M 231, 285 NW 529.

Where there has been a hearing on an employee's claim for compensation, and after his death his dependents petition for compensation on a claim that his death was due to the same accident, that part of the record of the employee's claim which is relevant to the new issue of causation may be considered in evidence at the hearing of the dependents' claim. While the claims are independent of each other, the proceeding for their enforcement is unitary. Susnik v Oliver Iron Mining Co. 205 M 325, 286 NW 249.

Where before an accident an employee with diseased organs was able to perform hard manual labor and thereafter was unable to do so, the margin of evidence, while narrow, is enough to support the theory that before the accident there had been compensation in the function of his vital organs which the accident reversed and put on the road to decompensation in such manner as to render the accident a substantial factor in his death four years later. Susnik v Oliver Iron Mining Co. 205 M 325 286 NW 249.

Where the owner of a chattel delivers it to another to perform work in respect to or by means of it, the relationship is that of bailor and bailee where the owner parts with control over it, and is that of master and servant where he retains control. Wicklund v North Star Timber Co. 205 M 595, 287 NW 7.

A substitute employed by an employee with consent of the employer becomes the employee of the employer, though the regular employee receives the wages and pays the substitute. Wicklund v North Star Timber Co. 205 M 595, 287 NW 7.

Employer is liable to employee for all legitimate consequences of an accident, including those produced by unskilled or erroneous treatment by physicians furnished by employer. McGough v McCarthy Improvement Co. 206 M 1, 286 NW 857.

Relationship of employer and employee must exist and be in force at time of accident to render the employer liable. Roberts v Ray-Bell Film Co. 206 M 351, 288 NW 591.

The term "arising out of" the employment points to the origin or cause of the injury, and determination of the origin or cause requires a finding of proximate cause. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

A fall of an employee while at work, due to physical weakness, arises in the "course of" the employment, and an injury sustained by the fall arises "out of" the employment, thus completing the combination of the two necessary factors. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

An employer is not relieved of liability because physical defects rendered an employee more susceptible to injury than if he were in perfect physical trim. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

"When an event is followed in natural sequence by a result it is adapted to produce ***, that result is a consequence of the event and the event is the cause of the result." Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

Where physical weakness induced a fall, and the fall resulted in a fractured skull and death, it was the fall, and not the physical weakness that caused the death. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

Injuries to an employe while engaged in the work of supplying the means by which the employer carries on his business result from risks to which such employment exposes him. Byhardt v Ballord, 209 M 391, 296 NW 504.

If the employment creates a special hazard from which injury comes, there is causal relation between the employment and result. Hanson v Robitshek-Schneider Co. 209 M 596, 297 NW 19.

The maintenance of a resident employee in this state by a foreign corporation under an agreement consummated in Minnesota sufficiently localizes its business to make our compensation act applicable. Rice v Keystone View Co. 210 M 227, 297 NW 841.

Where a business is localized in this state an employe of it is within the protection of our compensation act, even though some of his services may be performed and an accident to him occurred outside the state. Rice v Keystone View Co. 210 M 227, 297 NW 841.

The modern tendency is to treat a partnership as an entity distinct from and independent of the individuals composing it. Gleason v Sing, 210 M 253, 297 NW 720.

Where the employer-employee relationship exists the rights and liabilities of the parties are determined by the standards fixed by the compensation act. Gleason v Sing, 210 M 253, 297 NW 720.

Application of state workmen's compensation laws to public employees and officers. 17 MLR 162.

See also annotations under section 176.01, subds. 9, 11, and under sections 176.05, 176.08.

176.01 DEFINITIONS.

HISTORY. 1913 c. 467 s. 34; G.S. 1913 s. 8230; 1921 c. 82 ss. 65, 66; 1923 c. 300 ss. 13, 14; G.S. 1923 ss. 4325, 4326; 1925 c. 175; 1927 c. 216; M.S. 1927 ss. 4325, 4326; 1937 c. 18 s. 1; M. Supp. ss. 4325, 4326; 1941 c. 512; 1943 c. 633 ss. 2, 3; 1945 c. 195; 1945 c. 233 s. 1.

Subd. 2. Compensation.

There is a distinction between the words "compensation" and "damages" as applied to malpractice of physician. McGough v McCarthy Improvement Co. 206 M 1, 287 NW 857.

See annotations under section 176.11.

Compensation is defined as "money benefits to be paid on account of injury". This is sufficient to cover claims in the instant case. See also "accrued compensation" under section 176.11. Fehland v City of St. Paul, 215 M 103, 9 NW(2d) 349.

Subd. 3. Child; Children.

An unadopted child living with deceased held not his dependent. State ex rel v District Court, 133 M 265, 158 NW 250.

Remedy for an injury to a child illegally employed is in an action at law for damages. Westerlund v Kettle River Co. 137 M 24, 162 NW 680.

Where a father has abdicated and the mother loses her life in a compensable accident, the children will be considered to be orphans. State ex rel v District Court, 143 M 144, 172 NW 897.

Child of one in charge of store was not an employee while volunteering brief and uncompensated service in the store. Supornick v Supornick, 175 M 579, 222 NW 275.

An illegitimate child of a woman was a "stepchild" of man she subsequently married, entitled to compensation for his death. Lunceford v Fegles Constr. Co. 185 M 31, 239 NW 673.

Where an 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 the girl bore a child of the employee, there was no marriage and child was not entitled to compensation. Guptil v Dahlquist Contracting Co. 197 M 211, 266 NW 748.

Subd. 5. Employer.

The court cannot determine, as a question of law, that the rule of respondent superior does not apply, unless the evidence shows conclusively that the alleged employer possessed no power to control the other in the transaction in which the latter was injured. State ex rel v District Court, 128 M 43, 150 NW 211.

Relationship of employer and employee did not exist between owner of building and a carpenter hired by one who contracted to make repairs thereon. State ex rel v District Court, 145 M 127, 176 NW 165.

Employer who let its team and teamster to do hauling for another at stipulated monthly payments, out of which employer paid teamster weekly wages, is responsible to teamster for an accident occurring to him while so let. State ex rel v District Court, 147 M 12, 179 NW 216.

Industrial commission may make awards under compensation act, but before it can do so the relation of employer and employee must be established. Erickson v Kircher, 168 M 67, 209 NW 644.

Where a township, in graveling a road, paid farmers with team and wagon a certain price per load for loading, hauling and unloading gravel from its pit, and supervised all of the work, the relation of employer and employee was thereby created between the township and hauler under the compensation act. Rouse v Town of Bird Island, 169 M 367, 211 NW 327.

The evidence supports the finding and justifies the conclusion that the town board had authorized the work to be done, and, in having the road graded over the railroad crossing at the expense of the railroad company, was acting within the scope of its authority. Gabler v Town of Bertha, 169 M 413, 211 NW 477.

Company furnishing instrumentality to another, together with trained employees to manage the same, remained employer of the man so furnished. Campbell v Connolly Contract Co. 179 M 416, 229 NW 561.

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 Wunderlich, 194 M 35, 259 NW 399.

Evidence held to show that two persons operating an apartment building and dividing income were partners rather than tenants in common. Keegan v Keegan, 194 M 261, 260 NW 318.

Road contractor held employer of truck drivers selected through federal re-employment 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 Hector Constr. Co. 195 M 21, 261 NW 478.

A substitution of employers cannot be made without the knowledge or consent of the employee. Yoselowitz v Peoples Bakery, Inc. 201 M 600, 277 NW 221.

An employee who continues his employment after knowledge of the substitution of a new employer will be deemed to have accepted the new employer. Yoselowitz v Peoples Bakery, Inc. 201 M 600, 277 NW 221.

Evidence held to sustain finding that husband and wife who separately owned business properties which were practically under one management, were joint employers of one whose main duties were at one of the properties, but was subject to assist at any of the other properties. Oberg v Du Beau, 202 M 476, 279 NW 221.

Owner of road machinery, who had a contract with a township to maintain its roads and engaged others to operate the machinery, held to be employer of the operators. Mooney v Town of Stony Run, 203 M 461, 281 NW 820.

Fact that truck owner, who sometimes hired his son to operate it and at other times permitted him to use it in hauling jobs of his own, arranged for the hauling of logs with the truck by his son and received the credit therefor, held to furnish sufficient evidence and inferences to sustain a finding of employment by the father of his son who was killed before the completion of the hauling. Laughren v Laughren, 205 M 215, 285 NW 531.

A department store which assigned one of its clerks to demonstrate and promote in its store and under its direction the sale of products of a manufacturer, which reimbursed the store for the service, held to be the employer. Ekrem v Harriet Hubbard Ayer Co. 209 M 337, 296 NW 180.

A realtor who engaged a trucker and his employed helper to move his office equipment from the building to another for an agreed price and exercised control over the work held to be the employer of both the trucker and his helper. Byhardt v Ballord, 209 M 391, 296 NW 504.

Employers must use ordinary care to see that their employees have a reasonably safe place wherein to work. Ryan v Twin City Wholesale Grocery Co. 210 M 21, 297 NW 705.

Railroad held employer and liable for injury to employee transferred to work for and under control of grocery company, which reimbursed railroad for wages and other benefits paid employee, who retained his seniority rights with railroad. Ryan v Twin City Wholesale Grocery Co. 210 M 21, 297 NW 705.

The modern tendency is to treat a partnership as an entity distinct from and independent of the individuals composing it. Gleason v Sing, 210 M 253, 297 NW 720.

Truck owner hauling for and under direction of contractor, paying his drivers' wages to and from the job, but contractor paying their wages, compensation insurance, etc., on the job and deducting same from amount due truck owner, held the employer and liable for fatal injury to a driver on the job. Finn v Phillippi Bros. 211 M 130, 300 NW 441.

An oil company owning numerous filling stations, some of which it leased to others, held to be the employer of a lessee of one of the stations whom it supervised and directed and of an assistant employed by him. Washel v Tankar Gas, Inc. 211 M 403, 2 NW(2d) 43.

Owner of summer resort closed for season, who instructed his caretaker to see that the ice houses of the resort and a neighbor were filled, held employer of caretaker, who was injured while cutting ice for neighbor's ice house. James v Peterson, 211 M 481, 1 NW(2d) 844.

The relationship of employer and employee does not exist between an owner of a truck and a farmer who accompanied the truck owner while his sheep were being transported to market and who was injured on the trip while assisting in the care of the sheep at the request of the truck owner. Anderson v Hegna, 212 M 147, 2 NW(2d) 820.

A church which included the wages of the priest's housekeeper in his salary, which he paid separately by checks of the church signed by himself as an officer, held to be her employer. Berger v Church of St. Patrick, 212 M 345, 3 NW(2d) 590.

The statute does not provide that a specific classification of domestic servants in the covenants of a policy of insurance shall be the only method by which liability may be assumed. Berger v Church of St. Patrick, 212 M 345, 3 NW(2d) 590.

A power company held to be the employer of an electrician who did odd electrical jobs for pay from the persons served and who was electrocuted while repairing a power line for it, having been hired for the job with the consent of a city for which he was then doing work. Toronto v City of Shakopee, 213 M 169, 6 NW(2d) 45.

Direction and control by a building contractor of workmen shingling a roof with contractor's material at agreed price per square held to establish relationship of employer and employee. Bergstrom v Brehmer, 214 M 326, 8 NW(2d) 328.

See also annotations under subd. 8.

Act is applicable to employer incorporated in Delaware with its business localized in Minnesota, although employee performed all his services in the state of Michigan and the accident for which benefits are sought occurred in that state. Fitzgerald v Economic Laboratory, 216 M 296, 12 NW(2d) 621.

An agency such as a soil conservation district is an employer. OAG Aug. 17, 1944 (705a-8).

Workmen of a municipal water and power commission are employees. OAG Feb. 9, 1944 (624e-7).

Related purpose doctrine. 27 MLR 586.

Minnesota labor relations act. 28 MLR 64.

Injury from recreational activities as arising out of the cause of employment. 28 MLR 415.

Subd. 6. Physicians; Surgeon.

Malpracticing physician is not liable for original injury, and, while his services are called into play because thereof, his liability arises solely because of his own fault, later occurring, and has for its basis not contract but tort. McGough v McCarthy Improv. Co. 206 M 1, 286 NW 857.

There is nothing in the compensation law making it obligatory for the commission to appoint a neutral physician when medical experts express opposing opinions. Rehak v St. Paul Term. Warehouse Co. 206 M 96, 288 NW 22.

If an employer believes that charges made for treating an injured employee are excessive, he may apply to the commission for a determination of the reasonable value of the services. Carmody v City of St. Paul, 207 M 419, 291 NW 895.

An employee who has been injured in his employment may decline treatment by a physician tendered by his employer, obtain treatment from a physician of his own choice, and recover the reasonable value thereof. Carmody v City of St. Paul, 207 M 419, 291 NW 895.

Where an employee applies to the commission for a change of physicians and it fails to act, and the employer's insurer declines to consent to such change, the employee may obtain necessary treatment from a physician of his own choice and be reimbursed for the reasonable cost thereof. Carmody v City of St. Paul, 207 M 419, 291 NW 895.

Where an employer has furnished proper medical treatment an injured employee may change physicians at the expense of the employer only with the consent of the commission. Morrell v City of Austin, 208 M 132, 293 NW 144.

See also annotations under section 176.15, 176.19.

Subd. 8. "Employee" or "workman."

The test for determining whether one person is the employee of another is the power of one to control the other in the transaction out of which the injury arose. State ex rel v District Court, 128 M 43, 150 NW 211.

Relation of employer and employee held to exist between defendant and student elevator operator, a minor. Pettee v Noyes, 133 M 109, 157 NW 995.

Where a wagon loaded with coal became mired and the driver requested a passer-by to assist in releasing it, the latter, by complying, became an employee of the coal company delivering the coal and was entitled to compensation for an injury thereby sustained. State ex rel v District Court, 138 M 416, 165 NW 268.

When the employee of one firm calls the assistance of another in an emergency, the latter, for the time being, comes into the service of the first employer and if injured is entitled to compensation from the employer assisted. State ex rel v District Court, 138 M 416, 165 NW 268.

Relationship of employer and employee did not exist between owner of building and a carpenter hired by one who contracted to make repairs thereon. State ex rel v District Court, 145 M 127, 176 NW 165.

A team owner contracted with a county to haul gravel at an agreed price per cubic yard, then arranged with a driver to do the hauling for one-half of the earnings. Held that the driver was not an employee of the county within the meaning of the compensation act. Arterburn v County of Redwood, 154 M 338, 191 NW 924.

One who assists an employee for a few minutes at his request where nothing unusual had occurred and no emergency existed, without expecting pay therefor and without the knowledge of the employer, does not thereby become an employee

and is not entitled to compensation for an injury sustained. State ex rel v Industrial Commission, 155 M 267, 193 NW 450.

One employed upon a steam dredge in a drainage project is not excluded from the compensation act as coming within the class designated as "farm laborers." Dailey v Barr, 157 M 357, 196 NW 266.

Employer used elevator without guards as provided by law, and the employee, a minor over 16 years old, was injured thereon. Held, that the language, "minors who are legally permitted to work under the laws of the state," excludes from the act minors whose employment is prohibited by law. Novack v Montgomery Ward & Co. 158 M 495, 198 NW 290.

Teamster working jointly with another for city contractor held contractor's employee. Herron v Coolsalt Bros. 158 M 522, 198 NW 134.

Driver for owner of truck delivering coal at price per ton collided with and injured a motorcycle rider while on way to coal yard in morning to turn in previous day's delivery slips and money collected and haul more coal. Held, jury might find he was within scope of his employment by coal dealer and latter chargeable with driver's negligence. Elliason v Western Coal & Coke Co. 162 M 213, 202 NW 485.

The transaction amounted to a substitution of the father for the son; and the father having been killed in an accident in the employment, his dependents were entitled to compensation. Schullo v Village of Nashwauk, 166 M 186, 207 NW 621.

The relation of employer and employee is contractual, and no one can become the employee of another without the consent of the other. Erickson v Kircher, 168 M 67, 209 NW 644.

An employee who receives compensation for his services in the form of commissions instead of wages is within the scope of the compensation act. Angell v White Eagle Oil & Refin'g Co. 169 M 183, 210 NW 1004.

A partnership is not a legal entity. The members thereof may become the individual employees of a person who hires them, to perform services for him. Angell v White Eagle Oil & Refin'g Co. 169 M 183, 210 NW 1004.

Firemen are within the operation of the workmen's compensation act. Behr v Soth, 170 M 278, 212 NW 461.

Child of one in charge of store was not an employee while volunteering brief and uncompensated service in the store. Supornick v Supornick, 175 M 579, 222 NW 275.

President of company who owned all excepting two "qualifying shares" and supervised its activities was not an "employee." Donaldson v Donaldson Co. 176 M 422, 223 NW 772.

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. Zarns v Swanville Stock Shipping Ass'n, 177 M 462, 225 NW 448.

The relation of master and servant did not exist between a shipping association and one hired by the manager under an arrangement by which the manager received a stated sum per car shipped, out of which he paid all necessary help. Zarns v Swanville Stock Shipping Ass'n, 177 M 462, 225 NW 448.

President of corporation held not an employee entitled to compensation for injuries. Erickson v Erickson Furn. Co. 179 M 304, 229 NW 101.

Persons employed by state livestock sanitary board to assist its veterinarian are "employees" of the state. Huseth v State, 179 M 425, 229 NW 560.

Finding sustained that employee working in creamery was employee of creamery and not of manager and buttermaker who paid her. Janoseck v Farmers Coop. Cry. Co. 182 M 507, 234 NW 870.

Finding that teamster was employee of road contractor while driving an automobile to order feed and groceries held sustained by evidence. Wheeler v Wheeler, 184 M 538, 239 NW 253.

As between a statutory provision with special and limited application, and another, general in scope, special controls general within former's limited field. Rosenquist v O'Neil & Preston, 187 M 375, 245 NW 621.

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 St. James Hotel & Union City Mission, 191 M 315, 254 NW 4.

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 Davis Tailoring Co. 194 M 179, 259 NW 809.

Husband of one member of a partnership operating an apartment building held an employee of partnership. Keegan v Keegan, 194 M 261, 260 NW 318.

A member of a religious order, to which she turned over all her earnings and received maintenance for life, sent to teach in a parochial school operated by a church which paid the order for her services and furnished her with maintenance, held to be an employee of the church and entitled to compensation for an injury in the employment. Sister Odelia v Church of St. Andrew, 195 M 357, 263 NW 111.

Treasurer, vice president, member of executive committee, and director of corporation, receiving a salary only as an officer, was not employee. Benson v Hygienic Art. Ice Co. 198 M 250, 269 NW 460.

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 of husband. Colosimo v Giacomo, 199 M 600, 273 NW 632.

President and manager of corporation, who supervised its work for a salary, but was under control of a board of directors in all but routine work, held to be an employee of the corporation. March v March Gardens, Inc. 203 M 195, 280 NW 644.

A substitute employed by an employee with the consent of the employer becomes the employee of the employer, though the regular employee receives the wages and pays the substitute. Wicklund v North Star Timber Co. 205 M 595, 287 NW 7.

Terms "servant," and "independent contractor" defined. Wicklund v North Star Timber Co. 205 M 595, 287 NW 7.

Where the owner of a chattel delivers it to another to perform work in respect to or by means of it, the relationship is that of bailor and bailee, where the owner parts with control over it, and is that of master and servant where he retains control. Wicklund v North Star Timber Co. 205 M 595, 287 NW 7.

Replacing screens with storm windows on apartment buildings at an agreed price per window held to be menial labor. Fisher v Manzke, 208 M 410, 294 NW 477.

Evidence that decedent was hired and paid by employee to assist him in performing work for his employer with latter's consent and subject to his control as to details of work supports finding that decedent was employee of employer. Byhardt v Ballord, 209 M 391, 296 NW 504.

A truck driver on a construction crew, injured while doing flunky work about an independently operated camp kitchen in his spare time, held not to be an employee of the construction contractor at the determinative moment. Curtis v Hedeen, 209 M 396, 296 NW 495.

Where an owner of equipment is hired to work with equipment which requires an assistant in its operation, such assistant, though hired and paid by the owner of the equipment, becomes the employee of the employer of the owner of the equipment. Bolin v Scheurer, 210 M 15, 297 NW 106.

A sheriff has authority to engage a person other than a deputy sheriff to go with him in order to safely conduct a prisoner from another state to his county. Sexton v County of Waseca, 211 M 422, 1 NW(2d) 394.

Where a sheriff engaged a municipal judge to assist him in the safe return of a prisoner from another state, and the county ratified the employment by pay-

ing his bill, neither the county nor its insurer may attack the validity of the hiring on a question of public policy. Sexton v County of Waseca, 211 M 422, 1 NW(2d) 394.

Caretaker of summer resort, closed for the season, instructed to see that ice house of resort and that of a neighbor were filled, held employee of resort owner when injured while ice was being cut for neighbor's ice house. James v Peterson, 211 M 481, 1 NW(2d) 844.

The relationship of employer and employee does not exist between an owner of a truck and a farmer who accompanied the truck owner while his sheep were being transported to market and who was injured on the trip while assisting in the care of the sheep at the request of the truck owner. Anderson v Hegna, 212 M 147, 2 NW(2d) 820.

Owner of stationary sawmill, which he moved to another place and cut logs into lumber at agreed price per thousand feet, under control of owner of logs, held to be an employee. Anfinson v A.O.U.W. Ins. Co. 212 M 183, 3 NW(2d) 7.

The statute does not provide that a specific classification of domestic servants in the covenants of a policy of insurance shall be the only method by which liability may be assumed. Berger v Church of St. Patrick, 212 M 345, 3 NW(2d) 590.

One who is hired and paid by an employee to help in performing the employer's work, with the consent of the employer and subject to his control as to the details of the work, is an employee of the employer. Bergstrom v Brehmer, 214 M 326, 8 NW(2d) 328.

Direction and control by a building contractor of workmen shingling a roof with contractor's material at agreed price per square held to establish relationship of employer and employee. Bergstrom v Brehmer, 214 M 326, 8 NW(2d) 328.

The workmen's compensation act is highly remedial and is not to be construed so as to exclude an employee from the benefits thereof unless it clearly appears that he does not come within the protection of the act. Kiley v Sward-Kemp Co. 214 M 548, 9 NW(2d) 237; Tillquist v State Department of Labor, 216 M 203, 12 NW(2d) 512.

Evidence sustains finding of industrial commission that at the time of the accident the employee was on business personal to himself and not in the course of his employment, and hence not covered by the workmen's compensation act. Gumbrill v General Motors, 216 M 351, 13 NW(2d) 16.

The purpose of the workmen's compensation act is to include only workers as distinguished from executive officers; that is, only those are employees who perform a service for hire and to whom some employer directly pays wages. Bendix v The Bendix Co. 217 M 439, 14 NW(2d) 464.

Charitable institutions, as such, are not exempted from the operation of the Minnesota workmen's compensation act. Schneider v Salvation Army, 217 M 448, 14 NW(2d) 467.

One picking up business for a dry cleaning establishment using own car, and making a profit out of the difference in price charged by the firm and the larger price charged to the customer is an employee and not an independent contractor. Korthus v Soderling, 218 M 342, 16 NW(2d) 285.

Public employees.

By auditing, allowing and paying the bill of a workman employed by direction of a member of the board to remove brush growing along the sides of a town road, the board ratified unauthorized employment. Reed v Town of Monticello, 164 M 358, 205 NW 258.

A police officer, while on duty, went to his home, where he kept his weapons, to get his revolver. It accidentally fell upon the floor and was discharged, breaking his leg. Held, that the compensation act applied. McDaniel v City of Benson, 167 M 407, 209 NW 26.

Contracting pneumonia by city fireman held not "accident." Costly v City of Eveleth, 173 M 564, 218 NW 126.

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. Rosvall v City of Duluth, 177 M 197, 224 NW 840.

Driver of street flusher held employee of contractor, and not of the city. Tschida v Bratt, 179 M 277, 228 NW 935.

Persons employed by state livestock sanitary board to assist its veterinarian are "employees" of the state. Huseth v State, 179 M 425, 229 NW 560.

Compensation law covers a municipal employee only when under the same circumstances the employee of a non-municipal employer would be covered. Fabio v City of St. Paul, 181 M 601, 233 NW 467.

Finding that police officer, injured while traveling on a motorcycle to assume duty at place he was detailed by superior officer, received such injuries accidentally arising out of and in the course of his employment, held sustained by evidence. Fabio v City of St. Paul, 181 M 601, 233 NW 467.

Constable who assists sheriff at his request in making an arrest is employee of municipality, though neither he nor sheriff had his official position in mind at time. McFarland v Village of Carlton, 187 M 434, 245 NW 630.

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 towards persons working on such project that it did to its regular employees. Michels v City of St. Paul, 193 M 215, 258 NW 162.

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 County of Itasca, 194 M 302, 260 NW 299.

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 Town of Irondale, 195 M 264, 262 NW 632.

A sheriff has authority to engage a person other than a deputy sheriff to go with him in order to safely conduct a prisoner from another state to his county, Sexton v County of Waseca, 211 M 422, 1 NW(2d) 394.

Employee or independent contractor.

The test for determining whether one person is the employee of another is the power of one to control the other in the transaction out of which the injury arose. State ex rel v District Court, 128 M 43, 150 NW 211.

The court cannot determine, as a question of law, that the rule of respondeat superior does not apply, unless the evidence shows conclusively that the alleged employer possessed no power to control the other in the transaction in which the latter was injured. State ex rel v District Court, 128 M 43, 150 NW 211.

Where a township, in graveling a road, paid farmers with team and wagon a certain price per load for loading, hauling and unloading gravel from its pit, and supervised all of the work, the relation of employer and employee was thereby created between the township and hauler under the compensation act. Rouse v Town of Bird Island, 169 M 367, 211 NW 327.

A well driller, who was hired to sink a well for the owner of a building, under the circumstances related in the opinion was not an independent contractor, but an "employee." Lynch v Hutchinson Produce Co. 169 M 329, 211 NW 313.

Applicant for compensation must show that he was employee and not an independent contractor. Holmberg v Amundson, 177 M 55, 224 NW 458, 225 NW 439.

One cutting timber on a piece-work basis is an employee and not an independent contractor. Lampi v Kopenen, 178 M 133, 226 NW 475.

Where work is simple manual labor on premises of the employer and there is no showing that the 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. J. Dyer & Bro. 186 M 413, 243 NW 436.

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. J. Dyer & Bro. 186 M 413, 243 NW 436.

Right to control and supervise work is one of important tests as to whether worker is employee or independent contractor. Carter v W. J. Dyer & Bro. 186 M 413, 243 NW 436; Whitted v Town of Ponto Lake, 207 M 333, 291 NW 509.

Evidence sustained finding that interior decorator was not an independent contractor. Cardinal v Prudential Ins. Co. 186 M 534, 243 NW 706.

Evidence held to sustain finding of relation of employee and employer between sausage salesman driving his own truck on a well-defined route or territory and receiving as compensation only a discount of three cents per pound, though at time required to pay for his sausage in advance. Olson v Eck's Homemade Sausage Co. 194 M 458, 261 NW 3.

Authoritative control by employer over employee is necessary to establish relationship. Olson v Eck's Homemade Sausage Co. 194 M 458, 261 NW 3.

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 Noble, 196 M 185, 264 NW 685.

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 Noble, 196 M 185, 264 NW 685.

Burning brush for a highway contractor was not menial labor which could not be subject of an independent contract. Becker v Northland Transp. Co. 200 M 272, 274 NW 180, 275 NW 510.

A mechanic continuously and exclusively installed weatherstripping for defendant company, usually at a price per foot, conveying in his own car its tools and material to and from installation jobs. Held, the question whether he was an employee or independent contractor was for the jury. Robertson v Olson, 181 M 240, 232 NW 43.

Terms "servant" and "independent contractor" defined. Wicklund v North Star Timber Co. 205 M 595, 287 NW 7.

Control or right of control determines whether one undertaking work is an employee or an independent contractor. Wicklund v North Star Timber Co. 205 M 595, 287 NW 7.

The most important factor in determining whether one undertaking work for another is an employee or an independent contractor is the right to control the manner and means of performance. Other factors are mode of payment, furnishing materials or tools, control of premises, and right to discharge at will. Lemkuhl v Clark, 209 M 276, 296 NW 28; Rice v Keystone View Co. 210 M 227, 297 NW 841.

A servant is one who is employed to perform a service in which he is subject to employer's control as to details of work, while an independent contractor undertakes to do a specific piece of work for another without submitting himself to such party's control as to details and binds himself only as to results. Byhardt v Ballord, 209 M 391, 296 NW 504.

Held to be an employee.

Piece worker held employee, not independent contractor. State ex rel v District Court, 128 M 43, 150 NW 211; Lampi v Kopenen, 178 M 133, 226 NW 475.

When the employee of one firm calls the assistance of another in an emergency, the latter, for the time being, comes into the service of the first employer, and if injured is entitled to compensation from him. State ex rel v District Court, 138 M 416, 165 NW 268.

A person temporarily employed by a coal dealer to haul with his own facilities coal and fuel to patrons of the dealer at a stipulated rate per ton or load is for the time being a servant of the dealer and not an independent contractor. Dunn v Reeves Coal Yard Co. Inc. 150 M 282, 184 NW 1027.

Team owner hauling sewer pipe by the ton held to be an employee. Herron v Coolsalt Bros. 158 M 522, 198 NW 134.

An arrangement by a town board with a farmer to haul gravel with his team and wagon at a specified price per load under its control created the relation of employer and employee. Rouse v Town of Bird Island, 169 M 367, 211 NW 327.

Agent operating oil station held to be employee. Angell v White Eagle Oil & Refin'g Co. 169 M 183, 210 NW 1004; Nesseth v Skelly Oil Co. 176 M 373, 223 NW 608.

Portable mill owner, sawing for one having right to control work and terminate contract, held employee rather than independent contractor. Krause v Bodin, 172 M 467, 215 NW 838.

An agent receiving commissions as compensation was an employee and not an independent contractor. Nesseth v Skelly Oil Co. 176 M 373, 223 NW 608.

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. Gahr v Strout, 179 M 395, 229 NW 340.

A sales supervisor for a woolen company who secured salesmen and solicited sales in designated territory, paying his own expenses and receiving a commission on sales made by himself and the salesmen he placed, held to be an employee and not an independent contractor. Larson v Duluth Woolen Co. 181 M 417, 232 NW 915.

Person cutting, piling and loading on a car held an employee and not an independent contractor. Reigel v Finch Timber Co. Inc. 182 M 289, 234 NW 452.

Evidence held to sustain finding that owner of truck who hauled timber at an agreed price per cord was an employee. Barker v Bemidji Wood Products Co. 184 M 366, 238 NW 692.

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 Bracker Construction Co. 185 M 70, 240 NW 464. See also Carter v W. J. Dyer & Bro. 186 M 413, 243 NW 436.

One caring for sheep held an employee and not an independent contractor, and that there was no relationship of bailee and bailor. Wilson v Kileen & Son, 188 M 97, 246 NW 542.

Finding that one cleaning and painting smokestack for specified amount was employee sustained. Fuller v Northern States Power Co. 189 M 134, 248 NW 756.

Finding that owner of blacksmith shop doing jobs on hourly basis outside the shop was employee held sustained by evidence. Myers v Villard Cry. Co. 189 M 244, 248 NW 824.

Owner of truck engaged in hauling bottled products at fixed hourly compensation was an employee and not an independent contractor. Anderson v Coca Cola Bttlg. Co. 190 M 125, 251 NW 3.

A member of a town board told a truck owner that it would need several trucks to haul gravel, for which it would pay ten cents a cubic yard for loading and five cents per mile for hauling. The truck owner spread the information to other truck owners, who went to work. For convenience in bookkeeping the town paid the first truck owner for all the gravel hauled and he divided the money among the truckers according to the town's record of the amount of gravel each hauled. Held, that he was not an independent contractor and that all were employes of the township. Dahnert v Town of Otisco, 196 M 478, 265 NW 291.

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 Buchman, 200 M 171, 273 NW 678.

A substitute employed by an employee with the consent of the employer becomes the employee of the employer, though the regular employee receives the wages and pays the substitute. Wicklund v North Star Timber Co. 205 M 595, 287 NW 7.

One hauling logs under a contract with a timber company, under control of latter, held to be an employee. Wicklund v North Star Timber Co. 205 M 595, 287 NW 7.

One cutting wood from woodland at an agreed price per cord, with inference that owners had reserved right of control and could terminate the cutting at any time, held to be an employee and not an independent contractor. Stahl v Patrick, 206 M 413, 288 NW 854.

One engaged with his equipment by a township to remove snow from its roads when needed, the township exercising control and furnishing shovelers, held to be an employee of the township. Whitted v Town of Ponto Lake, 207 M 333, 291 NW 509.

One replacing screens with storm windows on large apartment buildings during his spare time at an agreed price per window, held to be an employee and not an independent contractor. Fisher v Manske, 208 M 410, 294 NW 477.

Relationship of master and servant held to exist between a city which sponsored and furnished trucks and drivers for a WPA project and one temporarily substituted for himself by an employed driver with the consent of the WPA foreman. Bushnell v City of Duluth, 209 M 27, 295 NW 73.

A trucker, not a moving contractor, who employed and paid a helper, did not become an independent contractor in undertaking to move the office equipment of a realtor for an agreed price where the latter exercised control over the work. Byhardt v Ballord, 209 M 391, 296 NW 504.

An excavation contractor hired by a city to remove earth with his equipment at a stated price per yard, without the accomplishment of an end result or an understanding of the amount or duration of the work to be done held to be an employee of the city. Bolin v Scheurer, 210 M 15, 297 NW 106.

Where an owner of equipment is hired to work with equipment which requires an assistant in its operation, such assistant, though hired and paid by the owner of the equipment, becomes the employee of the employer of the owner of the equipment. Bolin v Scheurer, 210 M 15, 297 NW 106.

A traveling salesman, required to carry, demonstrate and sell on commission products of a company under a degree of control by it held to be its employee. Rice v Keystone View Co. 210 M 227, 297 NW 841.

Held to be independent contractor.

Relator, using his own motor truck to make occasional hauls of merchandise for respondents, at a stated price per load, his loading and unloading points being designated by respondents, but they having no right to control him otherwise, held to be an "independent contractor" and not an employee, and so not entitled to compensation. Moore v Kileen & Gillis, 171 M 15, 213 NW 49.

Copartnership doing work for school district held independent contractor and not employee. Stuckey v Ind. School District, 175 M. 547, 221 NW 911.

Person working on house held independent contractor. Holmberg v Amundson, 177 M 55, 224 NW 458, 225 NW 439.

One hauling ashes from laundry held not employee of laundry and not protected by compensation act. Cleland v Anchor Laundry Co, 190 M 593, 252 NW 453.

A mason agreeing to build a wall for a certain sum, including material, was an independent contractor and not an employee. Lange v American Spawn Co. 194 M 342, 260 NW 298.

Road contractor 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 Hector Construction Co. 195 M 21, 261 NW 478.

Partners engaged as contractors in painting and repairing elevators, who undertook such a job for a stated price with material furnished by owner, using their own equipment and manner and means, held to be independent contractors. Lemkuhl v Clark, 209 M 276, 296 NW 28.

Subd. 9. Accident.

"The proximate cause of an injury is that act or event which in natural and continuous sequence, unbroken by any intervening cause, produces the same." State ex rel v District Court, 145 M 96, 176 NW 155.

Killing of a salesman by a sheriff's posse in attempting to stop an automobile in which he was riding at the invitation of a local dealer he was required to call on and get in personal contact with, held to be accidental and in the course of his employment. Wold v Chevrolet Motor Co. 147 M 17, 179 NW 219.

A teamster who is injured by the kick of a horse while beating it in a fit of anger is not entitled to compensation. Harris v Kaul, 149 M 428, 183 NW 828.

Injury to muscles and nerves from too long continuance at a heavy task, where there is no sudden or violent event to cause it, is not covered by the compensation act. Young v Melrose Granite Co. 152 M 512, 189 NW 426.

Where a team of horses hitched to a harrow pitched forward when killed by a stroke of lightning, and the driver, who had the lines wrapped around him, also fell forward, striking his head against the harrow and fracturing his skull, it is a fair conclusion that he was thrown by the forward pitch of the horses rather than by shock of the lightning. Dunnigan v Clinton Falls Nursery Co. 155 M 286, 193 NW 466.

Where conditions incident to the performance of duties concur with an act of God in causing an injury to an employee, he is entitled to compensation. Dunnigan v Clinton Falls Nursery Co. 155 M 286, 193 NW 466.

Employee need not show exactly how his injury was received. Absolute certainty is not necessary. Reasonable basis for the proximate cause complained of is sufficient. Rasmussen v Benz & Sons, 168 M 319, 210 NW 75, 212 NW 20.

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 Hilton & Thompson, 176 M 508, 223 NW 787.

Denial of compensation for relator's fall, based on conflicting evidence is conclusive on supreme court. Passe v Collins, 176 M 638, 223 NW 787.

Time for giving notice commences from concurrence of disability and not time of accident resulting in latent injury. Clausen v Minnesota Steel Co. 186 M 80, 242 NW 397.

Evidence sustains finding that employee suffered injury in automobile accident which resulted in his death. Brameld v Dickinson Co. 186 M 89, 242 NW 465.

Where death occurs by external violence and there is no evidence as to the means of such violence, the presumption is that it was due to accident. Konschak v Equitable Life Assur. Society, 186 M 423, 243 NW 691.

Death from septicemia due to squeezing a pimple held to come within the double indemnity clause of a life insurance policy for death by external, violent and accidental means. Strommen v Prudential Ins. Co. 187 M 381, 245 NW 632.

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 Northwestern Casket Co. 190 M 552, 252 NW 656.

If the inference from facts proved is more consistent with unintended mishap than design at self-destruction, the former will be adopted. Sentieri v Oliver Iron Mining Co. 201 M 293, 276 NW 210.

Scope of employment.

Question is not whether cause of accident is referable to a tortious of a blameless act, or whether if tortious employer or some third person is blameworthy, or even that employee is at fault if not wilfully so. McGough v McCarthy Improvement Co. 206 M 1, 286 NW 857.

Evidence held to sustain finding that intermittent temporary total disability resulted from original sprained back. Paul v Thornton Brothers Co. 206 M 74, 287 NW 856.

Record tends to prove that injury was severe back strain, leaving chronic condition which resulted in recurring disability. Paul v Thornton Bros. Co. 206 M 74, 287 NW 856.

Relationship of employer and employee must exist and be in force at time of an accident to render the employer liable. Roberts v Ray-Bell Film Co. 206 M 351, 288 NW 591.

"When an event is followed in natural sequence by a result it is adapted to produce * * * that result is a consequence of the event and the event is the cause of the result." Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

An employer is not relieved of liability because physical defects rendered an employee more susceptible to injury than if he were in perfect physical trim. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

If an unforeseen accident to an employee in the performance of his work directly caused an injury to the physical structure of his body, the injury is compensable, even though the employee had a natural weakness predisposing him to such injury. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

Where physical weakness induced a fall, and the fall, resulted in a fractured skull and death, it was the fall, and not the physical weakness, that caused death. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

If the employment creates a special hazard from which injury comes, there is causal relation between the employment and result. Hanson v Robitshek-Schneider Co. 209 M 596, 297 NW 19.

An accident is an event which must be susceptible of identification and reference to time, place and result, with whatsoever degree of certainty a particular case may demand. Golden V Lerch Bros. Inc. 211 M 30, 300 NW 207.

An accidental injury or death of an employee while doing his work, caused by falling because of an epileptic seizure, arises out of the employment. Barlau v Mpls-Moline Power Implement Co. 214 M 564, 9 NW(2d) 6.

An accident which causes an actual aggravation or acceleration of an existing infirmity is compensable. The rule is not limited to accidents which cause a latent malady to flare up. Swanson v American Hoist & Derrick Co. 214 M 323, 8 NW(2d) 24.

Where an employee's work required steady, rapid and concentrated activity on a hot day, which accentuated the natural risk of heatstroke, there was a causal connection between his death by heatstroke and the work he was performing. Nelson v Creamery Pckge. Mfg. Co. 215 M 25, 9 NW(2d) 320.

