

No. 125, A.]

[Published July 17, 1907.]

## CHAPTER 660.

AN ACT to amend, perfect, harmonize, and create certain sections of the statutes, relating to county courts and proceedings therein.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Section 3795 of the statutes is amended to read:  
\* \* \* \* \*

**Statute reference changed.** SECTION 2. Section 1 of chapter 232, laws of 1905, is amended by striking out therein the words and figures "Section 3030a" and inserting in place thereof the words and figures "Section 3930a."

SECTION 3. Section 3835 of the statutes is amended to read:  
\* \* \* \* \*

SECTION 4. Section 3876 of the statutes is amended to read:  
\* \* \* \* \*

SECTION 5. Compensation When Will Does not Fix. Section 3929, statutes of 1898 is amended to read:  
\* \* \* \* \*

SECTION 6. Section 3979a of the statutes is amended to read:  
\* \* \* \* \*

SECTION 7. Section 4022 of the statutes is amended to read:  
\* \* \* \* \*

SECTION 8. Section 2441 of the statutes is amended to read:  
\* \* \* \* \*

**Statute reference changed.** SECTION 9. Section 1, chapter 397, laws of 1901, is amended by striking out the words and figures "section 4041a" and inserting in place thereof the words and figures "section 4041b."

SECTION 10. Section 4042 of the statutes is amended to read:  
\* \* \* \* \*

SECTION 11. Section 4051 of the statutes is amended to read:  
\* \* \* \* \*

SECTION 12. Section 2450 of the statutes is amended to read:  
\* \* \* \* \*

- SECTION 13. Section 3504 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 14. Section 3505 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 15. Section 3506 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 16. Section 3507 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 17. Section 3508 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 18. Section 3509 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 19. Section 3511 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 20. Section 3514 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 21. Section 3515 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 22. Section 3516 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 23. Section 3519 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 24. Section 3519a, of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 25. Section 3519b, as created by chapter 125, laws of 1903, is amended to read:  
\* \* \* \* \*
- SECTION 26. Section 3819 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 27. Section 585 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 28. Section 3971 of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 29. Section 2454a of the statutes is amended to read:  
\* \* \* \* \*
- SECTION 30. Notice of Sale. Section 3891, statutes of 1898 is amended to read:  
\* \* \* \* \*
- SECTION 31. Petition for, Notice and Hearing on. Section 3908, statutes of 1898, is amended to read:  
\* \* \* \* \*
- SECTION 32. Appraisal and Sale; How Made. Section

3913, statutes of 1898, as amended by chapter 46, laws of 1901 and chapter 146 and 442, laws of 1903, is amended to read:

\* \* \* \* \*

SECTION 33. Notice of Application to Amend. Section 4047, statutes of 1898, is amended to read:

\* \* \* \* \*

SECTION 34. Notice of Hearing. Section 3998, statutes of 1898, is amended to read:

\* \* \* \* \*

SECTION 35. Time for Presenting Claims; Notice of. Section 3840, statutes of 1898, is amended to read:

\* \* \* \* \*

SECTION 36. Special Administration for Special Purposes. Section 3813a, statutes of 1898, is amended to read:

\* \* \* \* \*

Approved July 16, 1907.

(In effect from and after date of publication.)

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No. 1037, A.]

[Published July 17, 1907.]

## CHAPTER 661.

AN ACT to submit to the people amendments to the constitution.

**Proposed constitutional amendments.** WHEREAS, At the biennial session of the legislature of this state in the year 1905 amendments to the constitution were proposed and agreed to by a majority of the members elect to each of the two houses, which amendments were in the following language:

**Income tax.** 3. *Resolved by the assembly, the senate concurring,* That section 1 of article 8 of the constitution of the state of Wisconsin be amended by adding at the end thereof the following: "Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided," so that when so amended said section shall read as follows: "Section 1. The rule of taxation shall be uniform, and taxes

**Persons supposed insane: application for judicial inquiry.** SECTION 585. 1. When a resident of this state, or any person found therein whose residence has not been ascertained, shall be or be supposed to be insane, application may be made in his behalf, by any three respectable citizens to the judge of the county court, or in his absence or disability, to the judge of any court of record for the county in which such supposed insane person is found, for a judicial inquiry as to the mental condition of such supposed insane person, and for an order of commitment to some hospital or asylum for the insane.

**Form of application.** 2. Such application shall be in writing, and substantially in the following form:

To ..... County Judge of ..... County, Wisconsin: The undersigned, citizens of the said state, hereby make application in behalf of ....., a person supposed to be insane, now at ..... (naming the city, town or village) in the county of ....., for a judicial inquiry as to the mental condition of said person, and for an order committing such person to the hospital or asylum for the insane, if found to be insane.

Dated this .... day of ....., 19.....

.....  
 .....  
 .....

**Examining physicians.** 3. On receipt of such application the judge to whom it is directed, or in case of his absence or other disability to act, any other judge of a court of record in said county, shall appoint two distinguished physicians of good repute for medical skill and moral integrity to examine the person alleged or supposed to be insane.

**Physicians' qualifications.** 4. No physician shall be appointed such examiner in lunacy, unless he shall be a graduate of a legally incorporated medical school, *or shall have been duly licensed to practice medicine in this state*, and shall have had at least \* \* \* two years experience in the practice of his profession, or shall have had one year's experience as a physician in an insane hospital after his graduation, and shall be registered by such county judge as thus qualified on a list to be kept for that purpose in his office.

**Examination.** 5. Said judge may cause the person named in such application to be brought before him, and said physi-

cians shall, in the presence of the judge, if he so desires, by personal examination of such person and inquiry, satisfy themselves as to his mental condition, and report the result of their examination to said judge.

**Previous notice to party.** 6. Such physician shall, before making such examination, give notice to the person under examination that application has been made for an inquiry into his mental condition, withholding the names of the applicants if they shall deem it wise, and that he can be heard in respect to the same, or if in the judgment of such physicians such notice would be injurious to such person or if no advantage to him, they may withhold such notice and shall set forth at length their reasons for so doing in their report to the judge by whom they were appointed.

