

himself as such, to perform operations, to diagnose and treat lesions of the human teeth, or jaws, or correct malposed formations thereof, except that an unlicensed person may perform merely mechanical work upon inert material in a dental office or laboratory; or who shall be guilty of "unprofessional advertising" as defined in subsection (6) of section 152.06; shall upon a first conviction be fined not less than twenty-five nor more than one hundred dollars and costs, and upon a second or subsequent conviction shall be fined not less than one hundred nor more than five hundred dollars, or be punished by imprisonment not less than sixty days nor more than one year, or by both such fine and imprisonment.

(2) Anyone who shall unlawfully engage in the practice of dentistry shall be fined not less than * * * one hundred nor more than one * * * thousand dollars, or shall be imprisoned not less than sixty days nor more than one year, or both, for each person treated. * * *

SECTION 4. This act shall take effect upon passage and publication.

Approved June 1, 1933.

No. 123, S.]

[Published June 3, 1933.]

CHAPTER 190.

AN ACT to revise portions of Title XXIX—PROCEEDINGS IN COUNTY COURTS—of the statutes, and kindred provisions relating to proceedings in county courts for the purpose of simplifying and improving said proceedings and of harmonizing the substantive provisions of said title with the procedural rules which are now being revised by the Supreme Court.

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

SECTION 1. Section 310.03 of the statutes is re-enacted.

SECTION 2. Section 310.24 is renumbered 370.01 (18b) and amended to read:

(370.01) (18b) EXECUTOR. The word "executor" in * * * these statutes relating to probate proceedings shall be construed to include an administrator with the will annexed.

SECTION 3. Section 311.01 is amended to read:

311.01 ADMINISTRATION OF INTESTATE ESTATES. When any * * * resident of this state shall die intestate * * * letters of administration of his estate shall be granted

by the county court of the county of which he was * * * a resident. If any person * * * not a resident of * * * this state * * * shall die, leaving estate to be administered in this state, administration thereof shall be granted by the county court of any county in which there * * * is estate to be administered, and the administration first legally granted shall extend to all the estate * * * in this state. Administration may also be granted upon the estate of any person who, at the time of his death, was a party to any action pending in any court of record, upon the application of any other party to such action, when it shall appear necessary to protect the rights of the party so applying * * * .

SECTION 4. Section 311.02 of the statutes is revised to read:

311.02 WHO ENTITLED TO ADMINISTRATION. Administration of the estate of an intestate shall be granted to one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order:

(1) The widow, widower or heirs, or both, as the county court may think proper, or such person as they may request, if suitable and competent to discharge the trust;

(2) If the widow, widower or heirs, or the person selected by them shall be unsuitable or incompetent, or if they shall not within thirty days after the death of the intestate apply for administration or request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if competent;

(3) If there be no widow, widower or heirs, or creditors competent and willing to take administration, the same may be committed to such other person as the county court may think proper;

(4) If there be no application for administration by the widow, widower or heirs, or any creditor for sixty days after the death of the intestate, any one in whose favor a cause of action exists, which cannot be maintained without the appointment of an administrator, may apply for the appointment of an administrator.

SECTION 5. Section 311.03 is revised to read:

311.03 NOTICE OF APPLICATION FOR ADMINISTRATION. When application shall be made for the appointment of an administrator the court shall appoint a time and place for hearing such application, and shall cause notice thereof to be given unless waived by personal service on all persons interested, at

least ten days before the day designated, or by publication in a newspaper as provided in section 324.20.

SECTION 6. Section 311.075 is renumbered 311.04 and revised to read:

311.04 SUMMARY SETTLEMENT OF SMALL ESTATES. Whenever it is established that the estate, exclusive of an exempt homestead, does not exceed the selections and allowances of the widow and minor children, and the amounts required for funeral expenses and last illness and the expenses of administration, the executor or administrator (regular or special) may under the directions of the court pay such allowances and preferred claims and distribute such estate accordingly. And such executor or administrator shall thereupon file his final account, the heirship shall be determined, the exempt homestead be assigned forthwith, and further proceedings in the estate ordered discontinued.

SECTION 7. Section 311.15 is renumbered 253.32 and amended to read:

253.32 PUBLIC ADMINISTRATOR; APPOINTMENT; QUALIFICATIONS, OATH, BOND, TERM. The county court * * * shall appoint * * * a public administrator who shall, before entering upon * * * his duties, * * * take the official oath and * * * give bond, with sufficient sureties, to the judge of said court, in a sum not less than one thousand dollars, with conditions substantially like the conditions of * * * administrators' bonds, and that he will faithfully perform his duties; * * * which bond shall be approved by the county court and with the oath filed and recorded therein. Additional bonds may be required by the court. * * * The expense of surety upon such bonds shall be paid by the county treasurer out of * * * inheritance tax funds * * * belonging to the state, on the order of the county judge. *The person appointed shall be an attorney if one is available and his * * * term * * * shall * * * terminate * * * upon the appointment of his successor. * * * This section does not apply to Milwaukee county.*

SECTION 8. Section 311.16 is amended to read:

311.16 PUBLIC ADMINISTRATORS; EMERGENCY ADMINISTRATOR, GUARDIAN. (1) When any person shall die intestate, leaving property in this state, but leaving no widow, * * * *widower or heir* known to the county court, living therein, or when any administrator * * * or executor

* * * or guardian * * * shall be removed, * * * resign * * * or refuse to act, or when upon the final settlement of an estate * * * and the assignment * * * thereof there shall be minor * * * or * * * incompetent heirs, devisees or legatees entitled to * * * any part thereof, and no person * * * *entitled to apply* shall, within thirty days after such removal, resignation or refusal to act or within thirty days after such final settlement and assignment, apply * * * 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 *valid* application * * * 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, * * * the county court having jurisdiction of such estate or of such minor * * * or incompetent person or his estate shall, upon its own motion or upon the application of the public administrator, * * * grant administration of such estate or guardianship of the estate of such minor * * * or incompetent person to the public administrator, and *he* * * * shall thereupon * * * take possession of the * * * *estate* and protect and preserve the same, and * * * proceed with the administration * * * and with the care and management of the estate, * * * as the case may require, until administration or * * * guardianship * * * shall * * * be granted to some other person.

