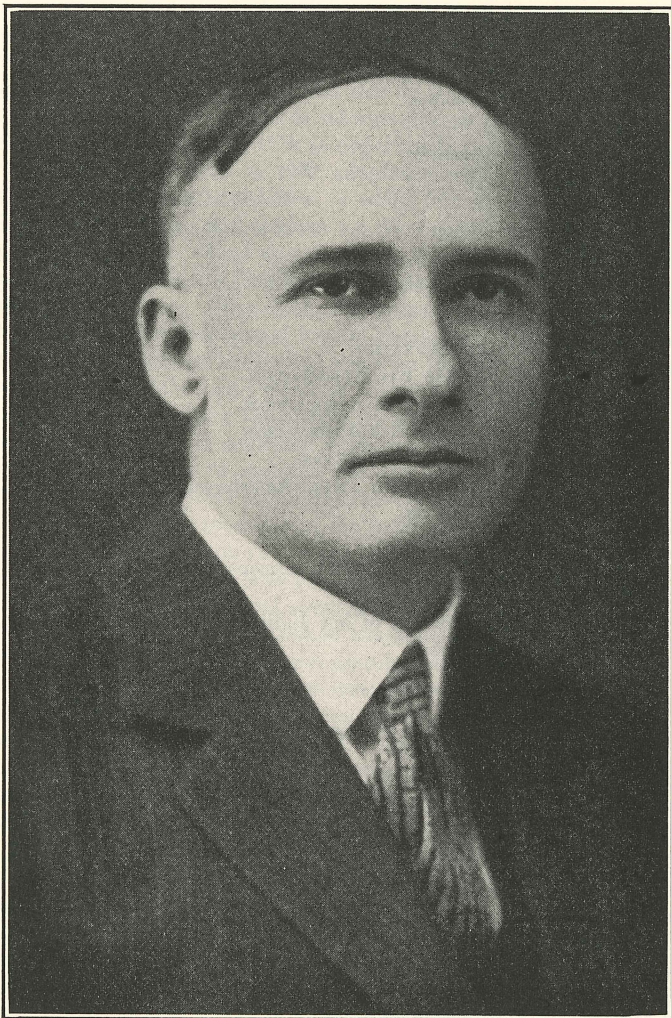


# KANSAS JUDICIAL COUNCIL BULLETIN

APRIL, 1941

PART 1.—FIFTEENTH ANNUAL REPORT



CHARLES L. HUNT

## MEMBERS OF THE JUDICIAL COUNCIL

---

W. W. HARVEY, <i>Chairman</i> .....	Ashland
Justice of the Supreme Court.	
J. C. RUPPENTHAL, <i>Secretary</i> .....	Russell
Formerly Judge Twenty-third Judicial District.	
EDWARD L. FISCHER.....	Kansas City
Judge First Division, Twenty-ninth Judicial District.	
EDGAR C. BENNETT.....	Marysville
Judge Twenty-first Judicial District.	
WALTER F. JONES.....	Hutchinson
Chairman Senate Judiciary Committee.	
PAUL R. WUNSCH.....	Kingman
Chairman House Judiciary Committee.	
ROBERT C. FOULSTON.....	Wichita
CHESTER STEVENS.....	Independence
SAMUEL E. BARTLETT.....	Ellsworth
Member State Corporation Commission.	

### COÖPERATING WITH THE—

KANSAS STATE BAR ASSOCIATION  
 SOUTHWESTERN KANSAS BAR ASSOCIATION  
 NORTHWESTERN KANSAS BAR ASSOCIATION  
 NORTH CENTRAL KANSAS BAR ASSOCIATION  
 LOCAL BAR ASSOCIATIONS OF KANSAS  
 JUDGES OF STATE COURTS AND THEIR ASSOCIATIONS  
 THE LEGISLATIVE COUNCIL  
 MEMBERS OF THE PRESS

OTHER ORGANIZATIONS, and leading citizens generally throughout the state.

For the improvement of our Judicial System and its more efficient functioning.

---

## TABLE OF CONTENTS

---

	PAGE
FOREWORD .....	3
OUR NEW LEGISLATIVE MEMBERS.....	4
A PERSONAL WORD—W. W. HARVEY.....	6
PROBATE CODE AMENDMENTS.....	7
HABEAS CORPUS CASES .....	13
CERTIFIED SHORTHAND REPORTERS.....	15
DECLARATORY JUDGMENTS .....	16
CHANGES IN TERMS OF COURT.....	16
OTHER STATUTES MENTIONED.....	17
OTHER PROPOSALS:	
Bill Providing for Personal Receivership.....	18
Bill Authorizing Composition with Creditors.....	19
Proposed Constitutional Amendment.....	20



## FOREWORD

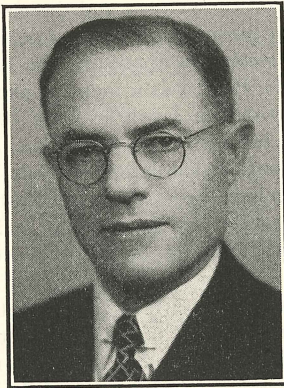
---

Fifteen years ago Charles L. Hunt, of Concordia, whose portrait appears as the frontispiece of this issue, was president of the State Bar Association. He had taken an interest in the activities of that association for many years and was a careful student of fundamental legal principles and of the structure and functioning of our judicial system. There was then a movement for the more careful study of the functioning of our courts. This had led to the formation in a few states of judicial councils empowered to collect data and other information and directed to make a continuous study of the state judicial system and the manner in which it functions, to learn of existing defects, and to recommend improvements. Judicial councils then organized were accomplishing worth-while results in two states—Massachusetts and California. Mr. Hunt became interested in this work and saw in it a field for useful service. He sought and obtained all available information on the subject and discussed it at bar associations and elsewhere as opportunity presented, with the result that the State Bar Association, in 1926, adopted a resolution approving the movement, and appointed a committee, of which Mr. Hunt was a member and the draftsman, to prepare and present to the Legislature a bill creating such a council for this state. That was done, and the bill was enacted into law. Mr. Hunt became one of its first members. Since then similar action has been taken in many states. Altogether such councils have been created in 27 states, and in seven others less formal similar organizations are functioning, and the movement has taken on a national scope by the formation of a National Conference of Judicial Councils, which is now doing a worth-while work, and by a similar movement among the judges of the federal courts. This is not the time nor the place to recount the work of our Judicial Council, but we think it is not out of place to mention the fact that Hon. Arthur T. Vanderbilt, chairman of the executive committee of the National Conference of Judicial Councils, and formerly president of the American Bar Association, and formerly president of the American Judicature Society, in a recent letter to our chairman, said: "I don't know whether you realize it or not, but yours has been one of the outstanding judicial councils of the country in point of accomplishments." No member of the Council has done more to bring about this result than has Mr. Hunt. He has given gratuitously much of his time and the full measure of his unusual talents, his wide study, and his extensive practical experience to the impartial consideration of each of the many questions presented to and considered by our Judicial Council. Recently he resigned from the Council, partially because he thinks he has done his share, for the time being at least, of this type of gratuitous public service, and partially because he realizes there are many good lawyers in Kansas and that perhaps a change in the membership of the Council will enable it to function better. We doubt if this last point is well taken, and while we would like for him to stay with us, we cannot blame him if he chooses to step aside voluntarily after so many years of such faithful and efficient gratuitous service. Still in the vigor of his capacity, and with many useful years ahead of him, we are sure he will not entirely withhold his helpful service. In fact, since his resignation, he said to our chairman: "There are some things I have been wanting to write this Council about. I'll be free to do it now." So we will be hearing from him, and we will not let him keep his "light under a bushel."

