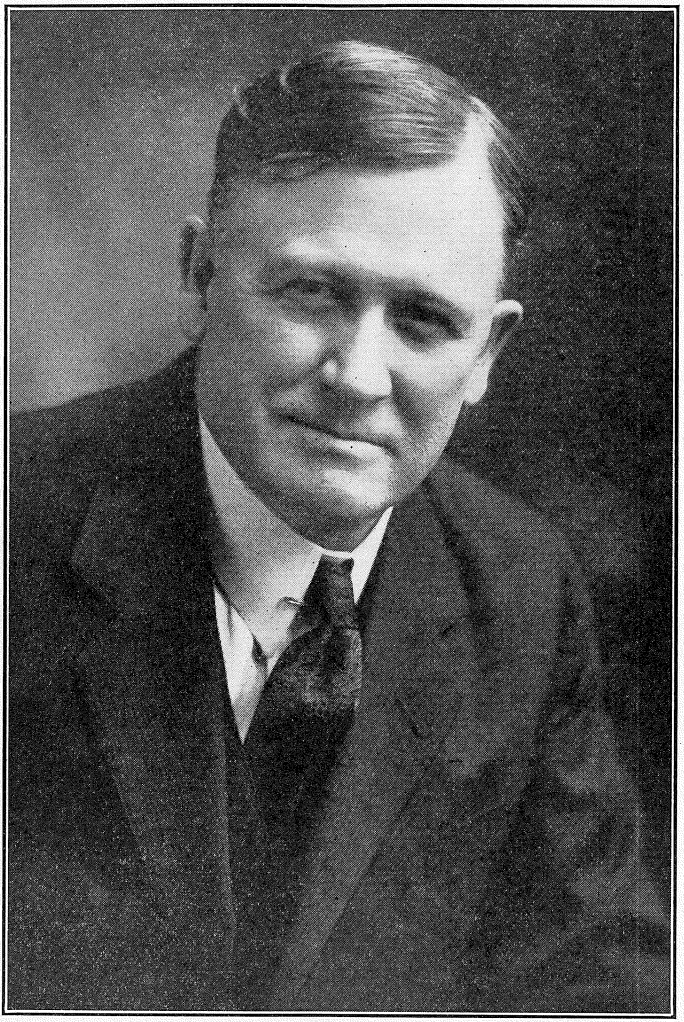
KANSAS JUDICIAL COUNCIL BULLETIN

APRIL, 1943 PART 1.—SEVENTEENTH ANNUAL REPORT



CHAS. D. WELCH,
President of the Bar Association of the State of Kansas

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FOREWORD

We are pleased to present in this BULLETIN an article written by Honorable Charles D. Welch, the president of the Bar Association of the State of Kansas. Mr. Welch is one of the outstanding lawyers of Kansas ,and is well known as a student of all matters pertaining to the betterment of our judicial processes and the advancement of the legal profession. His article is thought-provoking and should be read by layman and lawyer.

For some years past the National Committee on Traffic Law Enforcement, with the assistance of the National Conference of Judicial Councils, the American Bar Association and other interested organizations, has been making studies looking to improvements in the content and enforcement of motor traffic laws. The result of these studies has been included in a volume entitled "Traffic Courses," written by George Warren, published by Little, Brown and Company, Boston. The value of the study depends in a large part in getting the information contained therein before as many persons as possible. To accomplish that purpose in Kansas the Judicial Council requested Honorable Eldon R. Sloan, police judge of the city of Topeka, to write a review of the book. That he has ably done, and the review is printed in this issue of the BULLETIN.

Our December BULLETIN contained a list of the motion days of the various district courts. At a later place notice is called to a change in Morton county.

In our December, 1942, BULLETIN, we published a revised list of Kansas lawyers in the military, naval and marine service of the United States. In this issue we publish a supplemental list showing the names of fifty Kansas lawyers who have since entered the service. This makes a total of 433 Kansas lawyers who have entered the service, whose names have been reported to us.