(2) If such * * * *decedent* or minor * * * or incompetent person be a nonresident, administration or guardianship of his estate shall be granted to the public administrator of the county where * * * property may be found, *and the administration or guardianship first granted shall extend to all the property in this state.* Such administration or guardianship may be revoked at any time upon the appointment and qualification of an administrator or guardian, * * * 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. * * * *This section does not apply to Milwaukee county.*

SECTION 9. Section 311.17 is renumbered subsection (15) of section 14.42 and revised to read:

(14.42) (15) ADVERTISE RECEIPT OF LEGACIES AND SHARES. The state treasurer, upon the receipt of any money which belongs to heirs or legatees, shall forthwith advertise the fact in the state paper by giving the name of the decedent, the time and place of his death, the amount paid into the treasury, the personal representative paying the same, the county in which the estate is probated, and that the money will be paid to the heirs or legatees without interest, on proof of ownership, if applied for within five years from the date of publication in the manner provided in section 318.03. The cost of such advertising shall be charged to the appropriation for the treasury department.

SECTION 10. Section 312.04 is revised to read:

312.04 POSSESSION AND CARE OF LANDS. The executor or administrator shall have a right to the possession of the real estate of his decedent, except the exempt homestead, and may receive the rents and profits thereof until the estate shall be settled, or until delivered by order of the court, to the heirs or devisees, and he shall keep in good tenantable repair all buildings and fences thereon which are under his control.

SECTION 11. Section 312.05 is amended to read:

312.05 LIABILITY FOR CONVERSION. * * * Any person * * * *who* shall embezzle or convert to his own use * * * *property* of any * * * *decedent's estate* * * * shall * * * be liable to an action by the executor or administrator * * * for double the value of the property * * * embezzled or converted. * * *

SECTION 12. Section 312.10 is revised to read:

312.10 MORTGAGE IS PERSONALTY; FORECLOSURE. Real estate mortgages and the interest in the mortgaged premises conveyed thereby and the debt secured thereby belonging to a decedent's estate are personal assets, and the executor or administrator may foreclose or satisfy the same, and have any other remedy for the collection of such debt which the decedent would have if living.

SECTION 13. Section 312.11 is repealed.

SECTION 14. Section 312.12 is repealed.

SECTION 15. Section 312.13 is renumbered 287.43 and amended to read:

287.43 RECOVERY OF PROPERTY FRAUDULENTLY SOLD BY DECEDENTS. * * * When there shall be a deficiency of assets in the hands of an executor or administrator

and * * * the * * * *decedent* shall * * * have conveyed any * * * *property* or any * * * interest therein, with intent to defraud his creditors or to avoid any * * * duty, or shall have * * * *executed* conveyances * * * void as against creditors, the executor or administrator * * * shall * * * prosecute * * * *an* action for the recovery of the same, and may recover for the benefit of * * * creditors all * * * *property* so fraudulently conveyed. * * *

SECTION 16. Section 287.17 is renumbered 312.13 and amended to read:

312.13 RESALE BY EXECUTOR OR ADMINISTRATOR WITHOUT LICENSE. * * * Whenever any executor or administrator *has* * * * purchased *real estate* at * * * judicial sale, under a judgment in an action in which he * * * is plaintiff, * * * or * * * *has* redeemed * * * real estate from a foreclosure or judicial sale, * * * he may sell and convey the same without license, * * * upon such terms as he shall deem best; and the proceeds arising from such sale shall be held by him * * * the same as he would have held the money due upon the debt by virtue of which he * * * purchased or *held the money with which he* redeemed such real estate.

SECTION 17. Section 312.14 is renumbered 287.44 and amended to read:

287.44 CREDITORS TO GIVE SECURITY. * * * No executor or administrator shall be bound to sue * * * as * * * *provided* in section * * * 287.43, * * * except on the application of creditors, nor unless * * * *they* shall pay such part of the costs and expenses or give such security to the executor or administrator therefor as the county court shall deem just and equitable.

SECTION 18. Section 312.15 is amended to read:

312.15 ESTATE RECOVERED, HOW SOLD. All real estate * * * recovered as provided in section * * * 287.43 shall be sold for the payment of debts * * * as if the deceased had died seized thereof, upon obtaining license therefor; * * * and the proceeds of *personal property so* * * * recovered * * * shall be * * * *used* to pay the debts of the * * * *decedent*. * * *

SECTION 19. Section 312.16 is amended to read:

312.16 CREDITOR'S ACTION FOR PROPERTY NOT INVENTORIED. Whenever there shall be * * * reason to apprehend that the estate of a * * * *decedent*, as set forth in the inventory returned, * * * may be insufficient to pay * * * *his* debts * * * any * * * creditor * * * whose claim * * * *has* been allowed * * * may, on behalf of all, bring an action * * * to reach and subject to sale any * * * *property*, not included in such inventory, which * * * *is liable for* * * * the payment of such debts.

SECTION 20. Section 312.17 is amended to read:

312.17 CREDITOR'S ACTION; PROCEDURE. Such creditor's action shall not be brought to trial until the * * * insufficiency of the estate in the hands of the executor or administrator to pay the debts * * * shall be ascertained; if found sufficient such action shall be dismissed at the cost of the plaintiff; if * * * such action * * * *is tried* any property * * * which ought * * * to be subjected to the payment of the debts of the * * * *decedent* shall be sold * * * *in the action*; and the *net* proceeds * * * *used to pay* such debts. * * *

SECTION 21. A new subsection is added to 370.01 to read:

(370.01) (18a) LEGACY, BEQUEST, DEVISE. The words "legacy" and "bequest" include a devise; and "legatee" includes a devisee; and "bequeath" includes devise.