**Physicians' questions and answers.** 7. The report of the physicians shall consist of the following questions and the answers of said physicians thereto:

1. What is the age of the patient?
2. Where was the patient born?
3. Present place of residence?
4. Married, widowed or single?
5. If children, how many, and the age of the youngest?
6. What has been the occupation of the patient and the pecuniary circumstances?
7. When were the first symptoms of the disease manifested, and what were they?
8. Is this the first attack? If not, when did others occur, and what was their duration?
9. What was the cause of this attack?
10. Is the disease increasing or stationary?
11. Are there rational intervals? If so, how often and what is their duration?
12. Have any changes occurred in condition of body or mind since the attack?
13. On what subject or in what way is derangement now manifested? State fully. Are there any permanent hallucinations or delusions?
14. Has the patient shown any disposition to injure others, and if so, was it from sudden passion or premeditation?
15. Has suicide or homicide ever been attempted? If so, in what way? Is the propensity now active?

16. Has the patient any disposition to destroy clothing or other property?

17. Is there any disposition to filthy habits?

18. What treatment was pursued for the relief of the patient? Mention fully particulars and effects.

19. Have you made a physical examination of patient? State fully what is the present physical condition.

20. Has restraint or confinement ever been employed? If so, what and how long?

21. Did the patient manifest any peculiarities of temper, habits, disposition or pursuits before the accession of the disease; and predominant passions, religious impressions, etc.

22. Was the patient ever addicted to the intemperate use of intoxicating drinks, drugs or tobacco, or any improper habits?

23. Has the patient ever had any injury to the head, paralysis, epilepsy or other fits; any sign of tubercular or syphilitic disease; any suppressed eruptions, discharges or sores, or any strong predisposition to hereditary disease?

24. Has the patient been successfully vaccinated?

25. If epileptic, state duration and frequency of paroxysms and duration of disease.

26. Has the patient served in the army or navy of this or any other country?

27. What relatives, including grandparents and cousins, have been insane?

28. Were the parents blood relations to each other?

29. State any other matter supposed to have a bearing on the case.

30. To whom should letters be addressed in case of death, need of clothing, etc.?

31. Has the patient any infectious disease?

32. In your opinion is the patient insane? If such is your opinion state fully the grounds upon which it is founded unless you have so stated in your answer to question 13.

33. Should the patient be placed in temporary detention quarters or be sent to an insane hospital or asylum for treatment?

34. Have you given notice to the patient that application has been made for an examination into his or her mental condition, and of the opportunity of a hearing? If not, state fully your reasons for withholding such notice.

35. Does the patient desire a hearing in person?

**Oath of physicians.** 8. To such report shall be attached

the oath of the examining physicians which shall be substantially in the following form:

State of Wisconsin }  
..... County } ss.

.....and ....., being each duly sworn, each for himself says that he has made personal examination and inquiry as to the mental condition of....., and that the answers to the foregoing questions are true, to the best of his knowledge and belief.

.....  
.....

Subscribed and sworn to before me this .....day of....., 19....

**Report forwarded to hospital.** 9. Such report of the physicians shall be made in each case, whether the question of insanity is tried before a jury or otherwise, and shall be forwarded with the commitment to the superintendent of the hospital.

(Ch. 660, 1907.)

**Sanity inquiries: fees of examining physicians.** SECTION 585d. The county judge, except of Milwaukee county, shall receive a fee of five dollars for the hearing of an application to commit a person alleged to be insane, which fee shall include the making of necessary copies of the order to commit such person and the commitment papers, together with the certificate required by section 585c, when the insane person is committed to the county asylum; and each of the examining physicians shall receive a fee of four dollars for his examination and certificate, and ten cents per mile for necessary travel in complying with the requirements of his appointment; and in any contested matter arising under this chapter or in any case where the judge, in his discretion, shall postpone the examination of such person, a fee of four dollars for each day he may be required by the county judge to attend before him on such examination.

All expense of the proceedings, from the presentation of the application to the actual commitment or discharge of the alleged insane person, whether such person is a resident or nonresident of the county in which the proceedings are had, shall be allowed and paid by the county from which such person is committed. in the same manner as the expense of a criminal prosecution in a justice's court are allowed and paid, and if any

**County judge must be an attorney.** SECTION 2441. There shall be a general election of county judge in each county on the first Tuesday in April, 1905, and every fourth year thereafter. The term of office of county judge shall be four years, commencing on the first Monday in January after such election. When a vacancy shall occur in the office of county judge or there shall be no person qualified to take the office at the commencement of a term, the governor shall appoint such judge, and the person so appointed shall hold until the first Monday of June next succeeding an election to fill such vacancy; but when no election to fill such vacancy is held then such appointment shall be for the residue of the term; and where any county judge shall be elected in a newly organized county the judge first elected shall hold his office until the first Monday of January following the first general election for county judges thereafter. \* \* \* *No person shall be eligible to the office of county judge who shall not, at the time of his election or appointment thereto, be an attorney of a court of record; provided, that the foregoing provision shall not disqualify any person who held such office in this state on or before the first day of July, 1907.* Every county judge may be removed from office by \* \* \* address in the manner provided in the constitution for the removal of justices of the supreme court or judges of the circuit courts.

(Ch. 660, 1907.)

**Affidavit that judge is partial: other judge called.** Section 2447. When the judge of any county court, his wife, child, parent, brother or sister shall be an heir, devisee or legatee, or when such judge shall be an executor, administrator, guardian of any ward or interested as creditor or otherwise in any question to be decided, *or when any heir, devisee, legatee, administrator, executor, trustee, guardian or other person interested in any matter, order, citation or proceedings in such county court shall on or before the day when such matter, order, citation or proceedings shall have been set for hearing, file in such court an affidavit stating that he has good reason to believe and verily does believe that from prejudice or other cause the judge of such county court, naming him, will not decide impartially in said matter,* he shall be disqualified to act in relation to \* \* \* such estate or in the decision of such question; \* \* \* *he shall thereupon request the county judge of any other county to hold court therein for the purpose of settling such estate*



or deciding such question. *If the court in which such matter is pending has two judges, the other judge shall preside and officiate therein.* It shall be the duty of such judge, upon such request, to attend and act in such matter so far as in his judgment the proper discharge of his other duties will permit. Whenever any county judge shall be required, pursuant to any law, to hold court in any county other than that for which he was elected he shall receive the sum of five dollars per day and his actual expenses, to be audited and paid by the county board of the county in which he so holds court. \* \* \*

(Ch. 289, 1907.)