An accidental injury to an employee while doing his work, caused by falling because of an epileptic seizure, arises out of his employment. Barlau v Minneapolis-Moline, 214 M 574, 9 NW(2d) 6; Fehland v City of St. Paul, 215 M 94, 9 NW(2d) 349.

Following restatement, conflict of laws, section 400, it is held "no recovery can be had under the workmen's compensation act of a state if neither the harm occurred nor the contract of employment was made in the state". DeRosier v Craig, 217 M 296, 14 NW(2d) 286.

Purely a question of fact as to whether or not relator's disability was due to an accident. Leland v St. Olof, 217 M 355; 14 NW(2d) 340.

The accidental injury did not cause the workman's death or aggravate pre-existing disease known as lymphatic leukemia so as to accelerate his death. Kundiger v Waldorf, 218 M 168, 15 NW(2d) 486.

Accident or disease.

Where a flying particle of ore struck a miner in an eye and was removed by a fellow workman with a match and handkerchief which had been in use several days and the eye was then washed with water from a trough used in common by many miners, and soon thereafter gonorrheal infection set in, destroying the vision of the eye, the employee being free of the disease, the injury so re-

ceived was an accident within the meaning of the compensation act. State ex rel v District Court, 137 M 435, 163 NW 755.

Typhoid fever from drinking infected water furnished by employer to employees is not caused by an accident as defined in the compensation law. State ex rel v District Court, 138 M 210, 164 NW 810.

Employee was crushed under a load of lumber and confined to bed until his death six weeks later, when an autopsy disclosed advanced stage of pulmonary tuberculosis. Held that it does not conclusively appear that the injuries had no part in causing his death. State ex rel v District Court, 138 M 334, 164 NW 1012.

Finding that acute nephritis had developed from a fall held justified by evidence. State ex rel v District Court, 140 M 216, 167 NW 1039.

"Acute dilatation of the heart (by a strain) is an accident within the definition of the compensation act, in that it produces at the time 'injury to the physical structure of the body', the muscles of the heart being ruptured. It is also often 'an unexpected or unforeseen event, happening suddenly and violently'." State ex rel v District Court, 142 M 420, 172 NW 311.

Evidence held to sustain finding that death from apoplectic stroke was caused by shock of severe injury to hand. State ex rel v District Court, 147 M 10, 179 NW 217.

A workman afflicted with arteriosclerosis was injured by falling and striking a concrete floor with the back of his head. The industrial commission found that death was caused by the accidental injury. Under the evidence, the finding cannot be held to have been the result of speculation and conjecture. Maxon v Swift & Co. 158 M 491, 198 NW 133.

Whether claimant's disability resulted from the injury or from prior disease was, under the evidence a question of fact for the industrial commission to determine. Higgins v Standard Oil Co. 161 M 490, 202 NW 26.

Medical testimony attributed the cancer to the injury. Held, that the evidence justified an award, and that the conclusion of the industrial commission was not conjectural. Austin v Red Wing Sewer Pipe Co. 163 M 397, 204 NW 323.

Whether paresis, primarily caused by syphilis, is lighted up or accelerated by injuries is a question of fact. Walker v Minnesota Steel Co. 167 M 475, 209 NW 635.

Death from abscess of brain held not occasioned by injury occurring, 20 months prior thereto. Bottiani v Oliver Iron Mining Co. 171 M 382, 214 NW 57.

Apoplexy may constitute "accident." Kallgren v Lundquist Co. 172 M 489, 216 NW 241.

Finding that infection causing death did not result from injury received in course of employment held sustained by evidence. Debeltz v Oliver Iron Mining Co. 172 M 549, 216 NW 240.

Contracting pneumonia by city fireman held not "accident". Costly v City of Eveleth, 173 M 564, 218 NW 126.

That the deceased was affected with heart disease, predisposing him to an injury, does not prevent compensation. Reardon v City of Austin, 174 M 359, 219 NW 292.

Finding that death from heart trouble resulted from blow or pressure over heart, held sustained by evidence at variance with expressed medical views. Conway v Swift & Co. 175 M 42, 219 NW 944.

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 Hilton & Thompson, 176 M 508, 223 NW 787.

Paralytic condition from cerebral hemorrhage found due to over-exertion while acting as member of volunteer fire department. Blair v Village of Coleraine, 177 M 376, 225 NW 284.

Finding of causal connection between injury from blow on head and subsequent death from pneumonia sustained. Olson v Carlton, 178 M 34, 225 NW 921.

Compensation may be given for traumatic neurosis producing disability resulting from injury in course of employment. Welchlin v Fairmont Ry. Motors, 180 M 411, 230 NW 897.

Evidence held to support finding that sarcome resulted from striking of leg by falling box. Halper v Golden Rule, 180 M 477, 231 NW 195.

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. Keane v Arrowhead Steel Products Co. 181 M 359, 232 NW 621.

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. Thomseth v Shapiro Bros. L. & D. C. Inc. 183 M 270, 236 NW 311.

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 New York Life Ins. Co. 183 M 275, 236 NW 305.

Burden was on insurer claiming that bursting of artery in brain was not accidental to show that arteries were diseased. Clay v New York Life Ins. Co. 183 M 275, 236 NW 305.

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 Watab Paper Co. 184 M 1, 237 NW 610.

Death of employee with unknown coronary sclerosis who suffered an initial attack of angina pectoris while under the emotional and mental strain and while engaged in severe muscular employment, was compensable. Wicks v Northland Milk & Ice Cream Co. 184 M 540, 239 NW 614.

Employee suffering rupture of blood vessel in brain while lifting heavy weight held to have suffered accidental injury. Krenz v Krenz Oil Co. 186 M 312, 243 NW 108.

Evidence held to sustain finding that erysipelas, resulting in death, was caused by infection when employee bumped leg on table. Bliss v Swift & Co. 189 M 210, 248 NW 754.

Death caused by pulmonary embolism following coronary thrombosis resulting from exertions held "accidental injury" and compensable. Farrell v Ragatz & Sons Co. 189 M 573, 250 NW 454.

Evidence supports finding that burns on face and hands caused combined degeneration of the spinal cord. Sorenson v La Pompadour, Inc. 190 M 406, 251 NW 901.

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. Pechaver v Oliver Iron Mining Co. 196 M 558, 265 NW 429, 266 NW 854.

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 Schmahl, 198 M 504, 270 NW 129.

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 Cities Service Oil Co. 199 M 25, 270 NW 912.

Evidence held to warrant finding that bump on leg caused death of employee suffering from diabetes. Jacobs v Village of Buhl, 199 M 572, 273 NW 245.

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 in his employment, which aggravated his 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. Jacobs v Village of Buhl, 199 M 572, 273 NW 245.

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 Village of Buhl, 199 M 572, 273 NW 245.

Finding of causal relationship between an injury to a knee and subsequent tuberculosis of the knee held sustained by competent evidence. Nyberg v Little Falls Black Granite Co. 202 M 86, 277 NW 536.

Medical testimony held to justify finding that disability for which award was made was recurrence from chronic condition resulting from original injury. Paul v Thornton Bros. Co. 206 M 74, 287 NW 856.

Disability from dermatitis held due to phosphorus poisoning from use in employment of washing powder containing trisodium phosphate and compensable as an occupational disease. Malzak v Salmio, 206 M 430, 288 NW 837.

Evidence held to sustain finding that employee's death resulted from strain of heart in carrying a 100-pound sack of sugar in his employment. Ferch v Great Atlantic & Pac. Tea Co. 208 M 9, 292 NW 424.

Where legal cause of disability from disease has been shown by competent evidence, liability follows, though other causes may have contributed thereto. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

Where medical men have found the harmful effect of certain chemicals upon employee, a finding that satisfies them as to the cause of employee's disease should satisfy the statute. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

While recovery of compensation cannot rest on mere speculation or conjecture, if the proof furnishes a reasonable basis for an inference that the injury was the cause of the disability, it is sufficient. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

Though an employee has a congenital or acquired condition favorable to the development of a rupture, if an unusual strain or over-exertion in his work induces its development, that is the legal cause and the result is compensable. Haller v Northern Pump Co. 214 M 404, 8 NW(2d) 464.

The compensation act is not limited to those only who are normal. Those who are below normal, or have a weakness or disease, are also within its protection. Haller v Northern Pump Co. 214 M 404, 8 NW(2d) 464.

An actual aggravation of an existing infirmity caused by an accident in the employment is compensable, even though the accident would have caused no injury to a normal person. Haller v Northern Pump Co. 214 M 404, 8 NW(2d) 464.

An accidental injury or death of an employee while doing his work, caused by falling because of an epileptic seizure, arises out of the employment. Barlau v Minneapolis-Moline Power Implement Co. 214 M 564 9 NW(2d) 6.

Aggravation of pre-existing condition.

Evidence held to sustain finding that blow in abdomen of policeman, assaulted while making arrest, caused or contributed to his death from cancer. Goetz v City of Melrose, 155 M 330, 193 NW 691.

The existence of a disease which does not impair the employee's ability to work will not prevent a recovery if an accident accelerates the disease to a degree of disability. Walker v Minnesota Steel Co. 167 M 475, 209 NW 635.

An actual aggravation of an existing infirmity caused by accident in the course of employment is compensable, even though the accident would have caused no injury to a normal person. Walker v Minnesota Steel Co. 167 M 475, 209 NW 635; Reardon v City of Austin, 174 M 359, 219 NW 292; Westereng v City of Morris, 205 M 219, 285 NW 717.

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. Cavett v Pillsbury Flour Mills Co. 172 M 94, 214 NW 923.

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. Smith v Mason Brothers Co. 174 M 94, 218 NW 243.

Though an employee has a congenital or acquired condition favorable to the development of a rupture, if an unusual strain or over-exertion in his work induces its development, that is the legal cause and the result is compensable. Haller v Northern Pump Co. 214 M 404, 8 NW(2d) 464.

An actual aggravation of an existing infirmity caused by an accident in the employment is compensable, even though the accident would have caused no injury to a normal person. Haller v Northern Pump Co. 214 M 404, 8 NW(2d) 464.

Assault.

Injury to a bartender in a saloon by being struck in the eye by a drinking glass indiscriminately hurled by a drunken patron held an accident arising out of the employment. State ex rel v District Court, 134 M 16, 158 NW 713.

Injury to female school teacher by assault by stranger on way home from country school after leaving school premises held not to arise out of her employment. State ex rel v District Court, 140 M 470, 168 NW 555.

Fatal injury to employee by wilful assault by fellow employee during working hours over manner of doing the work held to arise out of the employment. Hinchuk v Swift & Co. 149 M 1, 182 NW 622.

An employee who suffers injury in a street brawl, brought on by himself and for his own purposes, is not entitled to compensation, even though he was engaged in his employer's business just before the fracas, and intended to resume it immediately afterwards. Wooley v Mpls. Equip. Co. 157 M 428, 196 NW 477.

Injury from assault by intoxicated former employee over manner of doing work is compensable. Sieger v Knox & Peterson, 160 M 185, 199 NW 573.

The word "reasons," as used in section 176.01, subd. 11, refers to the provocation for the assault, and if the proper work of the employee furnishes the sole provocation for the assault, it is to be considered as directed against him because of his employment. Sieger v Knox & Peterson, 160 M 185, 199 NW 573.

Dependents of employee killed by robbers were entitled to compensation. Davis v Kresge & Co. 169 M 245, 210 NW 1003.

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. Louden v Minnesota Masonic Home, 172 M 178, 215 NW 204.

Award of compensation sustained where taxi driver was murdered by intoxicated passenger under circumstances indicating that quarrel over fare might have been the occasion and there was nothing to indicate that the motive was personal to the victim or outside his employment. Maher v Duluth Yellow Cab Co. 172 M 439, 215 NW 678.

Employer who wilfully assaults his employee cannot assert that the latter's remedy is under the compensation act. Boek v Wong Hing, 180 M 470, 231 NW 233.

Evidence as to murder of night watchman in vacant ten-story building held to rest in conjecture and speculation and to be insufficient to support finding that death arose out of employment. Sivald v Ford Motor Co. 188 M 463, 247 NW 687.

Section 176.01, Sub. 11, excludes results caused by act of third person intended to injure employee because of reasons personal to him. Sivold v Ford Motor Co. 188 M 463, 247 NW 687.

Inference from circumstances of employment and shooting of labor union organizer by unknown person held to justify finding that his death arose out of and in course of his employment. Corcoran v Teamsters & Chauffeurs Joint Council, 209 M 289, 297 NW 4.

Evidence that employee's habits were good and that he had no enemies precludes the presumption that an assault on him was for personal reasons and shifts the burden of proof to his opponent. Hanson v Robitshek-Schneider Co. 209 M 596, 297 NW 19.

An assault directed against the victim neither "as an employee" nor for "reasons personal to him" is ordinarily compensable. Hanson v Robitshek-Schneider Co. 209 M 596, 297 NW 19.

Injury from assault to which the employment exposes an employee to a greater than ordinary risk is attributable to the employment. Hanson v Robitshek-Schneider Co. 209 M 596, 297 NW 19.

Evidence held to sustain finding of commission that death of a labor leader, found shot in his car, did not arise out of and in the course of his employment. Brown v General Drivers Union No. 544, 212 M 265, 3 NW(2d) 423.

Employer encouraged employees to form teams to play games of contest with teams of other employers. One of the games was softball. Employer financed the team. Membership was optional. Claimant was accidently injured. The injury was deemed to have arisen in the course of employment. LeBar v Ewald Bros. 217 M 18, 13 NW(2d) 729.

Employee crossing the street during working hours to get a cup of coffee was not injured in the course of his employment. Callaghan v Brown, 218 M 440, 16 NW(2d) 317.

The employee's situation is no different where the injury occurs during transportation furnished by the employer as an incident of the employment from that where an injury occurs on the employer's premises, or at a place where the employer's services require his presence. Rodermacher v St. Paul City Railway, 214 M 428, 8 NW(2d) 466; Kiley v Sward, 214 M 556, 9 NW(2d) 237.

The employee did not suffer an accidental injury arising out of and in the course of employment. Anderson v Farwell, 217 M 110, 14 NW(2d) 311.

Hotel chambermaid with fixed hours of work receiving board and room as part of her compensation was injured in her room when off duty. This was not in the course of her employment. Brusven v Ballord, 217 M 502, 14 NW(2d) 861.

Although disability due to overwork may not be covered by the workmen's compensation act, where overwork or long continued effort in employment results in weakening the physical structure of some part of the body so that it subsequently collapses or gives way because of some unusual strain or over-exertion, disability resulting therefrom is covered by the act. Caddy v Maturi, 217 M 207, 14 NW(2d) 393.

An employee is not engaged in his employer's business while riding home after work in an automobile owned by the employer where the employer has not undertaken to furnish such transportation as an incident of the employment; but otherwise where the employer regularly furnishes the transportation as an incident to the employment. This is usually for the jury. Hardware Mutual v Ozmun, 217 M 280, 14 NW(2d) 351.

Disfigurement.

Where an injury results in part in disability and in part in non-disabling disfigurement, the employee is limited in his relief to that given by the compensation law, and a separate action at law for the non-disabling injury cannot be maintained. Hyett v Northwestern Hospital for Women and Children, 147 M 413, 180 NW 552.

Freezing.

Freezing is a personal injury caused by accident within the meaning of the compensation act, and in this case arose out of the employment. State ex rel v District Court, 138 M 131, 164 NW 585.

The loss of a leg of a janitor from toes frozen while shoveling snow from the walks about a building was accidental injury within the compensation act. State ex rel v District Court, 138 M 260, 164 NW 917.

Freezing feet, after having spilled gasoline on them, conceded to be compensable accidental injury. Dahl v Wunderlich, 194 M 35, 259 NW 399.

Heatstroke.

Sunstroke is a personal injury caused by accident within the meaning of the compensation act. State ex rel v District Court, 138 M 250, 164 NW 916.

Where the work and the condition of the place where it is carried on expose the employee to the happening of an event causing personal injury, there is no risk to which all are exposed and the result is an accident arising out of the employment. State ex rel v District Court, 138 M 250, 164 NW 916.

Finding that death following heatstroke was accidental and arose out of employment sustained. Pearson v Ford Motor Co. 186 M 155, 242 NW 721.

That employee's physical condition was predisposing or contributing cause did not prevent compensation for heatstroke which was immediate producing cause of death. Pearson v Ford Motor Co. 186 M 155, 242 NW 721.

Under the rule adopted in this state sunstroke is an accident, producing bodily injury through external and violent means. Tate v Benefit Ass'n of Railway Employees, 186 M 538, 243 NW 694.

Test as to whether heatstroke is accidental injury warranting compensation is whether employment was such as to expose employee to risk of sun's rays. McDonald v Fulton & Runquist, 187 M 442, 245 NW 635.

The special facts of the employment and the environment of the deceased employee at the moment he succumbed to a heatstroke held to justify award of compensation. McDonald v Fulton & Runquist, 187 M 442, 245 NW 635.

Employment held of such nature as to expose employee to risk of heatstroke which caused his death, and that such heatstroke was accidentally sustained and arose out of the employment. Murdock v Washburn-Crosby Co. 187 M 518, 246 NW 113.

It matters not that the collapse in a heatstroke did not occur during the hours of the victim's employment or on the working premises. It is enough that the agency of causation was applied during the employment. Ueltschi v Certified Ice & Fuel Co. 201 M 302, 276 NW 220; La Cross v Cedar Lake Ice Co. 203 M 146, 280 NW 285.

That heatstroke may be an accidental injury within the definition of our workmen's compensation act has been definitely settled since the decision in State ex rel v District Court, 138 M 250, 164 NW 916. The question is whether the employment exposed the employee to the risk. Ueltschi v Certified Ice & Fuel Co. 201 M 302, 276 NW 220; Ruud v Mpls. St. Ry. Co. 202 M 480, 279 NW 224.

Where an employee's work required steady, rapid and concentrated activity on a hot day, which accentuated the natural risk of heatstroke, there was a causal connection between his death by heatstroke and the work he was performing. Nelson v Creamery Pkge. Mfg. Co. 215 M 25, 9 NW(2d) 320.

Hernia.

A sudden and violent rupture or break in the physical structure of the body of an employee, caused by some strain or exertion in the employment of the master, is an "accidental injury" within the meaning of the workmen's compensation act, even though no external unforeseen event, such as slipping, falling or being struck, contributes thereto. Babich v Oliver Iron Mining Co. 157 M 122, 195 NW 784; Klika v Ind. School Dist. 166 M 55, 207 NW 185; Zobitz v Oliver Iron Mining Co. 167 M 424, 209 NW 313; Valeri v Village of Hibbing, 169 M 241, 211 NW 8; Colburn v Kenyon Steel Pump Co. 171 M 254, 214 NW 29.

An inguinal hernia, the development of which is caused by over-exertion or strain, is an "accidental injury" within the workmen's compensation act, and is compensable. Kika v Ind. School Dist. 161 M 461, 202 NW 30.

There being no evidence contra, there is required a finding that the hernia was due to an accident arising out of and in the course of relator's employment. Fredericksen v Burns Lbr. Co. 163 M 394, 204 NW 161.

If an unforseen accident to an employee, while engaged in the performance of his work, directly causes an injury to the physical structure of his body, the injury is compensable under the workmen's compensation act, even though the employee had a natural weakness predisposing him to such an injury. Wilkins v Ben's Home Oil Co. 166 M 41, 207 NW 183.

To relieve the hernia a surgical operation was performed. It was followed by an attack of delirium tremens and the death of the workman. The commission

sustained a finding of the referee that the "operation did set into activity delirium tremens," and that death was the result of the operation and the subsequent complications. Held, that the finding is supported by the evidence. Valeri v Village of Hibbings, 169 M 241, 211 NW 8.

Award of compensation for recurring disability from hernia without intervention of second accident sustained. Benjamin v Kiefer, 170 M 382, 213 NW 32.

A traumatic hernia is compensable. (Klika v Independent School Dist. 161, M 461, 202 NW 30, followed.) In relation to the injury, it is sufficient if the accident is the incitation. Bauman v Roth Downs Mfg. Co. 177 M 98, 224 NW 459.

Medical theory of hernia has little or no bearing on hernia as cause of industrial disability. Court is concerned only with legal phase. Bauman v Roth Downs Mfg. Co. 177 M 98, 224 NW 459.

Where there has been a recent tear or evidence of an accidental injury was clear and persuasive compensation for hernia has been allowed. Brajan v Oliver Iron Mining Co. 181 M 296, 232 NW 342.

Where claimant's testimony as to accidental injury producing an inguinal hernia is contradicted and impeached by surrounding circumstances, commission's finding that he did not suffer the asserted injury cannot be disturbed. Brajan v Oliver Iron Mining Co. 181 M 296, 232 NW 342; Nasland v Federal Cement Tile Co. 181 M 301, 232 NW 342; Tillman v Northwest Fruit, Inc. 207 M 377, 291 NW 609.

Finding sustained that permanent partial disability of employee resulted from two hernias, one occurring during coverage of each of two insurers, and that both were equally liable for the disability. Carpenter v Arrowhead Steel Prod. Co. 194 M 79, 259 NW 535.

Where evidence of causal connection between an alleged slip and jerk and a hernia is in conflict, a negative finding by the commission based on competent evidence must be sustained. Schwendig v Anderson & Hedwall Co. 207 M 14, 289 NW 772.

Conflicting statements of employee before and at a hearing as to the occurrence of a hernia held sufficient to sustain the commission's denial of compensation. Hillman v Northwest Fruit, 207 M 377, 291 NW 609.

Finding of commission that claimant did not suffer a traumatic hernia was one of fact which court cannot disturb if it is justified by evidence and reasonable inferences to be drawn therefrom. Hillman v Northwest Fruit, Inc. 207 M 377, 291 NW 609.

Though an employee has a congenital or acquired condition favorable to the development of a rupture, if an unusual strain or over-exertion in his work induces its development, that is the legal cause and the result is compensable. Haller v Northern Pump Co. 214 M 404, 8 NW(2d) 464.

Lightning.

Death from lightning which struck a tree under which employee sought shelter from a severe rain storm during his working hours held to arise out of the employment. State ex rel v District Court, 129 M 502, 153 NW 119.

Where conditions incident to the performance of duties concur with an act of God in causing an injury to an employee, he is entitled to compensation. Dunnigan v Clinton Falls Nursery Co. 155 M 286, 193 NW 466.

Death by lightning is not compensable unless the employment accentuates the natural hazard from lightning. Lickfett v Jorgenson, 179 M 321, 229 NW 138.

Poisoning.

Evidence held not to justify inference that fatal Hodgkins disease resulted from ulcerations in employee's nose caused by inhaling fumes of hydrochloric acid used in his work as tinner. State ex rel v District Court, 145 M 444, 177 NW 644.

An employee who has become afflicted with a disabling ailment in his employment, not among those listed in the law as compensable occupational diseases, through negligence of his employer amounting to an omission of a statutory duty,

has an action at law for damages. Donnelly v Mpls. Mfg. Co. 161 M 240, 201 NW 305.

Chemical poisoning from coffee drawn from new urn in restaurant to which employer had directed office clerk to lunch and arrange to receive an expected telephone call there held to arise out of employment. Krause v Swartwood, 174 M 147, 218 NW 555.

When 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. Krause v Swartwood, 174 M 147, 218 NW 555.

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. Manley v Harvey Lbr. Co. 175 M 489, 221 NW 913; Grina v Steenerson Bros. Lbr. Co. 189 M 149, 248 NW 732.

Evidence held to show that injuries from inhalation or injection of poisonous substances in the distillation of coal was an "accident". Adler v Interstate Power Co. 180 M 192, 230 NW 486.

Death of a 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 City of Virginia, 193 M 62, 257 NW 661.

Death by carbon monoxide gas poisoning of traveling salesman in control of his own time and means of transportation while repairing his automobile at home held not to arise out of his employment. Soule v Red Wing Adv. Co. 194 M 365, 260 NW 360.

Bronchial asthma from fumes of chemical used to treat wheat in unventilated grain tank held not within compensation act, but recovery of damages in action at law upheld. Clark v Banner Grain Co. 195 M 44, 261 NW 596.

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 Russell-Miller Milling Co. 196 M 358, 267 NW 501.

Phosphorus poisoning held cause of dermatitis from use in employment of strong solution of washing powder containing trisodium phosphate and to be a compensable occupational disease. Malzak v Salmio, 206 M 430, 288 NW 837.

Where medical men have found the harmful effect of certain chemicals upon employee, a finding that satisfied them as to the cause of employee's disease should satisfy the statute. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

See annotations under section 176.66.

Going to or returning from work.

Defense in action at law that plaintiff's remedy under the compensation act held not made out where defendant and plaintiff's employer were both under the act and plaintiff was injured by being struck by defendant's street car while on his way home to supper, after which he was to return to his employment, the accident not occurring during his hours of service. Otto v Duluth St. Ry. Co. 138 M 312, 164 NW 1020.

An injury to workmen while riding on their employer's truck on way home after completion of day's work, where employer did not regularly furnish transportation does not come within compensation act. Erickson v St. Paul City Ry. Co. 141 M 166, 169 NW 532.

As a general rule an injury sustained by an employee on his way home after completing his day's work does not arise out of his employment or entitle him to compensation. Koubek v Gerens, 147 M 366, 180 NW 219; Simmonds v Reigel, 165 M 458, 206 NW 717.

An injury to an employee in a building owned and exclusively occupied by the employer while descending in an elevator from the floor on which she was em-

ployed upon leaving work, held to come within the compensation act and that an action at law for damages does not lie. Lienau v Northwestern Telephone Exch. Co. 151 M 258, 186 NW 945.

Injury to office employee, given mail by employer to deposit in a mail-box on his way home from work, struck by an automobile while crossing street to a mail-box, arose out of her employment. Bookman v Lyle Culvert & R. E. Co. 153 M 479, 190 NW 984.

Where the employee enters the premises of the employer on her way to work and pursues the proper course to the place of her labor, while there in the performance of her duties, and until she leaves the premises by the ordinary means of exit, she is engaged in the ordinary pursuit of her employment, and is entitled to the protection and is subject to the limitations of the compensation act. Novack v Montgomery Ward & Co. 158 M 495, 198 NW 290.

An employee necessarily using an elevator on premises of employer is at common law an employee and not a passenger. Such use of an elevator 20 minutes before time to begin work is within a reasonable time and on the premises "during the hours of service." Novack v Montgomery Ward & Co. 158 M 495, 198 NW 290.

Respondent was sent upon a special errand which required his presence out several miles from the office until ten o'clock at night. He was returning to his home when injured. Held, that he was where his duties called him in the course of his employment, and is entitled to compensation. Reese v National Surety Co. 162 M 493, 203 NW 442.

Injury received on way home after special errand compensable. Reese v National Surety Co. 162 M 493, 203 NW 442.

Boarding freight train going to working place. Moore v J. A. McNulty Co. 171 M 75, 213 NW 546.

Injury to cook near rear door of restaurant on premises of employer while on way to work was compensable. Simmonson v Knight, 174 M 491, 219 NW 869.

"Working premises" includes usual avenues of ingress and egress of place where services were rendered. Simonson v Knight, 174 M 491, 219 NW 869.

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. Rosvall v City of Duluth, 177 M 197, 224 NW 840.

Where it was necessary for an employee to cross railroad tracks 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. Ludwig v Farmers Shipping Ass'n, 181 M 90, 231 NW 803.

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 Minnesota Min. & Mfg. Co. 193 M 169, 258 NW 307.

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 Borgen Chevrolet Co. 199 M 348, 272 NW 172.

A street car company which furnishes passes to its employees and its employees who use them in transportation to and from work without being required to do so are subject to section 176.01, Subd. 11. In principle there can be no distinction between an injury while alighting from or boarding the vehicle furnished for transportation to and from work, as both are incidental to the transportation. Radermacher v St. Paul City Ry. Co. 214 M 427, 8 NW(2d) 466.

See annotations under "Street and Highway Accidents".

Street and highway accidents.

Injury to a messenger boy through climbing a passing vehicle to expedite his work held not to arise out of his employment. State ex rel v District Court, 138 M 326, 164 NW 1012.

Accident to traveling business solicitor on week-end homeward journey from a mission for his employer held to arise out of and in course of the employment. State ex rel v District Court, 141 M 348, 170 NW 218.

Plaintiff, while driving an automobile belonging to his employer, as an accommodation to a fellow employee to whom it had been assigned, was injured by being struck by an automobile driven by defendant, an employer, in the course of his business. All parties were under the compensation act. Held that the accident did not arise in the course of plaintiff's employment and did not come within the third party provision of the compensation act. Gibbs v Almstrom, 145 M 35, 176 NW 173.

A workman required to carry signal lanterns from a line of sewer to a tool house did not remove himself from the protection of the compensation act by taking a shorter and generally traveled route between the two points along a railroad track instead of the public streets. Patterson v O'Neil, 151 M 15, 185 NW 948.

Being struck by an automobile while crossing a street to deposit letters in a mail box for the employer on way home from work is an accident arising out of and in the course of the employment. Bookman v Lyle Culvert & R. E. Co. 153 M 479, 190 NW 984.

Injury on return trip from repairing machines in casual employment in usual course of employer's business held compensable. Workman v Endriss, 164 M 199, 204 NW 641.

Firemen on way to fire. Behr v Soth, 170 M 278, 212 NW 461.

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. McCarty v Twin City Egg & Poultry Ass'n, 172 M 551, 216 NW 239.

Finding that injury to automobile salesman in accident happening while driving a prospective purchaser on an errand for his accommodation did not arise out of nor in the course of his employment, held sustained by the evidence. Engsell v Northern Motor Co. 174 M 362, 219 NW 293.

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. Rosvall v City of Duluth, 177 M 197, 224 NW 840.

Injury while traveling on highway arose out of and in course of employment. Austin v Leonard, Crossett & Riley, Inc. 177 M 503, 225 NW 428.

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. Fabio v City of St. Paul, 181 M 601, 233 NW 467.

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. Johnston v W. S. Nott Co. 183 M 309, 236 NW 466.

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 Lorenz Trunk Works, 187 M 444, 245 NW 615.

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 the course of employment. Markoff v Emeralite Surfacing Products Co. 190 M 555, 252 NW 439.

Driver of a school bus, fatally injured on his way to school house 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 Villard Consolidated School District, 192 M 449, 257 NW 90.

Evidence held to sustain finding that investigator of industrial commission was acting in course of employment while stepping off a streetcar into path of automobile. Hardy v State Indus. Commission, 193 M 46, 257 NW 497.

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 Roth, 193 M 107, 258 NW 26.

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 Eck's Homemade Sausage Co. 194 M 458, 261 NW 3.

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. Reinhard v Universal Film Exchange, 197 M 371, 267 NW 223.

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 Buchman, 200 M 171, 273 NW 678.

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 National Battery Broadcasting Co. 200 M 237, 273 NW 681.

When an employee in the discharge of his duties is required to go upon the highway he continues under the protection of the compensation act while on the homeward portion of his journey, even if the employment is terminated before the homeward trip. Howlett v Midwest Distributors, Inc. 202 M 247, 277 NW 913.

Death of an employee while necessarily crossing railroad tracks on his way from usual place of employment to assist at another place under instructions of employer held to arise out of and in course of his employment. Oberg v De Beau, 202 M 476, 279 NW 221.

Where attention to the employer's business on the same route is a material or concurrent part of an employee's return trip from a vacation, an accident occurring to him on the way held to arise out of and in the course of his employment. Fox v Atwood-Larson Co. 203 M 245, 280 NW 856.

In a combination business and personal trip by automobile, in which the personal mission involved the perils of the highway beyond the business terminus, an accident occurring on the increased risk not necessitated by the employment held not to be attributable to the employment. Kayser v Carson, Pirie, Scott & Co. 203 M 578, 282 NW 801.

The liability of an employer who regularly furnishes transportation to his employees to and from their place of employment exists for an injury occurring to an employee during such transportation even though there was no contract to furnish the transportation, or that the employee could have walked, or that the transportation was outside the hours of service. Gehrke v Weiss, 204 M 445, 284 NW 434.

An injury to an employee by slipping and falling on an icy sidewalk while returning from a physician's office for treatment of a prior compensable injury held to arise out of and in course of the employment. Fitzgibbons v Clarke, 205 M 235, 285 NW 528.

Fatal highway accident to publication solicitor while on combined sales and personal trip held to arise out of and in course of his employment. Lindell v Minn. American Legion Pub. Co. 208 M 415, 294 NW 416.

Rule governing street and highway accidents: "If the work of an employee creates the necessity for travel, he is in the course of his employment, although he is serving at the same time some purpose of his own. But, if the work has had no material part in creating the necessity of travel, then the travel is personal and so is the risk". Lindell v Minn. American Legion Pub. Co. 208 M 415, 294 NW 416.

Injury to traveling salesman, without fixed working hours or routes, by being struck by a locomotive at a railroad crossing in his territory while on his employer's business in an automobile furnished by the employer, held affirmatively. Johnson v Crane Co. 210 M 519, 299 NW 19.

Travel by an employee and its incidental risks are in the course of the employment where the employment creates the necessity for such travel. Johnson v Crane Co. 210 M 519, 299 NW 19.

An injury is within the course of the employment where the employee has stepped aside from his employer's business to visit beer taverns and has returned to his duties when injured. Johnson v Crane Co. 210 M 519, 299 NW 19.

Where the employee's work creates the necessity for travel, whether it is for the dual purposes of employer and employee or solely for the purpose of the employer, such travel and its incidental risks are in the course of the employment, but not otherwise. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824.

The highway accident rule applicable to traveling salesmen is not a general rule, as these salesmen carry their working premises with them and their working hours are those during which they are engaged in their employers' service. Cavilla v Northern States Power Co. 213 M 331, 6 NW(2d) 812.

A streetcar company which furnishes passes to its employees and its employees who use them in transportation to and from work without being required to do so are subject to section 176.01, subd. 11. Radermacher v St. Paul City Ry. Co. 214 M 427, 8 NW(2d) 466.

See annotations under "Going to and Returning from Work" and "Scope of Employment".

Accidents occurring in another state.

The compensation act applies to an injury sustained on a vessel on the Great Lakes while in a Minnesota port, and that such application of the law did not infringe upon then existing federal jurisdiction over admiralty matters. Lindstrom v Mutual Steamship Co. 132 M 328, 156 NW 669.

The Minnesota compensation act is applicable to an accident in North Dakota, where the employee was soliciting business for a Minnesota employer under a contract of hire consummated in this state. State ex rel v District Court, 139 M 205, 166 NW 185.

Minnesota compensation act applies to an injury in another state to one employed by a Minnesota employer under a Minnesota contract of hire who had been sent to the other state to supervise work for his employer. State ex rel v District Court, 140 M 427, 168 NW 177.

Death of a traveling business solicitor for a Minnesota corporation in North Dakota by drowning while endeavoring to reach his home in that state for the week-end by crossing a river in a rowboat during a flood in a river which prevented trains from crossing, held compensable under Minnesota law as an accident arising out of and in course of his employment. State ex rel v District Court, 141 M 61, 169 NW 274.

A traveling salesman, employed in connection with the business of a foreign corporation localized in this state, is within the Minnesota act, though injured by an accident outside of the state. Stansberry v Monitor Stove Co. 150 M 1, 183 NW 977.

Compensation may be recovered for the death of a traveling salesman while attempting to escape a fire in a hotel in another state in which he was obliged to stop in the course of his itinerary. Stansberry v Monitor Stove Co. 150 M 1, 183 NW 977.

Where employer and employee are residents of this state, and the employer has his business localized in this state, and the employee performs services pertaining to that business under a contract made in this state, he is within the protection of the compensation law, although his services may be performed outside the state. Krekelberg v M. A. Floyd Co. 166 M 149, 207 NW 193.

Where a 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 act applied. Ginsburg v Byers, 171 M 366, 214 NW 55.

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. Bradtmiller v Liquid Carbonic Co. 173 M 481, 217 NW 680.

Traveling salesman working in another state for corporation located in Minnesota was within Minnesota compensation act. Brameld v Dickinson Co. 186 M 89, 242 NW 465.

One injured while working in a plant in another state operated by a Minnesota employer under a different name for business reasons is entitled to compensation. Melhus v Johnson & Sons Fisheries Co., Inc. 188 M 304, 247 NW 2.

Where the employment of a traveling salesman terminated while on a sales trip away from home, he was under the protection of the compensation act until he reached his place of abode. Howlett v Midwest Distributors, Inc. 202 M 247, 277 NW 913.

See also annotations under subd. 11.

Subd. 11. Personal Injuries Arising Out of and in the Course of Employment.

Injury to an employee while endeavoring to make a key during working hours out of material which appeared to be harmless but was explosive, to facilitate his work for his employer, held to arise out of his employment. State ex rel v District Court, 129 M 176, 151 NW 912.

Evidence held to sustain finding that strain of propelling a wheelbarrow caused rupture of bloodvessel and resulting paralysis, and was an accident arising out of and in the course of employment. State ex rel v District Court, 137 M 30, 162 NW 678.

Long-continued striking with a heavy hammer to split a piece of granite, which caused employee to perspire freely on a cold day, and then falling over a pile of chips of stone, striking his head on a piece of granite, followed immediately by death, justifies a finding that death from cerebral hemorrhage arose out of and in the course of his employment. State ex rel v District Court, 137 M 318, 163 NW 667.

The loss of a leg of a janitor from toes frozen while shoveling snow from the walks about a building was accidental injury within the compensation act. State ex rel v District Court, 138 M 260, 164 NW 917.

Death from infection of scratch on hand held to arise out of and in course of the employment where employee had no scratch when he left home in the morning, but had it on returning from his work. State ex rel v District Court, 139 M 30, 165 NW 478.

Where an employee was injured by a missile thrown by a fellow worker and the employer knew or could have known of such custom in the factory, and the injured employee did not participate in the sport, the injury arose out of the employment. State ex rel v District Court, 140 M 75, 167 NW 283.

The finding that the evidence fails to prove that relator's husband came to his death as the result of an accident arising out of and in the course of his employment must be regarded as in effect a finding that he did not die from such cause. State ex rel v District Court, 142 M 420, 172 NW 311.

Death of driver of city sprinkler who furnished his services, team and running gear for stated daily compensation from injury by one of his horses while caring for it in his stable, held not to arise out of his employment. State ex rel v District Court, 144 M 259, 175 NW 110.

Compensation may be recovered for the death of a traveling salesman while attempting to escape a fire in the hotel in which he is obliged to stop in the course of his itinerary. Stansberry v Monitor Stove Co. 150 M 1, 183 NW 977.

Discovery of dead body of employee at the bottom of shaft of an elevator which he used in his work is sufficient, without other evidence of the occurrence, to sustain a finding that his death was accidental and arose out of his employment. Belanger v Masonic Temple Ass'n, 153 M 281, 190 NW 184.

Acts necessary to the comfort and convenience of the employee while at work, though strictly personal to himself, and not acts of service, are incidental to the service and injury sustained in the performance thereof is deemed to have arisen out of employment. Kaletha v Hall Mercantile Co. 157 M 290, 196 NW 261.

Claimant was employed to act as Santa Claus about and in a store. In his work children pulled at his clothes, and because of that he sought seclusion in a room in the rear of the store, and there removed the mask half from his face and attempted to light and smoke a cigarette. The beard caught fire, injuring his face and hands. Held, that his injuries arose out of and in the course of his employment. Kaletha v Hall Mercantile Co. 157 M 290, 196 NW 261.

Some general characteristics indicated: (1) Employee is "in course of employment" when he does those reasonable things which his contract with his employment expressly or impliedly permits him to do. (2) It "arises out of" the employment when it reasonably appears from all the facts and circumstances that there is a causal connection between the conditions which the employer puts about the employee and the resulting injury. (3) It excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the employee would have been equally exposed apart from the employment. (4) It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence. Novack v Montgomery Ward & Co. 158 M 495, 198 NW 290.

The commission found that Louis Beci died from injuries arising out of and in the course of his employment. The record does not establish conclusively that his injuries were sustained while in a place of danger in disobedience of orders to leave it. Beci v Mariska Iron Co. 161 M 237, 201 NW 313.

Finding that death caused by shock of accident, sustained. Stippel v Charles Friend & Son, 161 M 471, 201 NW 934.