SECTION 22. Section 313.08 is amended to read:

313.08 STATUTE OF LIMITATIONS. Every * * * claim against a *decedent*, * * * proper to be * * * *filed in probate proceedings in county court*, * * * *which* shall not, after notice given as required by sections 313.03 and 313.04, * * * *be filed* within the time limited for that purpose, shall forever be barred. * * *

SECTION 23. Section 313.22 is amended to read:

313.22 CONTINGENT CLAIMS. * * * Contingent claims against * * * *a decedent's* estate which cannot be * * * *allowed* as * * * debts * * * *shall, nevertheless*, be presented * * * to the court *and proved*, and they shall be embraced * * * in a statement * * * *like that* provided in section 313.06. * * * The court * * * may order the executor or administrator to retain in his hands sufficient estate to pay * * * contingent claims when the same * * * become ab-

solute; or if the estate * * * is insolvent, sufficient to pay a percentage thereof equal to the dividends of the other creditors.

SECTION 24. Section 313.23 is amended to read:

313.23 CONTINGENT CLAIMS; WHEN ALLOWED, HOW PAID. * * * *When* * * * a contingent claim, *which was duly presented*, shall become absolute * * * it may be allowed, * * * upon due proof *made within one year after it becomes absolute*, in the same manner as other claims. * * * If such contingent claim shall be allowed * * * the creditor shall be entitled to receive payment thereon to the same extent as other creditors. * * *

SECTION 25. Section 313.24 is repealed.

SECTION 26. Section 313.25 is amended to read:

313.25 LIABILITY OF HEIRS AND LEGATEES FOR CLAIMS. When a * * * *contingent claim shall have become absolute and been allowed*, and the executor or administrator shall not have sufficient assets to pay * * * such claim, the creditor * * * *may* recover such part of his claim as the executor or administrator has not assets to pay * * * from the heirs, devisees or legatees who * * * have received * * * property from the estate that was liable for the payment of the debts of the * * * *decedent*.

SECTION 27. Section 313.26 is amended to read:

313.26 WHAT PROPERTY TO PAY DEBTS; DIRECTION IN WILL. * * * If a testator * * * makes provision by his will or designates therein the * * * *property* to be appropriated for the payment of his debts, the expenses of administration or family expenses, they shall be *so paid*; * * * but * * * a general direction * * * to pay * * * *his* debts * * * out of his property shall *not* subject the homestead to the payment thereof.

SECTION 28. Section 313.27 is amended to read:

313.27 INTESTATE PROPERTY TO PAY DEBTS. If the provisions made by the will * * * *are not* * * * sufficient to pay the debts, expenses of administration and family expenses, such part of the estate, real or personal, * * * *which* is not * * * disposed of by the will, * * * shall be first appropriated * * * for * * * *those* purposes.

SECTION 29. Section 313.28 is amended to read:

313.28 LEGATEES TO PAY DEBTS. The estate, real and personal, given by will, * * * when required for that pur-

pose, shall be held liable for the payment of debts, expenses of administration and family expenses in proportion to the * * * several devises * * * and legacies; except that specific devises and legacies, and the persons to whom * * * made, * * * shall be exempted if there * * * is other sufficient estate and it shall appear * * * necessary in order to * * * effect the intention of the testator.

SECTION 30. Section 313.29 is revised to read:

313.29 LIABILITY OF WILLED PROPERTY; SHARE OF AFTERBORN CHILD. When the property given by will is liable for the payment of debts and expenses, or is liable to be taken to make up the share of a child as provided in sections 313.28, 238.10, 238.11 and 238.12, the executor shall retain the possession of the same until such liability is settled and the devises and legacies so liable shall be assigned by the courts. Any devisee or legatee may petition such court to have such liability settled and his devise or legacy assigned to him.

SECTION 31. Section 313.30 is revised to read:

313.30 LEGATEES HOLD SUBJECT TO LIABILITY. Before such liability is determined, devisees and legatees hold the estate given to them by will, subject to the liabilities mentioned in section 313.29, and must contribute, according to their respective liabilities, to the executor or to any devisee or legatee from whom estate willed to him has been taken for the payment of debts or expenses or to make up the share of a child omitted in the will. Heirs who have received property, not disposed of by will, shall be liable to contribute among themselves in like manner as the devisees or legatees.

SECTION 32. Section 313.31 is amended to read:

313.31 LIABILITY, AFFECTED BY INSOLVENCY. If any person liable to contribute according to * * * section 313.30 shall be insolvent, * * * the others shall be severally liable for the loss occasioned by such insolvency in proportion to, and to the extent of, the estate they * * * have received; and if any * * * person * * * so liable to contribute shall die, * * * not having paid his share, * * * his estate shall be liable for * * * the same * * * as if it had been his proper debt.

SECTION 33. Section 313.32 is re-enacted.

SECTION 34. Sections 314.01 to 314.04 are repealed and the title to Chapter 314 shall read "ASSIGNMENT OF HOMESTEADS".

SECTION 35. A new section is created to be numbered and to read:

316.47 DEED OF MORTGAGOR'S TITLE. In any case where the court may find, upon application made for the purpose, that it is for the best interest of the estate of the deceased that the property incumbered with mortgage be conveyed to the holder of the mortgage, so as to avoid foreclosure and possible judgment for deficiency, the court may authorize the administrator or executor to make such a deed.

SECTION 36. Section 317.12 is renumbered and amended to read:

(327.24) (6) BOOKS AS EVIDENCE. * * * In case any executor, * * * administrator, *guardian or testamentary trustee* * * * shall * * * die or become mentally incompetent * * * *his* books of accounts shall be presumptive evidence of the receipts and disbursements *regardless of the amount* therein entered and the services therein charged.

SECTION 37. Subsection (2) of 318.01, 318.03 and (6) of 318.06 are consolidated and revised to read:

318.03 ESCHEATS AND UNCLAIMED LEGACIES AND SHARES. (1) HEIRS UNKNOWN. In case there shall be no known heir of the decedent, the residue of the estate, not disposed of by will, shall escheat and shall be ordered paid into the state school fund.

(2) UNCLAIMED LEGACIES AND SHARES. If any legacy or any share of intestate property shall be refused or shall not be claimed by the legatee or heir within two years after the entry of the final judgment by the county court, the executor or administrator shall convert the same into money and pay it to the state treasurer for the state school fund, and it shall be part of said fund until and unless refunded as in this section provided.