**Judge may hold court in other counties.** SECTION 2450. The county judges may perform all official duties of county judges, including holding court in any county other than the one in which they shall have been elected, upon the request of the county judge of such other county, and while so doing they shall have the same powers as if elected for the county in which they are acting. \* \* \*

(Ch. 660, 1907.)

**County judge not to draft papers for actions; penalty.** SECTION 2454a. No county judge or his clerk or any person employed by him in or about his office \* \* \* shall be allowed to draft or prepare any paper or give advice pertaining to the drafting or preparation of papers or as to who shall prepare them, relating to any matter, proceeding or action pending in or which there is good reason to believe will be brought or instituted in the county court over which such judge presides, except such as are expressly given by law. Any county judge who shall \* \* \* violate any of the provisions of this section shall be fined not less than fifty dollars nor more than five hundred dollars and be subject to impeachment. \* \* \*

(Ch. 660, 1907.)

**Terms: civil actions and proceedings.** SECTION 2521. Said judge may, if he deem it best, by order in writing filed in court, direct terms to be held for the trial of all civil actions and proceedings and of offenses on which information may be filed, and of appeals from justices of the peace in civil or criminal cases, and actions over which a justice court has no jurisdiction not exceeding four in any one year. When such terms are ordered, the clerk of said court in the presence of the judge at

to collect any such judgment at any time within two years from its rendition.

(Ch. 180, 1907.)

**Habeas corpus petition: one dollar fee for copy of warrant.** SECTION [3410.] 4. If the confinement or restraint is by virtue of any warrant, order or process a copy thereof must be annexed, or it must be averred that, by reason of such prisoner being removed or concealed before the application a demand of such copy could not be made or that such demand was made and \* \* \* *a fee of one dollar* therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused.

(Ch. 261, 1907.)

**Prison or house of correction for refusal to pay costs.** SECTION 3479. When any order of the court or a judge shall have been made requiring the payment of costs or any other sum of money and proof by affidavit shall be made of the personal demand of such sum of money and of a refusal to pay it the court or judge may issue a warrant to commit the person so disobeying to prison or a house of correction until such sum and costs and expenses of the proceedings shall be paid.

(Ch. 481, 1907.)

**Realty of infant or incompetent: application for sale or encumbrance.** SECTION 3504. The application for such disposition must be made to the circuit or county court of the county in which such real estate or some part thereof is situated or to the \* \* \* *presiding judge of either court* by petition of the general guardian of the infant or of such incompetent person or by any relative or other person in behalf of either. Such petition must be verified and must set forth the facts which would authorize the selling, mortgaging or leasing of such real estate or some part thereof for one or more of the reasons set forth in the preceding section. If a sale is sought on behalf of one or more, but not all, of such infants in any case where an action for partition would lie, the whole tract may be sold and the proceeds applied as directed in section 3513; but the share of those who do not join in the application shall be paid to their guardians.

(Ch. 660, 1907.)

**Appointment of special guardian under said application.**

SECTION 3505. When such application is made on behalf of an infant the court or \* \* \* *presiding* judge must appoint some suitable person special guardian of such infant in relation to the proceeding on such application; such special guardian, and when \* \* \* application is made on behalf of an incompetent person the guardian of such incompetent person, shall give a bond to such infant or incompetent person, by name, as the case may be, to be filed in the county court or with the clerk of the circuit court, in such sum, with such sureties and in such form as the county or circuit court or \* \* \* judge shall direct, conditioned for the faithful performance of the trust reposed, for paying over, investing or accounting for all moneys that shall be received by such guardian, according to the order of any court having authority to give directions in the premises and for observance of the directions of the court in relation to the said trust. In case of the breach of the conditions of such bond it may be prosecuted for the benefit of the party injured without any direction therefor.

(Ch. 660, 1907.)

**Inquiry relative to the proposed sale or incumbrance.**

SECTION 3506. Upon the presentation of such petition and the filing of such bond either such court or the \* \* \* *presiding* judge may proceed in a summary manner to inquire into the merits of such application or make an order referring it to some suitable person as referee to inquire into and report upon the matters contained in such petition, whose duty it shall be to examine into the truth of the representations made, to hear the parties interested in the property or otherwise interested in the application and report thereupon with all convenient speed.

(Ch. 660, 1907.)

**Final orders relative thereto.** SECTION 3507. If, after an examination of the matter by the court or *judge* to which application is made, \* \* \* without a reference, or on the coming in of the report of the referee, and on examination of the matter, it shall satisfactorily appear that a disposition of any part of the real estate of such infant or incompetent person or any interest therein is necessary and proper, for any of the causes mentioned in section 3503 such court or \* \* \* judge shall make a final order directing the leasing, mort-

gaging or sale of such real estate or interest therein or of such part thereof as the court or judge shall deem proper to be made by the special guardian of such infant so appointed, or by the guardian of such incompetent person, as the case may be, in such manner and with such restrictions as shall be deemed expedient.

(Ch. 660, 1907.)

**Sale or incumbrance; approval.** SECTION 3508. No such lease, mortgage or sale shall be made until an agreement therefor shall be entered into by such special guardian of the infant, or guardian of such incompetent person, subject to the approval of the proper court or \* \* \* judge. Upon the confirmation of such agreement by such court or judge he must execute a lease, mortgage or deed as directed by the order of confirmation.

(Ch. 660, 1907.)

**Platting said realty before sale.** SECTION 3509. Whenever a final order shall have been made for the sale of any such real estate and it shall be made to appear to the court or judge that the interest of the infant or incompetent person would be promoted by platting such real estate the court or judge may, by order, authorize the special guardian of such infant or the guardian of such incompetent person, either alone or together with the co-tenants, if any, or other owners, to make and acknowledge a plat of such real estate in the manner prescribed in chapter 101. A plat made pursuant to such order, certified and acknowledged in manner and form prescribed in said chapter and approved by the court or *presiding judge*, shall be as valid and effectual as if made by such infant when of full age or by such incompetent person when of sound memory and understanding. After such plat shall have been duly made and recorded such guardians may make separate sales of any lot or lots, according to such plat, or of such infant's or incompetent person's interest therein in the manner above prescribed.