Repairing automatic machines, though employment was casual, it was in usual course of employer's business, and injury on return trip held compensable. Workman v Endriss, 164 M 199, 204 NW 641.

An employee is not within the act while performing services outside the scope of his employment as a voluntary accommodation to his employer or to others; but, if such services are performed at the direction of the employer and because of the relation of master and servant existing between them, the service is within the act. O'Rourke v Percy Vittum Co. 166 M 251, 207 NW 636.

Where an employer assigns an employee to perform services for and under the control of another without disturbing the relation of employer and employee between them he is liable for compensation for injury sustained by the employee in the task. O'Rourke v Percy Vittum Co. 166 M 251, 207 NW 636.

An employer who directs an employee to perform services for a third party remains liable under the act for injuries sustained, if the relation of employer and employee continued to exist between them during the performance of such services. O'Rourke v Percy Vittum Co. 166 M 251, 207 NW 636.

A police officer, while on duty, went to his home, where he kept his weapons, to get his revolver. It accidentally fell upon the floor and was discharged, breaking his leg. Held, that the compensation law applied. McDaniel v City of Benson, 167 M 407, 209 NW 26.

Injury from accidental discharge of gun carried for employee's own purposes not compensable. Larsen v L. A. Larsen Co. 169 M 370, 211 NW 330.

The evidence sustains the finding of the industrial commission that the deceased employee, the janitor and caretaker of a church, was killed in the course of his employment, though the work was not that which he was specifically directed to do. Orcutt v Trustees of Wesley M. E. Church, 170 M 97, 212 NW 173.

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 heavy object and was injured, held that the injury arose out of the employment. Ramczik v Winona Machine & Foundry Co. 174 M 156, 218 NW 545.

Working premises of employer may include usual avenues of ingress and egress of place of employment. Simonson v Knight, 174 M 491, 219 NW 869.

Term "during hours of service" in section 4326 (j) includes reasonably short period of ingress on employer's place of business where services are rendered. Simonson v Knight, 174 M 491, 219 NW 869.

The law supposes accident as against suicide until the contrary is shown. Manley v Harvey Lbr. Co. 175 M 489, 221 NW 913.

Finding that loss of eyesight was occasioned by a twig hitting employee in eye while chopping sustained. Lampi v Koponen, 178 M 133, 226 NW 475.

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. Baaken v Nauft & Bergstrom, 179 M 272, 228 NW 931.

Meaning of phrase "out of and in course of" employment. Rautio v International Harvester Co. 180 M 400, 231 NW 214.

Finding that police officer, injured while traveling on a motorcycle to assume duty at place he was detailed by superior officer, received such injuries accidentally arising out of and in the course of his employment, held sustained by evidence. Fabio v City of St. Paul, 181 M 601, 233 NW 467.

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 Prudential Ins. Co. 186 M 534, 243 NW 706.

Death of employee when foreman turned air hose on him as a practical joke arose out of and in the course of employment. Barden v Archer-Daniels Midland Co. 187 M 600, 246 NW 254.

Injury to salesman going outside his territory on fishing trip did not arise out of his employment, though he posted signs and advertising matter for employer while on trip. Loucks v J. R. Reynolds Tobacco Co. 188 M 182, 246 NW 893.

Finding that injury to office manager from accidental discharge of gun in another building did not arise out of employment sustained. Auman v Breckenridge Tel. Co. 188 M 256, 246 NW 889.

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 Johnson Grocery, 189 M 285, 249 NW 44.

Employer is liable for injuries sustained by an employee while performing work assigned to him, although performed for a third party. Melhus v Johnson & Sons Fisheries Co. Inc. 188 M 304, 247 NW 2.

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 Osman Temple, 189 M 239, 248 NW 827.

Burden is upon employee to prove that injury resulted from accident arising out of employment. Bloomquist v Johnson Grocery, 189 M 285, 249 NW 44; Jensvold v Kunz Oil Co. 190 M 41, 250 NW 815; Henry v Odell Motor Car Co. 191 M 92, 253 NW 110; Thompson v G. E. Thompson Co. Inc. 198 M 547, 270 NW 594; Brown v General Drivers Union No. 544, 212 M 265, 3 NW(2d) 423.

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 of and in course of his employment held sustained by evidence. Green v County of Chippewa, 189 M 627, 250 NW 679.

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 Kunz Oil Co. 190 M 41, 250 NW 815.

Injury of 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 Inter-State Iron Co. 190 M 132, 250 NW 812.

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. The presumption sustains the burden of proof until rebutted by satisfactory evidence. Henry v Odell Motor Car Co. 191 M 92, 253 NW 110.

Burden of proving that accident arises out of and in course of employment is upon claimant. Henry v Odell Motor Car Co. 191 M 92, 253 NW 110.

A farm laborer working for monthly wage and on duty at all times is covered by compensation in attending to his personal wants on premises, and even when in cottage furnished for use of his family on the farm. Margoles v Saxe, 191 M 358, 254 NW 457.

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 the course of employment, held sustained by evidence. Hicken v Ebert-Hicken Co. 191 M 439, 254 NW 615.

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 injury did not arise out of and in course of his employment held supported by evidence. Thompson v G. E. Thompson Co. Inc. 198 M 547, 270 NW 594.

Relationship of employer and employee must exist and be in force at time of an accident to render the employer liable. Roberts v Ray-Bell Film Co. 206 M 351, 288 NW 591.

Inference from circumstances of employment and shooting of labor union organizer by unknown person held to justify finding that his death arose out of and in course of his employment. Corcoran v Teamsters & Chauffeurs Joint Council, 209 M 289, 297 NW 4.

A fall of an employee while at work, due to physical weakness, arises in the "course of" the employment, and an injury sustained by the fall arises "out of" the employment, thus completing the combination of the two necessary factors. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

The term "arising out of" the employment points to the origin or cause of the injury, and determination of the origin or cause requires a finding of proximate cause. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

An injury arises out of and in course of the employment where it exposes the employee in a special degree to the risk of injury. Byhardt v Ballord, 209 M 391, 296 NW 504.

Injuries to an employee while engaged in the work of supplying the means by which the employer carries on his business result from risks to which such employment exposes him. Byhardt v Ballord, 209 M 391, 296 NW 504.

The new standard "arising out of and in the course of" employment does not require that the latter be the proximate cause of injury. Hanson v Robitshek-Schneider Co. 209 M 596, 297 NW 19.

The words "in the course of" impose a requirement in respect to time and place; the phrase "out of" expresses a factor of source or contribution rather than cause in the sense of being proximate or direct. Hanson v Robitshek-Schneider Co. 209 M 596, 297 NW 9.

Injury to traveling salesman, without fixed working hours or routes, by being struck by a locomotive at a railroad crossing in his territory while on his employer's business in an automobile furnished by the employer, held to arise out of and in course of his employment. Johnson v Crane Co. 210 M 519, 299 NW 19.

A workman is within the protection of the compensation act while, within his hours of work and on the employer's premises, he is on his way to a toilet to respond to a call of nature. Sudeith v City of St. Paul, 210 M 321, 298 NW 46.

A half-hour lunch period is too short for an outlying park employee to eat lunch away from the park, and an accident to him during this period on the employer's premises is compensable. Sudeith v City of St. Paul, 210 M 321, 298 NW 46.

An injury is within the course of the employment where the employee has stepped aside from his employer's business to visit beer taverns and has returned to his duties when injured. Johnson v Crane Co. 210 M 519, 299 NW 19.

A person hired in Iowa to work in Minnesota for an industry localized therein, which directed his work and paid his salary, is limited to the compensation act to Minnesota for an injury sustained in Wisconsin in his employment. Severson v Hanford Tri-State Airlines, 105 F(2d) 622.

The determinant whether an accident arises out of and in the course of employment is the employee's activity at the moment. Lunde v Congoleum-Nairn, Inc. 211 M 487, 1 NW(2d) 606.

Where legal cause of disability has been shown by competent evidence, liability follows, though other causes may have contributed thereto. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

While recovery of compensation cannot rest on mere speculation or conjecture, if the proof furnishes a reasonable basis for an inference that the injury was the cause of the ailment, it is sufficient. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

An injury to a priest's housekeeper by slipping and falling on the driveway of the parish house while returning from the performance of duties at the church held to arise out of and in the course of her employment. Berger v Church of St. Patrick, 212 M 345, 3 NW(2d) 590.

Where an employer furnishes transportation to and from work it is of no consequence that the vehicle is for public use or that an injury in such transportation occurs outside of regular working hours. Radermacher v St. P. City Ry Co. 214 M 427, 8 NW(2d) 466.

Scope of employment.

A messenger boy, whose duties require him to traverse city streets, departed from the scope of his employment in attempting to climb upon a passing vehicle without authority to do so. State ex rel v District Court, 138 M 326, 164 NW 1012.

Findings sustained by evidence that decedent met his death when not engaged in the course of his employment and when he was engaged in furthering personal interests. State ex rel v District Court, 142 M 335, 172 NW 133.

A team driver, in ill humor, who during his working hours, without provocation, lashed with a whip a horse which was quietly feeding in its stall and was kicked by it, held to have stepped aside from his employment to do an act in no way connected therewith. Harris v Kaul, 149 M 428, 183 NW 828.

A workman required to carry signal lanterns from a line of sewer to a tool house, did not remove himself from the protection of the compensation act by taking a shorter and generally traveled route between the two points along a railroad track instead of the public streets. Patterson v O'Neill, 151 M 15, 185 NW 948.

Doing the master's work in an unusual manner, after a warning by his foreman that he "was likely to get hurt" was merely a warning and not a violation of an order which removed a brakeman from the scope of his employment. Korhonen v Missabe Ice Co. 153 M 150, 189 NW 931.

An employee required to board cars spotted by a railroad company for use of his employer and let them down grade did not depart from the scope of his employment by boarding a moving car before it was spotted. Korhonen v Missabe Ice Co. 153 M 150, 189 NW 931.

Voluntary fireman held within scope of employment. Stevens v Village of Nashwauk, 161 M 20, 200 NW 927.

Where a contractor went up a ladder to inspect a chimney, telling his employee to wait until his return, and while on the roof noticed a movement on the ladder and on his descent observed his employee bleeding and incoherent, the inference is that the employee fell from the ladder. The direction to wait was casual, and it does not necessarily follow that the employee stepped aside from his employment. Young v Bjornes, 165 M 473, 206 NW 933.

An employee who combined a personal mission with a duty to his employer at the same time and place did not thereby depart from the scope of his employment, and an injury then occurring to him was compensable. Bellman v Northern Minn. Ore Co. 167 M 269, 208 NW 802.

The compensation act is liberally construed to secure to employees the benefits intended, and an employee is not necessarily placed outside the protection of the act by disobeying an order. Olson v Robinson, Straus & Co. 168 M 114, 210 NW 64.

Effect of violation of law. Moore v J. A. McNulty Co. 171 M 75, 213 NW 546.

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. Nygaard v Throndson Bros. 173 M 441, 217 NW 370.

Finding sustained that automobile salesman departed from scope of employment in going on errand for prospective customer. Engsell v Northern Motor Co. 174 M 362, 219 NW 293.

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. Rautio v Internat'l Harv Co. 180 M 400, 231 NW 214.

Finding that bank officer on a "good will tour" was not acting within the scope of his employment sustained. Quast v State Bank of Wheaton, 184 M 329, 238 NW 677.

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 pasttime of fishing when accident occurred. Hoskins v Austin-Western Road Mach. Co. 190 M 397, 251 NW 909.

Evidence held to sustain finding that employee in automobile had departed from his employment at time of accident. Lundeen v Kaplan Paper Box Co. 196 M 100, 264 NW 435; Dahley v Ely & Walker, 196 M 428, 265 NW 284; Johnson v Nash-Finch Co. 197 M 616, 268 NW 1; Bronson v Nat'l Battery Brdcasting Co. 200 M 237, 273 NW 681.

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 Taylor, 198 M 274, 269 NW 525.

An employee is not within protection of act when as a voluntary accommodation to his employer he performs duties outside scope of his employment. Thompson v G. E. Thompson Co. Inc. 198 M 547, 270 NW 594.

Stopping of automobile salesman for supper at home of his wife's folks did not take him out of his employment. Jeffers v Borgen Chev. Co. 199 M 348, 272 NW 172.

Violation of employer's orders does not defeat compensation unless the violation takes the workman out of the scope of his employment. Prentice v Twin City Whle. Groc. 202 M 455, 278 NW 895.

An employee who was doing what he was hired to do, but in a manner forbidden by his superior, is a transgression within the sphere of his employment and does not defeat compensation for an injury thereby sustained. Prentice v Twin City Whle. Groc. 202 M 455, 278 NW 895.

The coverage of section 176.01, subd. 11, of workmen while "in, on or about" the premises where their service requires their presence includes premises in the immediate vicinity of the work, even though not under the control of the employer. McKenzie v Ry. Exp. Agcy. Inc. 205 M 231, 285 NW 529.

Furnishing a policeman's badge to an employee of a golf course in a city park implies an expectation to protect the city's interests in any part of the park. Sudeith v City of St. Paul, 210 M 321, 298 NW 46.

An injury is within the course of the employment where the employee has stepped aside from his employer's business to visit beer taverns and has returned to his duties when injured. Johnson v Crane Co. 210 M 519, 299 NW 19.

Where an employee's activity at the moment of an accident to him is wholly his own, it is beyond the scope of his employment. Lunde v Congoleum-Neirn, Inc. 211 M 487, 1 NW(2d) 606.

Fatal accident to a traveling salesman while on a pleasure trip taken as a pastime occurred during a detour from his employer's business. Lunde v Congoleum-Nairn, 211 M 487, 1 NW (2d) 606.

Accidental death of a mechanic while returning home for a week-end before completion of a job at a distant place, to which he had been sent under an agreement to pay his transportation there and back upon its completion, held not to arise out of and in the course of his employment. Cavilla v N. S. Power Co. 213 M 331, 6 NW (2d) 812.

An employee sent on a mission to a certain city, who after performing the mission departed from the scope of her employment by visiting in another city, re-entered the course of her employment by returning home from the latter city by a shorter route within the allotted time and is entitled to compensation for an injury sustained on the return trip. Kiley v Sward-Kemp Drug Co. 214 M 548, 9 NW(2d) 237.

See annotations under "Street and highway accidents" and "Going to or returning from work."

See annotations under "Scope of employment" and under subd. 9.

Subd. 13. Farm Laborers—Commercial Threshermen and Balers.

Farm laborers.

Employment of carpenters by owner of a farm to tear down an old barn and construct another with the lumber held to be farm work and not under compensation act. State ex rel v Nelson, 145 M 123, 176 NW 164.

One employed to work for and about a summer resort, including work ordinarily done by farm hands, some of which was done on other land owned by the employer, held not a farm laborer and is within the compensation act. Klein v McCleary, 154 M 498, 192 NW 106.

One employed upon a steam dredge in a drainage project is not excluded from the compensation act as coming within the class designated as "farm laborers." Dailey v Barr, 157 M 357, 196 NW 266.

Workman injured while erecting a potato warehouse near railroad tracks for a farmer who also bought and sold hay and potatoes was not a farm laborer. Benoy v Torkelson, 161 M 223, 201 NW 312.

The compensation act excludes farm labor from its operation, but provides that it shall apply to such labor if the employer shall have elected to accept the provisions of the act by posting a statement of such election and filing a duplicate thereof with the industrial commission. Under this statute, filing a notice without posting it does not bring the employer of such labor within the act. O'Rourke v Percy Vittum Co. 166 M 251, 207 NW 636.

Injury to one employed in the operation of a sawmill on the farm of a farmer who operated the mill only a short time each year is covered by the compensation act. Durrin v Meehl, 163 M 325, 204 NW 22.

One employed to milk cows and take care of barns on dairy farms, 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. Greischar v St. Mary's College, 176 M 100, 222 NW 525.

Employee in industrial business was not a farm laborer, though sometimes required to do farm work for his employer. Austin v Leonard, Crossett & Riley, 177 M 503, 225 NW 428.

One operating a silo filler for commercial thresherman and cornshredderman held not a "farm laborer." Boyer v Boyer, 178 M 512, 227 NW 661.

Neither task on which workman is engaged at moment of injury nor place where it is performed is test of whether he is a farm laborer, and carpenter repairing buildings on farm owned by bank was not a farm laborer. Peterson v Farmers State Bank, 180 M 40, 230 NW 124.

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 Fairmont Cry. 187 M 260, 245 NW 138.

Finding that one working on farm owned by creamery corporation was "farm laborer" sustained. Hebranson v Fairmont Cry. 187 M 260, 245 NW 138.

One caring for sheep held an employee and not an independent contractor, and that there was no relationship of bailee and bailor. Wilson v Kileen & Son, 188 M 97, 246 NW 542.

Farmer electing to come under compensation act held within such act at time of injury to one caring for sheep. Wilson v Kileen & Son, 188 M 97, 246 NW 542.

Employment of woodcutter by owner of lake shore land, some of which he farmed and on which he had cottages and boats for rent, a small store and sawmill, selling some wood and lumber, held incidental to farming. Hagelstad v Usiak, 190 M 513, 252 NW 430.

A farmer who, by posting notice and filing a duplicate thereof with the 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 Saxe, 191 M 358, 254 NW 457.

A farm laborer, working for monthly wages for a farmer who had elected to be bound by the compensation act and on duty at all times, is covered by compensation in attending to his personal wants on the premises, and even when in cottage furnished for use of his family on the farm. Margoles v Saxe, 191 M 358, 254 NW 457.

A caretaker of a hotel property assigned to assist in repairing building on farm under same management is not a farm laborer simply because at time of injury he was working on the farm. Oberg v Du Beau, 202 M 476, 279 NW 221.

Cutting wood from woodland, without intent of owners to convert the land into a farm for their use, but for sale in a wood-yard owned by them, held not farm labor. Stahl v Patrick, 206 M 413, 288 NW 854.

An employee of a farmer who operated a cornpicker owned by the farmer in small jobs casually undertaken by the farmer for other farmers in the vicinity held to be a farm laborer. Partridge v Blackbird, 213 M 228, 6 NW(2d) 250.

Whether or not an employee is a farm laborer is determined by the whole character of the employment. "The nature of the employment is the test, rather than the particular item of work the employee was doing when injured." Partridge v Blackbird, 213 M 228, 6 NW(2d) 250.

A workman is not a farm laborer simply because at the moment of injury he was doing work on a farm. Schroepfer v Hudson, 214 M 17, 7 NW(2d) 336.

The particular work being done at the time of injury and the place of performance are not determinative of the classification of the employment. Schroepfer v Hudson, 214 M 17, 7 NW(2d) 336.

Evidence held to sustain finding that employment was as carpenter where a builder who also operated a farm hired employee for carpenter work and to fill in time between such jobs on the farm, where he was injured while removing a fence. Schroepfer v Hudson, 214 M 17, 7 NW(2d) 336.

Employee was hired to assist in the care of foxes and mink and not as a farm laborer. Tucker v Newman, 217 M 473, 14 NW(2d) 767.

Commercial Threshermen and Balers.

Employee injured while cranking automobile for employer, engaged in threshing operation, held under act. Nygaard v Throndson Bros. 173 M 441, 217 NW 370.

Owner and operator of threshing machine, corn shredder, and silo filler, not a farmer, comes within the definition of a commercial thresherman as to employee injured in a silo cutting and filling job. Boyer v Boyer, 178 M 512, 227 NW 661.

An employee of a commercial thresherman and corn shredderman is not a farm laborer within the definition of section 176.01, subd. 13, even though at the

time of his injury he was operating a silo filler. Boyer v Boyer, 178 M 512, 227 NW 661.

A farmer threshing for his neighbors may be a "commercial thresherman." Charpentier v Cumming, 178 M 519, 227 NW 663.

Finding that teamster hauling bundles for commercial thresherman, but injured while pumping water for the horses on employer's farm, was injured in course of employment of commercial thresherman, sustained. Charpentier v Cumming, 178 M 519, 227 NW 663.

Engineer of farmer who owned and operated threshing rig and threshed for others at a fixed price per bushel, and also belonged to a group of farmers exchanging work, held to be employee of commercial thresherman, there being nothing about the work of the engineer which made it exchange work. Walker v Wading, 180 M 49, 230 NW 274.

A farmer who owned and used on his farm a combine, corn-picker and other machines, with which he casually did small jobs for other farmers in the vicinity, held not to be a commercial thresherman or baler. Partridge v Blackbird, 213 M 228, 6 NW(2d) 250.

Subd. 14. Daily Wage—Weekly Wage.

Whether an employee received $140.00 a month with an understanding that out of this he was to pay wages of an assistant, and for several months prior to a fatal accident paid an assistant $40.00 a month, the compensation rate of his widow must be based on wages of $100.00 per month. State ex rel v District Court, 128 M 486, 151 NW 182.

Fireman was paid $2.00 for each call and $1.00 per hour for time spent at a call over one hour. His employment did not afford employment for any fixed or regular number of days in any one week. Held, compensation was properly determined pursuant to section 176.01, subd. 14, and not pursuant to section 176.12. Stevens v Village of Nashwauk, 161 M 20, 200 NW 927.

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. Anderson v Roberts-Karp Hotel Co. 171 M 402, 214 NW 265.

Employee might be employed under terms that would permit his reward to be in something other than money. Gossen v Town of Borgholm, 174 M 227, 218 NW 882.

Weekly wage to be paid during temporary total disability is to be ascertained by multiplying daily wage by five and one-half. Modin v City Land Co. 189 M 517, 250 NW 73.

Where traveling salesman was being paid $60.00 to $65.00 weekly to cover flat allowance of $25.00 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 $40.00 per week was sustained. Nelson v Winkley Artificial Limb Co. 191 M 225, 253 NW 765.

Driver of school bus working about three hours a day was a part-time worker for purpose of computing daily wage. Lee v Villard Consol. School District, 192 M 449, 257 NW 90.

Burden is upon him who alleges it to show that normal working time is not eight hours in determining compensation of part-time worker. Lee v Villard Consol. School District, 192 M 449, 257 NW 90.

Weekly wage and compensation rate of employee who worked one day a week for store operating six days a week were under statute properly based on six times his wages for the one day a week he worked. Ferch v Great Atlantic & Pac. Tea Co. 208 M 9, 292 NW 424.

Where an employee worked one hour a day and received no cash wages but did receive services with $40.00 per month, the industrial commission was justified in finding claimant was a part-time employee within the meaning of section 176.01, subd. 14, at a weekly wage in excess of $30.00 for compensation purposes. Olson v Trinity Lodge, 217 M 162, 14 NW(2d) 103.

Subd. 15. Occupational Diseases.

See annotations under section 176.66.

176.02 EMPLOYERS RIGHT TO ELECT ABOLISHED.

HISTORY. 1937 c. 64 s. 1; 1939 c. 265; M. Supp. s. 4272-1.

Elections not to be bound by the compensation act which were made prior to the effective date of Laws 1937, Chapter 64 (July 1, 1937), were not abrogated by that act as to persons then in the employ of such electors. Schuler v Schuler Candy Co. 204 M 456, 283 NW 781.

Evidence held to sustain finding that employer's notice of election not to be bound by former part 2 of compensation law was not posted at time of employee's accident and therefore not operative. Wallerius v Foldesi, 206 M 521, 289 NW 55.

Dependents of a W.P.A. worker who accept compensation pursuant to federal statute, are not precluded from bringing action against a third party whose negligence is alleged to have been the cause of decedent's death. Wagner v City of Duluth, 211 M 252, 300 NW 820.

The finding of the industrial commission that relator's husband, employee of defendent, was found dead in his car at nine o'clock in the evening as the result of a bullet wound which did not arise out of or in the course of his employment, is sustained. Brown v General Drivers Union, 212 M 266, 3 NW(2d) 423.

Housekeeper was an employee of the church rather than the priest she served as such. Berger v Church, 212 M 348, 3 NW(2d) 590.

Accidental injury to employee on a week-end trip to his home, does not arise out of or in the course of his employment. Cavilla v Northern States, 213 M 334, 6 NW(2d) 812.

A lighthouse and its foundation are not to be distinguished in determining whether the injury to one working on the foundation was engaged in "maritime employment" so as to be subject to longshoremen's compensation act. Merrill v Bassett, 50 F. Supp. 488.

Unless there has been a previous resolution to that effect, towns cannot pay the difference between the compensation insurance and the stated salary. OAG Nov. 20, 1944 (442a-19).

Rights of employer as subrogee. 24 MLR 302.

Governmental responsibility for torts. 26 MLR 709.

Evidence of a parol agreement between employer and employee that either or both should be excluded from the compensation act and not bound thereby is inadmissible because not in the form prescribed by the act. (Right of election since abolished) Larson v Trageser, 150 M 182, 184 NW 833.

Accidental injuries.

See annotations under section 176.01, subds. 9, 11.

Injuries arising out of and in the course of employment.

See annotations under section 176.01, subds. 9, 11.

Negligence.

Compensation is not founded upon negligence, and no question of negligence arises unless it be claimed that injury was caused by wilful negligence of employee. Lewis v Connolly Contract Co. 196 M 108, 264 NW 581.

Negligence of driver of automobile held not imputable to gratuitous passenger having no control over manner of operation. Faltico v Mpls. St. Ry. Co. 198 M 88, 268 NW 857.

In an action against a third party by a subrogee insurer for compensation paid, the questions of negligence of the third party and contributory negligence of the employer and employee held properly submitted to the jury. Standard Acc. Ins. Co. v Minn. Utilities Co. 207 M 24, 289 NW 782.

The present compensation act preserves the common law liability resting upon a third party's negligence. Gleason v Sing, 210 M 253, 297 NW 720.

Intentionally self-inflicted injury.

Commission could not find accident "intentionally self-inflicted" because employee violated rule with respect to reporting slightest accidental injury. Clausen v Minn. Steel Co. 186 M 80, 242 NW 397.

Intentional infliction of injury does not ipso facto preclude compensation. Hanson v Robitshek-Schneider Co. 209 M 596, 297 NW 19.

Presumption against suicide.

When violent death is shown, the presumption arises that it was not self-inflicted. As between accident and suicide, the law supposes accident until the contrary is shown. State ex rel v District Court, 138 M 138, 164 NW 582.

The presumption against suicide is presumption of fact and a strong one; but it does not control where there is substantial proof from which rational consideration may reach the conclusion of suicide. Hawkins v Kronick Cleaning & Lndry Co. 157 M 33, 195 NW 766.

If the inference from facts proved is more consistent with unintended mishap than design at self-destruction, the former will be adopted. Sentieri v Oliver Iron Min'g Co. 201 M 293, 276 NW 210.

Intoxication as proximate cause of injury.

Cause of death held accidental in course of employment and not due to intoxication. State ex rel v District Court, 128 M 221, 150 NW 623.

Finding that intoxication was not the "natural or proximate cause" of the accident sustained. State ex rel v District Court, 141 M 348, 170 NW 218.

Intoxication constitutes a bar to relief under the compensation act only when shown to be the proximate, as distinguished from the contributory, cause of the injury, negligence being excluded by the law. State ex rel v District Court, 145 M 96, 176 NW 155.

Condition of stairway, rather than intoxication of employee, held proximate cause of his injury. State ex rel v District Court, 145 M 96, 176 NW 155.

The proximate cause of an injury is that act or event which in natural and continuous sequence, unbroken by any intervening cause, produces the same. State ex rel v District Court, 145 M 96, 176 NW 155.

The burden of proving that intoxication was the proximate cause of death of employee held not satisfied by evidence that he was "somewhat intoxicated" a few hours before a fall down the shaft of an elevator which he used in his work. Belanger v Masonic Temple Ass'n, 153 M 281, 190 NW 184.

Evidence held insufficient to show that intoxication of employee was the natural cause of his injury. Kopp v Bituminous Surface Treating Co. 179 M 158, 228 W 559.

A messenger employed to accompany a shipment of fruit, for whom transportation was provided over specified railroad lines, who became intoxicated and lost his money on the trip, and was injured while attempting to steal a ride back over another railroad held, to have departed from the scope of his employment. Kaselnak v Fruit Dispatch, 205 M 198, 285 NW 482.

Proximate cause of injury.

"The proximate cause of an injury is that act or event which in natural and continuous sequence, unbroken by any intervening cause, produces the same." State ex rel v Dist. Court, 145 M 96, 176 NW 155.

The burden of proving that intoxication was the proximate cause of death of employee held not satisfied by evidence that he was "somewhat intoxicated" a few hours before a fall down the shaft of an elevator which he used in his work. Belanger v Masonic Temple Ass'n, 153 M 281, 190 NW 184.

Employee need not show exactly how his injury was received. Absolute certainty is not necessary. Reasonable basis for the proximate cause complained of is sufficient. Rasmussen v Benz & Sons, 168 M 319, 210 NW 75, 212 NW 20.

A man of advanced years is as much within the protection of the workmen's compensation act as a young man, age being but a factor to be considered in determining whether accident is proximate cause of disability. Furlong v Northwestern Casket Co. 190 M 552, 252 NW 656.

"When an event is followed in natural sequence by a result it is adapted to produce * * *, that result is a consequence of the event and the event is the cause of the result. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

Where physical weakness induced a fall, and the fall resulted in a fractured skull and death, it was the fall, and not the physical weakness, that caused the death. Stenberg v Raymond Coop. Cry. 209 M 366, 296 NW 498.

Burden of proof.

Employee need not show exactly how his injury was received. Absolute certainty is not necessary. Reasonable basis for the proximate cause complained of is sufficient. Rasmussen v Benz & Sons, 168 M 319, 210 NW 75, 212 NW 20.

See annotations under "Intoxication as proximate cause of injury" and "Proximate cause of injury".

176.03 EMPLOYERS SHALL BE INSURED; EXCEPTIONS.

HISTORY. 1937 c. 64 s. 2; M. Supp. s. 4272-2; 1945 c. 31.

A municipality may carry compensation insurance. City of Red Wing v Eichinger, 163 M 54, 203 NW 622.

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. Skuey v Bjerkan, 173 M 354, 217 NW 358.

Employer is primarily liable and his obligation cannot become secondary by insurance coverage. Stitz v Ryan, 192 M 297, 256 NW 173.

An insurer of an employer may question cancelation of alleged coinsurer's contract for purpose of showing that coinsurance was in effect at time of loss. Industrial commission may bring in alleged coinsurer as additional party for purpose of determining if coinsurance exists. Byers v Dahlquist Contracting Co. 190 M 253, 251 NW 267.

Proceedings by an injured employee or his dependent may be brought directly against employer and insurer at the same time. Keegan v Keegan, 194 M 261, 260 NW 318.

A policy of compensation insurance to "A. F. Peavey, doing business as Northwestern Sand Blast Company," issued after Peavey had taken a partner into business with him. Northwestern Sand Blast Company being maintained as partnership name, intention was to protect all employers working under that firm name. Moreault v Northwestern Sand Blast Co. 199 M 96, 271 NW 246.

Contract of sale and installation of an air conditioning system providing "price herein includes cost of workmen's compensation" could be construed, as alleged in complaint, to include requirement that compensation insurance cover employees of buyer of system while assisting in installing it, as affecting demurrer to complaint of regular insurance carrier of buyer, proper construction of contract being a matter to be determined upon evidence at trial. Anchor Casualty Co. v Carrier Engineering Corp. 200 M 111, 273 NW 647.

Where the salary of the president and owner of nearly all of the stock of a corporation was entered in its books as payment to an unnamed "outside solicitor" and an insurer collected premiums thereon for compensation insurance, it was not estopped, after an accident to the president, to deny the relationship of employer and employee. Hansen v Terminal Mfg. Co. 201 M 216, 275 NW 611.

It is not within the power of the employer and insurer to enter into a policy contract which prevents the employee from enjoying the full protection of a policy containing the "usual and customary provisions found in such policies,"

but they may agree among themselves as to their respective rights and duties and ultimate financial responsibility in situations which do not impair the statutory protection given the employee. Maryland Casualty Co. v Amer. Casualty Co. 204 M 43, 282 NW 806.

Where an insurance company had knowledge of its agent's habit of extending credit and reinstating canceled policies it will be assumed that such authority was extended to him. Steidel v Metcalf, 210 M 101, 297 NW 324.

The industrial commission has the same power to determine questions arising between employer and insurer for the benefit of an employee as between employee and insurer or employee and employer. Steidel v Metcalf, 210 M 101, 297 NW 324.

Where an insurance agent had apparent authority to reinstate a canceled policy upon compliance by the assured with the company's requirement, the company is liable upon a policy so reinstated. Steidel v Metcalf, 210 M 101, 297 NW 324.

Owner of truck, not insured for compensation, held liable as third party under automobile law for injury to employee of insured contractors who operated truck by another of their employees with owner's consent in same or related purposes. Gleason v Sing, 210 M 253, 297 NW 720.

The compulsory insurance feature of the compensation act means continuous and uninterrupted coverage during the policy year. Annala v Bergman, 213 M 173, 6 NW(2d) 37.

It is contended there was no separation of risk. Such separation may be had with the consent of the industrial commission. There was no consent in this case. Finn v Phillippi, 211 M 135, 300 NW 441.

Permission for and manner of self-insurance. Wagner v City of Duluth, 211 M 255, 300 NW 820.

Where the employer other than the state or a municipality does not carry workmen's compensation or is not exempted as a self-insurer, an injured employee at his option may elect to claim under the act, or may maintain an action in damages. Hardware Mutual v Ozman, 217 M 287, 14 NW(2d) 351.

The North Dakota policy is not sufficient. Every employer must insure payment of compensation with some insurance carrier authorized to insure such liability in this state, or obtain an order from the industrial commission permitting self-insurance. 1940 OAG 105, June 21, 1939 (523a).

See annotations under section 176.25.

176.04 LIABILITY OF EMPLOYER EXCLUSIVE.

HISTORY. 1937 c. 64 s. 3; M. Supp. s. 4272-3.

The provision of the compensation act including every person in the service of a city, except an official who has been elected or appointed for a regular term of office, includes a policeman. State ex rel v District Court, 134 M 26, 158 NW 790.

A judgment recovered by defendant on demurrer to the complaint in an action for wrongful death is not res judicata or a bar to compensation proceedings where the relation of master and servant existed between defendant and plaintiff's intestate and the proper remedy was under the compensation act. State ex rel v District Court, 136 M 151, 161 NW 388.

The compensation act does not by implication repeal the charter provision of a city for compensation to firemen for injuries in their employment. Markley v City of St. Paul, 142 M 356, 172 NW 215.

Workmen's compensation act, in providing compensation for accidental injuries in employment, is exclusive of all other remedies. Hyett v Northwestern Hospital for Women and Children, 147 M 413, 180 NW 552.

Where an injury results in part in disability and in part in disfigurement or other injury not amounting to disability, the employee is limited to the relief given by the act and cannot maintain an action at law for the injury not amount-

ing to disability. Hyett v Northwestern Hospital for Women and Children, 147 M 413, 180 NW 552.

The presence of a provision in the charter of a city for the relief of injured policemen and firemen at the time of the enactment of the compensation law furnishes no basis for an inference that the legislature intended to exclude such employees of the city from its operation. Segale v St. Paul City Ry. Co. 148 M 40, 180 NW 777.

An injury to an employee in a building owned and exclusively occupied by the employer while descending in an elevator from the floor on which she was employed upon leaving work, held to come within the compensation act and that an action at law for damages does not lie. Lienau v Northwestern Tel. Exch. Co. 151 M 258, 186 NW 945.

The compensation act gives no new right of action to either the employee or employer for injury to the employee by a third party, but recognizes and continues in force existing legal remedies, with the right of subrogation by the employer to the rights of the employee when he has paid the compensation therein provided for. Fidelity & Cas. Co. v St. P. Gas Light Co. 152 M 197, 188 NW 265.

Where proceedings to recover under the workmen's compensation act are commenced in the form of an ordinary civil action, upon over-ruling a demurrer to the complaint the court properly directed that it proceed as one under the compensation statute. Kreidler v Mahnomen Elec. Light & Power Ser. Co. 154 M 23, 191 NW 277.

When the compensation act applies it is exclusive of all other remedies. Novack v Montgomery Ward & Co. 158 M 505, 198 NW 294.

An employee who has become afflicted with a disabling ailment, not among those enumerated in the compensation act as compensable, through negligence of the employer amounting to the omission of a statutory duty, has an action at law for damages. Donnelly v Mpls. Mfg. Co. 161 M 240, 201 NW 305.

So far as it covers rights and remedies in the field of industrial accident and occupational disease the workmen's compensation act is exclusive of all common law remedies. Donnelly v Mpls. Mfg. Co., 161 M 240, 201 NW 305.

An injured employee, who has a common-law action against a third person for negligence, and also has a claim against his employer under the compensation act, may pursue both. City of Red Wing v Eichinger, 163 M 54, 203 NW 622.

Effect of award of compensation as barring action under employers' liability act. Schendel v C. R. I. & P. Ry. Co. 163 M. 460, 204 NW 552; Elder v C. R. I. & P. Ry. Co. 163 M 457, 204 NW 557.

A school teacher exposed to tuberculosis by the negligence of the school officers in their governmental functions has no remedy in the absence of liability imposed by statute. Bang v Ind. School District, 177 M 454, 225 NW 449.

Violation of a statute, resulting in injury to one for whose benefit the law was enacted, results in liability, unless excusable or justifiable; and the burden of proving excuse or justification is on the party who has violated the statute. Christopherson v Custom Laundry Co. 179 M 325, 229 NW 136.

Where the violation by an employer of a statute requiring him to provide and maintain safety appliances for the protection of his employees is the proximate cause of an injury to an employee assumption of risk is not a defense. Suess v Arrowhead Steel Prod. Co. 180 M 21, 230 NW 125.

Employer is primarily liable and his obligation cannot become secondary by insurance coverage. Stitz v Ryan, 192 M 297, 256 NW 173.

Where the violation by the employer of a statute intended to safeguard employees is the proximate cause of injury to an employee, the employer may not assert that the employee assumed the risk of injury by continuing to work with knowledge of the employer's failure to comply with the statute. Frederickson v Arrowhead Coop. Cry. Ass'n, 202 M 12 277 NW 345.

An existing common-law remedy is not to be taken away by a statute unless by direct enactment or necessary implication. Rosenfield v Matthews, 201 M 113, 275 NW 698.

Courts are not permitted to carry a statute, particularly one in derogation of the common law beyond its clearly defined scope. Rosenfield v Matthews, 201 M 113, 275 NW 698.

Where an injury does not fall within the compensation act the common-law remedy is not affected by it. Rosenfield v Matthews, 201 M 113, 275 NW 698.

Legislative intent is not to be made to depend upon the collocation or arrangement of words alone, but upon the reason and sense of the thing, as indicated by the entire context and subject matter. Rosenfield v Matthews, 201 M 113, 275 NW 698.

The compensation act is a substitute for the common law on the 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 Matthews, 201 M 113, 275 NW 698.

Employee may accept compensation from employer and also damages from physicians furnished by employer for malpractice without right of deduction therefrom by employer for compensation paid. McGough v McCarthy Improv. Co. 206 M 1, 286 NW 857.

Employee may recover damages from physicians for malpractice or unskillful or erroneous treatment which aggravated or prolonged his disability and also compensation from his employer. McGough v McCarthy Improv. Co. 206 M 1, 286 NW 857.

Fact that person suing for personal injuries may have received payments from defendant's compensation insurer could in no sense be a bar to his common-law action based on negligence if he in fact was not an employee engaged within the scope of his employment at time of his injury. Hasse v Victoria Coop. Cry. Assn. 208 M 457, 294 NW 475.

Section 182.32, relating to ventilation of workrooms, held to apply to underground mines. Applequist v Oliver Iron M'ng Co. 209 M 230, 296 NW 13.

Where, due to an employer's violation of a protective statute, an employee contracts a disease not covered by the occupational disease section of the compensation law, he has a right of action at law against the employer for damages. Applequist v Oliver Iron M'ng Co. 209 M 230, 296 NW 13.

Employers must use ordinary care to see that their employees have a reasonably safe place wherein to work. Ryan v Twin City Whle. Grocer Co. 210 M 21, 297 NW 705.

Rights of action by parents of injured minor.

The workmen's compensation act destroys the parent's common-law action to recover for loss of services of an injured minor child who is an employee, and for the expenses incurred incident to such injuries. Novack v Montgomery Ward & Co. 158 M 505, 198 NW 294.