(3) APPLICATION FOR REFUND. The moneys received by the state treasurer pursuant to subsection (2) shall be paid to the owner on proof of his right thereto. The claimant may, within five years after the date of publication by the treasurer of notice of receipt thereof as provided by section 14.42 (15), file in the county court in which the estate was settled, a petition alleging the basis

of his claim to the legacy or share. The court shall order a hearing upon the petition; and twenty days' notice thereof shall be given by the claimant to the attorney-general, who shall appear for the state at the hearing. If the claim is established it shall be allowed without interest; and the court shall so certify to the secretary of state, who shall audit and the state treasurer shall pay the same.

SECTION 38. Section 318.05 is repealed.

SECTION 39. Section 318.08 is revised to read:

318.08 REMEDY OF CREDITORS OF NONRESIDENT HEIRS AND LEGATEES; SERVICE OF CITATION. (1) Whenever any legacy or distributive share of any estate belongs to any debtor who has absconded from or is a nonresident of this state, any of his creditors may petition to intervene in the probate proceedings to compel the application of said legacy or distributive share to the payment of his debt, and whenever it shall be necessary a citation to such debtor to appear at a time certain may be served by publication.

(2) Such citation shall be served in the manner provided for substituted service of summons in circuit courts.

(3) Upon due proof of service of, and at the time fixed in said citation, said court shall proceed to consider such petition, and take proof, and grant such relief thereunder as shall be just, and any order, judgment or determination made in said proceedings shall be binding upon said debtor. If the claim is not a judgment and any issue shall arise in said proceedings relating to said debt, the court may stay such proceedings pending the final determination of said issue. The court may at any time require the petitioner to give a bond in such sum and with such sureties for costs and damages as it may deem proper.

SECTION 40. Section 318.09 is repealed.

SECTION 41. Section 318.10 is amended to read:

318.10 PARTITION OF RESIDUE, WHEN NECESSARY, JUDGMENT. (1) When the * * * court shall * * * assign * * * the residue of any *personal* estate to two or more persons, * * * it shall not be necessary to make partition or distribution of such estate; * * * but when *partition* is requested by any party in interest prior to * * * final judgment, * * * and it appearing to the satisfaction of the court that *partition can be made without damage or prejudice to the owners*, partition * * * may be made by three disinterested persons to be appointed by the * * * court. * * * Said

court shall issue * * * *its* warrant to them * * * and they shall be sworn to a faithful discharge of their duties.

(2) Such partition, * * * when * * * completed * * * *and approved*, shall be incorporated in and made a part of the final judgment. * * *

SECTION 42. Section 318.11 is repealed.

SECTION 43. Section 318.12 is amended to read:

318.12 NOTICE OF APPOINTMENT OF COMMISSIONERS. * * * Notice of the time and place of hearing the application for the appointment of * * * commissioners shall be given *personally* to all persons interested who reside in this state or to their guardians, and to the agents, attorneys or guardians * * * in this state, of such as reside out of the state either *personally or by mail*, at least ten days before the day fixed for the hearing. * * *

SECTION 44. Section 318.13 is repealed.

SECTION 45. Section 318.14 is repealed.

SECTION 46. Section 318.15 is repealed.

SECTION 47. Section 318.16 is repealed.

SECTION 48. Section 318.17 is repealed.

SECTION 49. Section 318.18 is repealed.

SECTION 50. Section 318.19 is repealed.

SECTION 51. Section 318.20 is repealed.

SECTION 52. Section 318.21 is repealed.

SECTION 53. Section 318.22 is repealed.

SECTION 54. Section 318.23 is repealed.

SECTION 55. Section 318.24 is amended to read:

318.24 ADVANCEMENTS PART OF ESTATE. Any estate, real or personal, that may have been given by * * * *an* intestate * * * as an advancement to any * * * lineal descendant shall be considered as a part of the estate of the intestate, * * * *upon* the division and distribution thereof among his * * * *heirs*, and shall be taken by such * * * descendant toward his share of the estate. * * *

SECTION 56. Section 318.25 is amended to read:

318.25 ADVANCEMENT, HOW APPLIED. If the * * * advancement shall exceed the share of the heir * * * he shall be excluded from any further portion * * * of the estate, but he shall not be required to refund any part of such advancement. * * *

SECTION 57. Section 318.26 is re-enacted.

SECTION 58. Section 318.27 is re-enacted.

SECTION 59. Section 318.28 is re-enacted.

SECTION 60. Section 318.29 is revised to read:

318.29 ADVANCEMENTS, QUESTIONS FOR COURT.

All questions as to advancements shall be determined by the county court, and shall be specified in the judgment assigning the estate.

SECTION 61. Section 319.04 is amended to read:

319.04 TESTAMENTARY GUARDIAN; BOND, DUTIES, LIABILITIES. *Subject to the provisions of section 319.03, the * * * parents of every legitimate minor child * * * and * * * the mother of every * * * illegitimate minor child, may, by * * * will, * * * appoint a guardian * * * of such child, whether born at the time of making * * * the will or afterwards. * * * Every * * * testamentary guardian shall give bond * * * in like manner and with like conditions as * * * required of a guardian appointed by the * * * court, and * * * shall have the same power and perform the same duties and be subject to the same liabilities, * * * but when * * * such will shall * * * so direct * * * no bond need be taken unless the * * * court shall be of opinion that * * * it is required. * * **

SECTION 62. Section 319.10 is amended to read:

319.10 MARRIAGE OF WARD. The marriage of a * * * ward shall terminate the right * * * of the guardian * * * to the custody and education of the ward; * * * and the county court may, * * * upon the application of such ward, discharge such guardian and * * * order him to account to said court and * * * deliver to his * * * ward all the * * * property in his hands or due from him on such settlement. * * * No * * * order shall be made * * * which is contrary to or inconsistent with the * * * will * * * under which such estate is held for or comes to such minor; * * * but the court may, * * * upon such application, discharge such guardian and appoint another in his place. * * *

SECTION 63. Section 319.14 is amended to read:

319.14 INCOME OF MINOR USED FOR EDUCATION. If any minor * * * has property * * * which is sufficient for his maintenance and education in a manner more expensive than his * * * parents can reasonably afford, regard being had to the situation and circumstances of the * * * family, * * * the expenses of * * * his education and maintenance

* * * may be defrayed out of * * * his property in whole or in part, as shall be judged reasonable and be directed by the county court. * * *

SECTION 64. Section 319.17 is amended to read:

319.17 HOW APPOINTED. If, after a * * * hearing and examination upon such petition, it shall appear * * * that the person in question is incapable of taking care of himself and managing his property * * * *the* court shall appoint a guardian of his person *or* * * * estate, *or both*. * * *

SECTION 65. Section 319.18 is revised to read:

319.18 GUARDIAN FOR SPENDTHRIFTS; WARD SENT TO INEBRIATE ASYLUM. (1) Any friend or relative of a spendthrift, or any officer of the town, village or city of which such person is a resident, may present a verified petition to the court, setting forth the facts and circumstances of the case and praying to have a guardian appointed for such person.

