shall report such fact to the chairman of board of health and to the board of county commissioners, and shall in such report recommend the course of action advisable to be adopted by the board of county commissioners in relation thereto, and in accoradnce with the provisions of this act; and such board of county commissioners shall at the next meeting of such board consider such report and recommendafion and act on the same, and such board of county commissioners is authorized and empowered to audit and allow bills for services rendered in carrying into effect the action of such board in relation thereto.

§ 2. The boards of county commissioners of the several counties of this state may appropriate money out of the general revenue fund of the county for the purpose of paying for the services of visiting nurses or other necessary medical attention or advice in preventing the spread of tuberculosis in such county, or for the purpose of disinfecting any building, room, residence, hotel, or other place in such county infected with tuberculosis.

§ 3. The board of county commissioners shall have authority to co-operate with neighboring counties to establish homes or hospitals for incurable tuberculosis patients.

Approved February 25, 1913.

COUNTY COURT

CHAPTER 125.

[S. B. No. 170—Hookway.]

PROCEDURE IN ABOLITION OF INCREASED JURISDICTION OF COUNTY COURTS.

AN ACT to Amend and Re-enact Section 3 of Chapter 78 of the Session Laws of North Dakota for the year 1909. Entitled "An Act to Amend Section 8288 of the Revised Codes of 1905, of the State of North Dakota, Relating to the Increased Jurisdiction of the County Courts, and Providing for Abolishing the Same."

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. That Section 3 of Chapter 78 of the Session Laws of North Dakota for the year 1909 be amended and re-enacted to read as follows:

§ 3. DUTY OF DISTRICT COURT.] Whenever there shall

have been a reduction in the powers of the county court of increased jurisdiction, any cases left untried, or any unfinished business upon the calendar of the court and not properly triable in the Probate court, shall be continued over and placed upon the calendar of the district court of the judicial district in which said county is situated, without prejudice thereto, and such transfer shall in all things operate the same as if said causes had been originally filed in said district court, and the court on its own motion shall direct and authorize said actions to be entiled in the district court.

In any county wherein there shall have been such reduction in the powers of the county court of increased jurisdiction, the clerk of the district court of such county shall have the care and custody of all the records of the said county court, which relates to actions and proceedings within its civil and criminal jurisdiction. And any judgment of which has been rendered in said county court shall, on demand of a party in whose favor it has been rendered, and upon the payment of one dollar, be by the clerk of the district court of the said county entered in the judgment book and upon the judgment docket, and from the time of docketing thereof it becomes a judgment in the district court for the purpose of execution, and a lien upon real property owned by the debtor to the same extent as judgments originally entered in the district courts.

§ 2. EMERGENCY.] Whereas, an emergency exists in that there is no manner provided by law for the transferring of said cases and judgments to the district court, this act shall be in force from and after its passage and approval.

Approved March 3, 1913.

CHAPTER 126.

[H. B. No. 314—O'Connor.]

DEEDS, JUDGMENTS, DECREES.

AN ACT to Legalize Deeds, Judgments and Decrees.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. DEEDS, JUDGMENTS DECREES LEGALIZED.] Deeds, judgments or decrees affecting the title to real property in this state, in good faith taken, made or rendered in favor of the estate of a person deceased prior to the first day of January, 1913, shall be construed and held to be made in favor of, and be in favor of, the executor or administrator (as the case may be) of the estate of such person deceased,

subject, however, to administration of such estate in the probate court of this state which shall be entitled to jurisdiction, and the same are hereby declared to be legal and valid for all purposes.

Approved March 15, 1913.

CHAPTER 127.

[H. B. No. 448—Twichell.]

COUNTY COURT FEES.