When the compensation act applies it is exclusive of all other remedies. Novack v Montgomery Ward & Co. 158 M 505, 198 NW 294.

Although he may have been a casual employee, his employment was in the usual course of the employer's business, and his remedy is under the workmen's compensation law. An action at law will not lie. Workman v Endriss, 164 M 199, 204 NW 641.

Persons subject to and within the terms of the Wisconsin workmen's compensation act are confined to it for their remedy. Christ v C. & N. W. Ry. Co. 176 M 592, 224 NW 247.

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 J. E. Barr Packing Corp. 182 M 486, 234 NW 682.

The law gives an injured employee the option to claim compensation or maintain an action for damages against an employer who has not insured his compensation risk. Anderson v Hegna, 212 M 147, 2 NW(2d) 820.

An employee not subject to the workmen's compensation act has no choice of remedies, his exclusive remedy being the bringing of an action; and the election

giving the employee the option is limited to employees covered by the act. Hardware Mutual v Ozman, 217 M 280, 14 NW(2d) 351.

Governmental responsibility for torts. 26 MLR 709.

NOTE: For additional penalty for not insuring compensation risk, see section 176.24.

176.05 APPLICATION.

HISTORY. 1913 c. 467 s. 8; G.S. 1913 s. 8202; 1937 c. 64 s. 4; M. Supp. s. 4272-4.

Substantive rights of parties are fixed by statutes in force at time of accident out of which liability arises. Schmahl v School District, 200 M 294, 274 NW 168.

Conflict of laws. 20 MLR 19.

Common carrier by steam railroad.

An express company operating over steam railroads in which it has no interest is not excluded from the compensation act as a common carrier by steam railway. State ex rel v District Court, 142 M 410, 172 NW 310.

A private steam railroad, not engaged as a common carrier, is within the compensation law unless it has given notice of election not to be bound thereby. State ex rel v District Court, 145 M 181, 176 NW 749.

An interstate common carrier by express is liable under the compensation act for accidental injuries to its employees. Pushor v Amer. Ry. Exp. Co. 149 M 308, 183 NW 839.

A private steam railroad not engaged as a common carrier, is subject to the compensation act. Richardson v Minn. Steel Co. 154 M 506, 191 NW 924.

Domestic service.

Persons employed exclusively in caring for the home and serving the members of the family therein are not covered by the workmen's compensation act. Eichholz v Shaft, 166 M 339, 208 NW 18.

Local undergraduate chapter of a national sorority held not liable for compensation, injured employee having been at time of injury engaged in domestic service. Pingerson v Alpha Tau Chapter, 197 M 378, 267 NW 212.

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 Ueland, 197 M 518, 267 NW 517, 927.

Section 4268 [later 4272-4] excludes both domestic servants and persons whose employment is casual and not in the usual course of the trade, business, profession or occupation of the employer, and domestic servants' employment need not be casual. Anderson v Ueland, 197 M 518, 267 NW 517, 927.

True test of domestic service is nature of employment and its relation to the home, and it is not material that servants' wages are paid by another than one who uses premises as a home. Anderson v Ueland, 197 M 518, 267 NW 517, 927.

Injuries of an employee cannot be classified under both Section 4268 [4272-4] and Section 4327. Clark v Banner Grain Co. 195 M 44, 261 NW 596.

The statute does not provide that a specific classification of domestic servants in the covenants of a policy of insurance shall be the only method by which liability may be assumed. Berger v Church of St. Patrick, 212 M 345, 3 NW(2d) 590.

A policy of compensation insurance on which a church paid a premium based on the salary of the priest, which the insurer knew included the wages of his housekeeper, held to cover the housekeeper. Berger v Church of St. Patrick, 212 M 345, 3 NW(2d) 590.

In determining whether or not one is an employee the test is the nature of the employment and its relation to the home. In the instant case the alleged employee was a farm laborer and not within the act. Partridge v Blackbird, 213 M 230, 6 NW(2d) 250.

Employee was employed as a carpenter in connection with employer's contracting business and not as a farm laborer; and is entitled to recover. Schroepfer v Hudson, 214 M 17, 7 NW(2d) 336.

Tucker was employed to care for the foxes and other animals, and was within the act, even if he was at times also employed upon the farm. Tucker v Newman, 217 M 473, 14 NW(2d) 767.

Recovery where neither injury nor contract of employment occurred in state of suit. 28 MLR 335.

Farm laborers.

See annotations under Section 176.01, subdivision 13.

Casual employment and business of employer.

Employment of a workman by a city to load gravel for improving its streets was casual but in the usual course of the business of the city and comes within the compensation law. State ex rel v District Court, 131 M 352, 155 NW 103.

Employment in the construction of a temporary building on a farm owned by employer who had other business in a city and rented the farm to a tenant was not in the "usual course" of the business of the employer. State ex rel v District Court, 138 M 103, 164 NW 366.

Owner of a large building who devotes substantially his whole time for a year in supervising its construction by a contractor is under the compensation act. Gibbons v Gooding, 153 M 225, 190 NW 256.

In a workman's compensation case, it is held the findings that the employee was not a farm laborer, that the employment was not casual, and was in course of the business and occupation of the employer, are not without sufficient support. Benoy v Torkelson, 161 M 223, 201 NW 312.

Although he may have been a casual employee, his employment was in the usual course of the employer's business, and his remedy is under the workmen's compensation law. An action at law will not lie. Workman v Endriss, 164 M 199, 204 NW 641.

The workman's employment was not casual, but was in the usual course of the performance by the town of its duty to keep its roads in repair. Reed v Town of Monticello, 164 M 358, 205 NW 258.

Employment must be both casual and not in the usual course of the business of the employer to be excluded from the compensation act. O'Rourke v Percy Vittum Co. 166 M 251, 207 NW 636.

Employment, though casual and not otherwise excepted from the operation of the workmen's compensation act, held subject thereto if within the "usual course of the trade, business, * * * or occupation" of the employer. Bosel v Henderson Holding Co. 167 M 72, 208 NW 421.

Employment in the construction of a fuel shed as an addition to the business of a lumber dealer held to be within the usual course of the employer's business. State ex rel v District Court, 141 M 83, 169 NW 488.

A person owning but one small building, which he rents out, and having no trade, business, profession, or occupation, does not subject himself to the workmen's compensation act by hiring a workman at an hourly wage to reshingle the building. Sink v Pharaoh, 170 M 137, 212 NW 192.

One owning home and four resident properties was not carrying on a business or occupation with respect to one doing odd jobs. Billmayer v Sanford, 177 M 465, 225 NW 426.

One doing odd jobs about a house with respect to storm windows and small repairs was a "casual". Billmayer v Sanford, 177 M 465, 225 NW 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 Prudential Ins. Co. 186 M 534, 243 NW 706.

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 Dirks & Son, 189 M 34, 248 NW 283.

Work of installing electric wiring in apartment on second floor of building held not in usual course of employer's business. Ostlie v Dirks & Son, 189 M 34, 248 NW 283.

Property man in circus was "employee" of fraternal organization operating circus one week, but his employment was "casual" and not in the usual course of business. Houser v Osman Temple, 189 M 239, 248 NW 827.

Cutting of timber, part of which farmer turned over to son in payment of obligations, held casual and incidental to his farming. Hagelstad v Usiak, 190 M 513, 252 NW 430.

To exclude an employee from compensation act two facts must exist—employment must be casual and not in usual course of business of employer. Hagelstad v Usiak, 190 M 513, 252 NW 430.

To be excluded from act it must appear that employment was both casual and not in usual course of trade, business, profession or occupation of employer. Colosimo v Giacomo, 199 M 600, 273 NW 632.

Employment by a janitor of apartment buildings of one to assist him in replacing storm windows with screens is casual employment. Jackson v Cathcart & Maxfield, Inc. 201 M 526, 277 NW 22.

Owning inextensive dwelling or apartment buildings as an investment is not a business or occupation within the meaning of the compensation law. Jackson v Cathcart & Maxfield, Inc. 201 M 526, 277 NW 22.

Injury to regular employee while on assignment by employer to temporary service on another of his properties is not barred by the compensation act as casual labor. Oberg v Du Beau, 202 M 476, 279 NW 221.

Employment of one by an executor of an estate to tear down a shed belonging to the estate which had formerly been used in decedent's discontinued business, held casual and not in the usual course of the business of the executor nor of the heirs. Happel v Forsyth, 206 M 513, 289 NW 43.

Tearing down a small shed on a lot belonging to estate of a decedent under employment of an executor was casual and not in usual course of any trade, business, profession or occupation of owner or executor. Happel v Forsyth, 206 M 513, 289 NW 43.

An employment is not casual where the employee is hired on a part-time basis to render services at regularly recurring periods and is paid extra for certain kinds of services. Chisholm v Davis, 207 M 614, 292 NW 268.

Part-time employment, under which the employee is to render services at regular recurring periods is not casual. Chisholm v Davis, 207 M 614, 292 NW 268.

Employment by merchant of tenant of apartment building owned by him to collect rents monthly from other tenants and to remove and replace screen and storm windows and doors at regular recurring seasons is not casual. Chisholm v Davis, 207 M 614, 292 NW 268.

Employment at time of injury must be both casual and not in the usual course of the employer's business to be excluded from the act. One ground alone is not sufficient; both must concur. Chisholm v Davis, 207 M 614, 292 NW 268.

A regular employee hired on a part-time basis is not excluded from the benefits of act upon ground that his injury did not occur in usual course of employer's business, trade, occupation or profession. Chisholm v Davis, 207 M 614, 292 NW 268.

An employee whose employment is not casual is within the act, even though his injury occurs when he is not engaged in the usual course of his employer's trade or business. Chisholm v Davis, 207 M 614, 292 NW 268.

To take owners of apartment building outside the act, evidence must show that employment was not in usual course of trade, business, profession or occupation of employer, and it is immaterial that employment was casual. Fisher v Manzke, 208 M 410, 294 NW 477.

One hired to replace screens with storm windows on apartment building, the rentals of which constituted the main source of livelihood of the owners, was casual labor but in the usual course of the business or occupation of the owners. Fisher v Manzke, 208 M 410, 294 NW 477.

Removing screens and putting on storm windows on two three-story buildings was casual employment, but employer and employee were within the act if the employment was in the usual course of business or occupation of employer. Fisher v Manzke, 208 M 410, 294 NW 477.

Employment must be both casual and not in usual course of employer's business to take it out of statute where such grounds are relied on. Byhardt v Ballord, 209 M 391, 296 NW 504.

"Casual" relates to employment which is not permanent or periodically regular, but occasional or by chance, and not in the usual course of the employer's trade or business. Berry v Atlantic Greyhound Lines, (CCA4) 114 F(2d) 255.

Employment in an activity in the preservation and protection of the physical plant of a company which has suspended operations comes within the protection of the compensation act. Chriss v Compo Board Co. 211 M 333, 1 NW(2d) 129.

To be excluded from the compensation act employment must be both casual and not in the usual course of the trade, business, profession or occupation of the employer. Chriss v Compo Board Co. 211 M 333, 1 NW(2d) 129.

Employment in the collection of scrap iron from various parts of its premises by a company in course of liquidation, whose business had been the manufacture of compo-board, though casual, was in the usual course of its business. Chriss v Compo Board Co. 211 M 333, 1 NW(2d) 129.

Annual filling of ice house of summer resort, necessary to its operation, is in usual course of its business and not excluded as casual employment. James v Peterson, 211 M 481, 1 NW(2d) 844.

See annotations under Section 176.08, and also at the beginning of this chapter.

176.06 LIABILITY OF OTHERS THAN EMPLOYER.

HISTORY. 1913 c. 467 s. 29; G.S. 1913 s. 8229; 1937 c. 64 s. 5; M. Supp. s. 4272-5; 1943 c. 499 s. 1.

Third parties.

Laws 1913, Chapter 467, Section 33, in respect to injuries to an employee from the act of a third person not his employer, has reference to cases where such third person is also subject to the compensation statute. It has no application where the third person is not subject to the act. The fact that the third person is an officer of a corporation which is subject to the statute does not render the statute applicable unless the officer was acting in the course of his authority to such an extent as to render the corporation liable for his act. Hade v Simmons, 132 M 344, 157 NW 506.

Employer's right to recover from a third party the amount he was required to pay his employee's dependents depends upon whether the third party's negligence was the proximate cause of the injury. Carlson v Mpls. St. Ry. Co. 143 M 129, 173 NW 405.

Under Laws 1913, Chapter 467, Section 33, an employer's right to recover the amount which he was compelled to pay to his employee's dependents from a third party, whose act was the cause of the accident, depends upon whether the negligence of such third party was the proximate cause of the injury. Carlson v Mpls. St. Ry. Co. 143 M 129, 173 NW 405.

Where an employee is injured in the course of his employment by the actionable negligence of a third party, a statutory remedy accrues to him or his dependents for compensation against his employer and a common-law remedy against such third party, though he cannot proceed against both. If he elects to pursue the former remedy, he waives the latter, and his employer is subrogated to the right. Carlson v Mpls. St. Ry. Co. 143 M 129, 173 NW 405.

Where the employer and a third party causing an accident were both under the compensation act, and the injured employee brought a common-law action for damages against the third party, at the close of the testimony the court, on defendant's motion, dismissed the case as a common-law action and awarded compensation in accordance with the compensation act. Hansen v Northwestern Fuel Co. 144 M 105, 174 NW 726.

The fact that a recovery from a third party discharged the liability of an employer for a compensable injury did not give rise to liability under a benefit certificate issued by the employer for injuries or death not covered by the compensation law. Holmquist v Curtis Lbr. & M. W. Co. 144 M 163, 175 NW 103.

To entitle a third party who is under the compensation act as to his own employees to the limited liability under the act of employers for injuries to their employees, it must appear that his negligence in injuring an employee of another employer arose out of the business carried on by him. He is not engaged in such business when merely driving his automobile from his residence to his place of business. Podgorski v Kerwin, 144 M 313, 175 NW 694.

An injured employee may maintain an action against a third party who is also under the act as to his own employees, but whose act in causing the injury was not connected with his business, notwithstanding that the injured employee had made a settlement with his employer for his injury. A recovery in such an action will conclude his employer and not expose the third party to a second suit. Podgorski v Kerwin, 144 M 313, 175 NW 694.

Employee may accept compensation from employer and sue for damages third party causing injury who had no business relation with employer, though both were under compensation act as to their own employees. Podgorski v Kerwin, 144 M 313, 175 NW 694.

Plaintiff, while driving an automobile belonging to his employer, as an accommodation to a fellow employee to whom it had been assigned, was injured by being struck by an automobile driven by defendant, an employer, in the course of his business. All parties were under the compensation act. Held that the accident did not arise in the course of plaintiff's employment and did not come within the third party provision of the compensation act. Gibbs v Almstrom, 145 M 35, 176 NW 173.

Employer letting its rig, team and teamster to do hauling at stipulated monthly payments, out of which it paid teamster weekly wages, is responsible for an accident occurring to him while doing such hauling. State ex rel v District Court, 147 M 12, 179 NW 216.

Action by insurer of one subcontractor against another subcontractor in the construction of a large building to recover amount paid for the death of its insured's employee by the alleged negligence of an employee of the other subcontractor. Evidence held insufficient to sustain a finding that the death resulted from negligence of defendant. Travelers Ins. Co. v Healy P. & H. Co. 147 M 91, 179 NW 686.

An employee subrogated to the rights of a dependent who sues a third party causing the death of his employee is not absolved from liability when his rights against the third party are fixed, but is liable as before to the dependent until satisfaction. Metropolitan Milk Co. v Mpls. St. Ry. Co. 149 M 181, 183 NW 830.

An employer against whom an award has been made in favor of a dependent, payable in instalments need not wait until all instalments have been paid before suing a third party causing the death of his employee under his subrogated rights. Metropolitan Milk Co. v Mpls. St. Ry. Co. 149 M 181, 183 NW 830.

An employee may make a settlement with a third party and retain the right to collect from his employer any excess payable under the compensation act. Patterson v O'Neill, 151 M 15, 185 NW 948.

The provision subrogating to the employer the rights of the employer against a third party cannot apply to cases in which the employee, without fraud or collusion, has enforced his rights against the third party. Patterson v O'Neill, 151 M 15, 185 NW 948.

The last subdivision of section 176.06, making the third party liable for reasonable attorney's fees expended by plaintiff employer in an action to recover

the amount he paid in a compensation case does not contravene any provision of the state or federal constitution. Thornton Bros. Co. v N. S. Power Co. 151 M 435, 186 NW 863, 187 NW 610.

The compensation act gives no new right of action to either the employee or employer for injury to the employee by a third party, but recognizes and continues in force existing legal remedies, with the right of subrogation by the employer to the rights of the employee when he has paid the compensation therein provided for. Fidelity & Casualty Co. v St. P. Gas Light Co. 152 M 197, 188 NW 265.

The time within which an employer who has paid compensation and become subrogated to the rights of dependents against a third party causing the death of his employee is prescribed as two years. Fidelity & Casualty Co. v St. P. Gas Light Co. 152 M 197, 188 NW 265.

Owner of large building in course of construction who devotes substantially all of his time for a year in supervising the construction by contractors and hires watchmen at the building is an employer under the compensation law. A servant of the contractors in the erection of the building who is injured by the negligence of the owner cannot maintain an action at law against the owner after accepting compensation from the contractor. Gibbons v Gooding, 153 M 225, 190 NW 256.

Employee of contractor who has accepted compensation from employer cannot recover damages for negligence from owner of building under construction who with employees of his own was doing independent work about the building at the same time. Gibbons v Gooding, 153 M 225, 190 NW 256.

Driver for owner of truck delivering coal at price per ton collided with and injured a motorcycle rider while on way to coal yard in morning to turn in previous day's delivery slips and money collected and haul more coal. Held within scope of his employment by coal dealer and latter chargeable with driver's negligence. Elliason v Western Coal & Coke Co. 162 M 213, 202 NW 485.

An injured employee, who has a common-law action against a third person for negligence, and also has a claim against his employer under the compensation act, may pursue both. City of Red Wing v Eichinger, 163 M 54, 203 NW 622.

Where the award to the employee is paid by an insurance company, pursuant to a policy held by the city, and the city has paid nothing, it has suffered no damage, is not the real party in interest, and cannot maintain an action against the negligent third party who caused the injury. City of Red Wing v Eichinger, 163 M 54, 203 NW 622.

When employee claims and receives compensation from the employer, the common-law action passes to the employer by virtue of subrogation. The payment or obligation to pay the award on the part of the employer is a condition precedent to his right to prosecute such action. City of Red Wing v Eichinger, 163 M 54, 203 NW 622.

Neither the employer nor his insurer is a necessary party to an action against a third party whose negligence caused the injury or death of the employee. McGuigan v Allen, 165 M 390, 206 NW 714.

This section does not destroy the right of action enforceable, under the death statute (section 573.02) by the personal representative of a deceased employee whose employer has paid compensation pursuant to the workmen's compensation act. McGuigan v Allen, 165 M 390, 206 NW 714.

A mining company operating two mines and a contractor constructing a water conduit for it between the mines on its premises held to be engaged in the same or related purposes, and an employee of the contractor who was injured by the negligence of the mining company and received compensation from his employer cannot thereafter maintain an action for damages against the mining company, which was also under the compensation act. Uotila v Oliver Iron Mining Co. 165 M 475, 206 NW 937.

Ice company and owner of building used for hotel purposes held to be engaged in same or related purposes on premises while ice company was delivering ice to hotel. [Since overruled by Tevogt v Polson, 205 M 252, 285 NW 893.] Rasmussen v Benz & Sons, 168 M 319, 210 NW 75, 212 NW 20.

Where injury for which compensation is payable is caused by circumstances also creating a legal liability for damages on the part of any party other than the employer, the employee may, at his option, proceed either at law against such party to recover damages or against the employer for compensation, but not against both. If he brings an action for the recovery of damages, the amount thereof and the manner of payment shall be as provided in part 2 of said act. Rasmussen v Benz & Sons, 168 M 319, 210 NW 75, 212 NW 20.

Where an employee pursues the employer for compensation under the mistaken impression that the law afforded him no other remedy or an additional remedy, equity, in the absence of injury to others or of facts creating an estoppel, may relieve him from his apparent election. Behr v Soth, 170 M 278, 212 NW 461.

Third party clause in compensation law held to include an employe. Behr v Soth, 170 M 278, 212 NW 461.

City fireman injured while riding a truck to a fire by the chief of the fire department negligently colliding with the truck may look to the city as employer for compensation or to the chief as a third party for damages, but not to both. In either procedure the recovery would be the same, as both the fireman and the chief were under the compensation act and engaged in a common enterprise at the time. Behr v Soth, 170 M 278, 212 NW 461.

The public highway cannot be said to be premises within this section; and employee of one riding as guest in automobile driven by 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 De Parcq, (CCA8) 66 F.(2d) 678.

Employee awarded compensation cannot subsequently sue third party subject to the act. Olson v Thiede, 177 M 410, 225 NW 391.

Express company driver accepting compensation from employer could not recover against owner of building operating an elevator in violation of law. [But see Tevogt v Polson, 205 M 252, 285 NW 893.] McGrath v Northwestern Trust Co. 178 M 47, 225 NW 901.

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. Gile v Yellow Cab Corp. 177 M 579, 225 NW 911.

Employee prosecuting a proceeding against his employer for compensation to a final decision on the merits is barred from suing the third party. Ott v St. Paul Union Stockyards, 178 M 313, 227 NW 47.

Ignorance of law is immaterial. Ott v St. Paul Union Stockyards, 178 M 313, 227 NW 47.

Employer who wilfully assaults his employee stands in no better position than a stranger, and cannot assert that the remedy is under the compensation act. Boek v Wong Hing, 180 M 470, 231 NW 233.

Meat market employee, injured while delivering meat to a cafe in a hotel by negligence of a contractor repairing the hotel premises, held not precluded, by recovery from parties responsible for the negligence, from recovering difference between recovery and compensation, his employer not being engaged in a "related purpose" with such third person. Duus v Duus, 181 M 232, 232 NW 114.

Where a widow accepted compensation from the employer and his insurer for the death of her husband and then sued a third party responsible for the death, all being under the compensation act, and the employer and his insurer did not intervene or seek subrogation, she cannot maintain the action, not being the real party in interest. Prebeck v Village of Hibbing, 185 M 303, 240 NW 890.

In suit by employer against employee to recover for death of another employee, defendant may set up contributory negligence of employer and other employee. Thorton Bros. Co. v Reese, 188 M 5, 246 NW 527.

Increased workmen's compensation insurance premiums which plaintiff had to pay in consequence of an employee's death caused by negligent act of de-

fendant, a subcontractor, are too remote and indirect results of such wrongful act to be recoverable. Northern States Contract. Co. v Oakes, 191 M 88, 253 NW 371.

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 the 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 Roth, 193 M 107, 258 NW 26.

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 Brown & Co. 193 M 165, 258 NW 161.

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 Brown & Co. 193 M 165, 258 NW 161.

A company owning large warehouses and leasing part of it to another company and milk company delivering milk to employees of tenant at time of injury to employees of warehouse company were not engaged in same or related purposes, so as to confine injured employee's rights to compensation and bar his cause of action against milk company for negligence. Horgen v Franklin Coop. Cry. Ass'n 195 M 159, 262 NW 149.

Where an 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 similiar 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 compensation from his employer. Anderson v Interstate Power Co. 195 M 528, 263 NW 612.

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 Northern States Power Co. 196 M 22, 264 NW 139.

Brewing company and warehouse 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 Kedney Warehouse Co. Inc. 197 M 558, 267 NW 478, 269 NW 633.

A corporation in the business of repairing electric elevators, while repairing an elevator on the premises of another corporation, held (1) to be engaged with the latter in the furtherance of a common enterprise and (2) in the accomplishment of the same or related purposes on the premises at the time. Seidel v Nicollet Ave. Prop. Corp. 202 M 569, 279 NW 570.

An action for damages cannot be maintained against a third party for injuries caused by its negligence by an employee who had accepted compensation from his employer where the third party and employer were under the compensation act and both were engaged at the time in the accomplishment of the same or related purpose. Seidel v Nicollet Ave. Prop. Corp. 202 M 569, 279 NW 570.

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 Miller, (CCA8) 84 F(2d) 148.

A city incinerating plant and a fuel company delivering coal thereto held neither engaged in furtherance of a common enterprise nor in the accomplishment of the same or related purposes on the premises at the time. The rule in Rasmussen v Benz & Sons, 168 M 319, 210 NW 75, is modified to the extent that it does not apply where one employer is merely delivering a commodity to another employer. Tevoght v Polson, 205 M 252, 285 NW 893.

The common law right of action by an injured employee against a third party whose negligence caused the injury prevails where his employer and the third party were not engaged in furtherance of a common enterprise or accomplishment of the same or related purposes, though both were under the compensation act and the injured employee had accepted compensation from his employer. Tevoght v Polson, 205 M 252, 285 NW 893.

Employee may accept compensation from employer and also damages from physicians furnished by employer for malpractice without right of deduction therefrom by employer for compensation paid. McGough v McCarty Improv. Co. 206 M 1, 286 NW 857.

Employer is not entitled to subrogation or to credit on compensation of amount recovered by employee from malpracticing physician, though such malpractice increased disability and resulted in increased compensation. McGough v McCarthy Improv. Co. 206 M 1, 286 NW 857.

Statute contemplates injury originating under circumstances which render a third party and the employer liable, and if no common connection, relation or interest between third party and employer is established, employee may recover full damages from third party, and it is immaterial that employee has been awarded compensation from his employer. McGough v McCarthy Improv. Co. 206 M 1, 286 NW 857.

Where premises are in exclusive possession of a lessee, the lessor having no business thereon, the two are not engaged in the accomplishment of the same or related purposes. Murphy v Barlow Realty Co. 206 M 537, 289 NW 567.

The mere relationship of landlord and tenant does not constitute engagement by the parties in the accomplishment of the same or related purposes on the premises. Murphy v Barlow Realty Co. 206 M 537, 289 NW 567.

The enactment of section 4272-5(b) of the compensation law (relating to actions for damages against third parties) did not supplement the provision in section 9657 (death by wrongful act statute) for the distribution of damages recovered thereunder, nor deprive non-dependent children of a share thereof. Joel v Peter Dale Garage, 206 M 580, 289 NW 524.

Where dependents' distributive shares of damages recovered from a third party for wrongful death of an employee amount to less than the compensation law provides for them, they may recover the difference from the employer in a compensation proceeding, regardless of the amount recovered from the third party. Joel v Peter Dale Garage, 206 M 580, 289 NW 524.

In an action against a third party by a subrogee insurer for compensation paid, the questions of negligence of the third party and contributory negligence of the employer and employee held properly submitted to the jury. Standard Acc. Ins. Co. v Minn. Utilities Co. 207 M 24, 289 NW 782.

Solicitation of orders by a salesman for a wholesale dealer from and on the premises of a retail dealer does not constitute engagement by the two dealers in a common enterprise nor the accomplishment of the same or related purposes on the premises. Smith v Ostrov, 208 M 77, 292 NW 745.

Contributory negligence of a deceased employee is a bar to an action by the insurer against a third party causing the death of the employer for compensation benefits which it paid. Hartford Acc. & Ind. Co. v Schutt Realty Co. 210 M 235, 297 NW 718.

The present compensation act preserves the common law liability resting upon a third party's negligence. Gleason v Sing, 210 M 253, 297 NW 720.

Liability of a third party is based upon tortious conduct of one who is not the employer of the injured workman, and recovery is measured by common law standards of damages. Gleason v Sing, 210 M 253, 297 NW 720.

Receipt of compensation by an injured workman from his employer does not deprive him of the right to recover damages from an uninsured third party who was engaged in the accomplishment of the same or related purposes as the employer. Gleason v Sing, 210 M 253, 297 NW 720.

Owner of truck, not insured for compensation, held liable as third party under automobile law for injury to employee of insured contractors who operated

truck by another of their employees with owner's consent in same or related purposes. Gleason v Sing, 210 M 253, 297 NW 720.

Receipt of compensation from federal government by dependents of its employee who was fatally injured by negligence of city while working on a joint W P A project is no bar to an action against city for damages for the wrongful death. Wagner v City of Duluth, 211 M 252, 300 NW 820.

A statement in a case cited that if certain facts were shown "the question whether the companies were engaged in identical or related purposes would * * * become a question of fact for the jury to determine" is expressly overruled. Gentle v N. S. Power Co. 213 M 231, 6 NW(2d) 361.

The vending and delivery of supplies to another concern does not amount to either a furtherance of a common enterprise or the accomplishment of the same or related purposes. Gentle v N. S. Power Co. 213 M 231, 6 NW(2d) 361.

A power company supplying electricity to a manufacturing company and a contractor painting the latter's building are not engaged with it in the accomplishment of the same or related purposes. Gentle v N. S. Power Co. 213 M 231, 6 NW(2d) 361.

Owner of a poultry hatchery and a contractor repairing a floor in the hatchery, in which some of the hatchery employees assisted, are not engaged in furtherance of a common enterprise or in the accomplishment of the same or related purposes on the premises. Gleason v Geary, 214 M 499, 8 NW(2d) 808.

The charge of actionable negligence being justified the city's answer setting up as a bar the provisions of section 176.06, tendered no defense. Johnson v City of Duluth, 216 M 193, 12 NW(2d) 192.

Rights of employer as subrogee. 24 MLR 302.

Subrogation; splitting causes of action. 24 MLR 719.

Recovery of damages for negligence from third party also. 27 MLR 586.

176.07 JOINT EMPLOYERS SHALL CONTRIBUTE.

HISTORY. 1913 c. 467 s. 16; G.S. 1913 s. 8210; 1937 c. 64 s. 6; M. Supp. s. 4272-6.

Where a 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. Anderson v Roberts-Karp Hotel Co. 171 M 402, 214 NW 265.

A clerk in a department store held employee of the store, though store was reimbursed amount paid clerk in wages by company whose goods clerk demonstrated in store. Ekrem v Harriet Hubbard Ayer Co. 209 M 337, 296 NW 180.

176.08 APPLICATION CONTINUED.

HISTORY. 1937 c. 64 s. 7; M. Supp. s. 4272-7.

Right of dependent to compensation for death of employee is governed by law in force at time of his death. State ex rel v District Court, 132 M 249, 156 NW 120.

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 City of Mankato, 199 M 284, 271 NW 582.

Law in effect at time accident occurred, resulting in death and right to compensation, determines rights of parties. Herzog v City of New Ulm, 199 M 352, 272 NW 174.

Substantive rights of parties are fixed by statutes in force at time of accident out of which liability arises. Schmahl v School District, 200 M 294, 274 NW 168.

See annotations under section 176.05 and at the beginning of the chapter.

176.09 LEGAL SERVICES AN ENFORCEABLE LIEN; APPROVAL.

HISTORY. 1913 c. 467 s. 7; G.S. 1913 s. 8201; 1937 c. 64 s. 8; M. Supp. s. 4272-8.

See annotations under section 176.65.

176.10 MINORS HAVE POWER TO CONTRACT.

HISTORY. 1921 c. 82 s. 13; G.S. 1923 s. 4273; M.S. 1927 s. 4273; 1945 c. 233 s. 2.

A minor, 18 years of age, a student elevator operator, not licensed, was injured while operating the elevator in the absence of his instructor. Held that the employment was not illegal; that the relation of master and servant was not interrupted by the employee operating the elevator in the absence of the instructor, and that the compensation act applied. Pette v Noyes, 133 M 109, 157 NW 995.

The clause, "minors who are legally permitted to work," contained in this section, held to exclude from the act minors whose employment is prohibited by law, which includes employments dangerous to the life and limb of the minor, though not similar to the work specifically enumerated in the statutes. As so construed, the statute is not unconstitutional. Westerlund v Kettle River Co. 137 M 24, 162 NW 680.

The duty of an employer to refrain from putting a boy under 16 at work forbidden by the statute is non-delegable. Gutmann v Anderson, 142 M 141, 171 NW 303.

Unless plaintiff was employed in violation of a statute he could not maintain a common-law action for an injury; for, if his employment was legally permitted, his rights and the liability of the defendant are fixed by the workmen's compensation act. Gutmann v Anderson, 142 M 141, 171 NW 303.

When the compensation act applies it is exclusive of all other remedies. Novack v Montgomery Ward & Co. 158 M 505, 198 NW 294.

The workmen's compensation act destroys the parent's common-law action to recover for loss of services of an injured minor child who is an employee, and for the expenses incurred incident to such injuries. Novack v Montgomery Ward & Co. 158 M 505, 198 NW 294.

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 J. E. Barr Packing Corp. 182 M 486, 234 NW 682.

176.11 SCHEDULE OF COMPENSATION.

HISTORY. 1913 c. 467 s. 13; G.S. 1913 s. 8207; 1921 c. 825 s. 14; 1923 c. 300 s. 3; 1923 c. 408 s. 1; G.S. 1923 s. 4274; 1925 c. 219; 1925 c. 161 ss. 1, 2; M.S. 1927 s. 4274; 1929 c. 250; M. Supp. s. 4274; 1941 c. 522; 1943 c. 496 s. 1; 1945 c. 389 s. 1.

1. **Generally.**
2. **Temporary total and permanent partial disability.**
3. **Permanent total disability.**
4. **Death resulting from injury.**
5. **Double disabilities.**
6. **"Necessity" for retraining.**
7. **Disfigurement.**
8. **Freezing; Heatstroke; Hernia; Lightning; Poisoning.**
9. **Injuries to eyes.**
10. **Injury to thumb or finger.**
11. **Injuries to hand or arm.**
12. **Injuries to foot or leg.**

1. Generally

Laws 1913, Chapter 467, Section 27 (b), providing for an application by either party after six months to modify an award on the ground of increase or decrease of capacity applies only to cases where the capacity of the injured man has increased or decreased since the award was made, and is not a remedy for the correction of errors in fixing the compensation. State ex rel v District Court, 136 M 147, 161 NW 391.

Where an employee suffers two distinct injuries, for each of which he is entitled to compensation, the payments should not be made to run concurrently. State ex rel v District Court, 136 M 447, 162 NW 527.

If the injury is one which will leave no permanent disability, compensation must be on the basis of subsection (b) of the schedule, no matter if the length of time required for healing exceeds the period that would be allowed if the injury were permanent. Porter v Ritchie, 138 M 135, 164 NW 581.

The intent of the compensation act was to secure payment for disability actually sustained and its provisions for specific injuries must yield thereto when taken together they create a greater disability. State ex rel v District Court, 144 M 198, 174 NW 826.

The term "member," as used in the compensation law, includes the eye. Chiovitte v Zenith Furnace Co. 148 M 277, 181 NW 643.

The liability for compensation prescribed in the statute for loss or loss of use of a member is absolute and not dependent upon decrease in earnings. Chiovitte v Zenith Furnace Co. 148 M 277, 181 NW 643.

General Statutes 1913, Section 8222, providing for modification of a judgment on the ground of "increase or decrease of incapacity," does not authorize a modification because of judicial error in determining the amount of the award. Connelly v Carnegie Dock & Fuel Co. 148 M 333, 181 NW 857.

In this, a proceeding under the workmen's compensation act, it is held as a matter of law that there was an insufficient allowance for medical attendance and an insufficient award for temporary disability. Baker v Rundquist, 163 M 71, 203 NW 452.

Nature and extent of injury. Lampi v J. H. Brown Co. 165 M 169, 205 NW 953.

City fireman injured while riding a truck to a fire by the chief of the fire department negligently colliding with the truck may look to the city as employer for compensation or to the chief as a third party for damages, but not to both. In either procedure the recovery would be the same, as both the fireman and the chief were under the compensation act and engaged in a common enterprise at the time. Behr v Soth, 170 M 278, 212 NW 461.

Compensation based on total earnings when employee is working for more than one employer. Anderson v Roberts-Karp Hotel Co. 171 M 402, 214 NW 265.

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. Sheldon v Gopher Granite Co. 174 M 551, 219 NW 867.

Death of workman from cause other than the accident while receiving compensation for injury terminates all rights to compensation to accrue to him thereafter. Tierney v Tierney & Co. 176 M 464, 223 NW 773.

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 Hilton & Thompson, 176 M 508, 223 NW 787.

An application for retraining compensation, made five years after an award of compensation, is a part of the original proceeding and is not barred by the statute of limitations. It is analagous to the application for further medical bene-

fits, and likewise there is no statute limiting the time within which the commission may grant a rehearing. Vierling v Spencer, Kellogg & Sons, Inc. 187 M 252, 245 NW 150.

Evidence held to sustain finding of commission as to duration of disability. Metcalf v First Nat'l Bk. 187 M 485, 246 NW 28.

Dependents of 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 his 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 Connolly Contr. Co. 196 M 108, 264 NW 581.

Compensation rate for permanent partial disability for which no schedule is specifically provided must be based upon loss of ability to earn, not on percentage of physical impairment or what the employee actually earned or could have earned. Enrico v Oliver Iron M'ng Co. 199 M 190, 271 NW 456.

Employee is not chargeable with prolonging disability and with forfeiture of compensation for the time between failure of employer's physicians to discover the cause of disability and its discovery by a physician employed by himself. Kruchowski v Swift & Co. 201 M 557, 277 NW 15.

An action by a wife for dependency compensation brought more than six years after an accident to her husband which he survived that length of time held a reopening or continuation of an action brought by him for his injury within the limited time and is not barred by the statute of limitations. Nyberg v Little Falls Black Granite Co. 202 M 86, 277 NW 536.

Compensation rate of employee who worked one day a week for store operating six days a week under statute properly computed on six times his wages for the one day a week he worked. Ferch v Gt. Atlantic & Pac. Tea Co. 208 M 9, 292 NW 424.

The test of an injured employee's right to continuing compensation is not amount he is actually receiving in wages at determinative moment, but his ability to earn, rather than figure fixed by charity of employer. Gildea v State Dep't of Highways, 208 M 185, 293 NW 598; 210 M 402, 298 NW 453.

An employee of a state institution who has contracted tuberculosis by contacting tubercular inmates therein, for whom a special appropriation has been made by the legislature is not entitled to receive, in addition thereto, compensation under a general law adopted at the same session. Wolner v State Dep't of Social Security, 213 M 96, 5 NW(2d) 67.

Where compensation has accrued, but not paid, during the lifetime of an injured employee, it does not become a part of his estate upon his death and may be recovered by his representative, subject to distribution without probate administration upon determination by the industrial commission as to who are his dependents or legal heirs. Fehland v City of St. Paul, 215 M 94, 9 NW(2d) 349.

2. Temporary total and permanent partial disability.

Where an employee sustained concurrent permanent partial injuries to his left wrist and to a vertebra, and where the combined injuries produce temporary total disability and thereafter permanent partial disability, he is entitled to compensation under the workmen's compensation act, as follows: (1) For such total disability, 66⅔ per cent of the weekly wage at the time of the injury during such total disability, not exceeding 300 weeks. (2) For the permanent partial loss, 66⅔ per cent of the difference between the wage at the time of the injury and the wage he is able to earn in his partially disabled condition, not beyond 300 weeks in all. Hellie v Amer. Ry. Exp. Co. 157 M 456, 196 NW 566.

Findings of permanent partial disability of 50 per cent held sustained by evidence, the commission not being bound by undisputed expert testimony. Gurtin v Overland-Knight Co. 179 M 38, 228 NW 169.

Discontinuance of compensation to one with a fractured leg was unwarranted where he was totally disabled at the time, and it could not be determined what his

permanent disability might be and such employee was entitled to further medical aid. Lund v Biesanz Stone Co. 183 M 247, 236 NW 215.

Finding that one suffering hysterical paralysis, rendering his right arm useless, was totally disabled, held supported by evidence. Rystedt v Mpls-Moline Power Imp. Co. 186 M 185, 242 NW 623.

Weekly wage to be paid during temporary total disability is to be ascertained by multiplying daily wage by five and one-half. Modin v City Land Co. 189 M 517, 250 NW 73.

Measurement of permanent partial loss of vision of an eye, for purpose of schedule of compensation, held properly made without corrective lens. This is distinguished from cases of claims against special compensation fund for total disability, which are based upon loss of earning power, not measurement of loss of vision for schedule of compensation. Livingston v St. P. Hydraulic Hoist Co. 203 M 62, 279 NW 829.