(Ch. 660, 1907.)

**Validity of the conveyance.** SECTION 3511. Every deed, mortgage, lease or other conveyance made in good faith by the guardian of an infant or incompetent person, pursuant to any order or judgment of the county or circuit court or the \* \*

\* *presiding judge of either*, made under the provisions of this chapter, shall be as valid and effectual as if made by such infant when of full age or by such incompetent person when of sound memory and understanding.

(Ch. 660, 1907.)

**When ward's estate is subject to particular estates, courts dispositions.** SECTION 3514. If the real estate or interest therein of any infant or any incompetent person directed to be sold is subject to a right of dower or an estate for life or for years in the whole or any part thereof and the person having such right or estate shall, before such sale, consent in writing to accept a gross sum in lieu of such dower or other estate, to be fixed according to the principles of law applicable to annuities, or to have a proportionate share of the proceeds of the sale invested and the interest thereof paid to him until the termination of such right or estate, and file such consent in the county court or with the clerk of the circuit court the final order for the sale may, in the discretion of the court or \* \*

\* *presiding judge*, direct that such right or estate shall be sold, together with the estate or interest of the infant or incompetent person. After such sale the court *or judge* must ascertain the value of such right or estate and direct the payment of such sum in gross, or the investment of a proportionate share of the proceeds and the payment of the interest thereof to the person having such right or estate until the expiration thereof. But no such gross sum shall be paid or investment made until an effectual release of such right or estate has been duly executed so as to entitle the same to be delivered to the purchaser. If the owner of such right or estate for life or years shall not so consent the same may nevertheless be sold, in the discretion of the court *or presiding judge*, and the value or proceeds thereof determined as hereinbefore provided, paid to him.

(Ch. 660, 1907.)

**When ward has particular estate, court's disposition.** SECTION 3515. Where the interest of the infant or incompetent person in real estate consists of a right of dower or an estate for life or for years the court *or presiding judge* may, by \* \* \* order, authorize the special guardian of such infant or the guardian of such incompetent person to join with the person holding the reversionary estate in a conveyance of the property to which such interest attaches, so as to release such right of

dower or fully convey the particular estate, on receiving from the proceeds of the sale a gross sum in satisfaction of such right or estate or a proportionate share of such proceeds to be invested, and the interest thereon paid to the person having such right or estate until the termination thereof; in either case the amount to be ascertained as prescribed in the last section. When a proportionate part of such proceeds is received by the guardian for investment the order of the court *or presiding judge* must provide for the investment thereof until \* \* \* *termination* of the particular estate, and then for the payment thereof to the person entitled thereto.

(Ch. 660, 1907.)

**Infant, or incompetent, ward of the court.** SECTION 3516. From the time of such application on behalf of an infant or of an incompetent person having no guardian he shall be considered the ward of the court \* \* \* *in* which the application is made, \* \* \* so far as it relates to such property, its proceeds and income.

(Ch. 660, 1907.)

**Death of ward ends special guardian's powers.** SECTION 3519. In case of the death of any incompetent person during such state of incapacity the power of any guardian appointed under this chapter shall cease, and his \* \* \* estate shall *be disposed of* \* \* \* *according to law*.

(Ch. 660, 1907.)

**Courts of jurisdiction for said conveyances.** SECTION 3519a The proceedings for the disposition of the estates of infants *or incompetent persons* as provided in the foregoing sections may be had before the county court or county judge of the county in which the real estate or any part thereof is situated as well as before the circuit court or circuit judge

(Ch. 660, 1907.)

**Court may license foreign guardian to convey ward's Wisconsin estates, or appoint special guardian therefor.** SECTION 3519b. When any infant or incompetent person residing without this state shall own any right, title or interest in or to any real estate in this state and shall have a guardian or conservator who shall have been appointed in the state, terri-

tory or district or foreign country where such infant or incompetent person resides and no guardian appointed in this state, the guardian or conservator, appointed in such state, district or territory or foreign country may file a copy of his, or its, appointment, duly authenticated, so as to make the same receivable in evidence in the circuit or county court in any county in this state, in which the real estate of such infant or incompetent person is situated. Upon the filing of such authenticated copy of such appointment, such foreign guardian or conservator may be licensed by the circuit \* \* \* or county court or *presiding judge of either* of the county where such real estate is situated, to lease, mortgage, or sell the real estate of such infant or incompetent person in said county, or any portion thereof, or interest therein, in the same manner and upon the same terms and conditions and for the same purposes as prescribed in this chapter in the case of a special guardian appointed \* \* \* in this state. And such \* \* \* court, or the *presiding judge thereof* \* \* \* may, in \* \* \* *its* or \* \* \* *his* discretion, upon the petition of such foreign guardian or conservator, appoint some suitable person residing in this state, special guardian of such infant or incompetent person to make such lease, mortgage or sale in the manner provided by this chapter. In case a special guardian shall be appointed for the purpose of making such lease, mortgage or sale, the moneys arising from such lease, mortgage or sale shall be paid out and disposed of or invested as may be directed by the court or judge appointing such special guardian. The duly authenticated copy of the appointment of any guardian or conservator appointed in any other state, district, territory or foreign country together with a duly authenticated copy of the appointment of the special guardian of such infant or incompetent person, shall also be properly recorded and tract indexed in the office of the register of deeds of the county in which such real estate is situated. The expense of such record shall in all cases be borne by the grantor or special guardian.

(Ch. 660, 1907.)

**Mortgage foreclosure: six weeks notice and service upon subsequent grantee.** SECTION 3526. \* \* \* 1. Notice that such mortgage will be foreclosed by a sale of the mortgaged premises or some part of them shall be given as provided in section 2993.

2. A copy of such notice shall be served \* \* \* in the manner of serving a summons in a civil action, *upon the mort-*

jurors' fees, when collected, shall be paid by the justice to the jurors entitled thereto.

(Ch. 312, 1907.)