(2) Upon filing such petition the court shall cause ten days' notice to be given to such supposed spendthrift of the time and place fixed for hearing the case. If, after a hearing, it shall appear proper, the court shall appoint a guardian of his person or estate, or of both. The court may authorize or direct the guardian to commit such person to any inebriate asylum, in or out of this state, to be designated by such court, by order, for a term not exceeding two years, but he may be discharged at any time by order of the court.

SECTION 66. Section 319.19 is amended to read:

319.19 LIS PENDENS, VOID CONTRACTS. * * * *A copy of the petition and order for hearing provided for in sections 319.16 and 319.18 * * * may be * * * filed* in the office of the register of deeds for the county; and if a guardian shall be appointed upon such application all contracts, except for necessities at reasonable prices, and all gifts, sales and transfers of * * * *property* made by such insane or incompetent person or spendthrift, after the filing of a copy of such petition and order as aforesaid, * * * shall be void.

SECTION 67. Section 319.20 is amended to read:

319.20 GUARDIAN FOR INSANE PATIENT. * * * When * * * a patient in any hospital for the insane * * * shall appear to 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 up-

on 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 * * * appoint * * * such guardian * * * in the * * * manner * * * provided for the appointment of guardians of * * * minors *under fourteen years of age.* * * *

* * *

SECTION 68. Section 319.21 is amended to read:

319.21 GUARDIAN FOR NONRESIDENT. When any person * * * *subject* to * * * guardianship * * * shall reside out of this state and shall have * * * *property* therein, any friend of such person or any one interested in his estate, in expectancy or otherwise, may apply to the county court of any county in which there * * * *is* any * * * *property* of such * * * person, and after notice given to all persons interested, in such manner as the court shall order, and after a * * * hearing * * * *the* court may appoint a guardian for such absent person. * * * The guardianship * * * first * * * granted of any person residing out of this state shall extend to all * * * *his property in this state* and shall exclude the jurisdiction of * * * *every other* county court. * * *

SECTION 69. Section 319.22 is amended to read:

319.22 EXPENSE OF EXAMINATION. When a guardian shall be appointed for * * * *a person (other than a minor)* the court shall make an allowance to be paid by the guardian out of the estate of his ward for all reasonable expenses incurred by the ward in * * * *opposing* the petition. * * *

SECTION 70. Section 319.23 is amended to read:

319.23 CONFINEMENT FOR BAD BEHAVIOR. Whenever a guardian or friend of any insane, incompetent or imbecile person * * * shall present to the county court of the county wherein such person resides his verified petition setting forth that such person is addicted to * * * *lewd, * * * or indecent * * * behavior*, or that any person of the *opposite* sex * * * is accustomed to visit * * * *or is visited by such person* for immoral purposes, and praying that he *or she* be confined in some suitable place, * * * *the* court shall make an order appointing a time and place for hearing such petition, * * * *and* commanding the sheriff * * * to * * * bring * * * *such*

person before * * * *the court* at the time and place appointed. Before hearing such petition * * * *the court* shall appoint a disinterested attorney * * * guardian ad litem to represent such person. * * *

SECTION 71. Section 319.24 is amended to read:

319.24 COMMITMENT OF INSANE, EXPENSE. If * * * *upon the hearing* * * * it shall appear that * * * the welfare of such insane, incompetent or imbecile person requires that he or she be kept in close custody the court shall make * * * *an order committing such person to the county asylum* for the * * * insane, * * * and in case there is no such asylum in such county, then * * * *to the county asylum for the chronic insane, * * * which is designated by the state board of control.* He shall be subject to the direction of the court and shall receive such care, attention and treatment as the court shall deem necessary. All expenses incurred in * * * confining, taking care of and maintaining such person, when * * * certified * * * by the county judge, shall be paid out of his estate. * * * But in case * * * *his estate is not* sufficient for such purpose * * * such expenses shall be charged and adjusted as provided in section 51.08.

SECTION 72. Subsection (1) of section 319.25 is amended to read:

319.25 GUARDIAN'S DUTIES AS TO DEBTS; APPEAR FOR WARD. (1) Every *general guardian* * * * shall pay the just debts of the ward out of his personal estate and the income of his real estate, if sufficient, and if not, then out of his real estate upon selling the same as provided by law. * * * Proceedings for the presentation, allowance and adjustment of claims and demands against persons under guardianship * * * *may* be had and made as provided in * * * *section 319.41.* Such guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts *and claims for damages* due to him, or may, with the approbation of the county court, compound and discharge the same, * * * and shall appear for and represent his ward in all actions and proceedings except where another person is appointed for that purpose.

SECTION 73. Section 319.26 is amended to read:

319.26 MANAGEMENT OF WARD'S ESTATE; SALE; SUPPORT OF WARD. Every guardian shall manage the estate of his ward frugally and without waste and apply the personal prop-

erty or the income therefrom or from the real estate, as far as may be necessary for the suitable education, maintenance and support of the ward and of his family, if there be any legally dependent upon him for support, and * * * for the care and * * * protection of * * * *his* real estate. * * * If the personal property and income from the real estate shall be insufficient for those purposes, the guardian may * * * sell *or mortgage* the real estate, upon obtaining a license therefor, as provided by * * * *chapter 296*, and shall apply the proceeds * * * as far as may be necessary for such maintenance and support. * * *

SECTION 74. Section 319.29 is amended to read:

319.29 SALE OF PERSONAL PROPERTY; INVESTMENT OF FUNDS. The * * * court, * * * on the application of a guardian or of any person interested in the estate of any ward, after such notice to all persons interested therein as the court shall direct, may authorize or require the guardian to sell * * * any * * * personal * * * *property* held by him as guardian, and to invest the proceeds of such sale and * * * any other moneys in his hands in real estate or in any other manner that shall be most for the interest of all concerned therein; and the * * * court may make such further orders * * * as the case may require for managing, investing and disposing of the * * * *personal property* in the hands of the guardian.