Although we use extensive methods to obtain information and to check the same, we cannot be certain that the names of some lawyers may not be omitted. The assistance not only of the bench and bar but of laymen is requested. If you know of any error or omission, please write to the Judicial Council.

Attention is also directed to a review of statutes enacted by the legislature at the 1943 session, falling within the purview of the work of the Judicial Council. This review has been prepared by our secretary, Randal C. Harvey. In connection with the review we publish some of the statutes referred to in order that they may be available to the bench and bar prior to the publication of the Session Laws.

Please do not overlook the notice of the F. B. I., who have positions open for attorneys.

THE F. B. I. WANTS ATTORNEYS

The F. B. I. is accepting applications for the position of Special Agent at an entrance salary of $3,200 per year. These positions are open to men from 23 to 35 years of age who are attorneys in good physical condition. Those interested should communicate immediately with Dwight Brantley, Special Agent in Charge, Room 707, U. S. Courthouse, Kansas City, Missouri.

OUR NEW LEGISLATIVE MEMBER

The Judicial Council welcomes a new member, Hon. Irving M. Platt of Junction City, who is now Chairman of the House Judiciary Committee of the Kansas Legislature, having succeeded Hon. Paul R. Wunsch of Kingman.

Mr. Platt attended Washburn University and was admitted to the bar June 18, 1908. He was city attorney of Junction City for fourteen years and county attorney of Geary county for six years. He was president of the Bar Association of the State of Kansas in 1938-'39. A portrait of Mr. Platt appeared on the cover of our December, 1938, BULLETIN.

CHANGES WHICH ARE BEING PRESSED IN THE METHODS OF ADMINISTERING JUSTICE

By Chas. D. Welch

There exists at the present time a growing belief by the public that the present methods of conducting our courts are archaic, encumbered by confusing technicalities and circuitions; that the cost of litigation is excessive, that the time between the commencement of an action and its final settlement is too long; that a lawsuit as now conducted is a contest between lawyers, is a battle of wits, and the decision is obtained by the lawyer who best knows the technicalities and how to apply them, and not by the party who has a just cause.

This is partially due to the fact that in nearly every lawsuit each of the contesting parties believes that the right is on his side and one must fail, and it is not surprising that the defeated party should feel that justice has miscarried.

Chief Justice Taft said:

"If one were asked in what respect we have fallen furthest short of ideal conditions in our government, I think we would be justified in answering, in spite of the glaring defects of our system of municipal government, that it is our failure to secure expedition and thoroughness in the enforcement of public and private rights in our courts."

Courts are established to prevent contestants from attempting to exert their supposed rights by force, and the fact that the controversy is finally settled by a judgment makes for the peace of the community.

It is intended by this paper to call attention to some of the changes in the administration of justice in our courts that are now being seriously recommended and strenuously urged by those who have made a study of our system of administration of justice, which they claim will assist in its better administration by lessening the time required to settle controversies, save expense, prevent new trials on technicalities, assist in arriving at a just result, and lessen the criticism by the public of procedure.

All of these innovations will at some time in the very near future be urged for adoption in our state and it is beliveed that we should give consideration to them and decide in our own minds whether, if adopted in Kansas, they would in fact be improvements over our present methods.

No recommendations are being made here, but suggested improvements are passed on to the Bar and public for their consideration.

The Selection of Judges

It is the function of the courts to furnish the means whereby the rights and liberities of the people may be protected and, when they are submitted to them, to decide controversies among them which they cannot themselves settle.

It is of the highest importance that the public have confidence in the integrity, courage and ability of the judges who conduct our courts.

Whenever the people lose confidence in the courts, whenever they believe that the judgments of the courts are based on anything other than the facts and the law, the foundations of our government will be undermined, and unless the confidence of the public is restored our democratic structure will disintegrate and fall.