AN ACT to Amend Section 2589 of the Revised Codes of 1905, as Amended by Chapter 119 of the Session Laws of 1909, Relating to Fees in County Court.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 2589 of the Revised Codes of 1905 as Amended by Chapter 119 of the Session Laws of 1909 is hereby amended to read as follows:

§ 2589. COUNTY TO BE RE-IMBURSED. HOW.] For the purpose of re-imbursing the county for the salaries provided in the foregoing Sections to be paid to judges of county courts each petitioner for letters testamentary, or administration or guardianship, before filing the same in the county court, shall pay or cause to be paid into the county treasury for the use and benefit of the county in whose county court proceedings are to be instituted to settle the estate of a deceased person or for the appointment of a guardian the sum of five dollars, and when the value of said estate has been ascertained by the court through the inventory and appraisement or upon hearing of the same, as legally required, within thirty days after the issuance of letters testamentary, administration or guardianship, the judge of said court shall require an additional fee to be paid from said estate into said county treasury of five dollars for each and every one thousand dollars or fraction thereof in excess of the first one thousand dollars in value therein found after deducting the amount of the liens or encumbrances against the property of said decedent, as shown by said inventory and appraisement, and in all cases in addition thereto, all sums necessarily expended in publishing or serving notices required by law.

Approved March 15, 1913.

CHAPTER 128.

[S. B. 100—Hanley.]

DETERMINATION OF HEIRS.

AN ACT to Amend and Re-enact Chapter 121 of the Session Laws of 1911, Providing for the Determination of Heirs and the Share of Such Heirs Respectively in the Claims to Certain Real Estate by Action in the District Court.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Chapter 121 of the Session Laws of 1911 is hereby amended and re-enacted to read as follows:

HEIRS OR DEVISEES OF DECEASED ENTRYMEN, COURT MAY DETERMINE WHO ARE.] When any person holding a homestead or tree claim under the laws of the United States shall have died before patent therefor has been issued, and, by reason of such death, a patent or final certificate shall afterward be granted to "the heirs," or to "the devisees" of such person, the district court of the county in which the lands are situated may, in a civil action brought for that purpose, determine who are such heirs, or devisees, and determine their respective shares in said homestead or tree claim.

§ 2. PROCEDURE.] The provisions of the Code of Civil Procedure of North Dakota relating to the determination of adverse claims to real estate in so far as the same may be applicable shall pertain and govern the procedure in the action provided for in section 1 hereof.

§ 3. EMERGENCY.] Whereas, an emergency exists in this, that there is no law providing for determination of heirs or devisees in cases herein provided for; therefore, this act shall take effect and be in force immediately after its passage and approval.

Approved February 19, 1913.

CHAPTER 129.

[S. B. No. 373—Overson.]

INSANE PERSONS. RELEASED.

AN ACT to Amend and Re-enact Section 1904 of the Revised Codes of North Dakota for 1905.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENMDENT.] That Section 1904 of the Revised Codes of North Dakota for 1905, be amended to read as follows:

§ 1904. PROCEEDINGS FOR RELEASE OF PERSONS ALLEGED NOT TO BE INSANE] On a statement in writing verified by affidavit, addressed to the county judge of the county in which the hospital is situated, or of the county in which any person confined in the hospital has his residence, alleging that such person is not insane and is unjustly deprived of his liberty, such judge shall appoint a commission of not more than three persons in his discretion, to inquire into the merits of the case, one of whom shall be a physician and if two or more are appointed, one shall be an attorney. Without first summoning the person to meet them, they shall proceed to the hospital and have a personal interview with such person so managed as to prevent him if possible, from suspecting its object; and they shall make any inquiries and examiantions they may deem necessary and proper of the officers and records of the hospital, touching the merits of the case. If they shall deem it prudent and advisable they may disclose to the person the object of their visit, and in the presence of such person make further invesitgation of the matter. They shall forthwith report to such county judge the result of their examination and inquiries. Such report shall be accompanied by a statement of the facts and signed by the superintendent. After the receipt of such report, and before finding such patient sane or ordering his discharge, the county judge shall notify by registered letter, the nearest relative or friend of such patient, together with all persons appearing as witnesses at the hearing at which such patient was found to be insane, to appear before him not less than five (5) days after the mailing of such notice, to give testimony respecting the character of insanity of the patient, at and prior to the time such patient was committed, particularly with respect to matters affecting the question of whether the symptoms and actions of such patient at such time disclosed a character of insaintv in which a recurrence would be expected, and which might render the discharge of such patient dangerous to his own or the public safety. If on such report and statement and hearing of the testimony, if any is offered, the county judge shall find the person sane, he shall order his discharge. If he shall find him insane he shall authorize his continued detention. The finding and order of such judge with the report and other papers, shall be filed in his office, and entered on his records and he shall forthwith notify the superintendent of his findings and order and the superintendent shall carry out such order. The commissioners appointed as provided in this section shall be entitled to their necessary expenses and a reasonable compensation to be allowed by such judge and paid by the state out of any funds not otherwise appro-

priated; *provided,* that the applicant shall pay the same if the judge shall find that such application was made without probable grounds, and shall so order.