Degree of physical disability is not measured by which to determine amount of an award of compensation for permanent partial disability. Enrico v Oliver Iron M'ng Co. 199 M 190, 271 NW 456.

3. Permanent total disability.

Total loss of vision in right eye and 95 per cent in left eye (which could be increased to one-third of normal with glasses) and head injuries which caused pain on stooping or bending, with evidence of inability to work in any occupation to earn a livelihood, held to support finding of permanent total disability. State ex rel v District Court, 133 M 439, 158 NW 700.

Where a workman with vision of his left eye impaired 50 per cent sustained an accident which destroyed his right eye and nearly all of the remaining vision of his left eye, so that, while not totally blind, he could no longer follow any occupation, the amount of compensation payable is not determined by the schedule for the loss of an eye, but by the clause providing that compensation shall be based on the difference between the wage of the workman at the time of his injury and the wage he is able to earn in his partially disabled condition for a period not exceeding 300 weeks. Zinken v Melrose Granite Co. 143 M 397, 173 NW 857.

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 Fed. Cement Tile Co. 181 M 301, 232 NW 342.

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 Winona Knights of Columbus, 189 M 622, 250 NW 673.

Evidence held to sustain finding that respondent was permanently and totally disabled by an injury sustained in his employment. Furlong v Northwestern Casket Co. 190 M 552, 252 NW 656.

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. Foster v Schmahl, 197 M 602, 268 NW 631.

A workman who has lost the use of one leg, without other disability, is not permanently totally disabled. Krnetich v Oliver Iron M'ng Co., 202 M 158, 277 NW 525.

Inability, after diligent search, to find employment which one permanently partially disabled is capable of performing does not compel a finding that he is permanently totally disabled. Krnetich v Oliver Iron M'ng Co. 202 M 158, 277 NW 525.

"Permanent total disability" does not mean a state of absolute helplessness. Green v Schmahl, 202 M 254, 278 NW 157.

Occasional, intermittent and much limited capacity to earn something somehow does not reduce what is otherwise total to a partial disability. Green v Schmahl, 202 M 254, 278 NW 157.

An injured employee able to perform some parts of an occupation may be held to be totally disabled if not able to perform the substantial and material parts of

some gainful occupation with reasonable continuity. Green v Schmahl, 202 M 254, 278 NW 157.

Report of a neutral physician ordered by the commission and all subsequent competent evidence established the existence of employee's total disability and compelled a finding to that effect. Baker v MacGillis, 216 M 469, 13 NW(2d) 457.

Where injury to an employee's leg necessitates successive amputations, is complicated by infection permeating his whole system, and results in his total permanent disability, his right to compensation is measured by such disability and is not limited to the compensation fixed by statute for the sole loss of the use of the leg itself. Olson v Griffn Wheel Co. 218 M 48, 15 NW(2d) 511.

"Accrued compensation" is sufficiently comprehensive to cover expenditures by employee for medical, hospital, and nursing care. Fitzpatrick v City of St. Paul, 217 M 59, 13 NW(2d) 737.

Effect of inability of injured employee to obtain work on permanent total disability. 22 MLR 752.

4. Death resulting from injury.

Where one engaged in hauling bottled goods in his own truck at $1.25 per hour worked irregular hours from June 29 to July 3 and received checks amounting to $54.81, award of $18.00 per week during dependency, not to exceed $7,500 and funeral expenses paid, held proper for his death. Anderson v Coca Cola B'ttlg Co. 190 M 125, 251 NW 3.

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 his 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 Connolly Contr. Co. 196 M 108, 264 NW 581.

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 City of Mankato, 199 M 284, 271 NW 582.

The right of an employee to compensation for an injury and of his dependents for his subsequent death for the injury arise out of the same casualty, for which the compensation law contemplates only one proceeding, and an action brought by a dependent after one instituted by the employee is not a new or separate proceeding. Nyberg v Little Falls Black Granite Co. 202 M 86, 277 NW 536.

See annotations under section 176.12.

5. Double disabilities.

Double disabilities coming within the 400 weeks' provisions under subdivisions 28 to. 37 of section 176.11 relate only to total disability of at least two members. Jacobson v Stone & Webster, 177 M 589, 225 NW 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 for in paragraphs 19 and 41 of section 176.11. (Amending opinion in State of Minn. v Kuhse, Inc. 267 NW 478.) Smith v Kedney Warehouse Co. Inc. 197 M 558, 269 NW 663.

6. "Necessity" for retraining.

The word "necessary" therein should not be construed as meaning "indispensable", but such compensation should be found necessary if it appears that the retraining sought will materially assist the employee in restoring his impaired capacity to earn a livelihood. Tibbitts v Staude Mfg. Co. 166 M 139, 207 NW 202.

Retraining for a new occupation is necessary when it will materially assist employee in restoring his impaired capacity to earn a livelihood. Vierling v Spencer, Kellogg & Sons, Inc. 187 M 252, 245 NW 150.

Evidence held sufficient to sustain a finding of referee that retraining in poultry business will materially assist in restoring employee's impaired capacity to earn a livelihood. Vierling v Spencer, Kellogg & Sons, Inc. 187 M 252, 245 NW 150.

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 Spencer, Kellogg & Sons, Inc. 187 M 252, 245 NW 150.

Upon record, commission did not abuse its discretion by vacating an order denying additional compensation for retraining and granting an application of employee for permission to submit further evidence. Vierling v Spencer, Kellogg & Sons, Inc. 187 M 252, 245 NW 150.

7. Disfigurement.

Where an injury results in part in disability and in part in non-disabling disfigurement, the employee is limited in his relief to that given by the compensation law, and a separate action at law for the non-disabling injury cannot be maintained. Hyett v N. W. Hospital for Women & Children, 147 M 413, 180 NW 552.

8. Freezing; Heatstroke; Hernia; Lightning; Poisoning.

See annotations under section 176.01, subd. 9, these subtitles, and under "Disfigurement."

9. Injuries to eyes.

Where relator prior to entering respondent's service had lost the sight of an eye by accidental means and after entering respondent's services lost the sight of the other eye by an accident in his employment, rendering him totally blind, respondent is liable only for the permanent partial disability resulting from the injury suffered in his service. State ex rel v District Court, 129 M 156, 151 NW 910.

Total loss of vision in right eye and 95 per cent in left eye (which could be increased to one-third of normal with glasses) and head injuries which caused pain on stooping or bending, with evidence of inability to work in any occupation to earn a livelihood, held to support finding of permanent total disability. State ex rel v District Court, 133 M 439, 158 NW 700.

Where a workman with vision of his left eye impaired 50 per cent sustained an accident which destroyed his right eye and nearly all of the remaining vision of his left eye, so that, while not totally blind, he could no longer follow any occupation, the amount of compensation payable is not determined by the schedule for the loss of an eye, but by the clause providing that compensation shall be based on the difference between the wage of the workman at the time of his injury and the wage he is able to earn in his partially disabled condition for a period not exceeding 300 weeks. Zinken v Melrose Granite Co. 143 M 397, 173 NW 857.

The term "member", as used in the compensation law, includes the eye. Chiovitte v Zenith Furnace Co. 148 M 277, 181 NW 643.

Where a workman loses partial sight of an eye by an injury he is entitled to compensation during the number of weeks which the partial loss bears to the prescribed number of weeks for total loss. Chiovitte v Zenith Furnace Co. 148 M 277, 181 NW 643.

Where an injury by accident irrevocably destroys the sight of an eye, though by artificial means fair vision may be obtained, compensation should be as for the loss of the eye. Butch v Shaver, 150 M 94, 184 NW 572.

In determining extent of injuries to vision in claims on special fund for permanent disability, "correction by glasses" may be taken into consideration. Foster v Schmahl, 197 M 602, 268 NW 631.

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. Foster v Schmahl, 197 M 602, 268 NW 631.

Measurement of permanent partial loss of vision of an eye, for purpose of schedule of compensation, held properly made without corrective lens. This is

distinguished from cases of claims against special compensation fund for total disability, which are based upon loss of earning power, not measurement of loss of vision for schedule of compensation. Livingston v St. P. Hydraulic Hoist Co. 203 M 62, 279 NW 829.

Loss of eye already impaired.

Under the workmen's compensation act, the amount to be paid an employee for an injury to an eye which necessitates its removal is the sum stated in the schedule for the loss of an eye, even though the sight in that eye has been almost wholly destroyed in childhood. Hessley v Mpls. Steel Constr. Co. 156 M 405, 195 NW 274.

Compensation for the loss of the use of an eye does not debar the employee from recovering the full schedule compensation specified in the law for the removal of the same eye, injured in a subsequent employment under a different employer. Wareheim v Melrose Granite Co. 161 M 275, 201 NW 543.

For the removal of a sightless eye necessitated by an industrial accident, a workman is entitled to receive compensation for the loss of an eye. Mosgaard v Mpls. St. Ry. Co. 161 M 318, 201 NW 545.

Compensation awarded for loss of eyeball after compensation paid for industrial blindness of same eye. Shaughnessy v Diamond Iron Works, 166 M 508, 208 NW 188.

10. Injury to thumb or finger.

Where an injury to fingers affected the usefulness of the hand, compensation may properly be based on the disability to the hand. State ex rel v District Court, 144 M 198, 174 NW 826.

Loss of distal or first phalanx of thumb and one-half lacking one-eighth of an inch of the second or proximal phalanx thereof, was compensable as loss of half the thumb. Sheldon v Gopher Granite Co. 174 M 551, 219 NW 867.

11. Injuries to hand or arm.

Where there are permanent injuries to the hand and arm below the elbow, compensation should be based on the percentage of total disability of the hand; but where the same accident results also in permanent partial disability to the arm above the elbow, the compensation should be on the percentage of total disability of the arm as a whole, including the forearm and hand. It is improper in such case to divide the injuries into two units. State ex rel v District Court, 129 M 91, 151 NW 530.

12. Injuries to foot or leg.

Where a fracture of a bone in the heel of a foot resulted in some deformity and difficulty and pain in walking, there was "permanent partial disability", to be compensated at the proportion of the schedule for the loss of a foot which the disability bore to the total loss of the member. State ex rel v District Court, 136 M 147, 161 NW 391.

Where a fracture of a leg failed to unite and resulted in total disability for a longer period than that payable for the loss of a leg, compensation should continue on the temporary total basis with a limit of 300 weeks. State ex rel v District Court, 146 M 283, 178 NW 594.

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. (Amending opinion in Smith v Kedney Warehouse Co. Inc. 267 NW 478.) Smith v Kedney Warehouse Co. Inc. 197 M 558, 269 NW 633.

Commission is not bound to follow physicians' estimate of disability to a leg which was based on loss of flexion where there was other medical evidence that

the disability was due mainly to pain, regardless of flexion. Kruchowski v Swift & Co. 201 M 557, 277 NW 15.

A workman who has lost the use of one leg, without other disability, is not permanently totally disabled. Krnetich v Oliver Iron M'ng Co. 202 M 158, 277 NW 525.

176.12 DEPENDENTS AND ALLOWANCES.

HISTORY. 1913 c. 467 s. 14; G.S. 1913 s. 8208; 1921 c. 82 s. 15; 1923 c. 300 s. 4; G.S. 1923 s. 4275; 1925 c. 161 ss. 3 to 7; M.S. 1927 s. 4275; 1933 c. 61 s. 1; M. Supp. s. 4275; 1945 c. 389 s. 2.

1. Generally.
2. Widow or wife.
3. Children or orphans.
4. Brothers or sisters.

1. Generally.

To constitute total dependency within the meaning of the act, it is not necessary that the dependent be supported wholly out of the wages of the employee's employment. State ex rel v District Court, 131 M 27, 154 NW 509.

In determining compensation under the statute it is immaterial whether the claimant inherited anything from the estate of the employee. State ex rel v District Court, 131 M 27, 154 NW 509.

The right to recover compensation for the death of an employee is a new and distinct right created by the death, and the law in effect at the time of the death governs the amount recoverable. State ex rel v District Court, 131 M 96, 154 NW 661.

The compensation act applies to a member of a city fire department, and his dependents are entitled to recover under that act for his death. State ex rel v District Court, 134 M 28, 158 NW 791.

The fact that dependents of a city fireman drew benefits for his death from a firemen's relief association does not bar recovery of compensation nor reduce the amount thereof. State ex rel v District Court, 134 M 28, 158 NW 791.

Where the evidence fails to show that decedent received a monthly or weekly wage in excess of the minimum fixed by the statute, the dependents are entitled to the full amount of the minimum so allowed, but not in excess thereof. Kreidler v Mahnomen Elec. Light & Power Co. 154 M 23, 191 NW 277.

To justify an award to dependents of any amount in excess of the minimum allowed, the claimant must show by competent evidence the basis for ascertainment thereof as fixed by the statute. Kreidler v Mahnomen Elec. Light & Power Co. 154 M 23, 191 NW 277.

The right to compensation under the workmen's compensation act in case of death is governed by the law in force at the time of death. State ex rel v District Court, 132 M 249, 156 NW 120.

Substantial regularity of contribution toward support, under the compensation act, is an essential element of partial dependency. Bartkey v Sanitary Farm Dairies, 170 M 159, 212 NW 175.

Occasional contributions do not constitute partial dependency. Bengston v Siems, 173 M 498, 217 NW 679.

Subdivision 19 is operative only when there is a partial dependent. Bengston v Siems, 173 M 498, 217 NW 679.

To make one dependent on workman, regular essential contribution may consist of labor. Gossen v Town of Borgholm, 174 M 227, 218 NW 882.

Contributions to dependents need not be literally from money saved as wages, but may consist of labor. Gossen v Town of Borgholm, 174 M 227, 218 NW 882.

Common-law marriage and proof thereof. Campbell v Nelson, 175 M 51, 220 NW 401.

Dependents of a workman have a separate and independent right in event of his death, and where death occurs within 6 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 the commission. Lewis v Connolly Contracting Co. 196 M 108, 264 WN 581.

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 City of Mankato, 199 M 284, 271 NW 582.

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. Jacobs v Village of Buhl, 199 M 572, 273 NW 245.

Where the commission determines that an employer shall make payment to the special compensation fund for the death of an employee without dependents, the decision is not an award of "compensation." The liability is one created by statute, and an action or proceeding to recover the same must be commenced within six years from the accrual of the cause of action. Schmahl v School District, 200 M 294, 274 NW 168.

An order of the commission declaring a sum to be full payment to which an employee is entitled is not an adjudication of the rights of his dependents after his death from his injury. Johnson v Pillsbury Flour Mills Co. 203 M 347, 281 NW 290.

An action for compensation brought by a dependent upon the death from his injury of an employee who had settled his claim more than six years previously is a reopening of his case and is not barred by the statute of limitations. Johnson v Pillsbury Flour Mills Co. 203 M 347, 281 NW 290.

A stipulation for settlement releasing liability for possible future death claim by dependents hold properly refused approval by commission as contrary to policy of the law, which provides death benefits to insure support to dependents when the employee dies. If paid in advance there is no assurance that the benefit will be available when death occurs. Dale v Shaw Motor Co. 206 M 99, 287 NW 787.

Receipt of compensation from federal government by dependents of its employee who was fatally injured by negligence of city while working on a joint W P A project is no bar to an action against city for damages for the wrongful death. Wagner v City of Duluth, 211 M 252, 300 NW 820.

The compensation rate of partial dependents to whom the employee contributed $8.00 or less per week is governed by section 4275, subd. 19, providing that they shall receive the full amount of their income loss. Dragovich v Mille Lacs Region Coop. P. & L. Ass'n. 212 M 543, 4 NW(2d) 352.

Following American Law institute, "no recovery can be had under the workmen's compensation act of a state if neither the harm occurred nor the contract of employment was made in the state." DeRosier v Craig, 217 M 296, 14 NW(2d) 286.

Recovery where neither injury nor contract of employment occurred in state of suit. 28 MLR 336.

2. Widow or Wife.

Where an employee received $140.00 a month with an understanding that out of this he was to pay wages of an assistant, and for several months prior to a fatal accident paid an assistant $40.00 a month, the compensation rate of his widow must be based on wages of $100.00 a month. State ex rel v District Court, 128 M 486, 151 NW 182.

Amount to be paid widow of employee without children who remarries is governed by section 176.12. Miller v Tate Tile & Silo Co. 168 M 512, 209 NW 630.

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 Zaiser, 184 M 598, 239 NW 761.

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 County of Todd, 187 M 223, 244 NW 807.

Where upon remarriage of widow employer made final lump-sum settlement by paying half of amount of compensation, other half became payable to minor child. Stegner v City of St. Paul, 189 M 290, 249 NW 189.

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 Bohn Refrig. Co. 192 M 242, 255 NW 835.

Circumstances that decedent's dependent widow was a member of employer-partnership, did not relieve it or its insurer from liability. Keegan v Keegan, 194 M 261, 260 NW 318.

Advance lump-sum payments drawn by a widow from last weekly payments to become due in the future are properly deductible from the prescribed lump-sum settlement upon remarriage. Olson v Nat'l Tea Co. 212 M 215, NW(2d) 225.

Wife voluntarily living apart.

The expression, "voluntarily living apart from her husband", is construed to mean the free and intentional choice of the wife, deliberately made and acted upon. State ex rel v District Court, 137 M 283, 163 NW 509.

The burden of establishing voluntary separation by a wife from her husband rests with the party presenting the claim. State ex rel v District Court, 137 M 283, 163 NW 509.

The fact that a husband left his wife and brought an action for divorce against her is not evidence that the separation was by her voluntary consent, and she is entitled to compensation for his death. State ex rel v District Court, 137 M 283, 163 NW 509.

A wife living apart from her husband for fear of personal violence does not constitute "voluntary living apart". State ex rel v District Court, 139 M 409, 166 NW 772.

The fact that a wife was voluntarily living apart from her husband and the evidence showed no actual dependency removed the presumption of dependency. State ex rel v District Court, 146 M 59, 177 NW 934.

The burden of showing that a wife was voluntarily living apart from her husband rests with the party asserting it as a defense to the wife's right to compensation. Kolundjija v Hanna Ore Mining Co. 155 M 176, 193 NW 163.

3. Children or Orphans.

Provision for payment of compensation to certain children on remarriage of widow does not apply to a child adopted by widow after husband's death. State ex rel v District Court, 133 M 265, 158 NW 250.

Under the compensation act of 1913 as amended in 1915, a widowed daughter of 30 who derived part of her support from her father is a partial dependent and entitled to compensation. State ex rel v District Court, 134 M 131, 158 NW 798.

Children under 16 years of age, whose mother was accidentally killed in her employment and whose father had for several years prior thereto abandoned the family, are to be regarded as orphans for the purpose of fixing the amount of compensation to be paid them. State ex rel v District Court, 143 M 144, 172 NW 897.

An illegitimate child of a woman was a "stepchild" of man she subsequently married, entitled to compensation for his death. Lunceford v Fegles Constr. Co. 185 M 31, 239 NW 673.

Where, upon remarriage of widow, employer made final lump-sum settlement by paying half of amount of compensation, other half became payable to minor child. Stegner v City of St. Paul, 189 M 290, 249 NW 189.

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 eight and a half months after death the girl bore a child of the employee, there was no marriage and child was not entitled to compensation. Guptil v Dahlquist Contracting Co. 197 M 211, 266 NW 748.

Minor children under age of 16 are conclusively presumed to be dependents. Mchts. Trust Co. v Sommers & Co. 200 M 281, 274 NW 175.

A child ceases to be a dependent when he arrives at the age of 18 if he is not "physically or mentally incapacitated from earning." Mchts. Trust Co. v Sommers & Co. 200 M 281, 274 NW 175.

Status of invalided parents who were wholly supported by a son to the time of his decease held not changed to partial dependents by gratuitious services rendered parents for a few months by an adult daughter. State ex rel v District Court, 128 M 338, 151 NW 123.

A widowed mother, without means, who is supported by her son partly by the wages of his employment and partly by the yield of his land, is wholly dependent upon her son for support within the meaning of the compensation act. State ex rel v District Court, 131 M 27, 154 NW 509.

The monthly contributions of a workman to his mother should be considered as a part of her "total income" in determining the amount to which she is entitled as a partial dependent. State ex rel v District Court, 133 M 454, 158 NW 792.

Evidence sustains finding that parents were partial dependents of deceased son where family consisted of six, father earned $18.00 a week, and son gave all of his earnings of $7.50 a week to his parents and received from them his lodging, board and clothing, notwithstanding that father made an estimate, out of harmony with these facts, that cost of son's support exceeded his wages. State ex rel v District Court, 134 M 324, 159 NW 755.

The parents of a minor son, living with them and giving his wages to his mother for use in paying the household expenses, are his partial dependents, even though the father's earnings would have been sufficient to maintain the family if they had not been expended in the purchase of a home which it occupied. Pushor v American Ry. Exp. Co. 149 M 308, 183 NW 839.

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 Murphy Trans. & Storage Co. 195 M 359, 263 NW 117.

4. Brothers and Sisters.

Brother held not dependent. Krivich v Butler Bros. 177 M 332, 225 NW 117.

Evidence held to sustain finding that relator was not dependent of her brother. Hallstrom v C. F. Haglin Sons Co. 183 M 334, 236 NW 482.

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 Nelson, Mullin & Nelson, 198 M 298, 269 NW 641.

176.13 DISABILITY OR DEATH RESULTING FROM ACCIDENT; INCREASE OF PREVIOUS DISABILITY; SPECIAL COMPENSATION FUND.

HISTORY. 1913 c. 467 s. 15; G.S. 1913 s. 8209; 1921 c. 82 s. 16; 1923 c. 300 s. 5; G.S. 1923 s. 4276; M.S. 1927 s. 4276; 1933 c. 75; Ex. 1933 c. 21 s. 1; 1935 c. 311 s. 1; Ex. 1936 c. 43 s. 1; M. Supp. s. 4276; 1941 c. 384; 1945 c. 106.

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. Lehman v Schmahl, 179 M 388, 229 NW 553.

In determining extent of injuries to vision in claims on special fund for permanent total disability, "correction by glasses" may be taken into consideration. Foster v Schmahl, 197 M 602, 268 NW 631.

There was no total permanent disability arising from injuries to both eyes where all witnesses testified that employe had enough vision to at least distinguish objects. Foster v Schmahl, 197 M 602, 268 NW 631.

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 Schmahl, 198 M 504, 270 NW 129.

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 Halvorson, 200 M 253, 273 NW 812.

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 School District, 200 M 294, 274 NW 168.

Where, in case of death of employe 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 School District, 200 M 294, 274 NW 168.

Constitutionality of requirement that employer pay $1,000 into state treasury where deceased employee leaves no dependents. 23 MLR 556.

176.14 WHEN COMPENSATION BEGINS.

HISTORY. 1913 c. 467 s. 17; G.S. 1913 s. 8211; 1921 c. 82 s. 18; G.S. 1923 s. 4278; M.S. 1927 s. 4278.

176.15 MEDICAL AND SURGICAL TREATMENT.

HISTORY. 1913 c. 467 s. 18; G.S. 1913 s. 8212; 1921 c. 82 s. 19; 1923 c. 300 s. 6; G.S. 1923 s. 4279; M.S. 1927 s. 4279; 1929 c. 248 s. 1; M. Supp. s. 4279.

Where the joint answer of the employer and insurer alleged that defendants were ready and willing to pay the compensation due plaintiff and reasonable hospital and medical expenses within the limits of the law, plaintiff was not obliged to prove compliance with the provisions of the act necessary to make the insurer liable directly to him, and defendants are barred from resisting the claim for medical expenses set up in the complaint on the ground that their own physician was ready to perform the service. State ex rel v District Court, 136 M 147, 161 NW 391.

Proof of verbal assurance by employer to physician of payment of full value of treatment furnished injured employee, given after services were rendered, though not admissible under statute of frauds to prove a contract, may be properly received as an admission of a contract previously made. Collins v Joyce & Rasmussen, 146 M 233, 178 NW 503.

In this, a proceeding under the workmen's compensation act, it is held as a matter of law that there was an insufficient allowance for medical attendance and an insufficient award for temporary disability. Baker v Rundquist, 163 M 71, 203 NW 452.

An injured employee is entitled to exploratory treatment. Baker v Rundquist, 163 M 71, 203 NW 452; Gildea v State Dep't of Highways, 208 M 185, 293 NW 598; 210 M 402, 298 NW 453.

The right to medical and hospital treatment is governed by law in force at time of injury. Eberle v Miller, 170 M 206, 212 NW 190.

Whether employee who has sustained total permanent disability is entitled to further medical and hospital treatment, when all has been done that can be done to cure or improve the injury, rests in the discretionary power of the industrial commission. Eberle v Miller, 170 M 206, 212 NW 190.

An order of the industrial commission, providing for an injured employee a change of physicians and hospitalization, is not reviewable by certiorari. Lamire v Industrial Commission, 170 M 300, 212 NW 415.

Amount which may be allowed to injured employee for medical, surgical and hospital treatment not limited; held open to readjustment. Johnson v Iverson, 175 M 319, 221 NW 65, 222 NW 508.

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 may furnish the cure. Sheldon v Gopher Granite Co. 174 M 551, 219 NW 867.

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 Hilton & Thompson, 176 M 508, 223 NW 787.

Where a married woman is accidentally injured in the course and within the scope of her employment, and the employer and his insurer under the law have assumed liability for and have paid the medical and hospital expenses of the injured employee, no liability or cause of action for recovery of such expenses vests or remains in the husband of the injured employee. Arvidson v Slater, 183 M 446, 237 NW 12.

There is no statute limiting the time within which commission may grant rehearing on further allowance of medical benefits. Kummer v Mutual Auto Co. 185 M 515, 241 NW 681.

Where employer, after notice of disability, denied employee compensation, and by its own doctor advised employee to return to doctor he first consulted for treatment, commission was justified in awarding employee reasonable expenses incurred for medical and surgical treatment. Clausen v Minn. Steel Co. 186 M 80, 242 NW 397.

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. Pechaver v Oliver Iron M'ng. Co. 196 M 558, 265 NW 429, 266 NW 854.

Opposed medical opinions as to causal relation between an accident and resulting condition of workman are as much matters of fact as any other. Gorman v Grinnel Co. 200 M 122, 273 NW 694.

Opinions of medical witnesses based on descriptions of symptoms are admissible in evidence (1) when made to a medical attendant for the purpose of treatment, and (2) when they relate to symptoms from which the patient is suffering at the time, and (3) the medical attendant is called upon to give an expert opinion based in part upon them. Prevenden v Met. Life Ins. Co. 200 M 523, 274 NW 685.

Commission is not bound to follow physicians' estimate of disability to a leg which was based on loss of flexion where there was other medical evidence that the disability was due mainly to pain, regardless of flexion. Kruchowski v Swift & Co. 201 M 557, 277 NW 15.

There is a distinction between the words "compensation" and "damages" as applied to malpractice of physician. McGough v McCarthy Improvement Co. 206 M 1, 286 NW 857.

Employee may recover damages from physicians for malpractice or unskillful or erroneous treatment which aggravated or prolonged his disability and also compensation from his employer without right of any deduction therefrom by employer for compensation paid. McGough v McCarthy Improvement Co. 206 M 1, 286 NW 857.

Employer is liable to employee for all legitimate consequences of an accident, including those produced by unskillful or erroneous treatment by physicians furnished by employer. McGough v McCarthy Improvement Co. 206 M 1, 286 NW 857; Paul v Thornton Bros. Co. 206 M 74, 287 NW 856.

There is nothing in the compensation law making it obligatory for the commission to appoint a neutral physician when medical experts express opposing opinions. Rehac v St. P. Terminal Warehouse Co. 206 M 96, 288 NW 22.

After treatment for a compensable accident has commenced either party may, for cause, petition the commission for a change of physicians. Carmody v City of St. Paul, 207 M 419, 291 NW 895.

If an employer believes that charges made for treating an injured employee are excessive, he may apply to the commission for a determination of the reasonable value of the services. Carmody v City of St. Paul, 207 M 419, 291 NW 895.

An employee who has been injured in his employment may decline treatment by a physician tendered by his employer, obtain treatment from a physician of his own choice, and recover the reasonable value of the services rendered by him. Carmody v City of St. Paul, 207 M 419, 291 NW 895.

Admission in evidence of physician's opinion of cause of death, based in part on decedent's statement as to past transactions and not present symptoms, held not ground for reversal where evidence of the statement was already in the record. Ferch v Great Atl. & Pac. Tea Co. 208 M 9, 292 NW 424.

Failure of employer's physicians in 16 months to discover the treatment needed by an injured employee amounts to the statutory equivalent of inability or refusal seasonably to provide that which the statute requires. Morrell v City of Austin, 208 M 132, 293 NW 144.

Where an employe applies to the commission for a change of physicians and it fails to act, and the employer's insurer declines to consent to such change, the employee may obtain necessary treatment from a physician of his own choice and be reimbursed for the reasonable cost thereof. Morrell v City of Austin, 208 M 132, 293 NW 144.

In designating a change of physicians to treat an injured employee the commission must heed the statutory requirement of selecting the physician suggested by the employee or make its own choice. Morrell v City of Austin, 208 M 132, 293 NW 144.

Where an employer has furnished proper medical treatment an injured employee may change physicians at the expense of the employer only with the consent of the commission. Morrell v City of Austin, 208 M 132, 293 NW 144.

Where there is residual disability and promise of aid from surgery which should go far to restore physical efficiency, employee is entitled to additional surgical attention at expense of employer. Gildea v State Dep't of Highways, 208 M 185, 293 NW 598; 210 M 402, 298 NW 453.

Commission's denial of an order to take additional testimony or for a trial de novo held proper where nothing was shown to substantiate petitioner's claim that certain treatments given him were for a condition not disclosed in the record. Glass v State Dep't of Highways, 211 M 179, 300 NW 593.

Where medical men have found the harmful effect of certain chemicals upon employee, a finding that satisfies them as to the cause of employee's disease should satisfy the statute. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

Where medical opinions are in conflict as to the cause of disability, the commission's determination must stand. Swanson v Amer. Hoist & Derrick Co. 214 M 323, 8 NW(2d) 24.

There is no statute limiting the time when the commission may grant a rehearing on the propriety of allowing further medical benefits necessitated by the original injury. Fehland v City of St. Paul, 215 M 94, 9 NW(2d) 349.

See annotations under section 176.01, subd. 6, and under section 176.19.

176.16 NOTICE OF INJURY.

HISTORY. 1913 c. 467 s. 19; G.S. 1913 s. 8213; 1921 c. 82 s. 20; G.S. 1923 s. 4280; M.S. 1927 s. 4280.

Where the employer has actual knowledge of an accident and injury, giving notice thereof is not necessary. State ex rel v District Court, 129 M 423, 152 NW 838.

A finding that employer had "actual notice" of injury held equivalent to finding of "actual knowledge" thereof. State ex rel v District Court, 132 M 251, 156 NW 278.

If the employer actually receives information of the occurrence of an injury, it is sufficient and the form or manner in which he receives it is immaterial. Kraffer v Nett, 148 M 139, 180 NW 1014.

Plainly observable injury to eye, and employee's statements to employer within two weeks after occurrence that he could not see and that he had lost his eye through his work, constitute sufficient notice to employer of accidental injury. Kraker v Nett, 148 M 139, 180 NW 1014.

The evidence justified finding that workman failed to give notice of the injury within the time prescribed, because of mistake and ignorance of the law, and that the town was not prejudiced by the delay. Reed v Town of Monticello, 164 M 358, 205 NW 258.

Rights of alien workman, or his dependents, were lost by failure to take steps within time limited. Lipmanovich v Crookston Lbr. Co. 168 M 332, 210 NW 47.

Notice provided in Laws 1919, Chapter 363, Section 1, must be given by employer in order to start running of statute of limitations therein provided for. Schonberg v Zinsmaster Baking Co. 173 M 414, 217 NW 491.

Time for giving notice commences from occurrence of disability and not time of accident resulting in latent injury. Clausen v Minnesota Steel Co. 186 M 80, 242 NW 397.

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 Emeralite Surfacing Prod. Co. 190 M 555, 252 NW 439.

"Written report of injury" is that prescribed by section 176.32, and main purpose of notice is doubtless to enable commission to advise employee of his rights, as required by section 176.33. Pease v Minn. Steel Co. 196 M 552, 265 NW 427, 266 NW 854.

Where employer furnished medical and hospital treatment for an injury and had notice of chronic condition resulting therefrom, claim that employee gave no proper notice of his recurring disability requires no comment. Paul v Thornton Bros. Co. 206 M 74, 287 NW 856.

Governmental responsibility for torts. 26 MLR 716.

176.17 SERVICE AND FORM OF NOTICE.

HISTORY. 1913 c. 467 s. 20; G.S. 1913 c. 8214; 1921 c. 82 s. 21; G.S. 1923 s. 4281; M.S. 1927 s. 4281.

Jurisdiction may not be acquired over a non-resident employer by mailing of notices and other papers. Kling v Davis Tailoring Co. 194 M 179, 259 NW 809.

176.18 LIMIT OF ACTIONS.

HISTORY. 1921 c. 82 s. 22; 1923 c. 300 s. 7; G.S. 1923 s. 4282; M.S. 1927 s. 4282.

The right to recover compensation for the death of an employe is a new and distinct right created by the death, and the law in effect at the time of the death governs the amount recoverable. State ex rel v District Court, 131 M 96, 154 NW 661.

When statutes of limitation operate prospectively or retrospectively stated. State ex rel v General A. F. & L. A. Corp. 134 M 21, 158 NW 715.

An act which limits the time to recover compensation after the occurrence of the injury does not apply to claims that accrued prior to the passage of the limitation. State ex rel v District Court, 138 M 213, 164 NW 812.

The judgment in a compensation case cannot be amended by the district court because of judicial error in it after the time for review in the supreme court has passed. Connelly v Carnegie Dock & Fuel Co. 148 M 333, 181 NW 857.

The time within which an employer who has paid compensation and become subrogated to the rights of dependents must institute action against a third party causing the death of his employee is prescribed by General Statutes 1913, Section 8175, as two years. Fidelity & Casualty Co. v St. Paul Gas Light Co. 152 M 197, 188 NW 265.

The effect of the war is to suspend the statute of limitations, as to an alien enemy resident in the enemy's country, until peace is established. Kolundjija v Hanna Ore Mining Co. 155 M 176, 193 NW 163.

The claimant, by change of status in 1918, having ceased to be an alien enemy resident in the enemy's country, and this action not having been brought within one year after notice of the employer's willingness to pay compensation, the cause of action is barred by the statue of limitations. Kolundjija v Hanna Ore Mining Co. 155 M 176, 193 NW 163.

The trial court rightly ordered the dismissal of an action on the showing made, the clerk having mistakenly entered a memorandum indicating that the case was stricken from the calendar, when in fact it was dismissed by the court on the motion of the defendant. Such order, under the circumstances of this case, should not have been entered nunc pro tunc, when the effect of such entry would prevent the plaintiff or the beneficiary of the action from obtaining a reinstatement of the action, so that he might proceed with it as a compensation proceeding or substantially embarrass him in so doing, the time for instituting a proceeding under the compensation act having expired. Walsh v Flour City Ornamental Iron Co. 157 M 396, 196 NW 486.

Rights of alien workmen or dependents were lost where not enforced in time limited, though claim was seized by alien property custodian. Lipmanovich v Crookston Lbr. Co. 168 M 332, 210 NW 47.

The approval of a settlement in a workmen's compensation matter under act of 1913, chapter 467, is not a judgment as regards limitations. Strizich v Zenith Furnace Co. 176 M 555, 223 NW 926.

Proceeding held the reopening of a proceeding, not a new proceeding, and not barred by this section. Glassman v Radtke, 177 M 555, 225 NW 889.

There is no statute limiting the time when the industrial commission may on application grant a rehearing on the propriety of further allowance as medical benefits. Kummer v Mut. Auto. Co. 185 M 515, 241 NW 681.

Defense that compensation was barred, not presented to industrial commission, cannot be raised on appeal. Krenz v Krenz Oil Co. 186 M 312, 243 NW 108.

An application for retraining compensation, made five years after an award of compensation, is a part of the original proceeding and not barred by the statute of limitations. It is analagous to an application for further medical benefits, and likewise there is no statute limiting the time within which the commission may grant a rehearing. Vierling v Spencer, Kellogg & Sons, 187 M 252, 245 NW 150.

By settlement agreement and submission of same to commission for action any claim that proceeding was barred by limitations was waived. Worwa v Mpls. St. Ry. Co. 192 M 77, 255 NW 250.

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 reopening. Lunzer v Buth & Co. 195 M 29, 261 NW 477.

Where employer has made no written report of accident there can be no recovery of compensation unless proceeding before commission be commenced within six years from date of accident. Lunzer v Buth & Co. 195 M 29, 261 NW 477.

A "non-disabling 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 Minn. Steel Co. 196 M 552, 265 NW 427, 266 NW 854.

Two-year limitations did not apply to seemingly trivial "non-disabling accident." Pechaver v Oliver Iron M'ng. Co. 196 M 558, 265 NW 429, 266 NW 854.

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 Connolly Contr. Co. 196 M 108, 264 NW 581.

The respective rights and obligations of parties under the compensation law for an injury become fixed as of the date of accident; for death, at the time of death. Roos v City of Mankato, 199 M 284, 271 NW 582; Schmahl v School District, 200 M 294, 274 NW 168.

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 School District, 200 M 294, 274 NW 168.

Neither filing a report of an accident nor furnishing medical treatment constitute an action or proceeding. Mattson v Oliver Iron M'ng. Co. 201 M 35, 275 NW 403.

An action by a wife for dependency compensation brought more than six years after an accident to her husband which he survived that length of time held a reopening or continuation of an action brought by him for his injury within the limited time and is not barred by the statute of limitations. Nyberg v Little Falls Black Granite Co. 202 M 86, 277 NW 536.

An action for compensation brought by a dependent upon the death from his injury of an employee who had settled his claim more than six years previously is a reopening of his case and is not barred by the statute of limitations. Johnson v Pillsbury Flour Mills Co. 203 M 347, 281 NW 290.

Reporting an injury, furnishing medical treatment, paying compensation, and filing reports of the status of the case amount to a proceeding and give the commission jurisdiction over a claim petition filed seven years after the accident. Rasmussen v City of St. Paul, 215 M 458, 10 NW(2d) 419.

176.19 EXAMINATION AND VERIFICATION OF INJURY.

HISTORY. 1913 c. 467 s. 21; G.S. 1913 s. 8215; 1921 c. 82 s. 23; 1923 c. 300 s. 8; G.S. 1923 s. 4283; M.S. 1927 s. 4283; 1943 c. 633 s. 1.

Employer which did not apply to commission cannot complain that it was refused autopsy. Brameld v Dickinson Co. 186 M 89, 242 NW 465.

Appointment of neutral physician is within discretionary power of industrial commission. Astell v Cooke, 201 M 108, 275 NW 420.

After an award has been made the employer's right to compel the employee to submit to a physical examination by a physician selected by the employer is within the sound discretion of the commission. Nelson v Krause, 201 M 123, 275 NW 624.

Commission's denial of motion to reopen case and appoint neutral physician, after referee's decision, held in exercise of its judicial discretion. Rehac v St. P. Terminal Warehouse Co. 206 M. 96, 288 NW 22.

On motion for the appointment of a neutral physician, it is for the commission to determine whether or not more evidence is advisable to arrive at a decision. Rehac v St. P. Terminal Warehouse Co. 206 M 96, 288 NW 22.

There is nothing in the compensation law making it obligatory for the commission to appoint a neutral physician when medical experts express opposing opinions. Rehac v St. P. Terminal Warehouse Co. 206 M 96, 288 NW 22.

See annotations under section 176.15.

Report of neutral physician (Mayo clinic) established the existence of employee's total disability. Baker v MacGillis, 216 M 469, 13 NW(2d) 457.

176.20 COMPENSATION TO ALIEN DEPENDENTS.

HISTORY. 1913 c. 467 s. 23; G.S. 1913 s. 8217; 1921 c. 82 s. 24; G.S. 1923 s. 4284; M.S. 1927 s. 4284; 1929 c. 251; 1939 c. 416; M. Supp. s. 4284.