**Attorney's fees: actions for labor.** [SECTION 3775.] 5. In actions for work and labor, an attorney's fee of five dollars on any amount recovered under fifty dollars when the plaintiff appears by an attorney of record, whether or not the defendant has appeared, but no such fee shall be taxed if defendant prevails in the suit.

(Ch. 337, 1907.)

**County courts: executor's bond.** SECTION 3795. If the executor shall be sole or residuary legatee instead of the bond prescribed in the preceding section he may give a bond in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator. \* \* \* An executor named in any will may be exempt from giving bond, when the testator has so ordered or requested in his will, unless the county court shall order otherwise; and such court may require a bond, with sureties, of any such executor at any time pending the settlement of the estate.

(Ch. 660, 1907.)

**Executors, etc.: grounds for removal.** SECTION 3803. If an executor, administrator, guardian or trustee shall reside out of this state, or shall neglect to render his account within the time provided by law or the order of the court, or shall neglect to settle the estate according to law, or to perform any judgment or order of the court, or shall abscond, or become insane or otherwise incapable or unsuitable to discharge the trust, the county court may \* \* \* remove such executor, administrator, guardian or trustee and appoint a successor therefor.

(Ch. 289, 1907.)

**Executors, etc.: removal; complaint requisite.** SECTION 3803a. Before any executor, administrator, guardian or trustee shall be removed under the provisions of the last preceding section, *a complaint stating the grounds for removal, duly verified by the person making the same, shall be first filed in such county court and such* \* \* \* county court shall cite such executor, administrator, guardian or trustee to appear before it at some designated general or special term and show cause,



if any he have, why he should not be removed from his said trust and a successor appointed. If such executor, administrator, guardian or trustee can be found within the county where the court is held such citation shall be personally served upon him, but if not, it shall be served by mailing a copy thereof to him at his last post office address, when such address can be ascertained. Every such citation not so personally served shall also be published once a week for three successive weeks before the day of hearing in some newspaper published in the county and shall specify the time and place of hearing. \* \* \*

(Ch. 289, 1907.)

**Special administrators to discharge records undischarged by decedents, determine inheritance taxes, etc.**  
 SECTION 3813a. Whenever it shall appear, by affidavit or verified petition, to the county court that an inhabitant of such county has died, leaving no debts unpaid or that his estate has been fully settled and the executor or administrator thereof has been discharged, and that any mortgage or judgment in favor of such deceased person remains undischarged of record or any other act remains unperformed on the part of such person the performance of which affects or is of importance to petitioner or any other person the court may appoint a special administrator for the purpose of releasing and discharging such mortgage or judgment of record or performing such other acts as may be deemed necessary in the premises. Upon the presentation of such petition or affidavit the court shall determine whether notice of the hearing thereon shall be given, and if such notice is ordered the order shall direct the manner and time of giving the same. If the court shall deem notice of such hearing unnecessary it may proceed to hear the matter without notice. If the court shall appoint a special administrator it shall in all cases, where money or property may come into his hands, require him to give a bond to the judge of said court in such sum, with such conditions and with such surety or sureties as said court shall direct. The order appointing such administrator shall require him to make to said court, without delay, a full report of his acts as such. Upon the filing of such report such further proceedings shall be had and such further order made in said matter by said court as it shall deem necessary. Such special administrator shall exercise no powers except those \* \* \* specifically granted by the order of said court. When he shall have fully performed the act or acts mentioned in the order appointing him his powers as such shall cease. The

court may at any time require the administrator to make a report of his acts as such or revoke and vacate his appointment whenever it shall deem best. *Such special administrator may be so appointed and such special administration may be had and a prima facie inventory, appraisal and heirship determination had thereunder, for the purpose of having inheritance taxes determined and paid and of having prima facie certificate of descent of real estate issued pursuant to section 2276a in cases where it appears the estate may come under the provisions of the inheritance tax laws and where it does not otherwise appear necessary for regular administration to be had therein.*

(Ch. 660, 1907.)

**Public administrators: occasions for appointment and removal; powers.** SECTION 3819. When any person shall die intestate, leaving property in this state, but leaving no widow, surviving husband or next of kin, known to the county court, living therein, or when any administrator of an estate, or executor of a will which has been duly proved in this state, or guardian of the estate of any minor, insane or incompetent person within this state shall *be removed by the court*, resign his trust or refuse to act, or when upon the final settlement of an estate by the administrator thereof or by the executor of a will, and the assignment of the residue thereof there shall be minor, insane or mentally incompetent heirs, devisees or legatees entitled to such estate or any part thereof, and no person interested in such estate or minor, insane or incompetent person shall, within thirty days after such *removal*, resignation or refusal to act or within thirty days after such final settlement and assignment, apply to the proper county court for the appointment of an administrator or guardian, *or when in any case there is no person entitled to apply for administration or guardianship within the county, known to the county court, and no application by any one entitled to administration or guardianship is made, and it appears to the court necessary that administration or guardianship should be granted without delay in order to protect and preserve such estate in the interest of those entitled thereto, or of any creditors*, the county court having jurisdiction of such estate or of such minor, insane or incompetent person or his estate shall, upon its own motion or upon the application of the public administrator, if such court shall deem necessary, grant administration of such estate or guardianship of the estate of such minor, insane or incompetent person to the public

administrator, and it shall thereupon be lawful for the public administrator to take possession of the property and effects of the intestate, testator or minor, or insane or incompetent person and protect and preserve the same, and to proceed with the administration of such estates and with the care and management of the estate of such minor, insane or incompetent person, as the case may require, until administration or letters of guardianship thereon shall, upon proper application of some person entitled to apply therefor, be granted to some other person. If such intestate, testator or minor, insane or incompetent person be a non-resident, administration or guardianship of his estate shall be granted to the public administrator of the county where the property may be found. Such administration or guardianship may be revoked at any time upon the appointment and qualification of an administrator or guardian upon application of any person lawfully entitled to apply therefor, or when for any other cause the court shall deem it just or expedient; but such revocation shall not impair the public administrator's rights to receive from the estate his legal charges and disbursements, to be determined by the county court. Such estate shall be administered by the public administrator in the same manner as other estates, except as otherwise provided herein.

(Ch. 660, 1907.)