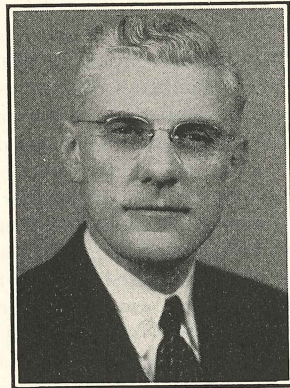
## OUR NEW LEGISLATIVE MEMBERS

The chairmen of the two judiciary committees of the Legislature are members of the Judicial Council. [G. S. 1935, 20-2201.] This brought two new members to the Council at the beginning of the 1941 session of the Legislature. Senator Walter F. Jones, of Hutchinson, chairman of the Senate judiciary committee, has succeeded Senator Kirke W. Dale, of Arkansas City, who became president *pro tem* of the Senate, and Hon. Paul R. Wunsch, of Kingman, succeeded Hon. George Templar, of Arkansas City, as chairman of the judiciary committee of the House.

Senator Jones, after having taken his law course in part by office study and in part at the Kansas University Law School, was admitted to the bar in 1906,



SEN. WALTER F. JONES



HON. PAUL R. WUNSCH

and since then has been engaged in the practice of law in Hutchinson. For several years he was associated with Hon. Frank L. Martin, formerly judge of the ninth judicial district and several times a member of the Legislature. In more recent years he organized and is senior member of the law firm of Jones, Branine, Chalfant & Hunter. He has taken an interest in public affairs and has served two terms as mayor of the city of Hutchinson. He was city attorney of Hutchinson for eight years during its most rapid development as a city of the first class. He served as a member of the Legislature in 1927 and was elected to the Senate in 1934 for the unexpired term of Sen. Guy C. Rexroad, who had resigned to take a federal appointment. He was reelected in 1936 and again in 1940. His district is composed of Kingman, Pratt and Reno counties.

Mr. Wunsch was reared at Argonia, in Sumner county, where he completed his high school education. He spent six years as a student at our state university, where he was graduated from the school of Liberal Arts and Sciences in 1923, and from the School of Law in 1925. The same year he was admitted to the practice of law, and since then has been engaged in the general practice of law at Kingman. For a time he was in partnership with the Hon. Clark A. Wallace, now judge of the district court of the twenty-fourth district. He



served as county attorney of Kingman county for six years and was president of the County Attorneys' Association during that time. He is now president of the Kingman board of education, of which he has been a member for ten years. He first served in the Legislature in 1937, where his abilities were soon recognized. He was a member again in 1939, when he was floor leader of the House, and again in 1941.

These new members will bring to the Council the ability, training and experience which will enable them to be useful members. We are glad to welcome them into our study group.

---

Hon. John S. Dawson, chief justice of our supreme court, has appointed Samuel E. Bartlett of Ellsworth a member of the Council, vice Charles L. Hunt, resigned. Mr. Bartlett needs no introduction to the members of the Council or to the readers of our BULLETIN. His portrait appeared as the frontispiece of our April, 1938, BULLETIN. He assisted in the preparation of the probate code enacted in 1939 and of the amendments to it enacted in 1941, and first and last he has contributed several articles to our BULLETIN. We are glad to welcome Mr. Bartlett to our study group and feel confident he will contribute much to the consideration of the many questions which will come before it.

---

The principal matter to which the Council gave its attention during the recent session of the Legislature was looking after amendments to the probate code. The amendments made are set out later in this BULLETIN. We submitted, also, two proposed bills and one concurrent resolution. These are printed later in this BULLETIN, with appropriate introductory paragraphs.

---

We are again collecting data from the clerk of the supreme court, clerks of the district courts and judges of probate courts and county courts relating to the business transacted in those courts within the year ending June 30, 1941, and pending on July 1. Summaries and tables compiled from this data will appear in the October BULLETIN.

---

The Council will have a meeting May 22, the day before the meeting of the State Bar Association at Topeka, and perhaps a later meeting the latter part of June or early in July. At these meetings propositions for the work of the Council for the coming year will be discussed. We would like to have suggestions from lawyers, judges and others of specific matters to which the Council should give its attention.

### A PERSONAL WORD

This is the last BULLETIN in which my name will appear as a member of the Council. By June 10 I will have served 14 years as its chairman, and I have notified the chief justice of my desire to retire. My reasons? I'll be frank: I've passed my "three score years and ten." While my health is good—my physician who examined me a few days ago so stated—I think I have common sense enough to know that I cannot keep up forever the high-tension drive to learn more that will be useful to me in my work and to perform it better which I have been keeping up, almost incessantly, for the last half century. Since the Council was organized, in addition to my work as a member of the supreme court—a full-time job for any man who tries to do it well—I have spent most of my noon hours, evenings and spare time, and some time I could not well spare, in the work of the Judicial Council. It has been interesting work, a legal school for me, an atmosphere I've enjoyed. To my associates on the Council, all good lawyers of high standing, goes the credit for the many real worth-while accomplishments of the Council. My task has been to suggest, arrange and assist to complete what has been done. Much has been accomplished in improving the work of our courts. Generally speaking, I am confident they are functioning better than at any previous time in the history of our state. Yet, there is much which can be done along that line. I have no notion that my efforts are essential to the carrying on of this work. There are many good lawyers in Kansas. Several of them are members of the supreme court. This work, if deemed useful, will go on long after my connection with it ceases. I simply want a little more time to spend with my family, my friends, and in the outdoors.

To the approximately 3,600 lawyers, judges, court officials, legislators, editors and business men who have regularly received our BULLETINS, I wish to express my appreciation for the interest you have taken in the work of the Council and the many valuable suggestions which you have offered from time to time. May you continue your assistance in improving the structure and functioning of our judicial system, and may I merit and continue to have your esteem.—W. W. HARVEY.