All thinking people agree that if our civil liberties are to be protected and if justice is to be enforced against conflicting interests of society, we must have judges wise enough and strong enough to see that the rights of citizens promised under our constitution and laws are vouchsafed to all our citizens.

This suggests the question whether the elective system of choosing judges, such as we have in Kansas, is the best method or whether judges should be chosen in some other way.

Some of the objections urged against the elective system are that to be elected a judge is required to make a campaign and to do this must have a platform in which he pledges certain actions on his part and in a way is tempted to and sometimes does prejudge controversies which he later is called upon to decide.

It is said with good authority that many years ago a candidate for district judge in Kansas ran on the platform that he would not, during his term of office, foreclose a mortgage. He was elected, and he didn't.

It is urged with some justice that a judge, subject to the electorate, is tempted, and sometimes does not resist the temptation to render decisions which he believes will be popular and tend to insure his reëlection rather than those which are just and according to law.

In elections in Kansas for the supreme court, I venture the statement that not one voter in ten knows who the candidates are, or their qualifications, or anything about them. The great majority who have made a study of the subject believe that judges should be appointed and not elected, at least those of the highest court; that the selection should be based on their character and legal ability, and that their selection should be made not by the governor alone, but by a nonpartisan commission of high qualifications selected with great care, composed of lawyers and laymen.

It is believed that the tenure of office of judges should be extended to not less than ten years, and that their salaries should be made high enough so that lawyers of ability can afford to give up their practice and business pursuits and make the administration of justice their life work.

Provision should be made that after having served a certain length of time and attained a certain age they should be retired and their salaries continued. Also, provision should be made for their removal in case they become incompetent or are unfaithful to their trust.

If judges were so selected, we believe it would improve the administration of justice, and the judiciary would merit and have the confidence and respect of all the people.

Jurists, lawyers and law professors who have made an intensive study of the subject have made certain recommendations as changes to be made in our court procedure and the rules of evidence which they claim will have the effect of improving the administration of justice by lessening the time between the filing of suit and the final decision, reducing the expense and assist in arriving at a just result.

Some of these recommendations are as follows:

THE JURY SYSTEM

Notwithstanding the right to a jury trial is guaranteed by the Bill of Rights and the Constitutions of many states, there is considerable criticism of the jury system and their exists a substantial number who would do away with the jury system altogether, at all events in civil cases.

It has been recommended by a committee of the American Bar Association that juries be waived during the duration and cases be tried by the court, where consent of clients can be procured, not ostensibly because of any objection to jury trial, but on the ground that it will save the time of litigants, jurors and courts and cut down expense.

The jury system is an outstanding feature of English and Common Law. It has been regarded as the anchor which holds steadfast the liberties of the people, a check on the unlimited power of the courts, and a means whereby the citizen can participate in the administration of justice and become familiar with workings of the courts.

Others believe the jury system should be retained, but that improvements should be made in the manner of selecting the jury.

It has been recommended that commissioners be appointed by the court, who will comb the list of those eligible to jury service, select only those of intelligence and good character, and that only these shall serve as jurors.

In California prospective jurors are interviewed and are submitted to an intelligence test and it is said that three out of every four fail to meet the test. That this means of selecting jurors has resulted in arriving at just results and fewer mistrials.

It is the practice in some states at the time a juror is summoned to furnish him with a pamphlet briefly describing the duties and functions of a juror and the important part he plays in the administration of justice, covering their necessary qualifications, the separate functions of the court and the jury, explaining what is meant by burden of proof, the weighing of conflicting testimony, and the like. It is claimed that this makes for better verdicts and shortens the examination of the jury.

STANDARDIZED INSTRUCTIONS

In California a committee has prepared and published standard instructions in a manual. In the preparation of this manual the committee has spent considerable time and study in preparing instructions which are in simple language, understandable to the average person, condensed, and correctly state the law.