Approved March 13, 1913.

CHAPTER 130.

[S. B. No. 387—Cashel.]

MORTGAGES.

AN ACT to Amend Section 8164 of the Revised Codes of 1905, Relating to the Approval of Mortgages Executed by an Administrator, Executor or Guardian.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. That Section 8154 of the Revised Codes of 1905 be amended to read as follows:

PETITION MUST SPECIFY.] A petition for the purpose specified in the preceding Section must specify the amount of money necessary to be raised, and the purpose for which the same is required with such further particulars as are required in a petition for the sale of real property. The decree must fix the amount for which the mortgage may be given and the rate of interest that may be paid thereon, and may order the whole or any part of the money so secured to be paid from time out of the income of the mortgaged property. The mortgage or other contract executed by the executor, administrator or guardian in pursuance thereof may be approved upon his report in the same manner as a sale made at public auction.

§ 2. EMERGENCY.] Whereas an emergency exists in that the confirmation of mortgages made by administrators, executors or guardians cannot be made on the first day of the next succeeding term without notice to all parties interested, this act shall be in full force and effect from and after its passage and approval.

Approved March 13, 1913.

CHAPTER 131.

[H. B. No. 358—Divet, Lambert and Buck.]

COURT PRACTICE.

AN ACT Providing the Rules of Practice to Prevail in the District Courts, County Courts of Increased Jurisdiction, before Referees Appointed by Such Courts and in the Supreme Court, and Repealing Sections 7054, 7055, 7056, 7057, 7058, 7059, 7064, 7065, 7067, 7068, 7069, 7204 and all Other Laws in Conflict Herewith.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. In all trials in the district court and county courts of increased jurisdiction, the following matters shall be deemed expected (excepted) to, to-wit: the verdict of the jury; the final decision in an action or proceeding; an interlocutory order or decision finally determining the rights of the parties or some of them; an order granting or refusing a new trial; an order sustaining or overruling a demurrer; an order allowing or refusing to allow an amendment to a pleading; an order striking out a pleading or portion thereof; an order refusing a continuance, or an order made upon ex parte application, whether such orders be formally reduced to writing or announced orally and entered on the minutes of the court; all rulings of the court envoked by counsel and all remarks of the court made during the trial and all orders or decisions made in the absence of a party, and, they may be reviewed both as to questions of law and the sufficiency of the evidence to sustain them, upon motion for a new trial or upon appeal, as fully as if exception thereto had been expressly taken.

§ 2. To prepare the record in a case for presentation to the trial court on motion for a new trial or judgment non obstante, or to the supreme court on appeal, the moving party shall proceed as follows:

Within thirty days after the notice of the entry of judgment or the order to be reviewed, or such further time as the court shall allow, he must procure a transcript of the evidence and furnish a copy thereof to the adverse party with a notice that at a time not less than fifteen or more than thirty days from the service of such notice, he will present the same to the judge for certification as a correct transcript of the evidence and of all proceedings had and made matter of record by the official stenographer, and that, at the same time, he will ask the judge for a certificate identifying the exhibits and depositions in the case.

If the adverse party questions the correctness of the transcript, he shall, five days before the date set for the certification of such record, or within such further time as the court may allow, furnish to the parties serving the transcript, a notice of the particulars in which he claims it is inaccurate, and this notice shall be presented to the judge with the original notice and transcript at the time set or at a time to which the hearing thereon is extended. The judge shall thereupon make such corrections, if any, as shall be necessary to make the transcript correct and shall then attach thereto his certificate to the effect that it is a correct transcript of the proceedings, which certificate shall also clearly idenify the exhibits and depositions in the case.

If there be any other documents, motions, orders or proceedings had during the progress of the case deemed by either party to be material to the questions to be reviewed, or if there be any proceedings in the case not resting in writing and not included in the stenographer's transcript, deemed by either party material to the questions to be reviewed, such party shall, if he be the moving party, furnish with the copy of the transcript a copy of what he claims such proceedings, documents or orders to have been and the adverse party may proceed to present corrections or additions thereto in the same manner as with the transcript; and, if the party desiring such matters incorporated in the record be not the party furnishing the transcript, he shall present such new matter to the judge in the same manner as corrections or additions to the transcript.