## PROBATE CODE AMENDMENTS

When the new probate code was formulated we realized and frankly stated that experience might develop the necessity or prudence of amending some of its sections. It was in force about a year and a half before the Legislature of 1941 met. During that time we endeavored to learn from probate judges and attorneys of any defects in the code which required amendments. In this we were assisted by the members of a large committee of the State Bar Association. Many of the matters presented raised questions which were provided for by the code, and judges and attorneys soon learned that a more thorough study of the code caused them to raise fewer questions concerning it. By the time the Legislature met the Probate Judges' Association recommended but three changes—one pertaining to the allowance of small claims, another to the matter of selecting jurors in certain cases, and another authorizing the requirement of security for costs in contested matters. A few others had come to our attention, with the result that we prepared a proposed bill making the amendments deemed necessary or prudent. This was introduced. The members of the Legislature had quite a few others. All suggestions made were considered. The Judicial Council and the Legislature worked harmoniously to have made only such amendments as would be beneficial. We regard the best work done by the Legislature respecting the matter was to keep out suggested amendments which would have been harmful, or which had been presented with a view of benefiting certain groups at the expense of others. The result was the enactment of Senate bill 256, which we print herewith. As we print it, we put first the section number of the bill as passed in 1939 (chapter 180, Laws 1939) and as published in our April, 1939, BULLETIN, and follow this with the number of the same section given it in the 1939 Supplement to the Revised Statutes of 1935. For the purpose of making it easier to compare the amendments made with the statute as first enacted we print in brackets the words of the original statute taken out by the amendments and we print in italics the words added by Senate bill No. 256. We think the reading of the sections as so printed will enable one readily to understand just what changes were made, and in most instances, at least, the purpose of the change is obvious.

PROBATE CODE, SEC. 21 (Sec. 59-403). *Allowances to spouse and minor children.* When a resident of the state dies, testate or intestate, the surviving spouse shall be allowed, for the benefit of such spouse and the decedent's minor children during the period of their minority, from the personal property of which the decedent was possessed or to which he was entitled at the time of death, the following: (1) The wearing apparel, family library, pictures, musical instruments, furniture and household goods, utensils and implements used in the home, one automobile, and provisions and fuel on hand necessary for the support of the spouse and minor children for one year. (2) [Other personal property, not exceeding an appraised value of seven hundred fifty dollars. If the appraised value, above any liens thereon, of such other personal property does not amount to seven hundred fifty dollars, the balance shall be paid in money.] *The sum of seven hundred fifty dollars, or other personal property at its appraised value in full or part payment thereof.* The

property shall not be liable for the payment of any, of decedent's debts or other demands against his estate, except liens thereon existing at the time of his death. If there are no minor children, the property shall belong to the spouse; if there are minor children and no spouse, it shall belong to the minor children. The selection shall be made by the spouse, if living, otherwise by the guardian of the minor children. *In case any of the decedent's minor children are not living with the surviving spouse, the court may make such division as it deems equitable.*

PROBATE CODE, SEC. 68 (Sec. 59-801). *Wills proved elsewhere.* Authenticated copies of wills [executed and] proved outside of this state according to the laws in force in the place where proved, relative to any property in this state, may be admitted to probate and record in the probate court of any county in this state where any part of such property may be situated; and such authenticated copies so admitted and recorded shall have the same validity as wills [made] *proved* in this state in conformity with the laws thereof. *Upon such admission to probate the court shall determine whether administration in this state is necessary.*

PROBATE CODE, SEC. 69 (Sec. 59-802). *Administration.* The estate of a non-resident decedent, *if administration thereof in this state is necessary*, shall be administered in the same manner as the estate of a resident decedent. Upon the payment of the expenses of administration, of the debts and other items here proved and of the inheritance taxes, the residue of the personal property, *or of the proceeds from the sale of real estate*, shall be transmitted to the domiciliary executor or administrator, to be disposed of by him; or the court may direct it to be distributed according to the terms of the will applicable thereto, or if the terms of the will are not applicable thereto, or if there is no will, it shall be distributed according to the law of the decedent's residence *if personal, and according to the laws of Kansas, if real estate.* The real estate not sold in the course of administration shall be assigned according to the terms of the will applicable thereto, or if the terms of the will are not applicable thereto, or if there is no will, it shall pass according to the laws of this state.

PROBATE CODE, SEC. 95 (Sec. 59-1301.) *Classification of demands.* If the applicable assets of an estate are insufficient to pay in full all demands allowed against it, payment shall be made in the following classified order: First class, the expenses of an appropriate funeral in such amount as was reasonably necessary, having due regard to the assets of the estate available for the payment of demands and to the rights of other creditors. Any part of the funeral expenses allowed as a demand against the estate in excess of the sum ascertained as above shall be paid as other demands of the fourth class. [Second class, reasonable sums for the appropriate and necessary expenses of the last sickness of decedent, including wages of servants, and for the appropriate and necessary costs of administration.] *Second class, the appropriate and necessary costs and expenses of administration and the reasonable sums for the appropriate and necessary expenses of the last sickness of decedent, including wages of servants.* Third class, judgments rendered against [the] decedent in his lifetime, [but if any such judgments shall be liens on the real estate of the decedent, and the estate shall be insolvent, such judgments as are liens upon the real estate shall be paid without reference to classification, except that the



demands of the first and second classes shall have precedence of judgments.] *All judgments or liens upon the property of the decedent shall be paid in the order of their priority.* Fourth class, all other demands duly proved, including the cost of any appropriate tombstone or marker or the lettering thereon, in such amount as may be reasonably necessary, but whether there shall be an allowance, and if so the amount thereof, shall be determined by the court before any obligation therefor is incurred: *Provided*, That debts having preference by the laws of the United States and demands having preference by the laws of this state shall be paid according to such preference. No preference shall be given in the payment of any demand over any other demand of the same class, nor shall a demand due and payable be entitled to preference over demands not due.

PROBATE CODE, SEC. 96 (Sec. 59-1302). *When payment to be made.* If any executor or administrator shall not, within nine months after having given notice of his appointment, have notice of demands against the estate of the decedent which will authorize him to represent it insolvent, he may, after the expiration of said nine months, proceed to pay the debts and other items due from the estate, according to their classification; *but, prior to the expiration of said period of nine months he shall pay said debts and other items if ordered to do so by the court, and the court may require bond or security to be given by the creditor to refund such part of such payment as may be necessary to make payment in accordance with this section after the expiration of said period of nine months.*

PROBATE CODE, SEC. 103 (Sec. 59-1405). *Order in which assets to be appropriated.* The property of a decedent, except as provided in sections 19 [59-401] and 21 [59-403], shall be liable for the payment of his debts and other lawful demands against his estate. When a will designates the property to be appropriated for the payment of debts or other items, it shall be applied to such purpose. Unless the will provides otherwise for the payment thereof, the property of the testator, subject to the payment of debts and other items, shall be applied to that purpose in the following order: (1) Personal property not disposed of by will; (2) real estate not disposed of by will; (3) personal property bequeathed to the residuary legatee; (4) real estate devised to the residuary [legatee] *devisee*; (5) property not specifically bequeathed or devised; (6) property specifically bequeathed or devised. Demonstrative legacies shall be classed as specific legacies to the extent of the payment thereof from the fund or property out of which payment is to be made, and as general legacies upon failure or insufficiency of the fund or property out of which payment was to be made to the extent of such insufficiency. The property of each class shall be exhausted before resorting to that of the next class; and all of one class shall contribute ratably if all the property of that class is not required for the payment of such debts or other items.

PROBATE CODE, SEC. 104 (Sec. 59-1406). *Specifically bequeathed property.* Property specifically bequeathed may be delivered to the legatee entitled thereto upon his giving security for the redelivery thereof, *or its appraised value*, [on demand] *if ordered by the court so to do*, to the executor or administrator; otherwise it shall remain in the custody of the executor or administrator, to be delivered or sold as may be required by law.