In practice, the attorney in his request for instructions simply requests that instructions numbers so-and-so, as contained in the manual, together with any other special instructions, be given by the court. It is reported that this has worked well in California, and has met with enthusiastic approval by the courts and practicing attorneys. It is claimed that by this method the law has been announced to the jury in a more accurate and understandable manner, saved time for the courts and attorneys, and has prevented new trials on account of misdirection of the jury.

The following is a statement made by Judge Minor Moore, presiding justice, Los Angeles Division, District Court of Appeals, with reference to this procedure:

"This is the greatest single contribution to time-saving efficiency in the administration of justice that has been made within my career in the law. It is the finest piece of statesmanship ever accomplished by a judicial body."

It is said that this manual is now part of the working equipment of every practicing lawyer of California. At a meeting of the Judges' Association of the State of California a resolution was adopted urging its use by lawyers. It is reported that committees have been appointed to draft standard instructions for use in the District of Columbia, Chicago, and other places.

INSTRUCTIONS TO THE JURY

In Kansas, by statute, the court is required to instruct the jury in writing, if requested, before the argument of counsel.

Before instructing the jury, counsel are permitted, if they request it, to inspect the instructions and may have a reasonable time for such inspection. By this procedure the attorney knows before his argument the law of the case. He is also given ample opportunity to object to any instructions which he believes is not the law.

The committee on Judicial Administration of the American Bar Association recommend that the judge instruct the jury orally and after counsel have made their arguments in accordance with the federal procedure.

SERVICE BY MAIL

No good reason is seen why many notices now required to be served personally by the sheriff, or others, should not be served by mail, registered, receipt requested, such as subpoenas, summons to jurors, and the like. Where this can be done, it would save expense and time.

OATH OF WITNESS

It is claimed that the ordinary witness does not understand and is not impressed with the oath which he takes as a witness; that quite often it is given to all the witnesses at the same time and is so given that it makes no impression and is regarded by the witness as a useless formality.

It is suggested that perjury on the witness stand would be lessened if the oath were administered to each witness separately and that it be given by the judge, and that the witness be required to repeat the oath as administered.

TORTS BY THE STATE, COUNTIES AND CITIES

Under the present law the state and its subdivisions are not liable for their torts except where expressly made liable by statute and cities are not liable for torts committed in the exercise of their governmental functions.

The rule is grounded on the archaic maxim that the King can do no wrong. It is now conceded, at any rate in the United States, the King can do wrong and that since the maxim no longer has any force, it is advocated that the rule be changed so as to permit such actions.

HEARSAY RULE

It has long been a fundamental rule of evidence that hearsay evidence is inadmissible. A hearsay statement is a statement of which evidence is offered as tending to prove the matter intended to be asserted. The principal reasons for rejecting such evidence are:

(1) No opportunity is afforded to cross-examine the declarant;

(2) The declarant was not under oath when he made the statement.

The courts have already announced what are said to be many exceptions to this rule, but which are not real exceptions. It is now proposed that the following rule, among others, be adopted:

Evidence of hearsay declarations may be admitted if the judge finds the declarant:

(*a*) Is unavailable as a witness, or

(*b*) Present and subject to cross-examination.

SCINTILLA RULE

It is the rule in Kansas, and other states, that if there is any evidence to sustain the plaintiff's cause of action the case must go to the jury for decision. This is known as the Scintilla rule.

It is claimed that by this rule cases are submitted to a jury which should be summarily decided by the court and that the rule should be abolished; that renunciation of this rule will promote justice by discouraging border line cases, and will encourage settlements and rid the courts of cases which should never have been brought.

SURVIVORS' TESTIMONY AGAINST REPRESENTATIVES OF DECEASED PERSONS

It has been strongly recommended that this ancient and heretofore honored rule in Kansas which prohibits the survivor from testifying as to conversations and transactions with a person since deceased in an action which his representative is the adverse party and in similar situations, and which prevails in the majority of the states, be abolished and such testimony be admitted.

Our own supreme court has strictly limited the rule to the language of the statute. It is claimed that the majority of judges and lawyers in the states where the rule has been abolished report that the abolishment of the rule has done more good than harm—a doubtful recommendation.