When such transcript and other matters are so certified by the judge and filed, they shall become a part of the judgment roll and shall be known as the statement of case.

§ 3. All acts of and proceedings by a referee, shall be deemed expected (excepted) to in the same manner and under the same conditions as though such proceedings had been before a district or county court, and in all trials before a referee in which such referee shall make findings of fact and conclusions of law, the prevailing party shall serve upon the other a copy of such findings and conclusions, after the same shall have been filed with the clerk of court, with a notice of the time of such filing, and either party may except to any such findings of fact or conclusions of law, by filing a written statement of such exceptions with the clerk within twenty days after the service of such copy of notice; and all such exceptions shall be incorporated in the statement of case which may thereafter be settled. When the findings of fact or conclusions of law of a referee are set aside or modified by the court, the action of the court in that regard shall be deemed excepted to.

§ 4. A party desiring to make a motion for new trial or to appeal from a judgment or other determination of a district court or county court with increased jurisdiction, shall serve with the notice of motion or notice of appeal, a concise statement of the errors of law he complains of, and if he claims the evidence is insufficient to support the verdict or that the evidence is of that character that the verdict should be set aside as a matter of discretion, he shall so specify.

A specification of insufficiency of the evidence to sustain the verdict or decision of the court shall point out wherein the evidence is insufficient and it shall be proper to include in such specification, specifications of facts conclusively established, together with the fact claimed not to be established, in such manner as to intelligently show wherein, on the whole case, the verdict or decision is not supported by the evidence.

§ 5. It shall not be necessary in any case for a person intending to make a motion for a new trial to serve a notice of intention to make such motion.

§ 6. A motion for a new trial upon the ground of newly discovered evidence may be made at any time within six months from the rendition of the verdict or decision. All applications for a new trial, made upon the minutes of the court, must be heard upon eight days' notice, within sixty days after the return of the verdict or decision of the court or such further time as the court, for good cause shown, shall allow; and on such hearing reference may be had to the pleadings, orders of the court, documentary evidence, stenographic report of the testimony, and any and all other matters that might be incorporated in a statement of the case.

Application for a new trial based upon a statement of case or affidavits, or both, except applications upon the ground of newly discovered evidence, must be heard within sixty days after the rendition of the verdict or notice of the decision of the court to be reviewed, or such further time as the court shall allow.

In case a motion for a new trial is made upon the minutes of the court, either party desiring to review the decision of the court upon such motion may proceed in the same manner and within the same time to have settled a statement of case as hereinbefore provided for the settlement of such statement after verdict or decision.

§ 7. The court or judge may, upon good cause shown, in furtherance of justice, extend the time within which any of the acts mentioned in Sections 1, 2, 3, 4, 5 and 6 of this

Act, may be done or may, after the time limited therefor has expired, fix another time within which any of such acts may be done.

§ 8. With all orders granting or refusing a new trial, the judge shall file a written memorandum concisely stating the different grounds on which his ruling is based, and unless the insufficiency or unsatisfactory nature of the evidence is expressly stated in such memorandum, as a reason for granting the new trial, it shall be presumed, on appeal, that it was not on that ground.

§ 9. No motion for a new trial shall be necessary to obtain, on appeal, a review of any questions of law or of the sufficiency of the evidence, unless, before the taking of the appeal, the judge shall notify counsel of the party intending to take the appeal that he desires such motion to be made. Such notice may be given in open court in the presence of such counsel and entered on the minutes of the clerk of court, or given in writing and filed with the clerk as a part of the record.

§ 10. All instructions of the court to the jury, when filed in the office of the clerk of said court, shall be deemed a part of the judgment roll.

§ 11. All instructions given by the court to the jury must be read to them by the court without disclosing whether such instructions were requested or not and must be signed by the judge and delivered to the jury, and shall be taken by the jury in their retirement and be returned with their verdict into court, and, at the close of the trial all instructions, given or refused, must be filed with the clerk, provided that with the consent of both parties entered in the minutes, the court may instruct the jury orally, in which case such oral instructions shall be taken down by the official stenographer and written out at length in typewriting, and the shorthand notes thereof, together with the instructions so typewritten, shall be filed in the office of the clerk of court, and the official stenographer shall receive, for writing out such instructions, the same fees as for making transcripts, and when oral instructions are given the jury shall not take the charge in their retirement unless it is after being transcribed, so ordered.