PROBATE CODE, SEC. 112 (Sec. 59-1501). *Duration of administration.* Every executor and administrator shall have one year from the date of his appointment for the settlement of the estate. An administrator *de bonis non* shall have such time, not exceeding one year, as the court may determine. For cause shown the period herein limited may be extended by the court, not exceeding one year at a time. The executor or administrator shall not be disqualified thereafter in any way, unless removed, but he shall not be relieved from any loss, liability, or penalty incurred by his failure to settle the estate within the time limited. *That in case any executor or administrator shall fail or refuse for a period of thirty days after the expiration of said one year to make such settlement, he may be cited by the court for the purpose of making such settlement unless the time therefor has been extended by the court, and all costs connected with such citation and the hearing thereon shall be assessed against such executor or administrator, and not against the estate: Provided, In the event the return of said citation shows that the executor or administrator is not within the jurisdiction of said court, said estate may be closed by the order of the court without a publication notice when there has been no prosecution thereon for a period of five years. Said estate may be reopened within one year thereafter upon written application by a direct heir, executor or administrator who shall be charged with the costs thereof.*

PROBATE CODE, SEC. 115 (Sec. 59-1504). *Compensation and expenses.* Whenever a decedent by will makes a provision for the compensation of his executor, that shall be taken as his full compensation, unless he files a written instrument, renouncing all claim to the compensation provided for in the will. Whenever any person named [as executor] in a will or codicil defends it, or prosecutes any proceedings in good faith and with just cause, for the purpose of having it admitted to probate, whether successful or not, or if any person successfully opposes the probate of any will or codicil, he shall be allowed out of the estate his necessary expenses and disbursements in such proceedings, together with such compensation for his services and those of his attorneys as shall be just and proper.

PROBATE CODE, SEC. 170 (Sec. 59-2006). *Duty to support patient; actions for support, limitation.* The following shall be bound by law to support persons [adjudged to be insane;] *committed to or received as patients at the state hospitals, as that term is defined in subsection 3 of section 59-2001 of the General Statutes Supplement of 1939:* Spouses, parents and children. The maintenance, care, and treatment of such person shall be paid by the guardian of his estate, or by any person bound by law to support him, or by the county. In case of payment by the county it may recover the amount paid by it from the estate of such person or from any person bound by law to support such person. The state may recover the sum of five dollars per week, to be applied on the maintenance, care, and treatment of a patient in a state hospital, from the estate of such person, or from any person bound by law to support such person. The state shall annually make written demand upon the spouse, parents, [and] or children liable for the support of the patient for the amount claimed by the state to be due for the preceding year, and no action shall be commenced by the state against such spouse, parents, or children for the recovery thereof unless such action is commenced within three years after the date of such written demand.



PROBATE CODE, SEC. 186 (Sec. 59-2210). *Form of notice.* Notice of any hearing, if such is required, shall be in substantially the following form:

State of Kansas, \_\_\_\_\_ County, ss. In the probate court of said county and state. In the matter of the estate of (name of decedent or person under disability, with a specific designation which it is). Notice of Hearing. The state of Kansas to [(names of persons to whom notice is given), and all other persons concerned] *all persons concerned*:

You are hereby notified that a petition has been filed in said court by (name of petitioner and capacity in which he appears), praying for (state nature of petition and the nature of the judgment, order or other relief sought), and you are hereby required to file your written defenses thereto on or before the \_\_\_\_\_ day of \_\_\_\_\_, 19—, at \_\_\_\_\_ o'clock —m. of said day, in said court, *in the city of \_\_\_\_\_*, at which time and place said cause will be heard. Should you fail therein, judgment and decree will be entered in due course upon said petition. [Witness my hand in the city of \_\_\_\_\_, in said county and state, this \_\_\_\_\_ day of \_\_\_\_\_, 19—.] \_\_\_\_\_, petitioner.

PROBATE CODE, SEC. 190 (Sec. 59-2214). *Taxation of costs and security therefor.* In all probate proceedings relating to the estate of a decedent or ward, the court shall tax the costs thereof against the estate unless otherwise provided by this act, or unless it appears that it would be unjust and inequitable to do so, in which event the court shall tax such costs or any part thereof against such party as it appears to the court is just and equitable in the premises. *In case of any contested demand or matters the probate court may, in its discretion, require the claimant to give security for costs, or in lieu thereof file a poverty affidavit as provided in the code of civil procedure.*

PROBATE CODE, SEC. 198 (Sec. 59-2222). *Notice for probate or administration.* When a petition for the probate of a will or for administration is filed, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to section 185 [59-2209] unless the court shall make an order to the contrary. If notice is by order of the court not required to be given pursuant to section 185 [59-2209] the court shall order notice thereof to be given, *such notice*, unless waived [by personal service on all persons interested as heirs, devisees, and legatees, at least ten days before the date of hearing], *shall be given in such manner as the court shall direct.* When the state is a proper party the notice shall be served upon the attorney general and the county attorney of the county.

PROBATE CODE, SEC. 213 (Sec. 59-2237). *Exhibition of demands and hearing thereon.* Any person may exhibit his demands against the estate of a decedent by filing his petition for its allowance in the proper probate court. The petition shall contain a statement of all offsets to which the estate is entitled. The court shall from time to time as it deems advisable, and must at the request of the executor or administrator, or at the request of any creditor having exhibited his demand, fix the time and place for the hearing of such demands, notice of which shall be given *by the executor or administrator in such manner and to such persons as the court shall direct. Any demand not exceeding fifty dollars, duly itemized and verified, may be allowed, if approved in writing by the executor or administrator, without compliance with any of the provisions of this act relating to petition, notice of hearing, or otherwise. The verification of any demand may be deemed prima facie evidence of its validity unless a written defense thereto is filed.* Upon the adjudication of any demand, the

court shall enter its judgment allowing or disallowing it. Such judgment shall show the date of adjudication, the amount allowed, the amount disallowed, and classification if allowed. Judgments relating to contingent demands shall state the nature of the contingency.

PROBATE CODE, SEC. 226 (Sec. 59-2250). *Proceedings to determine descent.* Whenever any person has been dead for more than one year and has left [real estate] *property*, or any interest therein, and no will has been admitted to probate nor administration had in this state, or in which administration has been had without a determination of the descent of such [real estate] *property*, any person interested in the estate, or claiming an interest in such [real estate] *property*, may petition the probate court of the county of the decedent's residence, or of [the] *any* county wherein [such] real estate [or any part thereof] *of the decedent* is situated, to determine its descent [and by decree of court to assign it to the persons entitled thereto]: *Provided, Nothing in this act shall be construed to divest district courts of power to determine descent in any proper proceeding.*

PROBATE CODE, SEC. 227 (Sec. 59-2251). *Decree of descent.* Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to section 185 [59-2209]. Upon proof of the petition, the court shall allow the same and enter its decree assigning the [real estate] *property* to the persons entitled thereto *at the time of the decedent's death* pursuant to the law of intestate succession *then* in force [at the time of the decedent's death]. No decree shall be entered until after the determination and payment of inheritance taxes.