PHYSICIANS AND SURGEONS—PRIVILEGED

Under the Kansas Statutes, a physician or surgeon is not permitted, without the consent of his patient, to testify concerning any communication to him by his patient with reference to any physical or supposed physical defect, disease, or injury, or the time, manner or circumstances under which the ailment was incurred, or concerning any knowledge obtained by personal examination of such patient.

It is claimed that this rule obstructs the administration of justice, that this is particularly true (1) In actions for personal injuries: (2) in cases where the mental capacity of a testator is involved; (3) in cases on the question of health.

The reason for, and the basis of rule is the idea that a person is entitled to privacy as to his body and also that without the rule a patient would be inclined not to disclose to his physician the necessary facts for treatment.

It is proposed that this rule be abolished, or at least that it be left to the decision of the trial judge whether under the circumstances a physician should be required to testify as to such facts.

Our supreme court has already held that the privilege is not to be granted

in a compensation case, but this was on the ground that section 44-515, G. S. Kansas, 1935, expressly removes such privilege in such case.

CROSS-EXAMINATION TO ONE'S OWN CASE

It is the rule in Kansas, and many other states, that the adversary is not permitted to examine his opponent's witnesses, except on matters brought out on direct examination. This is known as the American rule and was first announced in Pennsylvania.

Many who have made a study of the question believe that this rule hinders and prevents presentation of the facts in a logical order, that it is highly technical, tends to confuse the jury who can see no good reason why a witness on the stand should not be permitted to testify to all he knows about the issues at one sitting, in answer to proper questions by either party, and that the rule gives rise to appeals and reversals on only technical errors which have, in fact, in no way prejudiced the appellant.

It is proposed that this rule be abolished so as to permit either party to examine a witness on any part of the issues known to the witness.

THE FEDERAL RULES OF CIVIL PROCEDURE

The committee of which Judge Parker was chairman, recommends that all states adopt the Federal Rules of Civil Procedure adopted for Federal courts in 1938.

It is not possible in this paper to discuss all of these rules. Suffice to say that the Federal Rules seem to the Kansas practitioners to be revolutionary and contrary to what our courts, lawyers and legislative bodies have believed is good practice.

Some states have already adopted these rules with but very little change, using even the same section numbers as in the Federal Rules.

They are supposed to simplify procedure, hasten the time of trial, abolish technicalities, accomplish settlements without trial, cut down the expense of litigation and achieve the dismissal of actions without merit.

It can be said in their favor that if adopted by all the states it would make the practice uniform.

Motions to make definite, demurrers and pleas in abatement are abolished. The pleadings are a complaint and answer.

All that is necessary in a negligence case is to allege the conclusion of negligence, a general statement of the place and injury and the amount of damages. It is said that any one who has had a common-school education should be able to draft a competent complaint or answer under these rules, and this is probably true.

With such pleadings the only way the parties can find out what it is all about is by discovery and by taking the depositions of the witnesses, including the parties, which may be done as soon as the summons is served and by the pretrial provisions.

Depositions cost money and many depositions are expensive.

It seems to the writer that to require a party to an action to take depositions of parties and witnesses in order to find out what the plaintiff claims are the facts or what the defendant asserts as a defense is not only a hardship on account of the expense incurred, and the time required, but in many cases

would preclude a litigant of limited means from maintaining his action or defense.

The plan seems to require the parties to determine the facts by depositions and discovery and then have a pretrial before the judge at which time an attempt is made to narrow the issues.

PRETRIAL

At the pretrial an attempt is made to get an agreement on all of the facts about which there should be no dispute, such as the genuineness of documents, the correctness of plats and photographs, the dimensions of streets or places, what part of an account is correct, the amount of a doctor bill, ownership and the like. At the conclusion of the conference the judge prepares a pretrial report stating the nature of the case, the issues remaining, the matters which have been agreed upon and the possibilities of a settlement, which is binding on the judge and parties.