All instructions to the jury, whether given in writing or orally, shall be deemed excepted to, unless the court before giving them asks for exceptions to be noted, in which case all proceedings connected with the taking of exceptions shall be in the absence of the jury and a reasonably sufficient time shall be allowed counsel to take such exceptions.

§ 12. Judgment upon an issue of law or fact or upon confession or upon failure to answer may be entered by the clerk upon the order of the court or the judge thereof, and on failure of the prevailing party to cause judgment to be entered within thirty days after the trial, the other party may, on ten days' notice, cause the same to be entered without prejudice to any of his rights to attack the same, and it shall be the duty of the clerk of court immediately upon the entering of such judgment to cause the same to be duly docketed as provided by law.

§ 13. In addition to the matters already provided by law to be included in a judgment roll, there shall be included in and the clerk of court shall attach thereto the following papers, to-wit:

The application and notice of motion for a new trial, the specifications of errors of law and of insufficiency of the evidence, the order of the court granting or denying a new trial, together with the memorandum of his reasons and the notice of appeal and undertaking thereon.

§ 14. An appeal from a judgment may be taken within six months after the entry thereof by default or after written notice of the entry thereof, in case the party against whom it is entered has appeared in the action; and from an order within sixty days after written notice of the same shall have been given to the party appealing; *provided*, however, that upon a showing of reasonable diligence by the appellant, the district, or in case of its refusal so to do, the supreme court may order that the record shall remain in the district court for such time as shall be necessary to enable the appellant to properly prepare and have the same certified.

§ 15. Upon any appeal to the supreme court, it shall not be necessary to file or use any printed abstract or statement of the case, but in lieu thereof, the appellant shall cause to be filed in the lower court and returned to the supreme court with the other record, two copies, in addition to the original, of the statement of case as settled and certified.

The briefs of both parties shall be printed, and that of the appellant shall contain in the front thereof, all of the pleadings and the decision complained of, together with the specifications of error or insufficiency of the evidence served with the notice of motion for a new trial or notice or appeal. They shall also contain a concise statement of the history of the litigation, a concise statement of the propositions, of the law to be argued and the manner in which they arise on the record, the argument in support of the propositions, citation of authorities and such extracts from the rec-

ord as counsel shall deem necessary to a full understanding of the questions discussed. The briefs shall refer to the pages of the statement of case and in an intelligent manner to the exhibits, papers and other matters making up the original record. Except in regard to matters herein particularly provided, the brief shall be printed and prepared to conform to the rules of the supreme court as may be promulgated from time to time, and such number of copies thereof shall be filed as may be provided by the rules of said court.

Provided, however, upon appeal from a judgment or order in an action for the recovery of money only or of specific real or personal property, in which action the amount in controversy, exclusive of costs, does not exceed three hundred dollars ($300.00), the brief may be typewritten and need not be printed, and only five copies thereof need be filed in the supreme court; and, if either party in cases in which printed briefs are not required shall file such printed briefs, he shall recover not exceeding ten dollars ($10.00), for the printing thereof in case he is awarded judgment for costs on appeal.

§ 16. Upon request of any party the official stenographer of the district or county court shall, at the time of making a transcript of the proceedings, make four additional copies thereof, and for the making of said four copies, such stenographer shall be entitled to charge, in addition to his fee for the making of the original transcript, ten cents ($0.10) per folio of one hundred words.

§ 17. REPEAL.] Sections 7054, 7055, 7056, 7057, 7058, 7059, 7064, 7065, 7067, 7068, 7069 and 7204 of the Revised Codes of 1905, and all other sections or parts of sections of the codes of this state, and all Acts or parts of Acts of the legislative assembly of this state in conflict herewith are expressly repealed.

§ 18. The provisions of this Act are not taken or borrowed from the statutes of any other state, and in so far as they may be the same or similar to any other statutes, they are not to be deemed as taken with any construction that may have been placed thereon by the courts of any other state, and it shall be the duty of the courts of this state to construe them as original enactments under the ordinary rules of construction.

Approved March 13, 1913.