PROBATE CODE, SEC. 237 (Sec. 59-2261). *Trial by jury.* Trial by jury, if a demand therefor is made by an interested party or on his behalf prior to the hearing, shall be had in a proceeding for the commitment of an insane person and the appointment of a guardian thereof, or for the appointment of a guardian of an incompetent person. The jury shall consist of six persons, one of whom shall be a duly licensed doctor of medicine to be selected by the court. The other members of the jury shall be selected [and the jury shall be empaneled and sworn, and the trial shall proceed until a verdict is returned, in accordance with the rules prescribed by the code of civil procedure, except that no peremptory challenges shall be exercised as to the doctor of medicine.] *as follows: The court shall write in a panel the names of fifteen persons, citizens of the county, from which the person charged, or his attorney, must strike one name; the complainant, or his attorney, one; and so on alternately until each shall have stricken five names, and the remaining five, together with the doctor of medicine selected by the court, shall constitute the jury to try the cause; and if either party neglect or refuse to aid in striking the jury, the court shall strike the same in behalf of such party. In the event of the disqualification for cause of any juror so selected the court shall summon sufficient talesmen to complete the panel. The trial shall proceed and a verdict returned in accordance with the rules prescribed by the code of civil procedure.*

PROBATE CODE, SEC. 272 (Sec. 59-2404). *Time for appeal.* Such appeal may be taken by any person aggrieved within thirty days after the making of such order, judgment, decree, or decision: *Provided, That an appeal may be taken*

within nine months from an order admitting, or refusing to admit, a will to probate. [In an appeal from an order admitting, or refusing to admit, a will to probate, after the transcript has been filed in the district court, the order appealed from and the notice of appeal shall be served upon all interested parties not personally served when the appeal was taken, as in civil actions in the district court. Other persons may be made parties thereto by the service of such order and notice upon them.]

The act amending the probate code, as above set out, became effective on its publication in the official state paper April 17, 1941.

---

## HABEAS CORPUS CASES

Within the last year there appears to have developed what might be termed an epidemic of habeas corpus cases filed by prisoners in the state penitentiary. More than 75 such cases have been filed in the district court of Leavenworth county, about 40 in the supreme court, and nearly that many in the federal court for this district. It is not confined to Kansas. J. Edgar Hoover, of FBI, writing under the title "Crime's Law School," in the November, 1940, *American Magazine*, discusses this recent activity as being widespread by state and federal prisoners, and says:

"But I, for one, prefer to see a prisoner reach for a lawbook instead of a gun when he decides to make a break for freedom. Hopes run high among law-minded convicts, but success is rare. And, whenever one cell-block lawyer does uncover a legal rathole for escape, he unconsciously performs a service for law enforcement. Once exposed, a rathole can be closed promptly by court and legislative action."

In this state our records disclose that slightly more than 80 percent of sentences are imposed upon pleas of guilty. Most of the petitions are by prisoners who entered pleas of guilty. They raise, among others, the contention that they were not represented by counsel, did not know their rights respecting having counsel, and were mistreated or tricked into entering pleas of guilty. Of all of such claims so far made in this state we have been unable to find even one case where they were supported. In fact, since this court removed a sheriff a few years ago for mistreating a prisoner in an effort to get a confession, the court has heard of no well-grounded claim where that practice has been followed. We have discovered, however, that the records of commitment of prisoners are very imperfect in all too many instances. While our statute (G. S. 1935, 62-1304) relating to assignment of counsel appears to have been quite generally followed, and section 62-1516 provides for records to be made, it contains the provision that the omission to make the record shall not impair the validity of the judgment. From recent decisions of the supreme court of the United States it appears to be laid down as the rule that if one who has pleaded guilty, either in a federal or state court, thereafter, in a habeas corpus petition duly verified, alleges that he did not have counsel, or was denied counsel, or that he entered a plea because of a trick or duress, that he is entitled to a hearing upon such petition at which witnesses would be called to testify in person or by deposition before the court or a judge thereof; but if there is a record of the court contrary to the allegations of his petition he has a heavy burden of overcoming the record. If there is no such record,



the best that can be done is to have conflicting testimony. Since some of these cases are filed ten years or more after the plea of guilty, and there have been changes in the office of county attorney, sheriff, and perhaps of judge, it becomes difficult—sometimes impossible—to get evidence to oppose that of the petitioner, even though it was ungrounded. Senator LeRoy Bradfield, executive and pardon clerk to the governor, the attorney general and the court, having had their attention called to this situation, drafted a bill to insure proper handling of those cases and the making of a proper record. This was introduced as Senate bill No. 360 and enacted into law as drawn, except that the Legislature added to the latter part of section 1 a provision for the compensation of an attorney appointed to represent a defendant. This statute, if properly followed, as we are confident it will be, will enable the courts to reach more just conclusions in the class of habeas corpus cases above mentioned. The statute follows:

“SECTION 1. Section 62-1304 of the General Statutes of 1935 is hereby amended so as to read: Sec. 62-1304. If any person about to be arraigned upon an indictment or information for any offense against the laws of this state be without counsel to conduct his defense, it shall be the duty of the court to inform him that he is entitled to counsel, and to give him an opportunity to employ counsel of his own choosing, if he states that he is able and willing to do so. If he does ask to consult counsel of his own choosing, the court shall permit him to do so, if such counsel is within the territorial jurisdiction of the court. If he is not able and willing to employ counsel, and does not ask to consult counsel of his own choosing, the court shall appoint counsel to represent him, unless he states in writing that he does not want counsel to represent him and the court shall find that the appointment of counsel over his objection will not be to his advantage. A record of such proceeding shall be made by the court reporter, which shall be transcribed and reduced to writing by the reporter, who shall certify to the correctness of such transcript, and such transcript shall be filed and made a part of the files in the cause. The substance of the proceedings provided for herein shall be entered of record in the journal and shall be incorporated in the journal entry of trial and judgment. Counsel employed by or appointed for the accused shall have free access to him at reasonable hours for the purpose of conferring with him relative to the charge against him and advising him respecting his plea, and for the preparation of his defense, if a defense is to be made. It is the duty of an attorney appointed by the court to represent a defendant, without charge to defendant, to inform him fully of the offense charged against him and of the penalty therefor, confer with available witnesses, cause subpoenas to be issued for witnesses necessary or proper for defendant, and in all respects to fully and fairly represent him in the action. If after his appointment the attorney learns that the defendant, or his relatives or friends, are able and willing to employ counsel for defendant, he shall report those facts to the court and ask permission to withdraw from the case or to be permitted to accept compensation for his services. Whereupon the court shall make an appropriate order with respect thereto. If an attorney so appointed shall not have been paid and shall have complied with all of the provisions of this section, he shall receive a fee of not to exceed ten dollars per day for his services. Such fee shall be approved by the trial judge and the same shall be paid from the general fund of the county in which the action was tried.