As part of this procedure, the rules provide (Rule 56) for a summary judgment where, if through depositions taken and information obtained by discovery and admissions, it appears that the complainant has no case, or the defendant has no defense, the court renders a summary final judgment and the case or some phase of it is ended.

Those who are familiar with pretrial practice are enthusiastic in its praise. They claim for it that it saves expense of witnesses to prove facts about which there should be no real controversy; that it narrows the issues to be tried and saves time and often results in a summary judgment without a formal trial of complaints and defenses which have no real merit and that it accomplishes adjustments and settlements of cases which should be settled.

No statutory reason is seen why pretrial practice should not be tried out in our district courts if the parties and the courts believe it would be of benefit.

The effect of the Federal Rules is to give the judge the control of the trial, and procedure, and to prevent a reversal unless it can be affirmatively shown that the rights of the appellant were substantially prejudiced.

At the time this paper was written there was pending before the judiciary committee of the House of Representatives, House bill No. 156, which is similar to the Federal Rules for the taking of depositions and for discovery.

The bill provides for amending sections 60-2803, 60-2819, and repealing sections 60-2820, 60-2822, 60-2827, 60-2837, 60-2838, 60-2843, 60-2846 to 60-2850, inclusive, G. S. 1935, and provides for the taking of depositions by leave of court after jurisdiction has been obtained, and without leave after answer has been filed, of any person whether a party or not and permits the asking of leading questions of a hostile or unwilling witness.

Many believe that a bill so far-reaching and revolutionary in character should not be submitted unless and until it has been scrutinized, studied and recommended by a committee of outstanding lawyers, and members of the supreme court.

BAR INTEGRATION

It is urged that if all the practicing attorneys belonged to one body, with the right of all to be heard and to choose their board of governors by districts, that committees of outstanding lawyers could be selected who would

take the time to make a study of what changes, if any, should be made in our method of administration of justice, and make recommendations.

Among the outstanding accomplishments of the Kansas State Bar Association, which is a voluntary organization and which does not comprise all of the Kansas lawyers, is the *Bar Journal* which is published quarterly.

In the Journal are published valuable articles on Kansas procedure and questions of law written by eminent Kansas lawyers which are invaluable to the Kansas lawyer.

It is questionable whether the Association will be able longer to keep this publication up to its high standard on account of the expense. The funds of association have been depleted on account of the loss of dues from the many members in the armed forces.

With a Bar organization of all the active lawyers the Journal could be continued on the high plane it has occupied in the past, and published more frequently.

The Bar should have a secretary who devotes his entire time to the looking after the interests of the Bar, with an office at the Capital.

Such secretary could keep in touch with the various departments of the state, the many new laws, rules and regulations and furnish information to the members on their request. He should keep informed of what is being done by Bar Associations in other states.

If the entire Bar were organized into one body this could be done.

Many states now have an integrated Bar. The members in those states report that the effect has been wholesome and has improved the standing of lawyers with the public.

The State Bar Association at the annual meeting in May, appointed a committee to prepare a bill to be submitted to the legislature for such an organization in this state.

A bill was prepared, Senate bill No. 24. It was passed by the Senate and was recommended for passage by the House Judiciary Committee, and was lost in the House.

It was opposed by reputable lawyers who feared that it meant regimentation of the Bar by a chosen few—a result that is not apparent from anything contained in the bill.

The friends of this movement believe that a study of the Bar Integration will be convincing that Bar Integration of some kind will benefit the Bar, assist in improving the administration of justice and help restore the lawyer to the place of respect in the community which he deserves to occupy.