**Decedents' estates: sale of realty.** SECTION 3835. Whenever there shall be just reason to apprehend that the estate of a deceased person, as set forth in the inventory returned into court by his executor or administrator, may be insufficient to pay the debts of the testator or intestate, any one or more of the judgment creditor or creditors whose claim against the deceased shall have been allowed by the county court \* \* \* may, on behalf of all, bring an action in the circuit court to reach and subject to sale any real estate or interest therein or any other assets, not concluded in such inventory, which, according to law, ought to be subjected to the payment of such debts.

(Ch. 660, 1907.)

**Claims not contested; court may allow.** SECTION 3838m. Whenever any claim filed against any estate shall be accompanied by a statement of account verified by affidavit, unless objection be made to such claim by some person interested in

the estate or its administration prior to the time fixed for the examination and adjustment of claims, such claims shall, in the discretion of the court, be allowed.

(Ch. 419, 1907.)

**Presentation of claims against estates of decedents.**

SECTION 3840. At the time of granting letters testamentary or of administration *or at any time thereafter*, the county court, by order, shall fix a time not less than six months nor more than one year thereafter, as the circumstances of the case may require, within which creditors shall present their claims for examination and allowance. For good cause shown and upon such notice to the executor or administrator or other parties in interest as the court may direct, and *on the application of a creditor filed* not later than sixty days after the expiration of the time fixed as aforesaid, such time may be extended, but not beyond two years from the date of the letters. The court shall fix also by said order a time after the presentation of claims for the examination and adjustment of any claims presented. Notice of the time within which creditors may present their claims and of the time when the same will be examined and adjusted by the court shall be given by publication as provided in section 4050 for four consecutive weeks, or in such other manner as the court may direct, the first publication to be made within fifteen days of the date of said order. At the time so fixed for examining and adjusting claims the court may, if necessary, adjourn the hearing to such other time and from time to time thereafter as may be convenient until the examination and adjustment be completed.

(Ch. 660, 1907.)

**Presentation of claims; order for; notice of time.**

Section 3840m. If at any time in a matter of probate it appear that any order of publication or publication thereunder required in section 3840, statutes of 1898, has not been made, the county court shall thereupon make the order and give the notice as provided in said section.

(Ch. 169, 1907.)

**Statute of limitations.** SECTION 3844. Every person having a claim against a deceased person, proper to be allowed by the court, who shall not after notice given as required by sections \* \* \* 3840 and 3840m, exhibit his claim to the court

within the time limited for that purpose, shall forever be barred from recovering such demand or from setting off the same in any action. \* \* \*

(Ch. 169, 1907.)

**Decedents' estates: present value of interests; insurance commissioner to compute.** SECTION 3871a. The present value of every estate, annuity or interest of beneficiaries in the estate of a deceased person, shall, upon order of the county judge having jurisdiction therein, be computed by the commissioner of insurance in accordance with the American experience table of mortality, and interest at the rate of five per cent. per annum. Provided, however, that when it is impracticable to use the American experience table of mortality, the Northampton table may be used. In all cases the sum of the present value of the several parts, estates or interests of the several beneficiaries shall equal the net value of the entire estate. The necessary statement of facts shall be submitted to said commissioner of insurance in such form as he may prescribe.

(Ch. 420, 1907.)

**Sale of realty; order for hearing.** SECTION 3876. If it shall appear by such petition that the personal estate in the hands of the executor or administrator is insufficient to pay the debts of the deceased \* \* \* or the expenses of the administrator, or both, and that it is necessary to sell or encumber the whole or part of the real estate for the payment thereof, the county court shall make an order fixing the time and place, to be therein named, not less than \* \* \* *three* \* \* \* weeks from the time of making such order, when and where such petition will be heard.

(Ch. 660, 1907.)

**Executors, etc.: notices of realty sale.** SECTION 3891. When a sale is ordered notice of the time and place of holding the same shall be posted in three of the most public places in the town or ward in which the land is situated and shall be published in a newspaper, as provided in section 4045, *once in each week* for three successive weeks before the day fixed for the sale, and the *first insertion* \* \* \* shall not be more than \* \* \* *thirty* days before such day, in which notice the lands to be sold shall be described with reasonable certainty.

(Ch. 660, 1907.)

**Executors, etc.: realty conveyance pursuant to decedent's contract.** SECTION 3908x. On \* \* \* presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the county court shall appoint a time and place of hearing such petition and shall order notices of the pendency thereof and of the time and place of hearing to be published in a newspaper as provided in section 4045, at least three successive weeks before the day fixed for such hearing. \* \* \*

(Ch. 660, 1907.)

**Appraisal and sale; how made.** SECTION 3913. The county court may, in its discretion, authorize an executor, administrator or guardian to have the lands which he may be licensed by said court to sell, appraised by three disinterested freeholders of the county in which the lands or some part thereof lie. *The appraisal shall specify the whole value of such lands, and separately the value of each lien and incumbrance thereon, and the net value of such lands after deducting all liens and incumbrances as appraised by them, and such net value so fixed shall be the appraised value.* Such appraisal shall be under oath, which oath and appraisal shall be certified in the usual form and filed in the court from which said license was issued. The executor, administrator, or guardian so licensed shall offer the lands at public auction in the manner provided by law; and if at public auction no bid shall be made of a \* \* \* sum as great as \* \* \* the appraised value, or if such a sum be bid and the court shall deem it inadequate such executor, administrator or guardian may sell such lands at private sale at a price \* \* \* to be approved by the court licensing said sale, and if not sold within one year \* \* \* may be sold at public auction. *The appraisal of such lands made pursuant to section 3821 shall be taken as the appraised value thereof, if no additional appraisal be had under the provisions of this section.*

(Ch. 660, 1907.)

**Allowances to executors and administrators for expenses and services.** SECTION 3929. When no such compensation shall be provided by the will or the executor shall renounce all claim thereto he shall be allowed *unless derelict in his duty* all necessary expenses in the care, management and

settlement of the estate and for his services one dollar *and fifty cents* per day, and commissions upon the amount of personal estate collected and accounted for by him and the proceeds of real estate sold under an order of the county court for the payment of debts or legacies as follows: For the first thousand dollars at the rate of five per cent.; for all above that sum \* \* \* at the rate of one per cent.; and such further sums in cases of unusual difficulty or extraordinary services as the county court shall judge reasonable. The same *provision for compensation* shall \* \* \* *apply to administrators.*

(Ch. 660, 1907.)