“SEC. 2. Section 62-1516 of the General Statutes of 1935 is hereby amended so as to read: Sec. 62-1516. When judgment is rendered, or sentence of imprisonment is imposed, upon a plea or verdict of guilty, a record thereof shall be made upon the journal of the court, which record among other things shall contain a statement of the offense charged, and under what statute; the plea or verdict and the judgment rendered or sentence imposed, and under what statute, and a statement that the defendant was duly represented by counsel,

naming such counsel, or a statement that the defendant has stated in writing that he did not want counsel to represent him. If the sentence is increased because defendant previously has been convicted of crime the record shall contain a statement of each of such previous convictions, showing the date, in what court, of what offense and whether the same was a felony or a misdemeanor; also, a brief statement of the evidence relied upon by the court in finding such previous convictions and the facts pertaining thereto. Defendant shall not be required to furnish such evidence. It shall be the duty of the court personally to examine with care the entry prepared for the journal, or the journal when written up, and to sign the same and to certify to the correctness thereof.

"SEC. 3. The supreme court may make and amend from time to time such rules, consistent with statutes relating thereto, pertaining to criminal procedure in the supreme court and the inferior courts of the state, as it deems necessary."

The amended sections were repealed and the act became effective on its publication in the official state paper, April 12, 1941.

## CERTIFIED SHORTHAND REPORTERS

Prompted to do so, as we understand it, by the Association of Shorthand Reporters and the Association of District Judges, the Legislature enacted House bill No. 20 as amended, so as to read:

AN ACT relating to official reporters for the district courts; providing authority to take depositions; and repealing sections 20-905 and 20-910 of the General Statutes of 1935.

*Be it enacted by the Legislature of the State of Kansas:*

SECTION 1. It shall be the duty of the supreme court of Kansas, under such rules as the court shall deem necessary, and in substantially the same manner as attorneys at law are licensed to practice law, to grant certificates of eligibility for appointment as official reporters of the district courts.

SEC. 2. One holding such a certificate shall have the right to use the title "certified shorthand reporter."

SEC. 3. No person who does not hold such a certificate shall be appointed official reporter of a district court.

SEC. 4. Sections 20-905 and 20-910 of the General Statutes of Kansas of 1935 are hereby repealed.

SEC. 5. This shall take effect and be in force from and after its publication in the statute book.

After it was enacted, the attention of the supreme court was called to it and to the duties the court is expected to perform under it. The court has directed its clerk to send a copy of the bill to all judges of the district court and the district court reporters and to general reporters and to the secretaries of bar associations, asking suggestions as to appropriate rules which should be promulgated by the supreme court to carry out the purposes of the act. It appears necessary for the court to appoint a board to conduct examinations and to issue certificates; also to promulgate rules setting up standards for the examinations, fixing the fee to be charged therefor, and covering such other matters as are deemed necessary and proper. It is the hope of the court that it can have suggestions soon enough so that by the time of the meeting of the State Bar Association in May, or soon thereafter, it can formulate tentative rules which can be submitted to judges, reporters and others for criticism and suggestions. The court hopes to be able to have these rules

in final form by the time the act becomes effective. The court will be glad to receive suggestions from anyone interested. Be free to write your views to the clerk of the supreme court.

---

## DECLARATORY JUDGMENTS

Senate bill No. 203, relating to declaratory judgments, reads:

SECTION 1. In cases of express trusts where doubtful meaning of the trust instrument is alleged, courts of record within the scope of their respective jurisdictions shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceedings shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for.

SEC. 2. The provisions of sections 60-3128 to 60-3132, both sections inclusive, of the General Statutes of 1935, shall apply to judgments and orders prayed for or obtained under the provisions of this act.

SEC. 3. This act is declared to be remedial; its purpose is to afford relief from the uncertainty, insecurity and doubts attendant upon controversies over the meaning and legal construction of the express trusts and trust instruments specified in this act and it is to be liberally interpreted and administered with a view of making the courts of this state more serviceable to the people.

The act became effective upon publication in the official state paper, April 7, 1941.

---

## CHANGES IN TERMS OF COURT

The Legislature enacted statutes changing the opening days of terms of courts in the seventh district, composed of Neosho and Wilson counties; in the twenty-fifth district, composed of Sumner county; in the thirtieth district, composed of Ellsworth, Lincoln, Ottawa and Saline counties; and in the thirty-ninth district, composed of Grant, Haskell, Morton, Seward, Stanton and Stevens counties.

Terms of district court are less important than they formerly were. Earlier in the history of our state it was the practice for district courts to open on the first day of the term and continue in session until the business then ready for disposition was disposed of and adjourned sine die. Under that practice there would be no more business transacted in the district court of that county until the first day of the next term. This practice has long since been dispensed with, and the practice now is that the term of court in any county is never adjourned sine die until the day before the beginning of the next term and that has come to be a very informal matter. In the new probate code adopted two years ago, terms of the probate court were done away with. We think that could be done with the district court with beneficial effects. It is likely that will be done if and when there is a general revision of the structure and functioning of our district courts.



Other statutes enacted, which are of special interest to courts and lawyers, are as follows:

House bill No. 82 amending G. S. 1935, 63-401, relating to appeals in criminal cases in justice of the peace courts, was amended so as to give defendant ten days instead of twenty-four hours within which to give bond to stay proceedings pending the appeal. We question the wisdom of this amendment. The statute amended had been in force since 1868, and the instances were rare when it worked a hardship. The amended statute is likely to create more evils than it cures.

---

House bill No. 83 provides that in any criminal action in which a defendant pleads guilty or is found guilty of a misdemeanor, if a jail sentence is imposed, the court may deduct from the sentence the time, if any, the defendant has spent in jail pending the disposition of his case.

---

House bill No. 163 amends G. S. 1935, 64-102, relating to legal publications, so as to provide for their publication once each week in a daily, weekly, semi-weekly, or tri-weekly newspaper.

---

House bill No. 392 makes it the duty of anyone who has possession of any deed, real-estate mortgage, or other instrument pertaining to real estate, which belongs to some other person who is entitled to possession of it, to deliver such instrument to the person entitled thereto on demand, or to become liable for certain damages and costs.

---

Senate bill No. 154 amends G. S. 1935, 60-1511, relating to decrees in divorce cases as they pertain to property rights of the litigants.

---

Senate bill No. 365, relating to procedure on extradition, repealed G. S. 1939 Supplement 62-736 and 62-737 pertaining to habeas corpus in extradition proceedings.

---

Perhaps a few of the other statutes enacted should be mentioned, but the prudent attorney will consult and rely upon the Session Laws rather than our synopsis of these statutes.

## PERSONAL RECEIVERSHIPS

The Council presented to the Legislature for its approval an act authorizing personal receiverships. It was primarily designed to be of benefit to wage earners and salaried people who through misfortune or improvidence find themselves heavily in debt, their creditors insistent on payment, and some of them threatening or actually taking garnishment proceedings, the effect of which will cause the loss of employment. Similar statutes have been enacted in Michigan, Ohio, West Virginia, Wisconsin, and some other states, and have been found to operate beneficially. The proposal was introduced as Senate bill No. 75 and passed the Senate without a dissenting vote. In the House judiciary committee the newness of this particular type of legislation seemed to have raised several questions. Two amendments were suggested which we think would have removed the only meritorious objections to it. Nevertheless, the bill failed to receive the approval of the committee. While the need for it is not as great as in some other states, the measure has real merit. As passed by the Senate the bill reads:

AN ACT creating an additional ground for the appointment of a receiver, supplementing section 60-1201 of the General Statutes of Kansas of 1935.