SECTION 75. Section 319.32 is amended to read:

319.32 EFFECT OF WARD'S DEATH. In case of the death of * * * *a ward* the power of the guardian shall cease * * * and he shall settle his accounts with the court. * * *

SECTION 76. Section 319.35 is amended to read:

319.35 LAND OF WARD, LEASE EASEMENT. The guardian * * * *may* make leases of and grant easements upon the lands of * * * *his ward* in the same manner, for the same purpose, and with the same effect, as * * * *the ward* might do if of full age and under no legal disability. But * * * *such* lease * * * or easement * * * shall terminate with the guardianship or disability of the ward *unless it was authorized as provided in chapter 296*.

SECTION 77. Section 319.36 is repealed.

SECTION 78. Section 319.38 is repealed.

SECTION 78a. Section 319.39 is repealed.

SECTION 79. Section 321.02 is amended to read:

321.02 ACTIONS ON BONDS. (1) WHO MAY BRING. Actions may be brought on the bonds of executors, administrators, *guardians* and testamentary trustees, * * * *with* permission of the county court, * * *

(a) By any creditor when the amount due him has been ascertained and ordered paid by such court, if the executor, administrator, *guardian* or trustee shall neglect to pay the same when demanded;

(b) By any legatee * * * or *distributee* * * * to recover his share of the personal estate, after the * * * court has * * * declared the amount due to him, *and ordered it paid or delivered* if the executor, administrator or trustee shall fail to pay *or deliver* the same when demanded; *and*

(c) By any creditor, * * * *heir*, legatee or other person aggrieved by any maladministration, when it shall appear that the executor, administrator, *guardian* or trustee has failed to perform his duty in any other particular.

(2) WHEN ORDERED. * * * Whenever an executor, administrator, *guardian* or trustee shall refuse or neglect to perform any order or judgment * * * for rendering an account, or upon a final settlement, or for the payment of debts, legacies or distributive shares, the judge of such court shall cause the bond of such executor, administrator, *guardian* or trustee to be prosecuted for the benefit of all concerned, and the money collected thereon shall be applied in satisfaction of such order or judgment in the same manner as such money ought to have been applied by such executor, administrator, *guardian* or trustee.

* * *

SECTION 80. Section 319.07 is renumbered subsections (3) and (4) of 321.02 and amended to read:

(321.02) (3) * * * LIMITATION AS TO LIABILITY OF SURETY ON GUARDIAN'S BOND. * * * No action shall be maintained against the sureties on any bond given by a guardian unless it be commenced within four years from the time when the guardian shall have been discharged; provided, that in case an accounting is had, the time within which said action may be commenced shall not terminate in any event until one year after the final determination of such accounting proceedings. But if, at the time of such discharge, the person entitled to bring such action shall be under any legal disability to sue, the action may be commenced at any time within four years after such disability shall be removed.

(4) ACTION BY WARD; ACCOUNTING, WHEN UNNECESSARY. Any action upon such bond by or in behalf of one ward shall not bar or in any way affect the right of any other ward * * * interested to * * * maintain an action thereon, but separate actions or a joint action may be maintained thereon by or in behalf of any or all persons interested. Nor shall any such action impair any other remedy of the ward. No accounting * * * shall be necessary before bringing an action against sureties when the guardian shall die or remove out of the * * * *state* or shall * * * become incompetent.

SECTION 81. County Court Rule XXIII is renumbered and amended to read:

(321.02) (5) APPLICATION TO SUE. * * * *An* application * * * for permission * * * to bring *an* action * * * on the bond * * * of *an* executor, * * * administrator, * * * guardian * * * or testamentary trustee * * * shall * * * *state* the grounds of * * * *the* proposed action, * * * and be accompanied with the certificate of some reputable attorney that he has examined the facts of the case, and, in his opinion, a valid and meritorious cause of action exists in favor of * * * *the* applicant.

SECTION 82. Section 324.01 is amended to read:

324.01 APPEALS FROM COUNTY COURT; GUARDIAN AD LITEM. (1) In counties having a population of fifteen thousand or less * * * any executor, administrator, guardian, trustee or any person aggrieved by any order *or* judgment * * * 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. * * *

(2) In counties having a population of over fifteen thousand * * * any executor, administrator, guardian, trustee or any person aggrieved by any order *or* judgment * * * of the county court * * * *may* appeal * * * *therefrom* to the supreme court, *and the provisions of chapter 274 shall apply.*

(3) But *there is* no appeal * * * from the action of any county court * * * on any claim unless * * * *the* part thereof in dispute * * * *amounts* to at least twenty dollars. * * * The appeal of any * * * *minor* from an order of adoption may be taken by any person on his behalf. In an * * * appeal from an order of adoption, *if the child is a minor*, the state

board of control is * * * a party and shall be served with notice of appeal. * * * In all other cases the appeal of any minor or incompetent person may be taken * * * and prosecuted * * * by his general guardian * * * or by a guardian ad litem. * * *

SECTION 83. Section 324.02 is amended to read:

324.02 BOND ON APPEAL TO CIRCUIT COURT. * * * *In appeals to the circuit court the appellant*, other than an executor, administrator, guardian, trustee or alleged * * * incompetent person, shall, * * * before his appeal shall be effectual, * * * file with the county court a * * * bond in such sum and with such surety as the judge thereof shall approve, to the effect that he will diligently prosecute his appeal to effect and pay all damages and costs which may be awarded against him on such appeal; but no bond shall be required of nor costs awarded against any child, or person acting in behalf of a child, on an appeal from an order of adoption.