TRAFFIC COURTS

By GEORGE WARREN

Reviewed by ELDON R. SLOAN

The average individual's only contact with courts of law are in the so-called minor courts. Their impressions of the workings of justice are gained there. Notwithstanding this the lawyers on whom certainly the greater burden rests for the maintenance of our court system are very indifferent toward these courts. All lawyers are probably vaguely aware of the inadequacy of our

minor court system, but George Warren, in his new book "Traffic Courts," brings us face to face with the tremendous problem of what to do to improve the administration of justice in these courts. Mr. Warren deals exclusively with the enforcement of the traffic laws of the various states and municipalities, but what is said for the traffic laws could very well be applied to the enforcement of all laws in these courts.

Mr. Warren was authorized in 1938 by the National Committee on Traffic Law Enforcement and the National Conference of Judicial Councils to make a nation-wide survey of traffic courts. He spent the next two years on his survey studying all of the available material on the subject and in addition sent out questionnaires to all of the attorneys-general, 1,500 traffic court judges, 12,000 justices of the peace and had many personal conferences with traffic judges and court officials throughout the United States. His research was vigorous and thorough. In 1940 he made his report and this book is based upon that report. In his report he made fifty-seven recommendations. (See appendix following.) These recommendations have been submitted to the National Committee on Traffic Law Enforcement, the National Conference of Judicial Councils, the Section of Criminal Law, the Section of Judicial Administration, the Junior Bar Conference, the House of Delegates of the American Bar Association, the National Safety Council and the International Association of Police Chiefs, in addition to numerous individuals familiar with the problem throughout the United States. Approval of the recommendations has been unanimous. The book is more than the conclusion of one individual. It represents composite learning and study of many individuals and groups. I say this not by way of detraction from Mr. Warren but rather in praise of his work. It represents hours and hours of painstaking work and study. Undoubtedly much of it has been discouraging because of the lack of interest on the part of those who should be vitally concerned. The book merits the careful reading and study of everyone.

The author in his survey has included two Kansas cities, Topeka and Wichita. Some comfort can be taken in the fact that our courts are certainly not as bad as those of a great many other states, but there is no doubt but that there is a great deal of room for improvement and much of the criticism of these courts found in the book applies to Kansas.

The automobile has, of course, added a great deal to the problem of these courts. Most of them were created before the automobile was invented and the procedure that they follow has changed but little since their creation. The automobile has become one of the greatest destroyers of human beings. Every year more than 30,000 people are killed, 1,250,000 are crippled and $1,500,000,000 worth of property is destroyed. What this means, says Mr. Warren, can be better understood when we realize that this means an injury every 25 seconds, a death every 18 minutes and a cost of $170,000 every hour, day and night, from automobile accidents. Naturally this calls for more severe regulation and supervision of the operation of motor vehicles. Much of the responsibility for the accomplishment of this rests with our courts. More and more the public is demanding a better administration of our traffic laws and unless the lawyers meet the challenge, the matter will certainly be taken from their hands.

In Kansas, as is true in most states, we do not have separate traffic courts. Practically all traffic offenses are tried before police courts, city courts and justices of the peace. Most of these courts handle their traffic cases along

with their other criminal cases. Notwithstanding the fact that the average traffic offender and the other types of offenders are far different sorts of individuals, the throwing of them together often of itself has a very undesirable effect upon the traffic offender.

Some of the large cities in the United States have separate traffic courts. In others where their police courts are divided into several divisions, one division hears traffic cases. It is in the large urban centers that the best records and perhaps the worst records are to be found in dealing with this type of case. Where high-grade personnel have taken over the courts in these large centers much good has come, but in others the large city politician has made a mockery of these courts. In Kansas, in common with thirty-eight other states, most of the traffic cases are tried before the justice of the peace with both good and bad results. The higher state courts are not adaptable to the handling of traffic cases, for their procedure is defined to throw safeguards around the individual charged with serious crimes and their procedure is usually cumbersome and difficult.