*Be it enacted by the Legislature of the State of Kansas:*

SECTION 1. In addition to the cases now prescribed by law, a receiver may be appointed: When any person, employed for wages, salary, commission, or any combination thereof, who has debts he is unable to pay, shall petition therefor: *Provided*, In actions for divorce and alimony or for alimony only, prior to final order the court in a proper case may appoint a receiver for the estate of either spouse, but no receivership in any case may extend beyond the time of the entering of the final judgment and decree. The receiver provided by this act shall be the clerk of the district court, unless the court shall find the circumstances of a particular case make desirable the appointment of another.

SEC. 2. The petition shall be verified and shall include the following: An assignment of all petitioner's future wages during the pendency of the receivership, a full statement of all his debts and liabilities, the name of his employer and the amount of his earnings, a statement of his marital status and the names and ages of all dependents, with the reasons for such dependency. The omission of a creditor from the petition shall not prevent his participation in the same manner as if he had been included therein.

SEC. 3. The receiver shall give notice, in such manner as may be ordered by the court, to all creditors and to any employer of petitioner of the commencement of the proceedings. Such notice shall: (1) Fix a time for filing claims, (2) as to creditors, act as a stay of all proceedings in the nature of garnishment during the pendency of the receivership, and (3) as to any employer, include a direction to pay any and all moneys due or to become due henceforth to the receiver until further order. A secured creditor may pursue the rights given him under the instrument giving him such security, after having obtained an order from the court granting him authority so to do, but if he so elects, he shall be barred from participating in the receivership.

SEC. 4. Upon application the court shall make an order directing the receiver to pay, out of the funds in his hands belonging to petitioner's estate, such sums as will be reasonably necessary for the support and maintenance of petitioner and his dependents, at such times and in such manner as may be deemed most advisable in the particular case. In the absence from the county of the district judge, the probate judge may make such order.

SEC. 5. Balances remaining in the hands of the receiver shall be distributed to the creditors whose claims have been allowed, upon a pro rata basis, at such times and in such manner as may be directed by the court. The court may order payment to any creditor having due him a sum of five dollars or less the full amount of his balance.

SEC. 6. Each creditor desiring to participate in the estate shall file with the clerk an itemized, verified statement of his claim or proper evidence of a judgment. After the time for filing such claims has expired the court shall, upon notice, hear and determine such claims as may be objected to by the petitioner, any creditor, or other interested person, and shall thereupon enter judgment in favor of the creditor against the petitioner upon such claims not objected to or allowed by the court. No claim shall be allowed upon a debt incurred subsequent to filing the petition.

SEC. 7. The receivership shall continue until the allowed claims are paid: *Provided*, It may be dismissed upon motion of the petitioner or upon it appearing to the court that petitioner is attempting to misuse the proceedings.

SEC. 8. The petitioner may contract with an attorney for his services in connection with such proceedings, but no fee shall be allowed or paid to any such attorney in excess of the amount found by the court to be reasonable and proper.

SEC. 9. No deposit or other security for costs shall be required. There shall be taxed against the petitioner as costs fifty cents for each creditor and any sums necessarily expended for postage or other incidental expenditures. No costs shall be taxed against a creditor for the filing of his claim, but for the filing of any other papers by a creditor costs shall be charged as in other cases, to be equitably taxed by order of the court.

SEC. 10. Appropriate rules of court not inconsistent with the provisions of this act may be promulgated by the supreme court to regulate the practice in matters covered by this act.

SEC. 11. This act shall take effect and be in force from and after its publication in the statute book.

---

## COMPOSITION WITH CREDITORS

Since 1868, as a part of our code of civil procedure, there have been a number of sections (now G. S. 1935, 60-1301 to 60-1346) relating to voluntary assignments for the benefit of creditors. These sections have not been used much since the passage of the national bankruptcy act in 1898. Perhaps because of the expense and inconvenience of bankruptcy, within the last two years there have been as many as five cases brought in the district courts of the state under these sections. The attorneys and the trial judges who handled them have found that the statutes are cumbersome, incomplete, and that procedure under them is unduly expensive. Several recommendations came to us for the repeal of the sections. Our study of the question disclosed that while doing so we might be of additional service by authorizing the composition with creditors in the form of an ordinary receivership. Our proposal on the subject was introduced as Senate bill No. 76, and with minor amendments passed the Senate without a dissenting vote. After thorough consideration the House judiciary committee recommended it for passage. This was late in the session, and the bill was one of a number on the House calendar under general orders when the Legislature adjourned. In its consideration in the House there had been criticism of the wording of section 4, but an amendment



had been prepared to that section which carried out the purpose of the act and removed the adverse criticism. As passed by the Senate the bill reads:

AN ACT creating an additional ground for the appointment of a receiver, supplementing section 60-1201 of the General Statutes of 1935, and repealing sections 60-1301 to 60-1346, inclusive, of the General Statutes of 1935.

*Be it enacted by the Legislature of the State of Kansas:*

SECTION 1. In addition to the cases now prescribed by law, a receiver may be appointed: When any person desires to make a composition with his creditors, either in an original action or as an incident to any pending action, upon petition to the court for the appointment of a receiver to effect such composition. Such petition shall assign to the receiver all property owned by the debtor not exempt to him by law, shall be verified, and shall contain a schedule of assets, liabilities, and encumbrances.

SEC. 2. The claim of a creditor desiring to participate shall be itemized and verified, and shall contain, in addition to all other necessary information, a statement to the effect that he agrees to accept his proportional share of such assets in full settlement of his claim, in the amount found to be due him.

SEC. 3. After final judgment all creditors participating in the proceedings shall be estopped and precluded from asserting any further claim or action in the courts of this state upon any claim or liability proved in such proceeding.

SEC. 4. Common-law assignments and trusts for the benefit of creditors are hereby declared to be against the public policy of the state. If an attempt be made to carry on a proceeding of such a nature, upon application of any person interested the court shall assume jurisdiction and administer the estate as nearly as practicable in the same manner as if it were a proceeding begun under this act.

SEC. 5. Appropriate rules of court not inconsistent with the provisions of this act may be promulgated by the supreme court and the district courts to regulate the practice in matters covered by this act.

SEC. 6. If any provision of this act shall be held unconstitutional or invalid for any reason by any court, it shall be conclusively presumed that the legislature would have passed this act without such invalid provision, and the remaining provisions shall be given full force and effect, as if the provision held invalid had not been included herein.

SEC. 7. Sections 60-1301, 60-1302, 60-1303, 60-1304, 60-1305, 60-1306, 60-1307, 60-1308, 60-1309, 60-1310, 60-1311, 60-1312, 60-1313, 60-1314, 60-1315, 60-1316, 60-1317, 60-1318, 60-1319, 60-1320, 60-1321, 60-1322, 60-1323, 60-1324, 60-1325, 60-1326, 60-1327, 60-1328, 60-1329, 60-1330, 60-1331, 60-1332, 60-1333, 60-1334, 60-1335, 60-1336, 60-1337, 60-1338, 60-1339, 60-1340, 60-1341, 60-1342, 60-1343, 60-1344, 60-1345, and 60-1346 of the General Statutes of Kansas of 1935 are hereby repealed.