[SECTION 3930a created from section 3030a by Sec. 2, Ch. 660, 1907.]

**Estates: judgment assigning residue.** SECTION 3940. 1. After the payment of the debts, funeral charges and expenses of administration and after deducting all the allowances provided for in this chapter or when sufficient effects shall be reserved in the hands of the executor or administrator for the above purposes, the county court shall, by \* \* \* a judgment assign the residue of the estate, if any, to such \* \* \* persons as \* \* \* by law *are* entitled to the same.

**Rights of parties.** 2. *Such judgment may be made on the application of the executor or administrator or of any person interested in the estate.* \* \* \* The court shall name therein the persons and \* \* \* assign to each \* \* \* the portion to which he is entitled. \* \* \* The right to recover any such portion from the executor or administrator or from any other person is hereby given to the person entitled thereto. \* \*

**Judgment as evidence.** 3. *Any finding or determination as to heirship or assignment of real estate in any such judgment shall be presumptive evidence of any fact so found and of the right to the portion of any estate so assigned and shall be conclusive evidence thereof as to all persons appearing in any such proceeding and as to all persons claiming under them.*

**To apply to realty.** 4. *This section shall apply to all real estate described in any such judgment whether or not in the possession of the executor or administrator.*

(Ch. 635, 1907.)

**Partitions: satisfaction of creditors of non-resident heirs and legatees; service of citation.** SECTION 3940a.

bond in such sum and with such sureties for costs and damages of said proceedings as it may deem proper.

(Ch. 141, 1907.)

**Partition of estate residue to be prior to, and part of, final judgment.** SECTION 3942. 1. When the county court shall make an order or judgment assigning the residue of any estate to two or more persons entitled to the same, it shall not be necessary to make partition or distribution of such estate, unless the parties to whom the assignment shall be made, or some of them, shall request it; but when requested by any party in interest, *prior to the making and entry of a final judgment or decree in said estate*, partition and distribution may be made by three disinterested persons to be appointed by the county court for that purpose. Said court shall issue a warrant to them for the purpose of such partition and distribution and they shall be sworn to a faithful discharge of their duties.

2. *Such partition and distribution, when made and completed as hereinafter provided, may be incorporated in and made a part of the final judgment or decree to be entered in said estate, if the court shall so direct.*

(Ch. 340, 1907.)

**Guardian's reports annual and other; periods for filing.**

SECTION 3971. Every general guardian shall \* \* \* render *and file* an account under oath and specify therein the amount of property received by him and remaining in his hands or invested by him, and the nature and manner of such investment, and his receipts and expenditures during the year, *ending the thirty-first day of December in each year, which said annual account shall be rendered and filed within sixty days thereafter; and, whenever ordered by the court, such guardian shall, within thirty days, render and file a like account for any shorter term;* and, when any guardian of a minor shall have the custody of his ward and the care of his education, and in all cases when required by the court, he shall state in his annual report the length of time each of his wards has attended a public school during the year *or part of a year* for which the account is rendered, and shall also report which, if either, of the sureties upon his bonds as such guardian has died or removed from the county. \* \* \* Every guardian who fails \* \* \* *so to render and file* an account of his guardianship, \* \* \* may be removed and another appointed in his place. \* \* \*

(Ch. 660, 1907.)



**Guardian for patient in insane hospital.** SECTION 3979a.

1. Whenever any person who is or may be a patient in any hospital for the insane in this state shall appear to the satisfaction of the superintendent of such hospital to be incurable, and it shall appear that he has property within this state, that he has no wife or children who would be dependent upon him for support, if sane, and that he has no guardian, such superintendent shall apply to the \* \* \* county court of the county in which such patient resided at the time of his commitment for the appointment of a guardian of his person and estate, and the court, upon such application, shall proceed to the appointment of such guardian in the same manner as is or may be provided for the appointment of guardians of the persons and estates of minors.

2. Such guardian, when appointed, shall have and exercise the same powers and duties as are or may be by law conferred upon guardians of minors, and may sell any real or personal estate, the property of such insane person, in the same manner and for the same purposes as is or may be provided by law for the sale by guardians of minors of the real or personal estate of their wards. Such sale shall be made in the county where such estate is situated, and the proceeds thereof shall be \* \* \* applied to \* \* \* the use and support of such ward. \* \* \*

(Ch. 660, 1907.)

**Hearing of guardian's petition to sell or encumber ward's realty.** SECTION 3998. If it shall appear to the court from such petition, that, for any of the causes aforesaid, it is necessary or would be beneficial to the ward that such real estate or some part of it should be sold, mortgaged or leased, the court shall thereupon make an order fixing a time and place therein to be specified, not less than \* \* \* three weeks from the time of making such order, when and where such petition will be heard.

(Ch. 660, 1907.)

**County court bonds to run to more than one judge.** SECTION 4013. All bonds required by law to be taken in or by order of the county court shall be for such sum and with such sureties as the court shall direct, except when otherwise provided by law. Such bonds shall be for the security and benefit of all persons interested and shall be taken to the judge of

the county court, and in any county court having more than one judge, shall run to all of the judges of said court, except where they are required by law to be taken to the adverse party. No such bond shall be deemed sufficient unless it shall have been examined and approved by the judge and his approval indorsed thereon in writing and signed by him; but his failure so to do shall not render the bond void.

(Ch. 183, 1907.)

**Actions on bonds in name of more than one judge.** SECTION 4015. All actions upon bonds taken to the judge or judges of the county court shall be brought in the name of such judge or judges at the time the action is commenced, when the same are brought under the fourth subdivision of the preceding section. When the action shall be brought under either of the other subdivisions of said section it may be brought in the name of said judge or judges or of the party in interest. In either case, if judgment is rendered for the plaintiff, it shall be for the amount found due and costs of suit; and if the action is in the name of the judge or judges the judgment shall specify the amount found due to each particular person for whose benefit it is brought.

(Ch. 183, 1907.)