Where a traveling salesman was injured on a trip in the interests of two concerns which he represented the employment was concurrent and a joint award against both was correct. Rice v Keystone View Co. 210 M 227, 297 NW 841.

Where conflicting medical opinions raise a fact question the finding of the industrial commission must be affirmed. Kellerman v City of St. Paul, 211 M 351, 1 NW(2d) 378; Swanson v Amer. Hoist & Derrick Co. 214 M 323, 8 NW(2d) 24.

A finding relative to determatitis "that said disease was due to contacting mercury and/or wood alcohol" implies the conclusion that the disease was "mercury and/or wood alcohol poisoning." Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

Rule: Triers of fact must accept as true the positive, unimpeached testimony of credible witnesses, including a party, unless the same is inherently improbable or rendered so by facts and circumstances disclosed at the hearing. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824; Haller v Northern Pump Co. 214 M 404, 8 NW(2d) 464.

Failure to assert a fact, when it would have been natural to assert it, permits an inference of its non-existence, which may be used to contradict an assertion of its existence. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824.

Where testimony is impeached by contradiction or is shown to be improbable or inconsistent, its weight and credibility are for the commission. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824.

A witness may be impeached by a prior statement, either written or oral, purporting to narrate all the facts with respect to a particular event, which omitted to refer to a vital or important fact to which he testified. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824.

A finding on conflicting evidence that an accidental injury to an employee arose or did not arise out of and in the course of his employment will be sustained the same as any other finding on such evidence. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824.

Effect of previous award. 20 MLR 41.

See annotations under sections 176.41, 176.61.

176.51 REFEREE.

HISTORY. 1921 c. 82 s. 50; G.S. 1923 s. 4310; M.S. 1927 s. 4310.

The legislature intended that under the workmen's compensation act a referee's decision in cases assigned to him for hearing should be final unless reversed on appeal. Barlau v Mpls-Moline Power Imp. Co. 214 M 564, 9 NW(2d) 6.

Where two members of the industrial commission hearing an appeal from a referee's decision are divided in opinion there is no reversal and the decision of the rferee must stand. Barlau v Mpls-Moline Power Imp. Co. 214 M 564, 9 NW(2d) 6. The decision occurs by operation of law. Nelson v Creamery Pkge. Mfg. Co. 215 M 25, 9 NW(2d) 320.

176.52 INVESTIGATION.

HISTORY. 1921 c. 82 s. 51; G.S. 1923 s. 4311; M.S. 1927 s. 4311.

Opinions of medical witnesses based on descriptions of symptoms are admissible in evidence (1) when made to a medical attendant for the purpose of treatment, and (2) when they relate to symptoms from which the patient is suffering at the time, and (3) the medical attendant is called upon to give an expert opinion based in part upon them. Prevenden v Met. Life Ins. Co. 200 M 523, 274 NW 685.

176.53 HEARINGS SHALL BE PUBLIC.

HISTORY. 1921 c. 82 s. 52; G.S. 1923 s. 4312; M.S. 1927 s. 4312.

176.21 PAYMENT IN LUMP SUM.

HISTORY. 1913 c. 467 s. 25; G.S. 1913 s. 8220; 1921 c. 82 s. 25; G.S. 1923 s. 4285; M.S. 1927 s. 4285; 1929 c. 400; M. Supp. s. 4285.

Discretionary right to award lump-sum payments should be sparingly exercised. State ex rel v District Court, 134 M 16, 158 NW 713.

A lump-sum settlement under General Statutes 1913, Sections 8216 and 8222, approved by the trial court, confirmed by its judgment and paid by the employer, in the absence of fraud or deception, is final and not open to readjustment. It was within the power of the legislature to declare such settlements final. Integrity Mut. Cas. Co. v Nelson, 149 M 337, 183 NW 837.

The order approving a settlement in a workmen's compensation case was not final under General Statutes 1913, Section 8221, for the disability to be compensated was not limited to less than six month period, nor was it final under section 8222, for there was no commutation to a lump payment, and hence the order could be relieved against for the causes provided for in General Statutes 1913, Section 7786. Ronstadt v Minor, 152 M 10, 187 NW 703.

Where agreement for settlement was fair, commission should have approved, rather than denied it. Worwa v Mpls. St. Ry. Co. 192 M 77, 255 NW 250.

Where compensation to widow has been commuted and placed in trust fund and she dies before exhausting sum, depositing insurer may not recover unexpended balance. Employers Mut. L. Ins. Co. v Empire Nat. B. & T. Co. 192 M 398, 256 NW 663.

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 Pillsbury Flour Mills Co. 187 M 362, 245 NW 619.

Section 176.21 appears to authorize lump-sum settlement only on basis of previous award payable periodically. Settlement without award does not deprive commission of jurisdiction to set aside the settlement to determine whether compensation should be paid for subsequently appearing disability. Johnson v *Pillsbury Flour Mills Co.* 187 M 362, 245 NW 619.

Where compensation is commuted under section 176.21, and dependent beneficiary dies before receiving whole sum placed in trust for his benefit under section 176.22, depositing insurer may not recover balance unexpended at time of beneficiary's death. Employers Mut. L. Ins. Co. v Empire Nat. B. & T. Co. 192 M 398, 256 NW 663.

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 Cameron-Joyce Co. 194 M 285, 260 NW 213.

Advance lump-sum payments drawn by a widow from last weekly payments to become due in the future are properly deductible from the prescribed lump-sum settlement upon remarriage. Olson v Nat'l Tea Co. 212 M 215, 3 NW(2d) 225.

See annotations under section 176.34.

176.22 PAYMENT TO TRUSTEE.

HISTORY. 1913 c. 467 s. 28; G.S. 1913 s. 8223; 1921 c. 82 s. 26: G.S. 1923 s. 4286; M.S. 1927 s. 4286.

Where compensation is commuted under section 176.21, and dependent beneficiary dies before receiving whole sum placed in trust for his benefit under section 176.22, depositing insurer may not recover balance unexpended at time of beneficiary's death. Employers Mut. L. Ins. Co. v Empire Nat. B. & T. Co. 192 M 398, 256 NW 663.

176.23 COMPENSATION A PREFERRED CLAIM; ASSIGNMENT; EXEMPTION.

HISTORY. 1913 c. 467 s. 29; G.S. 1913 s. 8224; 1921 c. 82 s. 27; G.S. 1923 s. 4287; M.S. 1927 s. 4287.

An award under the workmen's compensation act is not a "debt incurred to any laborer or servant for labor or services performed," within the meaning of Constitution, Article 1, Section 12, and is not a lien upon the employer's homestead. Aase v Langston, 175 M 161, 220 NW 421.

Death of workman from other causes while receiving compensation for injury terminates all rights to compensation to accrue to him thereafter. Tierney v Tierney & Co. 176 M 464, 223 NW 773.

Award is not assignable, and attorney's fees cannot be collected out of award unless approved by commission. Blair v Village of Coleraine, 180 M 388, 231 NW 193.

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 Consumers Ice & Fuel Co. 192 M 596, 257 NW 501.

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 Consumers Ice & Fuel Co. 192 M 596, 257 NW 501.

Purpose of section 176.23. Fehland v City of St. Paul, 215 M 103, 9 NW(2d) 349.

Continuance of payment of workmen's compensation by an operating receiver. 19 MLR 253.

See annotations under sections 176.70, 176.71, 176.72, 316.05, and 577.08.

176.24 EMPLOYER TO INSURE EMPLOYEES; EXCEPTIONS.

HISTORY. 1921 c. 82 s. 28; 1923 c. 282 s. 1; G.S. 1923 s. 4288; M.S. 1927 s. 4288; 1945 c. 76.

There is but one risk for purpose of workmen's compensation insurance, unless limitation is approved by industrial commission. Skuey v Bjerkan, 173 M 354, 217 NW 358.

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. Skuey v Bjerkan, 173 M 354, 217 NW 358.

Holder of a permit to cut and remove timber from state land may be considered a general contractor of state so as to be liable to pay workmen's compensation to employee of subcontractor without insurance who cuts and removes timber. Nylund v Thornberg, 209 M 79, 295 NW 411.

See annotations under sections 176.03, 176.04, 176.25. For additional penalty for not insuring, see section 176.04.

176.25 WHO MAY INSURE; POLICIES.

HISTORY. 1921 c. 82 s. 29; 1923 c. 282 s. 2; G.S. 1923 s. 4289; M.S. 1927 s. 4289; 1931 c. 352 s. 1; M. Supp. s. 4289.

Where an employer insures his workman under General Statutes 1913, Section 8227, it is not necessary to the maintenance of an action against the insurer that the notice provided for in that section be filed in the office of the labor commissioner before the accident in question occurs. State ex rel v District Court, 133 M 402, 158 NW 615.

Specific terms held to overcome general limitations in a policy of insurance. State ex rel v District Court, 133 M 402, 158 NW 615.

In an action brought in municipal court for a stated amount the complaint alleged that defendant by agreement had assumed the liabilities of an insurance company which was indebted to plaintiff in an undetermined amount for an injury subject to the compensation act. Held that the complaint failed to state a

cause of action and that the municipal court had no jurisdiction. Burns v Millers Mut. Casualty Co. 146 M 356, 178 NW 812.

A mutual mistake in a policy of compensation insurance is clearly established where the insured and the agent soliciting the insurance testify that it was to cover a summer repair work payroll only, and the agent writing the policy erroneously covers the insured's entire pay-roll. London G. & Acc. Co. v Board of Education, 166 M 295, 207 NW 634.

The failure of the insured or its clerk to read a policy of compensation insurance when received is not such negligence that will defend a reformation of the policy to conform to its intended coverage. London G. & Acc. Co. v Board of Education, 166 M 295, 207 NW 634.

Temporary coverage given to enable plaintiff to determine whether it would renew indemnity held to have expired at time of injury to certain plaintiff's employees. Bell Lumber Co. v Employers Mut. L. Co. 175 M 577, 222 NW 72.

A binder and policy of insurance held not to have imposed upon the insurer liability for a premium deposit paid to former insolvent insurer. Indiana Mut. Cas. Co. v Pratt, 177 M 36, 224 NW 253.

First day was excluded and last day included in determining time of cancelation of workmen's compensation insurance policy. Olson v McGraw, 188 M 307, 247 NW 8.

Where a 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 instalments. Peniston v City of Marshall, 192 M 132, 255 NW 860.

Employer is primarily liable, and his liability cannot become secondary by insurance coverage. Stitz v Ryan, 192 M 297, 256 NW 173.

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 Arrowhead Steel Prod. Co. 194 M 79, 259 NW 535.

A policy of compensation insurance to "A. F. Peavey, doing business as Northwestern Sand Blast Company," issued after Peavey had taken a partner into business with him, Northwestern Sand Blast Company being maintained as partnership name, intention was to protect all employees working under that firm name. Moreault v Northwestern Sand Blast Co. 199 M 96, 271 NW 246.

Contract of sale and installation of an air conditioning system providing "price herein includes cost of workmen's compensation" could be construed, as alleged in complaint, to include requirement that compensation insurance cover employees of buyer of system while assisting in installing it, as affecting remurrer to complaint of regular insurance carrier of buyer, proper construction of contract being a matter to be determined upon evidence at trial. Anchor Cas. Co. v Carrier Engr. Corp. 200 M 111, 273 NW 647.

It is not within the power of the employer and insurer to enter into a policy contract which prevents the employee from enjoying the full protection of a policy containing the "usual and customary provisions found in such policies," but they may agree among themselves as to their respective rights and duties and ultimate financial responsibility in situations which do not impair the statutory protection given the employee. Maryland Cas. Co. v Amer. Cas. Co. 204 M 43, 282 NW 806.

Where an insurance company had knowldege of its agent's habit of extending credit and reinstating canceled policies it will be assumed that such authority was extended to him. Steidel v Metcalf, 210 M 101, 297 NW 324.

The industrial commission has the same power to determine questions arising between employer and insurer for the benefit of an employee as between

employee and insurer or employee and employer. Steidel v Metcalf, 210 M 101, 297 NW 324.

The industrial commission, having been vested with quasijudicial powers to determine questions of law, may also apply equitable principles to situations with which it must deal. Steidel v Metcalf, 210 M 101, 297 NW 324.

Where an insurance agent had apparent authority to reinstate a canceled policy upon compliance by the assured with the company's requirement, the company is liable upon a policy so reinstated. Steidel v Metcalf, 210 M 101, 297 NW 324.

Pneumoconiosis (silicosis), being a disease from inhalation of dust over a long period of time, is not covered by a policy of indemnity insurance applying only to injuries sustained by accidents occurring during the policy period. Golden v Lerch Bros. 211 M 30, 300 NW 207. [See Laws 1943, Chapter 633, since adopted.]

An employer who paid a judgment against him for a fatal slowly-developing disease resulting from violation of a statute requiring ventilation of dust-producing processes cannot recover indemnity from insurers against accidental injuries. Golden v Lerch Bros. 211 M 30, 300 NW 207.

An insurer of an oil company which had no knowledge of its ownership or control of filling stations which it leased to others to escape liability under the compensation act held not a party to such fraudulent artifice and not liable for the accidental death of an assistant employed by a lessee. Washel v Tankar Gas, 211 m 403, 2 NW(2d) 43.

Where a sheriff engaged a municipal judge to assist him in the safe return of a prisoner from another state, and the county ratified the employment by paying his bill, neither the county nor its insurer may attack the validity of the hiring on a question of public policy. Sexton v County of Waseca, 211 M 422, 1 NW(2d) 394.

A policy of compensation insurance on which a church paid a premium based on the salary of the priest, which the insurer knew included the wages of his housekeeper, held to cover the housekeeper as a domestic servant. Berger v Church of St. Patrick, 212 M 345, 3 NW(2d) 590.

An insurance policy canceled before an accident and reinstated after the accident held in force when the accident occurred. If an insurer chooses to reinstate a canceled policy, it must do so as of the date of cancelation. The coverage must be continuous. Annala v Bergman, 213 M 173, 6 NW(2d) 37.

The industrial commission acted within its discretion in refusing to vacate an award made upon an agreement between the parties. Elsenpeter v Potvin, 213 M 136, 5 NW(2d) 499.

Every employer must insure payment of compensation with some insurance carrier authorized to insure liability in Minnesota. In the instant case the North Dakota policy is not sufficient. 1940 OAG 105, June 21, 1939 (523a).

See annotations under sections 176.03, 176.04, 176.24.

176.255 DISPUTE AS TO PAYMENT OF COMPENSATION BENEFITS.

HISTORY. 1941 c. 64.

176.26 PROHIBITION OF DISCRIMINATING AGAINST PHYSICALLY HANDICAPPED PERSONS.

HISTORY. 1919 c. 367 s. 1; M.S. 1927 s. 4289-1.

176.27 PENALTY.

HISTORY. 1919 c. 367 s. 2; M.S. 1927 s. 4289-2.

176.28 CANCELATION OF LICENSE.

HISTORY. 1919 c. 367 s. 3; M.S. 1927 s. 4289-3.

176.29 LICENSES TO WRITE WORKMEN'S COMPENSATION INSURANCE; REVOCATION.

HISTORY. 1919 c. 508; M.S. 1927 s. 4289-4.

176.30 WHO LIABLE AS EMPLOYERS; CONTRACTORS; SUBCONTRACTORS.

HISTORY. 1921 c. 82 s. 30; G.S. 1923 s. 4290; M.S. 1927 s. 4290; 1929 c. 252 s. 1; M. Supp. s. 4290.

An employer against whom an award has been made in favor of a dependent, payable in instalments, need not wait until all instalments have been paid before suing a third party causing the death of his employee under his subrogated rights. Metropolitan Milk Co. v Mpls. St. Ry. Co. 149 M 181, 183 NW 830.

Proof held insufficient to sustain assertion that the relation between the parties was a scheme or device to relieve the original contractor from the burden of insurance premiums. Erickson v Kircher, 168 M 67, 209 NW 644.

Holder of permit to remove timber from state land considered a general contractor and liable for injury to employee of subcontractor engaged to remove the timber who carried no insurance. Nylund v Thornberg, 209 M 79, 295 NW 411.

An oil company leasing filling stations to others in exercising certain control over the lessee construed as a fraudulent artifice to escape liability under the compensation law and held liable as employer of the lessee and his assistant. Washel v Tankar Gas, Inc. 211 M 403, 2 NW(2d) 43.

An insurer of an oil company which had no knowledge of its ownership and control of filling stations which it leased to others to escape liability under the compensation act held not a party to such fraudulent artifice and not liable for the accidental death of an assistant employed by a lessee. Washel v Tankar Gas, Inc. 211 M 403, 2 NW(2d) 43.

While the purpose of the law is remedial and it is not only expedient but highly just to give it a broad rather than a narrow scope, there are limits beyond which it cannot be carried by judicial interpretation. Denial in the instant case is because it is one of independent, contract expressly excluded by section 176.30. Rochester v Christgau, 217 M 465, 14 NW(2d) 780.

176.31 PENALTIES FOR UNREASONABLE DELAY.

HISTORY. 1921 c. 82 s. 32; G.S. 1923 s. 4292; M.S. 1927 s. 4292; 1943 c. 586 s. 1.

Where evidence as to injury was conflicting compensation claimant held not entitled to additional award for frivolous reasons or delaying appeal. Bradtmiller v Liquid Carbonic Co. 173 M 481, 217 NW 680.

176.32 EMPLOYERS MUST REPORT ACCIDENTS; REPORTS; DUTY OF PHYSICIANS.

HISTORY. 1921 c. 82 s. 33; G.S. 1923 s. 4293; 1925 c. 161 s. 8; M.S. 1927 s. 4293; 1939 c. 241; M. Supp. s. 4293.

Prohibition against admitting reports into evidence applies only to those reports submitted to the industrial commission, not reports submitted to insurance companies or others. Hector Constr. Co. v. Butler, 194 M 310, 260 NW 496.

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 Buth & Co. 195 M 29, 261 NW 477.

"Written report of injury" is that prescribed by section 176.32, and main purpose of notice is doubtless to enable commission to advise employee of his rights, as required by section 176.33. Pease v Minn. Steel Co. 196 M 552, 265 NW 427, 266 NW 854.

176.33 DUTIES OF COMMISSION WHEN EMPLOYEE IS INJURED.

HISTORY. 1921 c. 82 s. 34; G.S. 1923 s. 4294; M.S. 1927 s. 4294.

"Written report of injury" is that prescribed by section 176.32, and main purpose of notice is doubtless to enable commission to advise employee of his rights, as required by section 176.33. Pease v Minn. Steel Co. 196 M 552, 265 NW 427, 266 NW 854.

176.34 EMPLOYER TO NOTIFY COMMISSION OF DISCONTINUANCE OF PAYMENTS.

HISTORY. 1921 c. 82 s. 35; G.S. 1923 s. 4295; 1925 c. 161 s. 9; M.S. 1927 s. 4295; 1933 c. 74 s. 1; M. Supp. s. 4295.

Where there has been award of compensation in instalments, 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), is distinguished from rehearing. Rosenquist v O'Neil & Preston, 187 M 375, 245 NW 621.

Section 176.34 applies only to decisions in cases on notice of discontinuance of payments. Section 176.60 applies to all other cases. Rosenquist v O'Neil & Preston, 187 M 375, 245 NW 621.

Where compensation was declared at an end and rights of parties were finally determined and fixed prior to passage of Laws 1933, Chapter 74, commission has no authority to grant a new hearing under this section, since substantive rights of parties are affected. Johnson v Jefferson, 191 M 631, 255 NW 87.

A settlement and release from further liability, approved by the commission, prior to the amendment of section 176.34, by Laws 1933, Chaptre 74, fixed and vested the rights of the parties, and the amendment did not apply to cases in which rights had become fixed and vested prior to its passage. Johnson v Jefferson, 191 M 631, 255 NW 87.

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 section 176.34 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 section 176.60, which continues commission's jurisdiction. Nyberg v Little Falls Black Granite Co. 192 M 404, 256 NW 732.

A final settlement approved by industrial commission and final payment made thereunder becomes final at expiration of time permitted for review thereof. Falconer v Central Lbr. Co. 193 M 560, 259 NW 62.

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 Cameron Joyce Co. 194 M 285, 260 NW 213.

A final settlement, approved by commission prior to amendment of section 176.34, by Laws 1933, Chapter 74, became final at expiration of time for review. Nadeau v Cameron Joyce Co. 194 M 285, 260 NW 213.

Amendment by Laws 1933, Chapter 74, had no retroactive effect so as to authorize reopening compensation cases finally closed before the statute was amended. Nadeau v Cameron Joyce Co. 194 M 285, 260 NW 213.

By amendment of section 176.34, by Laws 1933, Chapter 74, commission retains its jurisdiction, with power to open its decision made upon an accident occurring prior to passage of amendment. Hawkinson v Mirau, 196 M 120, 264 NW 438, 265 NW 346.

Under section 176.34, as amended by Laws 1933, Chapter 74, commission may vacate its decision at any time before reduced to judgment or certiorari has issued, as provided for by section 176.60. Hawkinson v Mirau, 196 M 120, 264 NW 438, 265 NW 346.

Laws 1933, Chapter 74, so amended section 176.34 that industrial commission retains authority and jurisdiction to vacate for cause a decision rendered thereunder and grant a rehearing pursuant to section 176.60, which by amend-

ment is incorporated into section 176.34. Hawkinson v Mirau, 196 M 120, 264 NW 438, 265 NW 346.

Jurisdiction of industrial commission to vacate a decision rendered pursuant to section 176.34 was adequately raised so as to be reviewed on certiorari. Hawkinson v Mirau, 196 M 120, 264 NW 438, 265 NW 346.

This section relates wholly to procedure, and amendment by Laws 1933, Chapter 74, applied to further compensation liability for accident occurring prior to its passage. Hawkinson v Mirau, 196 M 120, 264 NW 438, 265 NW 346.

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 General Logging Co. 196 M 617, 265 NW 837.

Amendment of section 176.34 by Laws 1933, Chapter 74, no way modified or affected section 176.60, and application to commission to set aside award and grant rehearing must be made before decision has passed into judgment in district court. Moffett v Citizens Bank, 198 M 480, 270 NW 596.

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. Moffett v Citizens Bank, 198 M 480, 270 NW 596.

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 City of Mankato, 199 M 284, 271 NW 582.

When an award of compensatoin has been made, the jurisdiction of the commission continues, subject to the provisions of section 176.60, as long as there is a continuing right to compensation. Roos v City of Mankato, 199 M 284, 271 NW 582.

By section 176.34, as amended in 1933, the jurisdiction of the commission is retained until (see section 176.60) the award of the commission or its referee has been reduced to judgment or the supreme court has issued certiorari to review it. Roos v City of Mankato, 199 M 284, 271 NW 582.

Amendment by Laws 1933, Chapter 74, affects procedurally and not rights of parties. Roos v City of Mankato, 199 M 284, 271 NW 582.

An award of compensation cannot be set aside and a new hearing granted thereon under section 176.34, if award was made prior to amendment by Laws 1933, Chapter 74, Section 1, as a rehearing could then be granted only under section 176.60 for cause, record not showing cause. Herzog v City of New Ulm, 199 M 352, 272 NW 174; Terres v International Fuel Co. 208 M 259, 293 NW 301.

Failure to give notice of discontinuance of compensation payments did not, by section 176.34, make employer liable to continue the voluntary payments to the date of hearing where at the hearing it was determined that the right to compensation had terminated at an earlier date. McGrath v Brown, 203 M 326, 281 NW 73.

Commission's denial of motion to reopen case and appoint neutral physician, after referee's decision, held in its judicial discretion. Rehac v St. P. Terminal Warehouse Co. 206 M 96, 288 NW 22.

Failure of the employer to file required receipts of compensation payments does not affect the merits of the controversy. Rasmussen v City of St. Paul, 215 M 458, 10 NW(2d) 419.

176.35 COMMISSION MAY ADVISE; REPORT TO LEGISLATURE.

HISTORY. 1921 c. 82 s. 36; G.S. 1923 s. 4296; M.S. 1927 s. 4296.

176.36 PROCEEDING BEGUN BY PETITION.

HISTORY. 1921 c. 82 s. 37; G.S. 1923 s. 4297; M.S. 1927 s. 4297.

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 section 176.18, in that it appeared from the pleading to be a new proceeding. Glassman v Radtke, 177 M 555, 225 NW 889.

The supreme court is not authorized to prescribe rules of procedure for the industrial commission. James v Peterson, 211 M 481, 1 NW(2d) 844.

The law contemplates only one proceeding for the separate rights of the employee during his lifetime and of his dependents after his death. Gustafson v Ziesmer & Vorlander, 213 M 253, 6 NW(2d) 452.

A dependent widow need not start a new proceeding to urge her rights, but may have her name substituted for that of her husband in proceedings begun by him in his lifetime. Gustafson v Ziesmer & Vorlander, 213 M 253, 6 (NW(2d) 452.

Under the informal procedure before the commission there was no abuse of discretion in granting a hearing on a widow's petition for compensation, as it amounted to a rehearing of a dismissed claim brought by her husband in his lifetime. Gustafson v Ziesmer & Vorlander, 213 M 253, 6 NW(2d) 452.

176.37 PAPERS FILED IN MAIN OFFICE.

HISTORY. 1921 c. 82 s. 38; G. S. 1923 s. 4298; M.S. 1927 s. 4298.

176.38 PAPERS SHALL BE FILED IMMEDIATELY.

HISTORY. 1921 c. 82 s. 39; G.S. 1923 s. 4299; M.S. 1927 s. 4299.

176.39 ORDERS AND DECISIONS FILED.

HISTORY. 1921 c. 82 s. 40; G.S. 1923 s. 4300; M.S. 1927 s. 4300.

176.40 SERVICE BY MAIL.

HISTORY. 1921 c. 82 s. 41; G.S. 1923 s. 4301; M.S. 1927 s. 4301.

Jurisdiction may not be acquired over a non-resident employer by mailing of notices and other papers. Kling v Davis Tailoring Co. 194 M 179, 259 NW 809.

176.41 PROCEDURE IN CASE OF DISPUTE.

HISTORY. 1921 c. 82 s. 42; G.S. 1923 s. 4302; M.S. 1927 s. 4302.

The statutes providing for a change of venue do not apply to the compensation act. State ex rel v District Court, 142 M 503, 172 NW 486.

It is doubtful whether the doctrine of estoppel may be invoked in proceedings before the industrial commission. There are opposing lines of authorities on the question. Hansen v Terminal Mfg. Co. 201 M 216, 275 NW 611.

The practice of demurring to a claim petition before the commission is disapproved as not provided for by statute. Johnson v Pillsbury Flour Mills Co. 203 M 347, 281 NW 290; McGough v McCarthy Improv. Co. 206 M 1, 286 NW 857.

A proceeding before the industrial commission is not a statutory procedure. To a great extent it regulates its own procedure. It may approve or disapprove ruling of its referees as it deems proper. Mooney v Town of Stony Run, 203 M 461, 281 NW 820.

176.42 ACTION WHERE EMPLOYER A NON-RESIDENT; VENUE; COMPLAINT; ATTACHMENT; GARNISHMENT; APPEARANCE BY EMPLOYER.

HISTORY. 1927 c. 417 s. 1; M.S. 1927 s. 4302A.

Injury to employee working in another state before adoption of Minnesota compensation law comes under the law of that state. Johnson v Nelson, 128 M 158, 150 NW 620.

The Minnesota compensation act is applicable to an accident in North Dakota, where the employee was soliciting business for a Minnesota employer under a contract of hire consummated in this state. State ex rel v District Court, 139 M 205, 166 NW 185.

A corporation of another state having a branch localized in Minnesota is, as to employees of that branch, within the Minnesota compensation act. Stansberry v Monitor Stove Co. 150 M 1, 183 NW 977.

Where a 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 had completed the road in Iowa, and he was injured in Minnesota, the Minnesota compensation act applied. Ginsburg v Byers, 171 M 366, 214 NW 55.

Resident connected with Minneapolis branch office of Chicago employer held entitled to compensation for injuries in South Dakota, his territory. Bradtmiller v Liquid Carbonic Co. 173 M 481, 217 NW 680.

Section 176.40, providing for mailing of notices by the commission to employers, does not contemplate that mailing of such notices to non-resident employers should constitute service upon them so as to bring them within the jurisdiction of the commission. Kling v Davis Tailoring Co. 194 M 179, 259 NW 809.

The maintenance of a resident employee in this state by a foreign corporation under an agreement consummated in Minnesota sufficiently localizes its business to make our compensation act applicable to it. Rice v Keystone View Co. 210 M 227, 297 NW 841.

Where a business is localized in this state an employee of it is within the protection of our compensation act, even though some of his services may be performed and an accident to him occurred outside the state. Rice v Keystone View Co. 210 M 227, 297 NW 841;

See annotations under section 176.01, subd. 9, "Injuries occurring in another state."

176.43 DETERMINATION OF ISSUES; REFERENCE; APPEALS TO SUPREME COURT.

HISTORY. 1927 c. 417 s. 1; M.S. 1927 s. 4302B.

A person hired in Iowa to work in Minnesota for an industry localized therein, which directed his work and paid his salary, is limited to the compensation act of Minnesota for an injury sustained in Wisconsin in his employment. Severson v Hanford Tri-State Airlines, 105 F(2d) 622.

See annotations under section 176.42 and under section 176.01, subd. 9, "Injuries occurring in another state."

176.44 COMMISSION TO GIVE HEARING ON CLAIM PETITION.

HISTORY. 1921 c. 82 s. 43; G.S. 1923 s. 4303; M.S. 1927 s. 4303.

The workmen's compensation act intended summary and inexpensive relief. Babich v Oliver Iron M'ng Co. 157 M 122, 195 NW 784.

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 Carlton, 178 M 34, 225 NW 921.

Burden of proof is upon employee to show that injury was suffered in accident arising in course of employment. Jensvold v Kunz Oil Co. 190 M 41, 250 NW 815.

The commission has the power to hear claim petitions or to assign them to one commissioner or to a referee for hearing and under section 176.45 to reassign the hearing from referee to another. Barlau v Minneapolis-Moline, 214 M 568, 9 NW(2d) 6.

176.45 REHEARING.

HISTORY. 1921 c. 82 s. 44; G.S. 1923 s. 4304; M.S. 1927 s. 4304.

Commission acted within its discretion in refusing to grant rehearing. Zeglin v Yost, 163 M 264, 203 NW 963; Kallgren v Lunquist Co. 172 M 489, 216 NW 241.

Upon the facts stated in the opinion it is held that whether a claimant shall have a hearing before the industrial commission rests in its discretion. Smith v Independent Silo Co. 169 M 96, 210 NW 624.

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. Dotlich v Shenango Furnace Co. 172 M 603, 216 NW 242.

Where affidavits in support of 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 Mitchell Battery Co. 191 M 411, 254 NW 584.

Evidence that plaintiff had previously received compensation for injury now sued for should not be admitted on new trial if evidence is the same as at first hearing. Guile v Greenberg, 192 M 548, 257 NW 649.

It could not be first argued on employee's petition for rehearing that litigated issue was settled by leading. Pease v Minn. Steel Co. 196 M 552, 265 NW 427, 266 NW 854.

The mere fact that medical experts express divergent opinions as to cause of disability in a hearing by a referee does not obligate the commission to open the case and appoint a neutral expert. Rehac v St. P. Terminal Warehouse Co. 206 M 96, 288 NW 22.

See annotations under section 176.60.

176.46 ANSWER TO PETITION.

HISTORY. 1921 c. 82 s. 45; G.S. 1923 s. 4305; M.S. 1927 s. 4305.

Where the joint answer of the employer and insurer alleged that defendants were ready and willing to pay the compensation due plaintiff and reasonable hospital and medical expenses within the limits of the law, plaintiff was not obliged to prove compliance with the provisions of the act necessary to make the insurer liable directly to him, and defendants are barred from resisting the claim for medical expenses set up in the complaint on the ground that their own physician was ready to perform the service. State ex rel v District Court, 136 M 147, 161 NW 391.

176.47 COMMISSION TO FIX TIME AND PLACE OF HEARING.

HISTORY. 1921 c. 82 s. 46; G.S. 1923 s. 4306; M.S. 1927 s. 4306.

Proceedings under General Statutes 1913, Section 8225, are summary in nature, and when the real parties in interest have pleaded and a reasonable time has been given to all to prepare for trial the court may proceed to hear and determine the controversy. State ex rel v District Court, 133 M 402, 158 NW 615.

176.48 AWARD BY DEFAULT.

HISTORY. 1921 c. 82 s. 47; G.S. 1923 s. 4307; M.S. 1927 s. 4307.

176.49 COMMISSION, TESTIMONIAL POWERS.

HISTORY. 1921 c. 82 s. 48; G.S. 1923 s. 4308; M.S. 1927 s. 4308.

176.50 AWARD; INTERVENTION.

HISTORY. 1921 c. 82 s. 49; G.S. 1923 s. 4309; M.S. 1927 s. 4309.

In the absence of a settled case, findings of the trial court are presumed to be within the issues litigated on the trial, even though not presented by the pleadings. State ex rel v District Court, 129 M 156, 151 NW 910.

General rule: A question of law arises on the evidence where an impartial consideration thereof, together with permissible inferences from facts shown,

will lead reasonable minds to but one conclusion. If reasonable minds may reach different conclusions, the question of the sufficiency of the evidence becomes one of fact, and the findings of the trial court thereon will be sustained. State ex rel v District Court, 142 M 335, 172 NW 133.

If an impartial consideration of the evidence, together with all reasonable and fair inferences, will lead reasonable minds to but one conclusion, and that conclusion is the opposite of the one made by the trial court, the finding should be set aside. State ex rel v District Court, 142 M 420, 172 NW 311.

The judgment in a compensation case cannot be amended by the district court because of judicial error in it after the time for review in the supreme court has passed. Connelly v Carnegie Dock & Fuel Co. 148 M 333, 181 NW 857.

Industrial commission may make awards under compensation act, but before it can do so the relation of employer and employee must be established. Erickson v Kircher, 168 M 67, 209 NW 644.

The commission properly declined jurisdiction of questions not involved in the relation of employer and employee under the contract of employment and the compensation law. Erickson v Kircher, 168 M 67, 209 NW 644.

Employee need not show exactly how his injury was received. Absolute certainty is not necessary. Reasonable basis for the proximate cause complained of is sufficient. Rasmussen v Benz & Sons, 168 M 319, 210 NW 75, 212 NW 20.

In reviewing proceedings before the industrial commission, findings on questions of fact will not be disturbed unless consideration of the evidence and the inference permissible therefrom clearly requires reasonable minds to adopt a conclusion contrary to the one at which the commission arrived. Krueger v King Midas Milling Co. 169 M 153, 210 NW 871.

A finding for the affirmative of a fact issue should be sustained where, the proof being wholly circumstantial, a reasonable deduction from the evidence supports the finding and there is not a manifest and undeniable preponderance of opposing and more reasonable inference. Maher v Duluth Yellow Cab. Co. 172 M 439, 215 NW 678.

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 the Constitution, Article 1, Section 12, and is not a lien upon the employer's homestead. Aase v Langston, 175 M 161, 220 NW 421.

In relation to the injury, it is sufficient if the accident is the incitation. Bauman v Roth Downs Mfg. Co. 177 M 98, 224 NW 459.

Workmen's compensation liability in this state arises from the contract of employment and is a legal indebtedness upon which interest at the legal rate accrues from the date when each instalment of compensation should have been made. Brown v City of Pipestone, 186 M 540, 245 NW 145.

Word "award" is construed as synonymous with "decision," so as to allow to an employee 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'Neil & Preston, 187 M 375, 245 NW 621.

Where the record discloses that no objection was made before commission, upon jurisdictional grounds, to application to vacate an award, nor any objection that no cause has been shown for vacation, relator-insurer will not be heard to raise question for first time in supreme court. Marks v Keller, 188 M 1, 246 NW 472.

Findings of 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 an invitee while aiding farmer in construction and the only material finding by the commission being that plaintiff was not an employee of the building contractor, one ending commission's power to proceed further. Gilbert v Megears, 192 M 495, 257 NW 73.

It is for triers of fact to choose not only between conflicting evidence, but also between opposed inferences. Reinhard v Universal Film Exch. 197 M 371, 267 NW 223.

Where there is conflicting evidence or where diverse inferences may be drawn from evidence, conclusions reached by commission should not be disturbed Foster v Schmahl, 197 M 602, 268 NW 631.

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 Nash-Finch Co. 197 M 616, 268 NW 1; Gorman v Grinnell Co. 200 M 122, 273 NW 694; Hillman v Northwest Fruit, 207 M 377, 291 NW 609; Bergstrom v Brehmer, 214 M 326, 8 NW(2d) 328.

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. Chamberlin v Taylor, 198 M 274, 269 NW 525; Benson v Hygienic Artificial Ice Co. 198 M 250, 269 NW 460.

Industrial commission is a fact-finding body, even on appeal from order of its referee. Segerstrom v Nelson, Mullin & Nelson, 198 M 298, 269 NW 641.

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 Village of Buhl, 199 M 572, 273 NW 245.

In compensation proceedings, 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 State Dep't. of Highways, 199 M 172, 271 NW 597.

Findings of fact of industrial commission are entitled to very great weight and will not be disturbed unless manifestly contrary to evidence. Colosimo v Giacomo, 199 M 600, 273 NW 632; O'Reilly v Miller, 205 M 228, 285 NW 526.

Whether there is any evidence tending to support a given finding and whether evidence conclusively establishes a particular fact are deemed questions of law. Gorman v Grinnell Co. 200 M 122, 273 NW 694.

Opposed medical opinions as to causal relation between an accident and resulting condition of workman are as much matters of fact as any other. Gorman v Grinnell Co. 200 M 122, 273 NW 694.

Finding of fact of industrial commission will not be overturned unless against manifest preponderance of evidence. Bronson v Nat'l Battery Broadcasting Co. 200 M 237, 273 NW 681.

Where the commission determines that an employer shall make payment to the special compensation fund, the decision is not an award of "compensation." Schmahl v School District, 200 M 294, 274 NW 168.

Rule: "A finding 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." Lothenbach v Armour & Co. 201 M 195, 275 NW 690.

It is doubtful whether the doctrine of estoppel may be invoked in proceedings before the industrial commission. There are opposing lines of authorities on the question. Hansen v Terminal Mfg. Co. 201 M 216, 275 NW 611.

An action for damages cannot be maintained against a third party for injuries caused by its negligence by an employee who had accepted compensation from his employer where the third party and employer were under part 2 of the compensation act and both were engaged at the time in the accomplishment of the same or related purpose. Seidel v Nicollet Ave. Properties Corp. 202 M 569, 279 NW 570.

Where the evidence is conflicting it is the duty of the triers thereof to determine the facts, and on appeal it is the duty of the court to view the evidence in the light most favorable to the party whose claims the triers of fact believe. Utgard v Helmerson, 202 M 637, 279 NW 748.

The important thing to determine in a case of heatstroke is not when the collapse occurred, nor whether it occurred upon the working premises of the employer, but rather when the active or proximate cause of the collapse was set in motion. La Crosse v Cedar Lake Ice Co. 203 M 146, 280 NW 285.

Where the cause of disability must be determined by inference and may be inferred with equal probability to have arisen from other factors, as well as his employment, the employee has not proved that it arose out of his employment. Addington v State, 203 M 281, 281 NW 269.

Where the evidence lends support to different conclusions, but neither favors nor compels any particular result, the ruling of the industrial commission will not be disturbed. Erickson v Globe Wrecking Co. 203 M 261, 280 NW 866.

An order of the commission declaring a sum to be full payment to which an employee is entitled is not an adjudication of the rights of his dependents after his death from his injury. Johnson v Pillsbury Flour Mills Co. 203 M 347, 281 NW 290.

Inherent weakness in uncontradicted evidence for affirmative held sufficient to support commission's negative findings. Spies v Spies, 205 M 71, 284 NW 887.

The opinions of experts are admitted in evidence in order to assist the triers of fact in arriving at the truth, and such evidence is admissible whenever the subject matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it without such assistance. Westering v City of Morris, 205 M 219, 285 NW 717.

An affirmative finding cannot be sustained on mere conjecture, as distinguishd from real deduction. This applies to opinion evidence, even to that of the best of experts. Susnik v Oliver Iron M'ng Co. 205 M 325, 286 NW 249.