SEC. 8. This act shall take effect and be in force from and after its publication in the statute book.

---

## CONSTITUTIONAL AMENDMENT

We submitted to the Legislature a proposal to amend article 3 of the constitution pertaining to the judiciary. It was introduced as Senate concurrent resolution No. 6 and copies of it were sent to each county in the state. The only legislative action respecting it was favorable. Only two adverse criticisms came to our attention. The probate judges were inclined to oppose the provision for selecting a court clerk who should be clerk both of the district court and the probate and county court on the ground that they would be deprived of their present authority of appointing their clerical help. When it was pointed out to them that many of them complain they have inadequate clerical

help, also that the judge of the district court does not appoint his clerk, the objections appeared to fade away. Then there were divergent views respecting section 8. Some desired that election be the only method provided for selection of judicial officers except when there is a vacancy. Others desired the so-called "Georgia Plan" of selecting judges, an adaptation of which was adopted in Missouri last November in the form of a constitutional amendment. The wording of the section as contained in the draft was thought to be fairly satisfactory. Whether either of these matters had a great deal to do with the fact that the resolution did not receive legislative approval is not clear. There were introduced in the Legislature an even dozen concurrent resolutions for the amendment of some part of the constitution. Since no more than three can be submitted at one general election, the matter of selecting which, if any, of them would be submitted became quite a legislative problem. The result was the Legislature submitted none of them. The proposition, as introduced in the Senate, reads as follows:

A PROPOSITION to amend article 3 of the constitution of the state of Kansas relating to the judiciary.

*Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the Senate and two-thirds of the members elected to the House of Representatives concurring therein:*

SECTION 1. There is hereby recommended and submitted to the qualified electors of the state of Kansas, to be voted upon at the next general election for representatives, for their approval or rejection, a proposition to amend article 3 of the constitution of the state of Kansas relating to the judiciary so as to read:

#### ARTICLE 3.—THE JUDICIARY

SECTION 1. The judicial power of the state is vested in a system of courts composed of the supreme court, district courts and county courts, which shall be state courts of record, and in such other courts inferior to the district court as are created by statute.

SEC. 2. The supreme court shall be the highest court in the judicial system and shall supervise the administration of justice in all state courts. It shall consist of seven justices, of whom the older justice who is senior in continuous service shall be the chief justice. It may appoint a clerk, a reporter, and other necessary officers of the court. It shall have original jurisdiction of any legal action or proceeding when the facts have been agreed upon in writing, and also in any proceeding in quo warranto, mandamus and habeas corpus. It shall have jurisdiction on questions of law by appeal from any final decision of a district court, and of the right to such appeal litigants shall not be denied; and it shall have such other appellate jurisdiction as may be provided by law. It may prescribe the practice and procedure in all state courts, and provide for the selection of judges pro tem, of courts inferior to it. It may require district judges to assist in the work of the supreme court, and may transfer the judge of any district court to serve temporarily as judge of any other district court.

SEC. 3. The legislature, by joint resolution adopted by a two-thirds vote in each house, after notice and hearing, may remove, or retire on terms, any justice or judge of any state court, for the good of the service; and the supreme court, by a two-thirds vote of its members, for like reason, after notice and hearing, may remove any justice or judge of any state court, or may retire such justice or judge upon such terms as are provided by law; but neither the legislature nor the supreme court may remove or retire more than two justices of the supreme court within any two-year period.



SEC. 4. There shall be a district court in each county, but the legislature may place several counties in one district and may make divisions of the court in any district. The district court shall be a court of original general jurisdiction for the trial of all civil and criminal actions and special proceedings, except as original jurisdiction is vested herein in county courts. It shall have appellate jurisdiction of questions of law and of fact in all actions or special proceedings originating in courts inferior to the district court, or before boards, commissions, tribunals and officers when exercising judicial functions, and of the right to such appeal litigants shall not be denied.

SEC. 5. In each county there shall be a county court which shall have original jurisdiction in all actions or proceedings, whether the question presented be legal or equitable, relating to the probate of wills and the administration upon and distribution of estates of decedents, minors and incompetents, to hold inquests, and to appoint guardians of the persons of minors and incompetents. It shall have, also, such other original jurisdiction, concurrent with the district court, in civil and criminal actions and special proceedings as may be provided by law. The legislature may make divisions of the county court in any county. At the first session of the legislature following the adoption of this article the legislature shall provide for the organization of county courts in accordance with this section, and until such provision is so made effective courts then existing shall continue to function.

SEC. 6. In each county there shall be a court clerk who shall be selected as provided by law and who shall serve as clerk for both the district court and the county court in such county, and whose duties shall be prescribed by rule of the supreme court.

SEC. 7. To be eligible to hold the office of justice of the supreme court or judge of a district court a person must have been duly admitted to practice law in this state, and to be eligible to hold the office of justice or judge of any court of record he must be a citizen and a resident of the state and county or district for which he is selected, and before taking such office must have been engaged in the active practice of law, or have served as judge of a court of record, or both, in this state, in the aggregate as follows: For justice of the supreme court, ten years; for judge of the district court, five years; for judge of the county court, two years. Additional requirements of eligibility for justice or judge of any state court may be provided by law. In the event a justice or judge of any court of record shall file for, or accept a nomination for, or an appointment to, a nonjudicial office, his office of justice or judge shall become vacant immediately.

SEC. 8. Until otherwise provided by statute justices and judges, provided for herein, shall be elected for terms as follows: Justices of the supreme court, ten years; judges of the district court, six years; judges of the county court, four years. When a vacancy occurs in the office of such justice or judge, the governor shall appoint some eligible person to fill the position until the second Monday in January next after the first general election held more than six months after the vacancy occurs, at which general election a justice or judge shall be elected for a full term beginning the second Monday in the next January. The legislature, by a vote of two-thirds of the members of each branch thereof, and by a general statute applicable throughout the state, may provide a different method of selecting such justices or judges, or the terms of their service, or for filling vacancies, but no such statute shall shorten the term for which any justice or judge was appointed or elected when the statute becomes effective.

SEC. 9. Justices and judges, provided for herein, shall receive such annual salaries, payable monthly by the state, as the legislature may provide, but such salaries shall not be less than: For justices of the supreme court, \$6,000; for judges of the district court, \$4,000; for judges of the county



court, \$2,000. The salaries of judges of the county court may be graduated by population. No such justice or judge shall receive any additional fee, salary or perquisite from the state or any of its subdivisions, nor shall he practice law while he continues in office.

SEC. 2. This proposition shall be submitted to the electors of the state of Kansas at the general election in 1942. The amendment hereby proposed shall be known on the official ballot by the title, "The Judiciary Amendment to the State Constitution," and the vote for and against such proposition shall be taken as provided by law.

SEC. 3. This resolution shall take effect and be in force from and after its publication in the statute book.

Sec. 562, P. L. & R.  
U. S. POSTAGE  
**PAID**  
Topeka, Kansas  
Permit No. 421

---

PRINTED BY KANSAS STATE PRINTING PLANT  
W. C. AUSTIN, STATE PRINTER  
TOPEKA 1941  
18-8589