**Adoption of child: consent, who to give; notice of hearing.** SECTION 4022. No such adoption shall be made without the written consent of the living parents of such child unless the court shall find that one of the parents has abandoned the child or gone to parts unknown, when such consent may be given by the parent, if any, having the care of the child. In case where neither of the parents is living, or if living are unknown or mentally incompetent or have abandoned the child, such consent may be given by the guardian of such child, if any. If such child has no guardian such consent may be given by any of the next of kin of such child residing in this state or, in the discretion of the court, by some suitable person to be appointed by the court. In case of a child not born in lawful wedlock such consent may be given by the mother, if she is living and has not abandoned such child; provided, that unless the living parent or parents of a minor consent to such adoption it shall be the duty of the court having jurisdiction of the proceedings, upon the filing of any petition for adoption, by order to appoint a time and place for hearing such petition and cause notice of such time and place to be

given to such parent or parents, by personal service of said notice on such parent or parents at least ten days before the hearing or by publication thereof in a newspaper at least three weeks successively prior to said hearing, and when notice is duly given as herein provided the parent of any minor shall be bound by the order of adoption as fully as though he had consented thereto. And in case such child has arrived at the age of twenty-one years such consent may be given by such child alone, and the consent of no other person in behalf of such child shall be required. !

(Ch. 660, 1907.)

**Appeals from county court; guardian ad litem.** SECTION 4031. In all cases not otherwise provided for any executor, administrator, guardian, trustee or any person aggrieved by any order, judgment, decree, determination or denial of the county court \* \* \* may appeal therefrom to the circuit court for the same county by filing a notice thereof with said county court within sixty days from the date of the act appealed from, together with such undertaking as is required in the next section. But no appeal shall be allowed from the action of the court in allowing or disallowing any claim unless a part thereof in dispute amounting to at least twenty dollars shall have been allowed or disallowed. The appeal of any child from an order of adoption may be taken by any person on his behalf. In all other cases the appeal of any minor may be taken in and prosecuted in the name of the general guardian of such minor or by a guardian ad litem appointed *generally* or for that purpose.

(Ch. 593, 1907.)

**Notice of appeal; transmission of papers.** SECTION 4033. The appellant shall give notice of the appeal to such adverse party, and in such manner as the county court shall direct within ten days after taking the same, and the county judge shall, within twenty days after the appeal is taken, file in the circuit court \* \* \* the record and proceedings appealed from, together with the notice of appeal and undertaking and proof of service of the notice of appeal on the adverse party, according to the order of the county court.

(Ch. 593, 1907.)

**Trial of appeal; further appeal.** SECTION 4034. When such \* \* \* *record*, notice of appeal, undertaking and the

evidence that the notice of appeal has been given to the adverse party shall have been filed in the circuit court the appeal may be brought to trial in the same manner as actions originally brought therein, and the court shall proceed to the trial and the determination of the matter according to the rules of law, allowing a trial by jury of all questions of fact, in cases where such trial may be proper; and such court may direct an issue to be made up between the parties in a brief form, when it shall be deemed necessary, and appeals may be taken to the supreme court as in other cases.

(Ch 593, 1907.)

**Infant's guardian for will or descent; sources of compensation.** SECTION 4041a. 1. Any court of record, in contests arising therein, upon application for the probate of any will, in its discretion, may allow to the proponent of such will a reasonable attorney's fee, to be paid out of the estate of the decedent and may also in its discretion, allow to the contestant if successful in the circuit court a reasonable attorney's fee out of said estate for services in such contest in said circuit court.

2. *A guardian ad litem appointed for an infant who is a necessary party to a proceeding to probate a will, or in a proceeding or action to construe a will, or in a proceeding in the settlement of an estate, may be allowed compensation for his services and for his necessary expenditures in the litigation, to be fixed by the court, in which such proceedings or litigation is had, and paid out of the body of the estate or property in controversy, if the infant has no available property out of which such payment can be directed by the court.*

(Ch. 267, 1907.)

[SECTION 4041a changed to section 4041b by Sec. 9, Ch. 660, 1907.]

**Security and judgment for costs.** SECTION 4042. In all cases mentioned in \* \* \* sections 4011, 4011a and 4011b, the county court may, in its discretion, require the claimant, or contestant, or other person to give security for costs. Such security shall be a written undertaking, in such sum and with such surety as shall be approved by the county court, to the effect that such surety will pay all costs that may be awarded by such court in such proceeding against the claimant or contestant. A judgment for costs against the claimant or contestant may also be rendered against the surety in such undertaking.

(Ch. 660, 1907.)

**Correction of county court records: notice of hearing.**

SECTION 4047. Upon verified application in writing to any county court by any person interested, praying that the records of such court, in any matter transacted therein, may be amended, corrected or perfected, and specifying the amendments desired, it shall be the duty of the court to cause notice to be given to all persons concerned of the time and place of hearing such application by publication in a newspaper as provided in section 4045, for three successive weeks prior to the time fixed for such hearing. \* \* \*

(Ch. 660, 1907.)

**County court fees.** SECTION 4051. Fees in the county court shall be allowed: (1). To appraisers, not less than one dollar nor more than three dollars per day, the amount of \* \* \* such compensation to be fixed by the court;

(2). To commissioners \* \* \* to make partitions, or to assign dower or homestead against deceased persons, three dollars per day;

(3). In all cases, travel, \* \* \* four cents per mile each way;

(4). *To jurors, interpreters and witnesses the same fees as provided in circuit court;*

(5). In cases not provided for, a reasonable compensation shall be allowed by the court.

(Ch. 660, 1907.)

**Corporation agents and employees; power to cross-examine.**

SECTION 4068. No person shall be disqualified as a witness in any action or proceeding, civil or criminal, by reason of his interest in the event of the same, as a party or otherwise; and every person shall be in every such case a competent witness, except as otherwise provided in this chapter. But such interest or connection may be shown to affect the credibility of the witness. Any person to the record in any civil action or proceeding, or any person for whose immediate benefit any such action or proceeding is prosecuted or defended, or the president, secretary or other principal officer or general managing agent, or any other agent or employe of any corporation which is such a party or for whose benefit the action or proceeding is prosecuted or defended may be examined upon the trial of any such action or proceeding as if under cross-examination, at the instance of the adverse party or parties or any of them, and for that pur-