SECTION 84. Section 324.03 is amended to read:

324.03 NOTICE OF APPEAL TO CIRCUIT COURT; TRANSMISSION OF PAPERS; TRIAL. (1) * * * The appellant shall give notice of the appeal to * * * *the* adverse party, * * * 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 * * * *perfected*, file in the circuit court the record and proceedings appealed from, together with the notice of appeal and * * * *bond* and proof of service of * * * notice of appeal on the adverse party. * * *

(2) When such record, notice of appeal, * * * *bond* and * * * *proof of service* * * * *are* filed in the circuit court the appeal may be brought to trial *and tried* in the same manner as actions originally brought there; * * * and such court may direct an issue to be made up between the parties. * * *

SECTION 85. Section 324.04 is revised to read:

324.04 REVIEW BY SUPREME COURT. (1) The time within which a writ of error may be issued or an appeal taken to obtain a review by the supreme court of any order or judgment of the county court is limited to sixty days from the date of the entry thereof, except as provided in section 324.05.

(2) On appeals from county courts to the supreme court no bond shall be required or costs awarded against any child or person acting in behalf of the child on an appeal from an order of

adoption; and no bond shall be required of any executor, administrator, guardian, trustee or alleged insane or incompetent person.

(3) A bill of exceptions may be settled, served and filed in the manner and under the restrictions required in the circuit court.

SECTION 86. Section 324.05 is revised to read:

324.05 EXTENSION OF TIME FOR APPEAL; RETRIAL. If any person aggrieved by any act of the county court shall, from any cause without fault on his part, omit to take his appeal within the time allowed, the court may, upon his petition and notice to the adverse party, and upon such terms and within such time as it shall deem reasonable, but not later than one year after the act complained of, allow an appeal, if justice appears to require it, with the same effect as though done seasonably; or the court may reopen the case and grant a retrial, but the order therefor must be made within one year after the act complained of.

SECTION 87. Section 324.06 is amended to read:

324.06 PROCEEDINGS STAYED. After * * * notice * * * of appeal to the circuit court is filed in the county * * * court all further proceedings in pursuance of the act appealed from shall cease until the appeal shall be determined.

SECTION 88. Section 324.07 is amended to read:

324.07 JUDGMENT ON APPEAL TO CIRCUIT COURT.
* * * The circuit court may reverse or affirm in whole or in part the act of the county court appealed from, and may render a proper * * * judgment * * * or made such order therein as the county court ought to have made, and may remit the case * * * for further proceeding in pursuance of the opinion of the circuit court, or may make any order, or take any action therein, to * * * enforce its own judgment, as * * * it may deem best. * * * If the case is appealed to the supreme court * * * it may remit the same to the county court, * * * when no further proceedings are required in the circuit court.
* * *

* * *

SECTION 89. Section 324.08 is amended to read:

324.08 DISMISSAL OF APPEAL. If the appellant * * * fails to prosecute his appeal to the circuit court with reasonable diligence the * * * court, on * * * motion, * * * shall dismiss the appeal or affirm the judgment or * * * order appealed from, as such court shall deem just. * * *

SECTION 90. Section 324.09 is repealed.

SECTION 91. Section 324.10 is repealed.

SECTION 92. Section 324.11 is amended to read:

324.11 COSTS, WHEN ALLOWED; JUDGMENT FOR. *Costs may be allowed in all appealable contested matters * * * in county court, excepting in jury trials, * * * to the prevailing party, * * * to be paid by the * * * losing party or * * * out of the estate * * * as justice * * * may require; and when costs are allowed they shall be taxed by the judge at the * * * rates allowed * * * in * * * circuit court and upon like notice; but the attorney fees shall * * * not exceed twenty-five dollars, and shall be allowed only when an attorney * * * appears for the prevailing party. When * * * costs are allowed, the court shall * * * render judgment therefor, * * * stating in whose favor and against whom the same is rendered and the amount thereof; and a list of the items making such amount shall be filed with the papers in the case.*

SECTION 93. Section 324.12 is amended to read:

324.12 COSTS IN WILL CONTESTS. * * * *Costs shall not be awarded to an unsuccessful contestant of * * * a will unless he is a special guardian * * * appointed by the county or circuit judge, or is named as an executor in a paper propounded by him in good faith as the last will of the decedent.*

SECTION 94. Section 324.13 is amended to read:

324.13 ATTORNEY'S FEES, WILL CONTESTS. (1) * * * *In a contest * * * upon * * * the probate of any will, or in relation to any trust created therein, or for the allowance * * * of any account * * * required * * * of an executor or trustee, * * * the court may, if * * * the contest * * * is necessary or meritorious, allow to the proponent of such will * * * and to the successful contestant in such proceedings a reasonable attorney's fee to be paid out of the estate of the decedent; and * * * the court may * * * allow to the proponent if successful on his appeal or to such contestant if finally successful on appeal a reasonable attorney's fee for services on such appeal to be paid out of said estate.*

(2) *A guardian ad litem * * * for * * * a necessary party to a proceeding to probate a will, or in a proceeding * * * to construe a will, or in a proceeding in the settlement of an estate, may be allowed compensation * * * and * * * his necessary expenditures, * * * to be fixed by the court, * * * and paid out of the * * * estate or property in controversy,*

if the * * * party has no available property out of which such payment can be directed by the court.

SECTION 95. Section 324.14 is amended to read:

324.14 SECURITY AND JUDGMENT FOR COSTS. In all cases mentioned in section * * * 324.11, * * * the county court may * * * require the claimant or contestant * * * to give * * * a bond in such sum and with such surety as shall be approved by the * * * court, to the effect that * * * he will pay all costs that may be awarded by such court in such proceeding against him. * * * A judgment for costs shall be against the claimant or contestant * * * and the surety.
* * *

SECTION 96. Section 324.15 is revised to read:

324.15 JUDGMENT, HOW ENFORCED; EXECUTION; LIEN. (1) All money judgments in favor of an estate shall have the same force and effect as judgments in the circuit court, and may be enforced by execution. The pertinent provisions of chapter 272, relating to executions, shall apply to such executions except as otherwise provided in this section.

(2) Any such judgment for more than ten dollars may be docketed in the circuit court as circuit court judgments are docketed, upon filing therein a certified transcript of such judgment. Such judgment when so docketed shall be a lien upon the real estate of the debtor in the same manner and for the same length of time as judgments rendered and docketed in the circuit court. When execution shall issue from the county court upon such judgment, in case the same has been docketed as aforesaid, it shall recite the time of docketing.