Where evidence reasonably supports the conclusion of the commission that disability due to an accident terminated on a certain date the supreme court must accept the commission's decision. Baudek v Oliver Iron M'ng Co. 205 M 344, 285 NW 887.

Under settled law supreme court cannot disturb a finding, made on conflicting medical opinions, that employee's disability was due to disease and not accidental injury. Rehac v St. Paul Terminal Warehouse Co. 206 M 96, 288 NW 22.

It is for the triers of fact to choose not only between conflicting evidence, but also between opposed inferences. Husnik v Seeger Refrig. Co. 206 M 210, 288 NW 389; Roberts v Ray-Bell Film Co. 206 M 351, 288 NW 591.

The commission was not required to speculate how the injury occurred, and was justified in accepting the testimony of respondent's doctors that the condition of employee's thumb was not the result of accident in his employment. Husnick v Seeger Refrig. Co. 206 M 210, 288 NW 389.

Where the commission had a complete transcript of all testimony a recital in its decision on appeal that it had considered all the evidence makes it affirmatively appear that it had done so and overcomes a claim of failure to consider all the evidence. Sieluch v Economy Tire & Battery Co. 207 M 1, 290 NW 302.

"A decision should stand, where it is sustained by facts well found, even though there was error in other findings which, if changed or set aside, would not change the result." Sieluch v Economy Tire & Battery Co. 207 M 1, 290 NW 302.

Conflicting statements of employee before and at a hearing as to the occurrence of a hernia held sufficient to sustain the commission's denial of compensation. Hillman v Northwest Fruit, 207 M 377, 291 NW 609.

Statement of employee, made when discovered in distress 20 minutes after heavy lift, that severe pain followed the lift, held properly admitted as a part of the res gestae. Ferch v Great Atlan. & Pac. Tea Co. 208 M 9, 292 NW 424.

The industrial commission, having been vested with quasi-judicial powers to determine questions of law, may also apply equitable principles to situations with which it must deal. Steidel v Metcalf, 210 M 101, 297 NW 324.

Where a traveling salesman was injured on a trip in the interests of two concerns which he represented the employment was concurrent and a joint award against both was correct. Rice v Keystone View Co. 210 M 227, 297 NW 841.

Where conflicting medical opinions raise a fact question the finding of the industrial commission must be affirmed. Kellerman v City of St. Paul, 211 M 351, 1 NW(2d) 378; Swanson v Amer. Hoist & Derrick Co. 214 M 323, 8 NW(2d) 24.

A finding relative to determatitis "that said disease was due to contacting mercury and/or wood alcohol" implies the conclusion that the disease was "mercury and/or wood alcohol poisoning." Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

Rule: Triers of fact must accept as true the positive, unimpeached testimony of credible witnesses, including a party, unless the same is inherently improbable or rendered so by facts and circumstances disclosed at the hearing. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824; Haller v Northern Pump Co. 214 M 404, 8 NW(2d) 464.

Failure to assert a fact, when it would have been natural to assert it, permits an inference of its non-existence, which may be used to contradict an assertion of its existence. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824.

Where testimony is impeached by contradiction or is shown to be improbable or inconsistent, its weight and credibility are for the commission. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824.

A witness may be impeached by a prior statement, either written or oral, purporting to narrate all the facts with respect to a particular event, which omitted to refer to a vital or important fact to which he testified. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824.

A finding on conflicting evidence that an accidental injury to an employee arose or did not arise out of and in the course of his employment will be sustained the same as any other finding on such evidence. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824.

Effect of previous award. 20 MLR 41.

See annotations under sections 176.41, 176.61.

176.51 REFEREE.

HISTORY. 1921 c. 82 s. 50; G.S. 1923 s. 4310; M.S. 1927 s. 4310.

The legislature intended that under the workmen's compensation act a referee's decision in cases assigned to him for hearing should be final unless reversed on appeal. Barlau v Mpls-Moline Power Imp. Co. 214 M 564, 9 NW(2d) 6.

Where two members of the industrial commission hearing an appeal from a referee's decision are divided in opinion there is no reversal and the decision of the rferee must stand. Barlau v Mpls-Moline Power Imp. Co. 214 M 564, 9 NW(2d) 6. The decision occurs by operation of law. Nelson v Creamery Pkge. Mfg. Co. 215 M 25, 9 NW(2d) 320.

176.52 INVESTIGATION.

HISTORY. 1921 c. 82 s. 51; G.S. 1923 s. 4311; M.S. 1927 s. 4311.

Opinions of medical witnesses based on descriptions of symptoms are admissible in evidence (1) when made to a medical attendant for the purpose of treatment, and (2) when they relate to symptoms from which the patient is suffering at the time, and (3) the medical attendant is called upon to give an expert opinion based in part upon them. Prevenden v Met. Life Ins. Co. 200 M 523, 274 NW 685.

176.53 HEARINGS SHALL BE PUBLIC.

HISTORY. 1921 c. 82 s. 52; G.S. 1923 s. 4312; M.S. 1927 s. 4312.

176.54 COMMISSION NOT BOUND BY RULES OF EVIDENCE.

HISTORY. 1921 c. 82 s. 53; G.S. 1923 s. 4313; M.S. 1927 s. 4313.

The compensation act provides for quick, summary and informal disposition of claims, and manifests an intention throughout to do away with technicalities. Kraker v Nett, 148 M 139, 180 NW 1014.

The practice of cross-assignments of error has never been adopted in this state, and the respondent on review, either by appeal or certiorari, cannot assign adverse rulings and thus secure consideration thereof by the supreme court. The relator in certiorari, like the appellant in appeal cases, may alone complain of adverse rulings. Lading v City of Duluth, 153 M 464, 190 NW 981.

Mere preponderance of evidence will sustain a claim. An applied theory that "evidence must be so clear and satisfactory as to leave no doubt in the minds of the triers of fact" imposes a greater burden of proof than is required and is erroneous. Hogan v Twin City Amusement Trust Estate, 155 M 199, 193 NW 122.

A decision of the commission in a workmen's compensation case will not be reversed on a mere matter of procedure. Babich v Oliver Iron M'ng Co. 157 M 122, 195 NW 784.

The undisputed, unimpeached testimony, not inherently improbable, nor discredited by any facts or circumstances in the case, required a finding that relator suffered an accidental injury, viz., a hernia, "arising out of and in the course of his employment." Babich v Oliver Iron M'ng Co. 157 M 122, 195 NW 784.

The commission is not subject to the rules of evidence governing courts, and their decisions will not be disturbed because incompetent evidence may have been admitted when there is sufficient competent evidence to sustain the findings. McDaniel v City of Benson, 167 M 407, 209 NW 26; Kallgren v Lunquist Co. 172 M 489, 216 NW 241; Walker v Minn. Steel Co. 167 M 475, 209 NW 635; Cooper v Mitchell, 188 560, 247 NW 805; Anderson v Coca Cola B'ttlg Co. 190 M 125, 251 NW 3.

Employee need not show exactly how his injury was received. Absolute certainty is not necessary. Reasonable basis for the proximate cause complained of is sufficient. Rasmussen v Benz & Sons, 168 M 319, 210 NW 75, 212 NW 20.

The commission and its referees are not subject to rules of evidence governing the courts. Debeltz v Oliver Iron M'ng Co. 172 M 549, 216 NW 240. Proceedings are not governed by strict rules of evidence. Johnson v Iverson, 175 M 319, 221 NW 65, 222 NW 508.

Duty of commission is to find certain facts under evidence. Manley v Harvey Lbr. Co. 175 M 489, 221 NW 913.

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 section 176.18, in that it appeared from the pleading to be a new proceeding. Glassman v Radtke, 177 M 555, 225 NW 889.

The view of the referee that the relator should have disclosed confidential infomation as to what an examination to his eye showed was not prejudicial on a trial de novo by the commission on appeal. Thompson v Linden Constr. Co. 181 M 502, 233 NW 300.

A decision of the commission will not be disturbed because incompetent evidence was admitted. Cooper v Mitchell, 188 M 560, 247 NW 805; Anderson v Coca Cola B'ttlg Co. 190 M 125, 251 NW 3.

Commission is not bound by strict rules of evidence, but its findings of fact must be based only upon competent evidence. Cooper v Mitchell, 188 M 560, 247 NW 805; Bliss v Swift & Co. 189 M 210, 248 NW 754.

Findings of commission must be based upon competent evidence and cannot rest on pure hearsay. Bliss v Swift & Co. 189 M 210, 248 NW 754.

Evidence that plaintiff had previously received compensation for injury now sued for should not be admitted on new trial if evidence is the same as at first hearing. Guile v Greenberg, 192 M 548, 257 NW 649.

The presumption created by section 602.01, that any statement procured from an injured person within 30 days of his injury is presumably fraudulent for use

in an action for damages, disappears completely immediately the evidence demonstrates that there is nothing fraudulent about it. Swanson v Swanson, 196 M 298, 265 NW 39.

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 commission properly denied compensation. Anderson v Russell-Miller Milling Co. 196 M 358, 267 NW 501.

Expert medical testimony as to extent of injury, based in part on history of case as related by plaintiff, held inadmissible where examination was made solely for purpose of qualifying physician as expert and not for the purpose of treatment. Faltico v Mpls. St. Ry. Co. 198 M 88, 268 NW 857.

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 Nelson, Mullin & Nelson, 198 M 298, 269 NW 641.

As affecting admissibility of statement of employee as a part of the res gestae, consideration should be given to facts that at the 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 Village of Buhl, 199 M 572, 273 NW 245.

In workmen's compensation cases a liberal policy should be followed in admission of declarations as part of the res gestae, in order that purpose of compensation act be carried out. Certain statements made by deceased approximately 45 minutes after accident held properly admitted as part of res gestae. Jacobs v Village of Buhl, 199 M 572, 273 NW 245.

It was not error to exclude expert testimony that it was a practical route to drive from Princeton Ave., St. Paul, to the St. Paul Hotel through intersection of Colborne and W. Seventh Sts., where decedent met with fatal accident. Bronson v Nat'l Battery Broadcasting Co. 200 M 237, 273 NW 681.

Opinions of medical witnesses based on descriptions of symptoms are admissible in evidence (1) when made to a medical attendant for the purpose of treatment, and (2) when they relate to symptoms from which the patient is suffering at the time, and (3) the medical attendant is called upon to give an expert opinion based in part upon them. Prevenden v Met. Life Ins. Co. 200 M 523, 274 NW 685.

It is doubtful whether the doctrine of estoppel may be invóked in proceedings before the industrial commission. There are opposing lines of authorities on the question. Hansen v Terminal Mfg. Co. 201 M 216, 275 NW 611.

The triers of fact must choose not only between conflicting evidence, but also between opposed inferences. Hill v Umbehocker, 201 M 569, 277 NW 9; Utgard v Helmerson, 202 M 637, 279 NW 748.

Where the evidence is conflicting it is the duty of the triers thereof to determine the facts, and on appeal it is the duty of the court to view the evidence in the light most favorable to the party whose claims the triers of fact believe. Utgard v Helmerson, 202 M 637, 279 NW 748.

Evidence held to justify finding that in death from heatstroke the agency of causation came into play during the time of employment and because thereof, and that the latter collapse was directly traceable thereto. La Crosse v Cedar Lake Ice Co. 203 M 146, 280 NW 285.

The important thing to determine in a case of heatstroke is not when the collapse occurred, nor whether it occurred upon the working premises of the employer, but rather when the active or proximate cause of the collapse was set in motion. La Crosse v Cedar Lake Ice Co. 203 M 146, 280 NW 285.

It was not error for the commission to reverse a ruling of its referee striking out certain testimony of relator given before he was made a party to the proceeding. Mooney v Town of Stony Run, 203 M 461, 281 NW 820.

Section 9817, Mason's Minnesota Statutes 1927, declaring incompetent the testimony of interested parties as to conversations with persons since deceased, applies to proceedings under the workmen's compensation act. Kayser v Carson, Pirie, Scott & Co. 203 M 578, 282 NW 801.

Inherent weakness in uncontradicted evidence for affirmative held sufficient to support commission's negative finding. Spies v Spies, 205 M 71, 284 NW 887.

The admission of evidence of a collateral fact depends on whether it has a direct, logical tendency to prove or disprove the facts in issue, and the question is not so much one of law as of sound, practical judgment to be determined from the facts of the particular case. Laughren v Laughren, 205 M 215, 285 NW 531.

Declarations made by a person since deceased as to relevant facts are admissible in evidence when it appears that he was personally cognizant of the facts, that they were against his pecuniary interest, and that he had no probable motive to state them falsely. Laughen v Laughren, 205 M 215, 285 NW 531.

Burden of proof is upon claimant to show traumatic character of a hernia. Hillman v Northwest Fruit, 207 M 377, 291 NW 609.

Statement of employee, made when discovered in distress 20 minutes after heavy lift, that severe pain followed the lift, held properly admitted as part of the res gestae. Ferch v Gt. Atlan. & Pac. Tea Co. 208 M 9, 292 NW 424.

Admission in evidence of physician's opinion of cause of death, based in part on decedent's statement as to past transactions and not present symptoms, held not ground for reversal where evidence of the statement was already in the record. Ferch v Gt. Atlan. & Pac. Tea Co. 208 M 9, 292 NW 424.

Consideration by the commission of certain evidence excluded by the referee held to be harmless. Byhardt v Ballord, 209 M 391, 296 NW 504.

Where it appears that industrial commission on appeal from findings of a referee considered an exhibit excluded by referee, there is no basis for claiming error in exclusion of evidence. Byhardt v Ballord, 209 M 391, 296 NW 504.

A magazine, published prior to the death of the employee, containing an article stating that he had been "marked for death," held rightly excluded from evidence as hearsay. Brown v General Drivers Union No. 544, 212 M 265, 3 NW(2d) 423.

Widow of one killed in an accident which also injured another had no interest in the event of a prosecution for compensation by the latter, and could testify to a conversation she heard between her husband, claimant and another. James v Peterson, 211 M 481, 1 NW(2d) 844.

The evidence in question has been subjected to the test of cross-examination and considered by a district judge competent upon a similar issue in the district court. There being no contradiction of it, nothing to discredit it, why shouldn't it be used by an administrative board. Elsenpeter v Potvin, 213 M 139, 5 NW(2d) 499.

The absence of an appropriate label on the petition for the rehearing is not important. It is not what the parties or the commission may call a proceeding but what it is that determines its status. Gustafson v Ziesmer, 213 M 255, 6 NW(2d) 452; Barlau v Minneapolis-Moline, 214 M 569, 9 NW(2d) 6.

Judicial administration; respective functions of parties and court. 20 MLR 194.

Administrative tribunals and rules of evidence. 20 MLR 746.

Hearsay evidence; res gestae. 22 MLR 392.

Hearings between two independent litigants. 23 MLR 75.

176.55 DEPOSITIONS; EVIDENCE.

HISTORY. 1921 c. 82 s. 54; G.S. 1923 s. 4314; M.S. 1927 s. 4314.

See annotations under section 176.54.

176.56 APPEAL.

HISTORY. 1921 c. 82 s. 55; 1923 c. 300 s. 10; G.S. 1923 s. 4315; M.S. 1927 s. 4315; 1939 c. 150; M. Supp. s. 4315.

So far as the statute specifies the form of the notice of appeal from the findings of a referee, it is directory rather than mandatory, and if there is objectionable indefiniteness, it should be remedied by an order rather than punished by dismissal of the appeal. Fredericksen v Burns Lbr. Co. 163 M 394, 204 NW 161.

The remanding of a proceeding to the commission for rehearing on the merits does not require a trial de novo nor the resubmission of the evidence already in. Fredericksen v Burns Lbr. Co. 163 M 394, 204 NW 161.

Service within 60 days on adverse party of writ of certiorari to review decision of commission should be made on counsel who has appeared for adverse party. Section 606.02 governs. Perkovich v Oliver Iron M'ng Co. 171 M 519, 214 NW 795.

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 Carlton, 178 M 34, 225 NW 921.

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 Linden Constr. Co. 181 M 502, 233 NW 300.

Failure of employee to make a deposit of $10.00 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 Tennant & Hoyt Co. 191 M 227, 253 NW 665.

If a relator deems a finding insufficient because not particularizing the items upon which it is based, the remedy is by motion for additional or modified findings. Ruud v Mpls. St. Ry. Co. 202 M 480, 279 NW 224.

An order of the commission refusing to dismiss an appeal by an employee from a denial of compensation by a referee does not involve the merits of the case and is not reviewable by certiorari. Vokich v Inland Coal & Dock Co. 203 M 433, 281 NW 713.

Commission is ultimate trier of facts and has power to annul, modify or amend any findings made by its referees. Walerius v Foldesi, 206 M 521, 289 NW 55.

Where it appears that commission on appeal from findings of a referee considered an exhibit excluded by referee, there is no basis for claiming error in exclusion of evidence. Byhardt v Ballord, 209 M 391, 296 NW 504.

The legislature intended that under the workmen's compensation act a referee's decision in cases assigned to him for hearing should be final unless reversal on appeal. Barlau v Mpls-Moline Power Impl. Co. 214 M 564, 9 NW(2d) 6.

Where two members of the commission hearing an appeal from a referee's decision are divided in opinion there is no reversal and the decision of the referee must stand. Barlau v Mpls.-Moline Power Impl. Co. 214 M 564, 9 NW(2d) 6. The decision occurs by operation of law. Nelson v Creamery Pckge. Mfg. Co. 215 M 25, 9 NW(2d) 320; Fehland v City of St. Paul, 215 M 94, 9 NW(2d) 349.

176.57 APPEAL BASED ON ERROR.

HISTORY. 1921 c. 82 s. 56; G.S. 1923 s. 4316; M.S. 1927 s. 4316.

Conclusions of commission manifestly contrary to evidence cannot stand. Manley v Harvey Lbr. Co. 175 M 489, 221 NW 913.

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 Carlton, 178 M 34, 225 NW 921.

Industrial commission on appeal from referee should have considered settlement agreement by which employee released claim to doubtful injury. Worwa v Mpls. St. Ry. Co. 192 M 77, 255 NW 250.

A proceeding before the commission is not a statutory procedure. To a great extent it regulates its own procedure. It may approve or disapprove rulings of

its referees as it deems proper. Mooney v Town of Stony Run, 203 M 461, 281 NW 820.

It was not error for the commission to reverse a ruling of a referee striking out certain testimony of relator given before he was made a party to a proceeding. Mooney v Town of Stony Run, 203 M 461, 281 NW 820.

"A decision should stand, where it is sustained by facts well found, even though there was error in other findings which, if changed, or set aside, would not change the result." Cieluch v Economy Tire & Battery Co. 207 M 1, 290 NW 302.

Where the commission had a complete transcript of all testimony a recital in its decision on appeal that it had considered all the evidence makes it affirmatively appear that it had done so and overcomes a claim of failure to consider all the evidence. Cieluch v Economy Tire & Battery Co. 207 M 1, 290 NW 302.

Reference to sections 176.57, 176.58. Barlau v Minneapolis-Moline, 214 M 570, 9 NW(2d) 6.

176.58 APPEALS BASED ON FRAUD OR INSUFFICIENCY OF EVIDENCE.

HISTORY. 1921 c. 82 s. 57; G.S. 1923 s. 4317; M.S. 1927 s. 4317.

Relief against fraudulent settlement must be applied for before the commission, and not by an action in equity in district court to set it aside. Fredericksen v Burns Lbr. Co. 175 M 539, 221 NW 910.

Commission's denial of an order to take additional testimony or for a trial de novo held proper where nothing was shown to substantiate petitioner's claim that certain treatments given him were for a condition not disclosed in the record. Glass v State Dep't of Highways, 211 M 179, 300 NW 593.

176.59 PROCEEDINGS IN CASE OF DEFAULT; ENTRY OF JUDGMENT UPON AWARDS.

HISTORY. 1921 c. 82 s. 58; 1923 c. 300 s. 11; G.S. 1923 s. 4318; M.S. 1927 s. 4318; 1935 c. 314 s. 1; M. Supp. s. 4318.

Application for increased compensation on ground of increased disability is not a new proceeding. Glassman v Radtke, 177 M 555, 225 NW 889.

The approval of a settlement in a workmen's compensation matter under Laws 1913, Chapter 467, is not a judgment, as regards limitations. Strizich v Zenith Furnace Co. 176 M 555, 223 NW 926.

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 commission for a rehearing of matter on merits. Meehan v Mitchell Battery Co. 191 M 411, 254 NW 584.

To vacate a judgment entered in district court to enforce an award of 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. Moffett v Citizens Bank, 198 M 480, 270 NW 596.

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 School District, 200 M 294, 274 NW 168.

Where, in absence of dependents, commission determines that an employer shall make payment to special compensation fund, decision is not award of "compensation" under section 176.59. Schmahl v School District, 200 M 294, 274 NW 168.

Provision of law giving claimants right to apply for judgment after 30 days' default in payment of an award may be waived. Connors v United Metal Prod. Co. 209 M 300, 296 NW 21.

A stipulation for judgment on an award and appearance of the parties before 30 days' default in payment constitute a waiver and gave the court full jurisidiction. Connors v United Metal Prod. Co. 209 M 300, 296 NW 21.

The compromise of a disputed claim constitutes valuable consideration for a stipulation for a judgment on an award, though consideration is not essential to the validity of a stipulation in a judicial proceeding. Connors v United Metal Prod. Co. 209 M 300, 296 NW 21.

A judgment on an award obtained on stipulation of the parties will not be vacated on a claim that it was procured by fraud where evidence fails to prove fraud, misrepresentation or mistake. Connors v United Metal Prod. Co. 209 M 300, 296 NW 21.

While a lower court has no power to alter, amend, or modify a mandate of the supreme court, it has jurisdiction, under section 548.14 to set aside a judgment entered pursuant to a mandate of that court where there has been extrinsic fraud in its procurement. Tankar v Lumbermen's Mutual, 215 M 266, 9 NW(2d) 754.

176.60 NEW HEARING MAY BE GRANTED.

HISTORY. 1921 c. 82 s. 59; 1921 c. 423 s. 1; G.S. 1923 s. 4319; M.S. 1927 s. 4319.

Upon a sufficient showing of newly discovered evidence a judgment awarding compensation may be opened, and General Statutes 1913, Section 7786 (Revised Laws 1905, Section 4160), relative to granting relief in certain cases within a year apply. State ex rel v District Court, 134 M 189, 158 NW 825.

Laws 1913, Chapter 467, Section 27 (b), providing for an application by either party after six months to modify an award on the ground of increase or decrease of capacity applies only to cases where the capacity of the injured man has increased or decreased since the award was made, and is not a remedy for the correction of errors in fixing the compensation. State ex rel v District Court, 136 M 147, 161 NW 391.

A settlement with an injured workman for a period of less than six months was approved by the district court within three months after the injury without formal action against the employer under the compensation act. More than a year after the injury the workman applied for a rehearing and the application was heard upon conflicting affidavits. Held that the record was not such as to compel the trial court to grant a rehearing. State ex rel v District Court, 146 M 476, 178 NW 1002.

The judgment in a compensation case cannot be amended by the district court because of judicial error in it after the time for review in the supreme court has passed. Connelly v Carnegie Dock & Fuel Co. 148 M 333, 181 NW 857.

The granting of a rehearing after an award rests in the sound discretion of the commission. Zeglin v Yost, 163 M 264, 203 NW 963; Anderson v Roberts-Karp Hotel Co. 171 M 402, 214 NW 265; Ogrosky v Commonwealth Elec. Co. 172 M 46, 214 NW 765; Domich v Oliver Iron M'ng Co. 172 M 521; 216 NW 227; Debeltz v Oliver M'ng Co. 172 M 549, 216 NW 240; Dotlich v Shenango Furnace Co. 172 M 603, 216 NW 242; Fredericksen v Burns Lbr. Co. 175 M 539, 221 NW 910; Delich v Thompson-Starret Co. 175 M 612, 220 NW 408; Fredericksen v Burns Lbr. Co. 178 M 464, 227 NW 657; Lickfett v Jórgenson, 179 M 32, 229 NW 138; Cooper v Mitchell, 188 M 560, 247 NW 805; Olson v Jones Elec. Co. 190 M 426, 252 NW 78; Pechaver v Oliver Iron M'ng Co. 198 M 233, 269 NW 417; Gustafson v Ziesmer & Volander, 213 M 253, 6 NW(2d) 452.

Where an award of compensation has been affirmed by the supreme court and remanded, the commission is without power to grant a new hearing. Orcutt v Trustees of Wesley M. E. Church, 174 M 153, 218 NW 550.

Relief against fraudulent settlement must be applied for before the commission and not by an action in equity in district court to set it aside. Fredericksen v Burns Lbr. Co. 175 M 539, 221 NW 910.

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. Glassman v Radtke, 177 M 555, 225 NW 889.

The absence of an appropriate label on a petition for rehearing was not important, though it was claimed that the proceeding was barred by section 176.18 in that it appeared to be a new proceeding. Glassman v Radtke, 177 M 555, 225 NW 889.

There is no statute limiting the time within which the commission may grant a rehearing on the propriety of further allowance of medical benefits necessitated by original injury. Kummer v Mutual Auto. Co. 185 M 515, 241 NW 681.

Refusal of commission to vacate award and allow additional compensation, based on competent evidence, will not be disturbed on appeal. Hanke v Northern States Power Co. 186 M 184, 242 NW 621.

Where an order of the commission affirmed by supreme court leaves an issue open for further consideration, the commission is merely following the direction of the court when it takes proceedings in furtherance of the order affirmed. Hertz v Watab Paper Co. 186 M 201, 242 NW 629.

An application for retraining compensation, made five years after an award of compensation, is a part of the original proceeding and is not barred by the statute of limitations. It is analogous to an application for further medical benefits and likewise there is no statute limiting the time within which the commission may grant a rehearing. Vierling v Spencer, Kellogg & Sons, 187 M 252, 245 NW 150.

Upon record, commission did not abuse its discretion by vacating an order denying additional compensation for retraining and granting an application of employee for permission to submit further evidence. Vierling v Spencer, Kellogg & Sons, 187 M 252, 245 NW 150.

Where a writ of certiorari has been discharged without a hearing the commission has continuing jurisdiction. Johnson v Pillsbury Flour Mills Co. 187 M 362, 245 NW 619.

Section 176.21 appears to authorize lump-sum settlement only on basis of previous award payable periodically. Settlement without award does not deprive commission of jurisdiction to set aside the settlement to determine whether compensation should be paid for subsequently appearing disability. Johnson v Pillsbury Flour Mills Co. 187 M 362, 245 NW 619.

Word "award" is construed as synonymous with "decision," so as to allow to an employee 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'Neil & Preston, 187 M 375, 245 NW 621.

Section 176.34 applies only to decisions in cases on notice of discontinuance of payments, section 176.60 applies to all other cases. Rosenquist v O'Neil & Preston, 187 M 375, 245 NW 621.

Commission did not abuse its discretion in refusing to grant rehearing to employee whose injury was originally compensated, where medical testimony as to present condition was in dispute. Bauman v Ochs Brick & Tile Co. 187 M 586, 246 NW 249.

Rehearing ordered for new evidence as to the cause of degeneration of spinal cord. Sorenson v La Pompadour, 187 M 665, 246 NW 114.

Where the record discloses that no objection was made before the commission, upon jurisdictional grounds, to application to vacate an award, nor any objection that no cause has been shown for vacation, relator-insurer will not be heard to raise question for first time in supreme court. Marls v Keller, 188 M 1, 246 NW 472.

Commission did not abuse its discretion in denying rehearing on ground of newly-discovered evidence which was merely cumulative. Olson v Jones Elec. Co. 190 M 426, 252 NW 78.

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 section 176.34 files with commission interim and final receipts, later reporting history of case for determination of commission as to whether em-

ployee's rights have been fully protected and full compensation given, transaction amounts to a proceeding within section 176.60, which continues commission's jurisdiction. Nyberg v Little Falls Black Granite Co. 192 M 404, 256 NW 732.

A final settlement approved by commission and final payment made thereunder becomes final at expiration of time permitted for review thereof. Falconer v Central Lbr. Co. 193 M 560, 259 NW 62.

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 Cameron Joyce Co. 194 M 285, 260 NW 213.

Six-year statute of limitations ran against right to recover compensation where employer paid injured employe 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 Buth & Co. 195 M 29, 261 NW 477.

Affirmance of an order of commission denying a petition to reopen case and grant a rehearing ended case and commission thereafter had no further jurisdiction to entertain another application for rehearing. Fredericksen v Burns Lbr. Co. 195 M 660, 261 NW 479.

A settlement approved by commission with final payment made thereunder becomes final at expiration of time permitted for review, and commission cannot reopen. Fredericksen v Burns Lbr. Co. 195 M 660, 261 NW 479.

Laws 1933, Chapter 74, so amended section 176.34 that commission retains authority and jurisdiction to vacate for cause a decision rendered thereunder and grant a rehearing pursuant to section 176.60, which by amendment is incorporated into section 176.34. Hawkinson v Mirau, 196 M 120, 264 NW 438, 265 NW 346.

Jurisdiction of commission to vacate a decision rendered pursuant to this section was adequately raised so as to be reviewed on certriorari. Hawkinson v Mirau, 196 M 120, 264 NW 438, 265 NW 346.

Under section 176.34, as amended by Laws 1933, Chapter 74, commission may vacate its decision at any time before reduced to judgment or certriorari has issued, as provided for by section 176.60. Hawkinson v Mirau, 196 M 120, 264 NW 438, 265 NW 346.

Where no writ of certiorari had issued to review an award made by commission, award had not been reduced to judgment, and no statute of limitations barred such relief, jurisdiction of commission continued, and it had power, for cause, to vacate prior award and grant a new hearing. Tuomi v General Logging Co. 196 M 617, 265 NW 837.

Unless there was clear abuse of discretion, order of commission denying rehearing for newly-discovered evidence cannot be disturbed. Pechaver v Oliver Iron M'ng. Co. 198 M 233, 269 NW 417.

Amendment of section 176.34 by Laws 1933, Chapter 74, in no way modified or affected section 176.60, and application to commission to set aside award and grant rehearing must be made before decision has passed into judgment in district court. Moffett v Citizens Bank, 198 M 480, 270 NW 596.

To vacate a judgment entered in district court to enforce an award of 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. Moffett v Citizens Bank, 198 M 480, 270 NW 596.

When an award of compensation has been made, jurisdiction of commission continues, subject to provisions of this section as long as there is a continuing right to compensation. Roos v City of Mankato, 199 M 284, 271 NW 582.

Jurisdiction of the commission is retained subject to section 176.60 until award of commission or its referee has been reduced to judgment or supreme court has issued certriorari to review it. Roos v City of Mankato, 199 M 284, 271 NW 582.

Words "for cause" mean some such cause as fraud or surprise, and rehearing cannot be based upon facts contained in a written statement furnished complaining party. Herzog v City of New Ulm, 199 M 352, 272 NW 174.

An award of compensation cannot be set aside and a new hearing granted thereon under section 176.34 if award was made prior to amendment by Laws 1933, Chapter 74, Section 1, as rehearing could then be granted only under section 176.60 or cause, record not showing cause. Herzog v City of New Ulm, 199 M 352, 272 NW 174.

Where at a hearing it was found that disability after a certain date was not due to injury, a rehearing is justified on a showing that after the hearing employee's disability had been overcome by surgery and was due to trauma. Jovanich v St. Paul Corrugating Co. 201 M 412, 276 NW 741.

A party litigant who participates in a rehearing ordered by the commission without objecting there to for failure to show cause for its granting cannot for the first time raise the question in supreme court. Baudek v Oliver Iron M'ng. Co. 205 M 344, 285 NW 887.

Commission's denial of motion to reopen case and appoint neutral physician, after referee's decision, held in exercise of its judicial discretion. Rehac v St. Paul Terminal Warehouse Co. 206 M 96, 288 NW 22.

Commission properly refused to approve settlement between employer, insurance carrier, employee and wife for herself and minor children, it being contrary to policy of the act to permit a release of death benefits by a prospective dependent. Dale v Shaw Motor Co. 206 M 99, 287 NW 787.

Continuing jurisdiction for rehearing by commission on question of further medical treatment granted employee by supreme court on appeal from adverse decision where evidence showed residual disability and promise of aid from surgery. Gildea v State Dep't of Highways, 208 M 185, 293 NW 598; 210 M 402, 298 NW 453.

An award of compensation by a referee of the commission under section 176.34 prior to its amendment by Laws 1933, Chapter 74, from which no appeal was taken, was final and terminated the jurisdiction of the commission. Terres v Internat'l Fuel Co. 208 M 259, 293 NW 301.

Uncontradicted testimony of continuance of substantial disability impels vacation of denial of additional compensation and remand of case for determination of extent of disability. Kirtland v State Dep't of Health, 209 M 537, 297 NW 23.

Rehearing by commission ordered where medical testimony made it clear that employee was suffering from traumatic neurosis and impaired ability to perform labor and was not a malingerer. Soderquist v McGough Bros. 210 M 123, 297 NW 565.

Supreme court remanded case to commission for rehearing where after an award by a referee upon a stipulation by the parties an injury to employee's spine due to his accident was discovered and the commission declined to vacate the award. Leland v St. Olaf Luth. Church, 213 M 34, 4 NW(2d) 769.

There was no abuse of discretion by the commission in refusing to vacate an award upon affidavits of testimony later adduced in district court in an action involving the same accident as to who was the employer which differed from stipulations by the parties upon which the award had been based. Elsenpeter v Potvin, 213 M 129, 5 NW(2d) 499.

Under the informal procedure before the commission there was no abuse of discretion in granting a hearing on a widow's petition for compensation, as it amounted to a rehearing of a dismissed claim brought by her husband in his lifetime. Gustafson v Ziesmer & Volander, 213 M 253, 6 NW(2d) 452.

There is no statute limiting the time when the commission may grant a rehearing on the propriety of allowing further medical benefits necessitated by the original injury. Fehland v City of St. Paul, 215 W 94, 9 NW(2d) 349.

Limitation of action and power of industrial commission to grant rehearings. 23 MLR 995.

See annotations under section 176.45.

176.61 APPEAL TO SUPREME COURT.

HISTORY. 1921 c. 82 s. 60; 1921 s. 423 s. 2; 1923 c. 300 s. 12; G.S. 1923 s. 4320; M.S. 1927 s. 4320.

1. Determinations of law and fact.
2. Review on certriorari.
3. Findings of fact.
4. Specific fact questions.

1. Determinations of law and fact.

GENERAL RULE: A question of law arises on the evidence where an impartial consideration thereof, together with permissible inferences from facts shown, will lead reasonable minds to but one conclusion. If reasonable minds may reach different conclusions, the question of the sufficiency of the evidence becomes one of fact, and the findings of the trial court thereon will be sustained. State ex rel v District Court, 142 M 335, 172 NW 133.

Where impartial consideration of evidence will lead to but one conclusion, a question of law arises. Where reasonable minds may reach different conclusions, the question is one of fact. Whether evidence is sufficient to support facts found is a question of law. State ex rel v District Court, 145 M 127, 176 NW 165.

Only questions of law are reviewable in supreme court in compensation cases. Whether evidence sustains a finding of fact does not become a question of law unless all reasonable and impartial minds would reach only one conclusion. State ex rel v District Court, 146 M 59, 177 NW 934.

Review of supreme court of proceedings under compensation law is limited to questions of law. Where reasonable minds might draw different conclusions from the evidence, the question is one of fact, not of law. Kraker v Nett, 148 M 139, 180 NW 1014.

Jurisdiction of supreme court is prescribed by state constitution and cannot be enlarged or abridged by legislation. Laws 1921, Chapter 82, Section 61, defining its jurisdiction in proceedings on certiorari to review decisions of commission in compensation cases construed as not intended to confer on court original jurisdiction to determine rights of parties from viewpoint of evidence and on merits of controversies. Its authority is limited to matters of error in rulings of the commission and other questions of law. Lading v City of Duluth, 153 M 464, 190 NW 981.

The practice of cross-assignments of error has never been adopted in this state, and the respondent on review, either by appeal or certiorari, cannot assign adverse rulings and thus secure consideration thereof by the supreme court. The relator in certriorari, like the appellant in appeal cases, may alone complain of adverse rulings. Lading v City of Duluth, 153 M 464, 190 NW 981.

Commission must assume as true the positive, unimpeached testimony of credible witnesses unless inherently improbable. Campbell v Nelson, 175 M 51, 220 NW 401; Manley v Harvey Lbr. Co. 175 M. 489, 221 NW 913.

A memorandum attached to a decision of the commission may not be resorted to to show that its justifiable findings are not based upon a tenable theory. Wheeler v Wheeler, 184 M 538, 239 NW 253.

A decision of the commission will not be disturbed because incompetent evidence was admitted, where there is sufficient competent evidence to sustain the finding. Cooper v Mitchell, 188 M 560, 247 NW 805.

Function of the 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 Eck's Homemade Sausage Co. 194 M 458, 216 NW 3.

In reviewing award of commission, evidence must be taken in its most favorable aspect to respondent. Lundeen v Kaplan Paper Box Co. 196 M 100, 264 NW 435.

Supreme court, as court of review, does not try cases de novo or make findings of fact. Rick v Noble, 196 M 185, 264 NW 685; Johnson v Nash-Finch Co. 197 M 616, 268 NW 1; Sutlief v New Richland Produce Co. 201 M 127, 275 NW 692.

Whether testimony objected to as conversation with a person since deceased was improperly permitted was immaterial where only conclusion possible under all other evidence in case was that commission properly denied compensation. Anderson v Russell Miller Milling Co. 196 M 358, 267 NW 501.

Evidence was not properly before supreme court where it was certified by stenographic reporter rather than by secretary under seal of commission. Dahley v Ely & Walker, 196 M 428, 265 NW 284.

An affirmative finding cannot be sustained on mere conjecture, as distinguished from real deduction. This applies to opinion evidence, even to that of the best of experts. Susnik v Oliver Iron Mining Co. 205 M 325, 286 NW 249.

It is for triers of fact to choose not only between conflicting evidence, but also between opposed inferences. Reinhard v Universal Film Exchange, 197 M 371, 267 NW 223.

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 Schmahl, 197 M 602, 268 NW 631.

Unless there was clear abuse of discretion, order of commission denying rehearing for newly discovered evidence cannot be disturbed. Pechaver v Oliver Iron Mining Co. 198 M 233, 269 NW 417.

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. Chamberlin v Taylor, 198 M 274, 269 NW 525.

Commission is a fact-finding body, even on appeal from order of its referee. Segerstrom v Nelson, Mullin & Nelson, 198 M 298, 269 NW 641.

Assignment of error that the finding that conclusions of the commission are contrary to testimony herein was not in proper form, there being nine specific findings of fact. Skoog v Schmahl, 198 M 504, 270 NW 129.

Opposed medical opinions as to causal relation between an accident and resulting condition of workman are as much matters of fact as any other. Gorman v Grinnell Co. 200 M 122, 273 NW 694.

Whether there is any evidence tending to support a given finding and whether evidence conclusively establishes a particular fact are deemed questions of law. Gorman v Grinnell Co. 200 M 122, 273 NW 694.

Where the commission had a complete transcript of all testimony a recital in its decision on appeal that it had considered all the evidence makes it affirmatively appear that it had done so and overcomes a claim of failure to consider all the evidence. Cieluch v Economy Tire & Battery Co. 207 M 1, 290 NW 302.

Consideration by the commission of certain evidence excluded by the referee held to be harmless. Byhardt v Ballord, 209 M 391, 296 NW 504.

The supreme court is not authorized to prescribe rules of procedure for the commission. James v Peterson, 211 M 481, 1 NW(2d) 844.

Where conflicting medical opinions raise a fact question the finding of the commission must be affirmed. Kellerman v City of St. Paul, 211 M 351, 1 NW(2d) 378.

Though evidence is not in conflict, if it is open to conflicting inference, the decision of the triers of fact is final. Lunde v Congoleum-Nairn, 211 M 487, 1 NW(2d) 606.