SECTION 97. Section 324.16 is amended to read:

324.16 WRITS OF ERROR. Writs of error to obtain a review by the supreme court of proceedings of the county court, in counties having a population of over fifteen thousand, shall be allowed, * * * and taken in * * * accordance with the provisions of chapter 274, relating to writs of error. * * *

SECTION 98. Section 324.17 is amended to read:

324.17 JURY TRIALS, PRACTICE. (1) *This section applies only to counties which have over fifteen thousand population.* Jury trials may be * * * had in county court * * * in all appealable cases in which a jury trial may be had * * * of similar * * * issues in circuit courts.

(2) In all cases provided in subsection (1), any person having the right of appeal from the * * * determination * * * of the court, may * * * *file* with the court, within ten days after notice * * * that the matter is to be contested, a written demand for a jury trial, and * * * *deposit* ten dollars * * * with the county * * * *treasurer, take his receipt therefor and file it with the court.* If such issue * * * is transferred for trial to the circuit court, as provided in this section, the judge of the county court may * * * order * * * said * * * *deposit* refunded to the * * * *depositor*, and the county treasurer upon presentation of such order shall refund said amount.

(3) Upon * * * filing * * * such demand and * * * *receipt*, the court may order an issue to be framed by the parties within a * * * fixed *time*, * * * and the matter shall be placed upon the calendar * * * *for* the next jury term of the * * * court. * * * The county court may * * * transfer the matter or cause, and the record thereof, to the circuit court of such county * * * *for trial.*

(4) * * * Three jury terms of the county court *shall be held* * * * each year * * * (*if there are jury cases ready for trial at such times*), * * * commencing *respectively* on the second Tuesday in *January*, * * * *April* and * * * *October.*

(5) Jurors and trial juries shall be drawn in the manner provided by sections 255.03 to 255.09, except as otherwise provided herein, and trials by jury shall be in the manner provided by sections 270.15 to 270.31; * * * *but* in * * * county courts having civil jurisdiction jurors and * * * juries may be drawn in probate matters and jury terms *had* in the * * * manner and according to the * * * regulations * * * required * * * in civil cases in such courts.

(6) * * * Not more than ten days prior to * * * *each* jury term * * * the clerk shall prepare, in the order of their date of issue, a list of cases in which a trial by jury shall have been demanded, and such list shall constitute the jury calendar for such term of the county court. * * * Unless the court shall otherwise order, every * * * case on such * * * calendar which shall not be * * * disposed of at said term shall stand continued to the next * * * jury term, * * * and be placed on the jury calendar for such term. * * * If the party who * * * demanded the jury trial shall ask to have such action

continued * * * *for* the * * * term, * * * after the commencement of the term * * * *at* which such action * * * *is* for trial, such continuance shall be granted only upon payment of ten dollars motion fees unless such party shall waive a jury trial in such proceeding. * * * In case a continuance in any action upon the jury calendar is asked by any other party, the court may grant such continuance and require payment of ten dollars motion fees in its discretion.

(7) In all jury cases costs shall be allowed as a matter of course to the prevailing party, the items and taxation of which shall be * * * *as* in circuit court.

(8) * * * *Any party to the controversy may* within ten days after notice * * * that a jury trial has been demanded, * * * have the matter * * * transferred to the circuit court of the * * * county * * * *for trial*. Upon the filing of such demand *for transfer*, the judge of the county court shall immediately cause the record and proceedings in the matter to be certified to the * * * circuit court, * * * *and the same shall there be tried and determined as a circuit court action*. And in case the matter is one where the county court has the right to fix the fees or compensation of the attorneys, executors, administrators or guardians, the * * * circuit court may * * * determine such fees or compensation. The circuit court may render such judgment as may be proper, or make such order therein as the county court ought to have made and may remit the case to the county court for further proceedings, * * * or * * * make any order or take any action therein * * * *to enforce its own judgment as the circuit court may deem best*. * * * The county court, after such cause is remitted, shall proceed therein in accordance with the determination of the circuit court. * * *

SECTION 99. Section 324.18 is renumbered (4) of 324.04 and amended to read:

(324.04) (4) * * * In all matters not otherwise provided for *in this chapter* relating to appeals from county courts to the supreme court, and jury trials in county courts, the law and rules of practice relating to circuit courts shall govern. * * *

SECTION 100. Sections 324.31 to 324.34 are consolidated, renumbered and revised to read:

253.33 COUNTY COURT REPORTER. (1) APPLICATION OF THIS SECTION. This section does not apply to any county court

provided with a phonographic reporter under any law existing on May 4, 1903.

(2) APPOINTMENT, OATH, DUTIES. The judge of the county court may appoint, and remove at pleasure, a reporter to take the testimony in contested matters and may require him to file a transcript of such testimony. Every person so appointed is an officer of the court, and shall discharge such duties as the court or judge thereof shall require, and before entering upon his duties shall file his official oath in such court.

(3) COMPENSATION. Such reporter shall be paid by the county for his services, such sum, not exceeding ten dollars for each day, and five dollars for each half day as the board shall allow. The county judge shall certify from time to time to the county board the number of days, and the number of half days occupied by such reporter in the performance of his duties.

(4) TRANSCRIPT OF TESTIMONY. Such reporter shall furnish to any party a transcript of the testimony taken by him in any matter or proceeding mentioned in this section upon being paid therefor at the rate of five cents per folio.

SECTION 101. All sections of TITLE XXIX of the statutes which are not mentioned in this act are not affected by it.

SECTION 102. This act shall take effect and be in force on and after January 1, 1934.

Approved June 1, 1933.

No. 213, A.]

[Published June 3, 1933.

CHAPTER 191.

AN ACT to amend subsection (5) of section 66.05 of the statutes, relating to the wrecking and removing of old and dilapidated buildings.

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

SECTION 1. Subsection (5) of section 66.05 of the statutes is amended to read: (66.05) (5) (a) *The governing body or the inspector of buildings or other designated officer in every * * * municipality may order the owner of premises upon which is located any building or part thereof within such * * * municipality which in * * * his or their judgment * * * is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation, occupancy*