Where legal cause of disability has been shown by competent evidence, liability, follows, though other causes may have contributed thereto. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

While recovery of compensation cannot rest on mere speculation or conjecture, if the proof that the injury was the cause of the disability, furnishes a reasonable basis for an inference it is sufficient. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

A finding relative to dermatitis "that said disease was due to contacting mercury and/or wood alcohol" implies the conclusion that the disease was "mercury and/or wood alcohol poisoning." Kvernstoen v Nelson, 212 M 102 2 NW(2d) 560.

Where medical men have found the harmful effect of certain chemicals upon employee, a finding that satisfies them as to the cause of employee's disease should satisfy the statute. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

While an award cannot rest on speculation or conjecture, if the proof furnishes a reasonable basis for an inference that the injury was the cause of the disability, it is sufficient. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

A finding on conflicting evidence that an accidental injury to an employee arose or did not arise out of and in the course of his employment will be sustained the same as any other finding on such evidence. Erickson v Erickson & Co. 212 M 119, 2 NW(2d) 824.

A magazine, published prior to the assassination of an employee, containing an article saying that he had been "marked for death," held rightly excluded as hearsay. Brown v General Drivers Union No. 544, 212 M 265, 3 NW(2d) 423.

Inferences of fact from the testimony and surrounding circumstances proved are for the commission and not for the supreme court. Brown v General Drivers Union No. 544, 212 M 265, 3 NW(2d) 423.

Burden of proof is on the one seeking recovery to prove that the injury or death of the employee was caused by accident arising out of and in the course of his employment. Brown v General Drivers Union No. 544, 212 M 265, 3 NW(2d) 423.

See annotations under sections 176.50, 176.60, 176.62.

2. Review on certiorari.

Where the time for taking an appeal has expired and no judgment has been entered, a stipulation by the parties to submit the matter to the supreme court as though a writ of certiorari had been issued gives the court no jurisdiction. State ex rel v Bashko, 127 M 519, 148 NW 1082.

Upon certiorari issued on the relation of the one against whom judgment fixing the compensation is entered, the claimant cannot have the record reviewed. State ex rel v District Court, 132 M 249, 156 NW 120.

The writ of certiorari does not bring to supreme court for review orders in a compensation proceeding not in their nature appealable, as an order for judgment on the pleadings, but lies to review a judgment entered pursuant to such an order. State ex rel v District Court, 139 M 205, 166 NW 185.

An undertaking conditioned as a supersedeas bond, executed in obtaining a writ of certiorari in a compensation proceeding, held to obligate the surety to pay the judgment and not merely the costs and damages. Carlson v Amer. Fidelity Co. 149 M 114, 182 NW 985.

Certiorari is the remedy for review by supreme court of proceedings in compensation cases. Breuning v Central Warehouse Lbr. Co. 150 M 525, 184 NW 273.

Certiorari is the only remedy for review of orders or judgment of the commission in compensation cases. Glassman v Radke, 152 M 253, 188 NW 286.

Informal service of writ of certiorari. Eichholz v Shaft, 166 M 339, 208 NW 18.

An order of the commission, providing for an injured employee a change of physicians and hospitalization, is not reviewable by certiorari. Lamire v Industrial Commission, 170 M 300, 212 NW 415.

Writ of certiorari must be served upon the adverse party or his attorney, in view of sections 543.17, 606.01, 606.02. Garbush v New York Life Ins. Co. 172 M 98, 214 NW 795.

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 section 176.60. Glassman v Radke, 177 M 555, 225 NW 889.

Failure to transmit return to supreme court in 30 days did not oust such court of jurisdiction. Hedquist v Sundquist & Co. 178 M 524, 227 NW 856.

On certiorari to review decision of commission the title of the proceeding does not change in the appellate court. Kopp v Bituminous Surface Treating Co. 179 M 158, 228 NW 559.

Decision of commission cannot be reviewed on certiorari after the expiration of 30 days from notice of determination. Lickett v Jorgenson, 179 M 321, 229 NW 138.

Findings of the commission having adequate support in the evidence are determinative on certiorari in the supreme court. Campbell v Connolly Contracting Co. 179 M 416, 229 NW 561.

Decision of fact issue by commission will not be disturbed on certiorari. Fort v Mahnomen M'ng Co. 181 M 546, 233 NW 245.

Where order of commission affirmed by supreme court provides for further proceedings, commission may proceed to determination of issue so left open. Hertz v Watab Paper Co. 186 M 201, 242 NW 629.

Where certiorari has issued to review a decision by the commission, but writ has been discharged without a hearing in supreme court, commission is not deprived of jurisdiction of case. Johnson v Pillsbury Flour Mills Co. 187 M 362, 245 NW 619.

Court granted jurisdiction for rehearing to commission after certiorari issued. Sorenson v La Pompadour, 187 M 665, 246 NW 114.

On certiorari to commission to review an award of compensation, granted on rehearing after a previous award has been vacated, there may be reviewed order granting rehearing. Marks v Keller, 188 M 1, 246 NW 472.

Jurisdiction of commission to vacate a decision rendered pursuant to section 176.34 was adequately raised so as to be reviewed on certiorari. Hawkinson v Mirau, 196 M 120, 264 NW 438, 265 NW 346.

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. Rick v Noble, 196 M 185, 264 NW 685.

When a party obtains additional time in which to apply for certiorari the writ must be served upon both the commission and respondents within the time so limited. Haimila v Opsahl Co. 208 M 605, 293 NW 599.

A party who did not join with another in an application for additional time in which to apply for certiorari, but joined with him in petitioning for the writ, is bound by the limitation fixed by the court in the application for additional time. Haimila v Opsahl Co. 208 M 605, 293 NW 599.

Application for writ of certiorari to restrict jurisdiction of commission held premature on assumption that it would keep within its jurisdiction in rehearing to be had of a matter authorized by supreme court. Gildea v State Dep't Highways, 210 M 402, 298 NW 453.

Supreme court remanded case to commission for rehearing where after an award by a referee upon a stipulation by the parties an injury to employee's spine due to his accident was discovered and the commission declined to vacate the award. Leland v St. Olaf Luth. Church, 213 M 34, 4 NW(2d) 769.

Application of rule. Barlau v Minneapolis-Moline, 214 M 570, 9 NW(2d) 6; 23 MLR 996.

See annotations under section 176.63.

3. Findings of fact.

If an impartial consideration of the evidence, together with all reasonable and fair inferences, will lead reasonable minds to but one conclusion, and that conclusion is the opposite of the one made by the trial court, the finding should be set aside. State ex rel v District Court, 142 M 420, 172 NW 311.

Upon conflicting evidence, the findings of the commission on question of fact will not be disturbed. Anderson v Minn. Steel Co. 160 M 410, 200 NW 475; Ledoux v Joncas, 163 M 498, 204 NW 635; Budd v C. Thomas Stores Sales System, 209 M 490, 296 NW 571.

The finding of the commission on questions of fact is binding upon the supreme court. Klika v Ind. School District, 161 M 461, 202 NW 30.

Findings of the commission will be sustained unless they are manifestly unsupported by the evidence. Klein v McCleary, 154 M 498, 192 NW 106; Smith v Mason Bros. Co. 174 M 94, 218 NW 243; Campbell v Nelson, 175 M 51, 220 NW 401; Austin v Leonard, Crossett & Riley, 177 M 503, 225 NW 428; Olson v Robert Street Realty Co. 181 M 398, 232 NW 716; Duchant v Oliver Iron M'ng Co. 192 M 443, 256 NW 905; Zitzman v Macht, 187 M 268, 245 NW 29; Benson v Hygienic Artificial Ice Co. 198 M 250, 269 NW 460; Bronson v Nat'l Battery Broadcasting Co. 200 M 237, 273 NW 681.

Mere preponderance of evidence will sustain a claim. An applied theory that "evidence must be so clear and satisfactory as to leave no doubt in the minds of the triers of fact" imposes a greater burden of proof than is required and is erroneous. Hogan v Twin City Amusement Trust Est. 155 M 199, 193 NW 122.

Findings of fact based on evidence reasonably tending to sustain them will not be reversed on appeal. Healy v Morden, 168 M 450, 210 NW 290; Debeltz v Oliver Iron M'ng Co. 172 M 549, 216 NW 240; Engsell v Northern Motor Co. 174 M 362, 219 NW 293; Brehm v Liebenberg & Kaplan, 174 M 376, 219 NW 292; Campbell v Nelson, 175 M 51, 220 NW 401; Martin v Northern Cooperage Co. 178 M 279, 226 NW 767; Tevik v Laliti Bros. 182 M 268, 234 NW 320; Benson v Winona Knights of Columbus, 189 M 622, 250 NW 673; Wallin v Lagerquist & Sons, 190 M 335, 251 NW 669; Nelson v Winckley Artificial Limb Co. 191 M 225, 253 NW 765; Gildea v State Dep't of Highways, 208 M 185, 293 NW 598.

A finding for the affirmative of a fact issue should be sustained where, the proof being wholly circumstantial, a reasonable deduction from the evidence supports the finding and there is not a manifest and undeniable preponderance of opposing and more reasonable inference. Maher v Duluth Yellow Cab Co. 172 M 439, 215 NW 678.

The commission is not necessarily concluded by undisputed testimony, although it must assume as credible witnesses unless inherently improbable. Campbell v Nelson, 175 M 51, 220 NW 401.

Commission's findings on fact question is final. Holmberg v Amundson, 177 M 55, 224 NW 458, 225 NW 439.

Determination of commission must stand if reasonable minds might reach different conclusions. Storing v Hotel Radisson Co. 177 M 519, 225 NW 652; Metcalfe v First Nat'l Bank, 187 M 485, 246 NW 28; Rick v Noble, 196 M 185, 264 NW 685; Foster v Schmahl, 197 M 602, 268 NW 631.

Rule: "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 Excelsior Laundry Co. 183 M 531, 237 NW 419; Gorman v Grinnell Co. 200 M 122, 273 NW 694; Lothenbach v Armour & Co. 201 M 195, 275 NW 690.

A decision of the commission will not be disturbed if founded upon an inference reasonably to be drawn from the controlling facts. Jensvold v Kunz Oil Co. 190 M 41, 250 NW 815; Hillman v Northwest Fruit, 207 M 377, 291 NW 609.

Decisions of commission will not be disturbed unless evidence and inferences permissible therefrom require reasonable minds to adopt a contrary conclusion. Farley v Nelson, Mullen & Nelson, 184 M 277, 238 NW 485; Palumbo v City of St. Paul, 187 M 508, 246 NW 36; Budd v C. Thomas Stores Sales System, 209 M 490, 296 NW 571.

Finding of commission upon questions of fact will not be disturbed when reasonable minds may reach conclusion in accord with that of commission. Brameld v Dickinson Co. 186 M 89, 242 NW 465.

Findings of fact of commission are entitled to very great weight and will not be disturbed unless manifestly contrary to evidence. Colosimo v Giacomo, 199 M 600, 273 NW 632; O'Reilly v Miller, 205 M 228, 285 NW 526.

It is for triers of fact to choose not only between conflicting evidence, but also between opposing inferences. Husnick v Seeger Refrig. Co. 206 M 210, 288 NW 389; Roberts v Ray-Bell Film Co. 206 M 351, 288 NW 591.

A decision should stand, where it is sustained by facts well found, even though there was error in other findings which, if changed or set aside, would not change the result. Cieluch v Economy Tire & Battery Co. 207 M 1, 290 NW 302.

Findings of fact, supported by sufficient competent evidence, will not be disturbed because some incompetent evidence was received. Corcoran v Teamsters & Chauffeurs Joint Council, 209 M 289, 297 NW 4.

Supreme court does not try facts nor determine credibility of witnesses where evidence amply sustains commission's findings. Schultz v U. S. Bedding Co. 210 M 68, 297 NW 351.

Though evidence is not in conflict, if it is open to conflicting inference, the decision of the triers of fact is final. Lunde v Congoleum-Nairn, 211 M 487, 1 NW(2d) 606.

4. Specific fact questions.

A finding that a wife was voluntarily living apart from her husband must stand, as reasonable minds might reach different conclusions as to the fact. State ex rel v District Court, 146 M 59, 177 NW 934.

Finding that allegation of injury to foot, resulting in infection and death, was not borne out by evidence held not manifestly against the weight thereof and must be sustained. State ex rel v Industrial Commission, 155 M 150, 193 NW 34.

Whether the condition of a finger was a continuation of an injury in one employment, for which compensation had been paid, or to injury in a subsequent employment was a question of fact for the triers to determine. Luks v Western Crucible Steel Casting Co. 165 M 354, 206 NW 433.

The above rule applies where a taxi driver was murdered by an intoxicated passenger arising from a quarrel over fare. Maher v Duluth Yellow Cab Co. 172 M 439, 215 NW 678.

Industrial commission's finding on conflicting evidence held warranted. Bradtmiller v Liquid Carbonic Co. 173 M 481, 217 NW 680; Smith v Mason Bros Co. 174 M 94, 218 NW 243; Manley v Harvey Lbr. Co. 175 M 489, 221 NW 913.

The commission having made no findings in respect to the claim, the cause is remanded with directions to make findings upon that claim in accordance with the evidence and award compensation thereon. London G. & A. Co. v Board of Education, 166 M 295, 207 NW 634.

Finding sustained that a fall was not contributory cause of death from heart trouble. Reardon v City of Austin, 174 M 359, 219 NW 292.

Duty of commission is to find certain facts under evidence. Manley v Harvey Lbr. Co. 175 M 489, 221 NW 913.

Finding on conflicting evidence that physical condition was not affected or aggravated by a fall must be sustained. Koppe v Hilton & Thompson, 176 M 508, 223 NW 787.

Denial of compensation for relator's fall, based on conflicting evidence, is conclusive on supreme court. Passe v Collins, 176 M 638, 223 NW 787.

Finding as to cause of death based on evidence could not be disturbed. Hedquist v Sundquist & Co. 178 M 524, 227 NW 856.

Determination of commission contrary to positive, undisputed testimony reversed. Maschogianis v Concrete Mat. & Mfg. Co. 179 M 177, 228 NW 607.

Whether act of employee was done for purpose of saving employer's property, held a question of fact for determination of commission. Baaken v Nauft & Bergstrom, 179 M 272, 228 NW 931.

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. Hasslen v Carlson & Hasslen, 180 M 473, 231 NW 188.

Finding of commission that there was no causal connection between fall and resulting cancer reversed and remanded for further evidence. Hertz v Watab Paper Co. 180 M 177, 230 NW 481.

The court will not disturb the finding of the commission that relator did not suffer an inguinal hernia where relator's testimony is both contradicted and impeached. Naslund v Fed. Cement Tile Co. 181 M 301, 232 NW 342.

Finding of commission that one was employee at time of accident is a finding of fact which cannot be reversed if reasonably sustained by evidence. Frederick v Fairbanks Tailoring Co. 183 M 243, 236 NW 322.

There being evidence to support negative finding of commission it will not be disturbed. Klugman v Central Hanover Bank & Trust Co. 183 M 541, 237 NW 420.

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 commission. Hoeflin v Riverside Press, 184 M 360, 238 NW 676.

Refusal of commission to vacate award and allow additional compensation, based on competent evidence, will not be disturbed on appeal. Hanke v Northern States Power Co. 186 M 184, 242 NW 621.

Finding of commission that person was employee must be sustained if reasonably supported by evidence and inferences. Carter v W. J. Dyer & Bro. 186 M 413, 243 NW 436.

Rehearing ordered for new evidence as to the cause of degeneration of spinal cord. Sorenson v La Pompadour, 187 M 665, 246 NW 114.

Denial of compensation by commission will not be disturbed if record presents an issue of fact. Ekelund v Cardozo Co. 189 M 228, 248 NW 824.

Finding that injured person was an employee must stand on appeal if fairly sustained by evidence. Myers v Villard Cry. Co. 189 M 244, 248 NW 824.

Finding that disability resulted from accidental injury cannot be disturbed by court if supported by evidence. Rutz v Tennant & Hoyt Co. 191 M 227, 253 NW 665.

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 commission that insurer had paid plaintiff full compensation prescribed by law presents no defense. Ruehmann v Consumers Ice & Fuel Co. 192 M 596, 257 NW 501.

Finding of commission as to which of two persons was employer of injured employee cannot be disturbed where supported by evidence. Hiland v Forrest, 193 M 10, 257 NW 663.

A conclusion of commission that death resulted from exertions in course of employment must be sustained if supported by sufficient evidence. Farrell v Ragatz & Sons Co. 189 M 573, 250 NW 454.

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 Vander Bies, 194 M 513, 261 NW 703.

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. Pechaver v Oliver Iron M'ng Co. 196 M 558, 265 NW 429, 266 NW 854.

Finding of commission that death of petitioner's husband resulted from accidental injuries in his employment is sustained by the evidence. O'Reilly v Miller, 205 M 228, 285 NW 526.

Where evidence reasonably supports the conclusion of the commission that disability due to an accident terminated on a certain date the supreme court must accept the commission's decision. Baudek v Oliver Iron M'ng Co. 205 M 344, 285 NW 887.

Where evidence of causal connection between an alleged slip and jerk and a hernia is in conflict, a negative finding by the commission based on competent

evidence must be sustained. Schwendig v Anderson & Hedwall Co. 207 M 14, 289 NW 772.

Evidence held to sustain a finding of the commission that a fall of employee aggravated a pre-existing arthritic condition to disability for 52 weeks. Johnson v Inter-State Iron Co. 210 M 468, 299 NW 1.

Issues of employment was one of fact, upon which finding of commission cannot be disturbed if fairly supported by evidence. Ekrem v Harriet Hubbard Ayer Co. 209 M 337, 296 NW 180.

Evidence held to sustain finding of commission that death of a labor leader, found shot in his car, did not arise out of and in the course of his employment. Brown v General Drivers Union No. 544, 212 M 265, 3 NW(2d) 423.

176.62 SUPREME COURT TO HAVE ORIGINAL JURISDICTION.

HISTORY. 1921 c. 82 s. 61; 1921 c. 423 s. 3; G.S. 1923 s. 4321; M.S. 1927 s. 4321.

Jurisdiction of supreme court is prescribed by state constitution and cannot be enlarged or abridge by legislation. Laws 1921, Chapter 82, Section 61, relating to its jurisdiction to review decisions of commission construed as not intended to confer original jurisdiction to determine rights of parties on merits of controversies. Its authority is limited to matters of error in rulings of the commission and other questions of law. Lading v City of Duluth, 153 M 464, 190 NW 981.

Case remanded to commission to make directed findings. O'Rourke v Percy pre-existing infirmity where commission's denial of compensation was manifestly based on an erroneous theory of the degree of proof required. Hogan v Twin City Amusement Trust Estate, 155 M 199, 193 NW 122.

Case remanded to commission to make directed findings. O'Rourke v Percy Vittum Co. 166 M 251, 207 NW 636.

Remand for new hearing on grounds of newly discovered evidence denied in absence of showing that such evidence was not known at time of hearing. Henderson v Henderson, 167 M 518, 209 NW 39.

On the evidence in this case reasonable minds might differ as to whether an infection of relator's arm resulted from a compensable injury to his hand received some time before. Hence, the decision of the industrial commission awarding compensation will not be disturbed. Kerchansky v Swift & Co. 160 M 195, 200 NW 292.

In reviewing proceedings before the commission, findings on questions of fact will not be disturbed unless consideration of the evidence and the inference permissable therefrom clearly requires reasonable minds to adopt a conclusion contrary to the one at which the commission arrived. Krueger v King Midas Milling Co. 169 M 153, 210 NW 871.

Upon a record, in a compensation matter, where the commission could find either way on the facts, its determination must control. Brokmeier v Lamb, 170 M 143, 212 NW 187.

In this claim under the workmen's compensation act the finding that the accident to the employee caused no "disablement" was made on conflicting testimony and cannot be disturbed on appeal. Ott v Standard Cattle Co. 170 M 410, 212 NW 813.

Supreme court's judgment affirming award of compensation is final unless it directs further proceedings. Orcutt v Trustees of Wesley M. E. Church, 174 M 153, 218 NW 550.

Where an award of compensation has been affirmed by the supreme court and remanded, the commission is without power to grant a new hearing. Orcutt v Trustees of Wesley M. E. Church, 174 M 153, 218 NW 550.

Relief against fraudulent settlement must be applied for before the commission, and not by an action in equity in district court to set it aside. Fredericksen v Burns Lbr. Co. 175 M 539, 221 NW 910.

The granting of a rehearing after an award rests in the sound discretion of the commission. Delich v Thompson-Starret Co. 175 M 612, 220 NW 408, and cases cited under section 176.60.

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. Glassman v Radtke, 177 M 555, 225 NW 889.

There is no statute limiting the time within which the commission may grant a rehearing on the propriety of further allowance of medical benefits necessitated by original injury. Kummer v Mutual Auto Co. 185 M 515, 241 NW 681.

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 Spencer, Kellogg & Sons, 187 M 252, 245 NW 150.

Upon record, commission did not abuse its discretion by vacating an order denying additional compensation for retraining and granting an application of employee for permission to submit further evidence. Vierling v Spencer, Kellogg & Sons, 187 M 252, 245 NW 150.

Word "award" is construed as synonymous with "decision" so as to allow to an employee 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'Neil & Preston, 187 M 375, 245 NW 621.

Motion or petition in supreme court to remand case to commission for further hearing on ground of newly discovered evidence was denied where affidavits of various parties contained substantially same irreconcilable conflict of issue involved as appeared at trial. Susnik v Oliver Iron Mining Co. 193 M 129, 258 NW 23.

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 Hygienic Artificial Ice Co. 198 M 250, 269 NW 460.

Where there is no dispute as to character and kind of service performed or as to relation of alleged employee to corporation it is the duty of supreme court to declare what law governs as to whether relator is an employee. Benson v Hygienic Artificial Ice Co. 198 M 250, 269 NW 460.

Supreme court, as a court of review, is not permitted to try issues of fact. Sutlief v New Richland Produce Co. 201 M 127, 275 NW 692.

Where the findings of the commission are attacked, they will not be disturbed if a review of the evidence does not require a contrary conclusion. Henz v Armour & Co. 202 M 213, 277 NW 923.

Under settled law supreme court cannot disturb a finding, made on conflicting medical opinions, that employee's disability was due to disease and not accidental injury. Rehac v St. Paul Terminal Warehouse Co. 206 M 96, 288 NW 22.

Appellate courts exist for the purpose of reviewing and correcting the work of trial courts, not of supervising and directing them. Upon an appeal involving the determination of a question of fact by a trial court, it is not the duty of the appellate court to review and discuss the evidence so as to demonstrate the correctness of the decision of the trial court. Anderson v Farwell, 217 M 110, 14 NW(2d) 311.

Section 268.10, subd. 9, as amended by Laws 1941, Chapter 554, Section 7; changes the method of review by the supreme court under the unemployment compensation law from direct appeal to certiorari but makes no substantial change in the scope of the review. Richard v Federal Cartridge Co. 217 M 137, 14 NW(2d) 118.

Where the record does not clearly disclose whether the decision of the industrial commission was based upon a misapplication of the law to undisputed facts or upon inferences drawn from circumstances casting doubt upon otherwise undisputed facts, in the interests of justice the case should be remanded with directions for a hearing de novo. Caddy v Maturi, 217 M 207, 14 NW(2d) 393.

Where evidence is conflicting, it is the duty of the industrial commission as trier of the facts to determine the facts; and upon review the supreme court is

required to view the evidence in the light most favorable to parties whose claims the triers of fact believe. Kundiger v Waldorf, 218 M 168, 15 NW(2d) 486.

On certiorari to review the function of the supreme court is not to make independent finding as to whether decedent was employee, but to ascertain whether evidence supports the commision's finding. Korthius v Soderling, 218 M 342, 16 NW(2d) 285.

See annotations under sections 176.50, 176.60, 176.61.

176.63 WRIT TO STAY PROCEEDINGS.

HISTORY. 1921 c. 82 s. 62; 1921 c. 423 s. 4; G.S. 1923 s. 4322; M.S. 1927 s. 4322.

Continuing jurisdiction for rehearing granted to commission by supreme court on appeal where evidence showed residual disability and promise of aid from surgery. Gildea v State Department of Highways, 208 M 185, 293 NW 598.

Where writ of certiorari has been discharged without a hearing the commission has continuing jurisdiction. Johnson v Pillsbury Flour Mills Co. 187 M 362, 245 NW 619.

Cases remanded by supreme court to industrial commission for further proceedings: Soderquist v McGough Bros. 210 M 123, 297 NW 565; Leland v St. Olaf Lutheran Church, 213 M 34, 4 NW(2d) 769.

See annotations under section 176.61, "Review on Certiorari."

176.64 ATTORNEY GENERAL TO APPEAR FOR COMMISSION.

HISTORY. 1921 c. 82 s. 63; 1921 c. 42 s. 5; G.S. 1923 s. 4323; M.S. 1927 s. 4323.

176.65 COSTS; REIMBURSEMENTS; ATTORNEY'S FEES; CERTIORARI.

HISTORY. 1921 c. 82 c. 64; 1921 c. 423 s. 6; G.S. 1923 s. 4324; 1925 c. 161 s. 10; M.S. 1927 s. 4324.

The allowance of attorney's fees is not authorized by the act; but the court may allow statutory costs, although designated in the order as attorney's fees. State ex rel v District Court, 129 M 423, 152 NW 838.

The relation of attorney and client does not preclude the latter from settling and compromising the matter in litigation in his own way without the knowledge or consent of the attorney, and by so doing does not subject himself to the payment to the attorney of a contingent fee agreed upon in case of the successful outcome of the case. If the settlement is in good faith, without intent to defraud the attorney, the latter may recover only the reasonable value of his services to the time of the settlement. Southworth v Rosendahl, 133 M 447, 158 NW 717.

Application by attorney for allowance of fees for services rendered an injured workman disallowed because compensation act at time did not provide for allowance of attorney's fees. Johanson v Lundin Bros. 144 M 470, 175 NW 302.

The provision in General Statutes 1913, Section 8201, limiting the right of attorneys to contract with employees in proceedings under the workmen's compensation act is valid and governs, and not General Statutes 1913, Sections 7973 and 4955, previously enacted. The amount allowed as fees by the court cannot be complained of as insufficient, and the court properly entertained a summary proceeding to compel restoration of money retained under a contract void because lacking the required written approval of a judge of the district court. Sarja v Pittsburgh Steel Co. 154 M 217, 191 NW 742.

Attorney's fees in supreme court allowed. Stippel v Charles Friend & Son, 161 M 471, 201 NW 934.

The provision authorizing the allowance of actual and necessary "disbursements" to the prevailing party does not include attorney's fees. Lidstrom v Amherst Mining Co. 169 M 465, 211 NW 674.

Attorney's fees cannot be collected out of award unless approved by commission. Fees awarded by commission approved by supreme court. Blair v Village of Coleraine, 180 M 388, 231 NW 193.

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 County of Itasca, 194 M 302, 260 NW 299.

176.66 OCCUPATIONAL DISEASES, HOW REGARDED.

HISTORY. 1921 c. 82 s. 67, G.S. 1923 s. 4327; M.S. 1927 s. 4327; 1936 c. 306; 1943 c. 633 ss. 4 to 6.

NOTE: All cases cited below were decided before the enactment of the present occupational disease section.

Typhoid fever from drinking infected water furnished by employer to employees is not caused by an accident as defined in the compensation law. State ex rel v District Court, 138 M 210, 164 NW 810.

Evidence held not to justify inference that fatal "Hodgkins disease" resulted from ulcerations in employee's nose caused by inhaling fumes of hydrochloric acid used in his work as a tinner. State ex rel v District Court, 145 M 444, 177 NW 644.

A policy of health insurance giving indemnity for disability resulting from a "disease which shall originate and begin after this policy shall have been in continuous force for 30 days," covers a disease first manifesting itself after such time, although the medical cause antedated it. Cohen v North American L. & C. Co. 150 M 507, 185 NW 939.

Injury to muscles and nerves from too long continuance at a heavy task, where there is no sudden or violet event to cause it, is not covered by the compensation act. Young v Melrose Granite Co. 152 M 512, 189 NW 426.

Compensation act provides exclusive remedy for industrial accidents and occupational diseases coming under it. For diseases not covered by the act due to the omission of a statutory duty by the employer the employee has an action at law for damages. Donnelly v Mpls. Mfg. Co. 161 M 240, 201 NW 305.

City fireman, contracting pneumonia from exposure, causing death, held not accident." Costly v City of Eveleth, 173 M 564, 218 NW 126.

Chemical poisoning from coffee drawn from new urn in restaurant to which employer had directed office clerk to lunch and arrange to receive an expected telephone call there held to arise out of employment. Krause v Swartwood, 174 M 147, 218 NW 555.

Death from carbon monoxide gas while repairing automobile preparatory to going on mission for employer held to be compensable. Manley v Harvey Lbr. Co. 175 M 489, 221 NW 913; Grina v Steenerson Bros. Lbr. Co. 189 M 149, 248 NW 732.

A school teacher exposed to tuberculosis by the negligence of the school officers in their governmental functions has no remedy in the absence of liability imposed by statute. Bang v Ind. School District, 177 M 454, 225 NW 449.

Evidence held to show that injuries from inhalation or injection of poisonous substances in the distillation of coal was an "accident." Adler v Interstate Power Co. 180 M 192, 230 NW 486.

Injury to health of miner from working in ice-cold water, which he was assisting in pumping out of a mine, held neither an accident nor an occupational disease within the compensation law. Jurovich v Interstate Iron Co. 181 M 588, 233 NW 465.

Determination as to which of two successive employers was liable for occupational blindness held to be determined from conflicting medical expert testimoney. Farley v Nelson, Mullen & Nelson, 184 M 277, 238 NW 485.

Asphyxiation of manager of lumber yard while repairing automobile at home preparatory to visit branch yard in another town to assist in taking an inventory there held to arise out of and in course of his employment. Grina v Steenerson Bros. Lbr. Co. 189 M 149, 248 NW 732.

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. It was conceded that the word "benzine" was

used by the legislature as meaning "benzene" or "benzol." Funk v Minn. Mining & Mfg. Co. 192 M 440, 256 NW 889.

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 Oliver Iron Mining Co. 193 M 129, 258 NW 23.

Death by carbon monoxide gas poisoning of traveling salesman in control of his own time and means of transportation while repairing his automobile at home held not to arise out of his employment. Soule v Red Wing Advertising Co. 194 M 365, 260 NW 360.

Bronchial asthma produced by chemical poisoning in a grain elevator from breathing fumes caused by treatment of grain is not a compensable disease, and it was a question of fact whether the disease was so caused. Clark v Banner Grain Co. 195 M 44, 261 NW 596.

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 Russell Miller Milling Co. 196 M 358, 267 NW 501.

In action for damages for pulmonary tuberculosis alleged to have been contracted while in defendant's employ, through violation of sections 182.30, 182.31, 182.32, 182.34, court properly ordered judgment for defendant because cause of condition was wholly within field of speculation and conjecture. O'Conner v Pillsbury Flour Mills Co. 197 M 534, 267 NW 507.

Disability from dermatitis held due to phosphorus poisoning from use in employment of washing powder containing trisodium phosphate and compensable as an occupational disease. Malzak v Salmio, 206 M 430, 288 NW 837.

Where, due to an employer's violation of a protective statute, an employee contracts a disease not covered by the occupational disease section of the compensation law, he has a right of action at law against the employer for damages. Applequist v Oliver Mining Co. 209 M 230, 296 NW 13.

Section 182.32, relating to ventilation of workrooms, held to apply to underground mines. Applequist v Oliver Iron Mining Co. 209 M 230, 296 NW 13.

Laws 1939, Chapter 306, which added certain diseases due to the hazards of fire fighting to the occupational disease section of the compensation law, is not unconstitutional as class legislation or a denial of equal protection of the law. Kellerman v City of St. Paul, 211 M 351, 1 NW(2d) 378.

Coronary sclerosis is "contracted" within the meaning of the occupational disease section of the compensation law when it first manifests itself so as to interfere with the functions of the body. Kellerman v City of St. Paul, 211 M 351, 1 NW(2d) 378.

Pneumoconiosis (silicosis), being a disease from inhalation of dust over a long period of time, is not covered by a policy of indemnity insurance applying only to injuries sustained by accidents occurring during the policy period. Golden v Lerch Bros. 211 M 30, 300 NW 207.

An employer who paid a judgment against him for a fatal slowly developing disease resulting from violation of a statute requiring ventilation of dust-producing processes cannot recover indemnity from insurers against accidental injuries. Golden v Lerch Bros. 211 M 30, 300 NW 207.

An employee of a state institution who has contracted tuberculosis by contacting tubercular inmates therein, for whom special appropriation has been made by the legislature, is not entitled to receive, in addition thereto, compensation under a general law adopted at the same session. Wolner v State Department of Social Security, 213 M 96, 5 NW(2d) 67.

A finding relative to dermatitis "that said disease was due to contacting mercury and/or wood alcohol" implies the conclusion that the disease was "mercury and/or wood alcohol poisoning." Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

While recovery of compensation cannot rest on mere speculation or conjecture, if the proof furnishes a reasonable basis for an inference that the injury was the cause of the ailment, it is sufficient. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

Where legal cause of disability has been shown by competent evidence, liability follows, though other causes may have contributed thereto. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

Where medical men have found the harmful effect of certain chemicals upon employee, a finding that satisfies them as to the cause of employee's disease should satisfy the statute. Kvernstoen v Nelson, 212 M 102, 2 NW(2d) 560.

The requirement of due process cannot be waived or dispensed with either by the legislature or by an executive tribunal to which it delegates the duty of administering a law. Juster v Christgau, 214 M 109, 7 NW(2d) 501.

In reviewing an order of an administrative body the supreme court will go no further than to determine whether the evidence was such that it might reasonably make the order in question. Chellson v State Division, 214 M 332, 8 NW(2d) 42.

The change of method of review makes no substantial change in the scope of review. Richard v Federal, 217 M 137, 14 NW(2d) 118.

An order of reference to a medical board under Laws 1943, Chapter 633, relating to occupational diseases, is neither a final order nor one involving the merits so far as to be reviewable on certiorari. Anderson v Pyramid Co. 218 M 194, 15 NW(2d) 523.

See annotations under section 176.01, subd. 9, "Poisoning."

176.661 AGGRAVATION OF OCCUPATIONAL DISEASE.

HISTORY. 1943 c. 633 s. 7.

176.662 PRESUMPTIONS.

HISTORY. 1943 c. 633 s. 8.

176.663 WAIVER OF FULL COMPENSATION.

HISTORY. 1943 c. 633 s. 9.

176.664 SILICOSIS OR ASBESTOSIS.

HISTORY. 1943 c. 633 s. 10.

176.665 HEARINGS; MEDICAL BOARD.

HISTORY. 1943 c. 633 s. 11.

176.666 INVESTIGATIONS; EXAMINATIONS.

HISTORY. 1943 c. 633 s. 12.

176.667 MEDICAL EXAMINATION OF EMPLOYEES.

HISTORY. 1943 c. 633 s. 13; 1945 c. 541 s. 1.

176.668 INSPECTION OF PLACES OF EMPLOYMENT.

HISTORY. 1943 s. 633 s. 14.

176.669 EXPENSES; REGULATIONS.

HISTORY. 1943 c. 633 ss. 15, 16.

176.67 NOT RETROACTIVE.

HISTORY. 1921 c. 82 s. 68; G.S. 1923 s. 4328; M.S. 1927 s. 4328.

176.68 INVALIDITY.

HISTORY. 1921 c. 82 s. 69; G.S. 1923 s. 4329; M.S. 1927 s. 4329.

176.69 SETTLEMENT OF CLAIMS.

HISTORY. 1935 c. 313 s. 1; M. Supp. s. 4330-1.

A so-called release from payment of further compensation executed by employee after returning to work from temporary total disability, which was not presented to nor approved by the court, held not a settlement within the contemplation of the law. Clarkson v Northwestern Cons. Milling Co. 145 M 489, 175 NW 997, 176 NW 960.

A settlement with an injured workman for a period of less than six months was approved by the district court within three months after the injury without formal action against the employer under the compensation act. More than a year after the injury the workman applied for a rehearing and the application was heard upon conflicting affidavits. Held that the record was not such as to compel the trial court to grant a rehearing. State ex rel v District Court, 146 M 476, 178 NW 1002.

Readjustment of settlement under law as it stood in 1920. Johnson v Iverson, 175 M 319, 221 NW 65, 222 NW 508.

The approval of a settlement in a workmen's compensation matter under Laws 1913, Chapter 467, is not a judgment as regards limitations. Strizich v Zenith Furnace Co. 176 M 555, 223 NW 926.

Section 176.21 appears to authorize lump sum settlement only on basis of previous award payable periodically. Settlement without award does not deprive commission of jurisdiction to set aside the settlement to determine whether compensation should be paid for subsequently appearing disability. Johnson v Pillsbury Flour Mills Co. 187 M 362, 245 NW 619.

A settlement and release from further liability approved by the commission, prior to the amendment of section 176.34 by Laws 1933, Chapter 74, fixed and vested the rights of the parties, and the amendment did not apply to cases in which rights had become fixed and vested prior to its passage. Johnson v Jefferson, 191 M 631, 255 NW 87.

A final settlement, approved by commission, prior to amendment of section 176.34 by Laws 1933, Chapter 74, became final at expiration of time for review. Nadeau v Cameron Joyce Co. 194 M 285, 260 NW 213.

Dependents of 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 his 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 Connolly Contracting Co. 196 M 108, 264 NW 581.

Death benefits are payable during dependency and as nearly like wages as may be. Law does not sanction payments before death. Dale v Shaw Motor Co. 206 M 99, 287 NW 787.

A stipulation for settlement releasing liability for possible future death claim by dependents held properly refused approval by commission as contrary to policy of the law. Dale v Shaw Motor Co. 206 M 99, 287 NW 787.

The law provides death benefits to insure support to dependents when the employee dies. If paid in advance there is no assurance that the benefit will be available when death occurs. Dale v Shaw Motor Co. 206 M 99, 287 NW 787.

176.70 COMPENSATION PREFERRED CLAIM IN CERTAIN CASES.

HISTORY. 1921 c. 26 s. 1; G.S. 1923 s. 4335; M.S. 1927 s. 4335.

176.71 WARRANTS ARE PREFERRED CLAIMS.

HISTORY. 1921 c. 26 s. 2; G.S. 1923 s. 4336; M.S. 1927 s. 4336.

176.72 LIBERALLY CONSTRUED.

HISTORY. 1921 c. 26 s. 3; G.S. 1923 s. 4337; M.S. 1927 s. 4337.

176.73 APPLICATION OF WORKMEN'S COMPENSATION ACT TO STATE EMPLOYEES.

HISTORY. 1927 c. 436 s. 1; M.S. 1927 s. 4337-1; 1935 c. 315 s. 1; M. Supp. s. 4337-1.

The state civil service act applies to all employments in state service except those therein excluded. Where hiring of truck and operator by commissioner of highways under rental agreement statute creates relationship of employer and employee between state and operator, the operator is entitled to workmen's compensation for injuries arising out of and in the course of employment. Aslakson v State, 217 M 524, 15 NW(2d) 22.

176.74 HEADS OF STATE DEPARTMENTS TO REPORT TO INDUSTRIAL COMMISSION.

HISTORY. 1927 c. 436 s. 2; M.S. 1927 s. 4337-2.

176.75 STATE EMPLOYEES; CLAIMS; POWERS OF INDUSTRIAL COMMISSION.

HISTORY. 1927 c. 436 s. 3; M.S. 1927 s. 4337-3.

176.76 PROCEDURE.

HISTORY. 1927 c. 436 s. 4; M.S. 1927 s. 4337-4.

176.77 PAYMENT OF COMPENSATION AWARDED.

HISTORY. 1927 c. 436 s. 5; M.S. 1927 s. 4337-5.

176.78 STATE COMPENSATION REVOLVING FUND.

HISTORY. 1933 c. 161 s. 1; M. Supp. s. 4337-6; 1945 c. 30.

176.79 PAYMENTS TO BE MADE FROM FUND.

HISTORY. 1933 c. 161 s. 2; M. Supp s. 4337-7.

176.81 MAINTENANCE OF FUND.

HISTORY. 1933 c. 161 s. 4; 1935 c. 312 s. 1; 1939 c. 3 s. 1; M. Supp s. 4337-9; 1945 c. 243.