The procedure followed in traffic courts varies a great deal from state to state and to some extent within the state. Jurisdiction of defendants is obtained in three ways, by summons, ticket or summary arrest. Where the ticket and summons is used the problem immediately arises as to how to deal with those who ignore it. Where a summary arrest is used in order to bring a defendant before the court this involves the taking of a policeman away from his post. This is an especially difficult problem at this time because the war has depleted the ranks of our police departments and most of them are operating short-handed. Some cities, Mr. Warren has discovered, follow the practice of issuing a ticket and at the same time taking the individual's driver's license. A receipt is issued for the license which is good for a few hours. He obtains his license back by going to the police headquarters. In Mexico the license plates are removed from a traffic offender's car and he is required to pick them up at the police station. Mr. Warren discusses various ways of getting the officer and defendant into court on the same day with as little inconvenience as possible. The problem is to a great extent a local one and solutions will have to be found in each locality.

In his survey Mr. Warren found that very few courts had adequate dockets. In Kansas the form of the docket is provided by law. (G. S. 1935, 13-605.) To what extent this statute is followed by the various police courts throughout the state is not known to the writer, but if it is, it affords a very good record. Naturally much of the procedural difficulty arises in large urban centers where a court must handle several hundred cases every day. The manner of organization of the work is undoubtedly a difficult problem. So far we have not had much trouble from this source in Kansas. In order to eliminate routine cases large cities have set up violation bureaus where an individual charged with a minor offense may come and plead guilty and pay a scheduled fine. This would be very helpful, particularly in dealing with parking violations.

To the writer one of the most serious difficulties in dealing with traffic cases is the matter of appeal. The practice exists in Topeka of appealing almost every case where the fine is larger than ordinary or a jail sentence is given. In order to avoid these appeals I am told that some cities in Kansas have the

practice of extending leniency in cases where appeals are anticipated. The advisability of this practice is questionable. The difficulties with appealed cases are certainly not the fault of the district judges. In actual practice many months elapse between the time of the commission of the offense and trial in the district court. The policemen who made the arrest seem to lose their interest in the case and many times it is difficult for the district judge to determine whether or not any offense at all has been committed. Furthermore, under our Kansas procedure the defendant has a right to a trial by jury. This is expensive and cumbersome. In the opinion of the writer, ninety percent of the appeals are taken in order to secure delay rather than because of any serious hope of changing the verdict. It would seem to me that a procedure could be worked out whereby appealed cases would have to be tried within thirty days from the date of the appeal. If the right to trial by jury were eliminated in misdemeanor cases we cannot see how defendants would unduly suffer if this were done. The district judges could very easily handle the appeals. We believe this would eliminate a majority of the appealed cases.

The author has devoted considerable attention to the need for adequate courtrooms. No one who is forced to stand trial in a dingy, dirty room can have a very high opinion of the procedure, nor is there much liklihood of the proceedings having the desired effect upon the accused individual. I wish there were room to set out some of the vivid descriptions of courtrooms Mr. Warren visited throughout the United States. The descriptions set out do not fit any particular courtroom in Kansas. We all know though that there are courtrooms in Kansas that leave much to be desired.

Mr. Warren devotes one chapter to the personnel of these various courts. Here in a sense is perhaps the greatest weakness of our minor courts. So far as Kansas is converned, acting as a judge of a city court or a J. P. court is not a full-time job. Individuals from all walks of life hold these positions and little attention appears to be paid to the qualifications of these judges. Most of them are not lawyers and the writer has heard some justices of the peace speak rather boastfully of their lack of knowledge of the law. Mr. Warren calls attention to the difficulties a young lawyer experiences in commencing the practice of law because the average individual feeling the need of a lawyer's services desires to hire an expecienced counsellor, yet this same individual seems to unhesitatingly place his liberty and his property in the hands of a judge who is unlearned in the law. It seems rather odd when you travel over the state and see the types of individuals that are entrusted with these responsible positions. These judges have the power to take away one's property and above all they have the power to deprive an individual of his liberty. Countless men and women have laid down their lives to defend their liberty and yet instances have occurred where in the selection of a justice of the peace animals with human names have been elected.

What has been said by Mr. Warren and by the writer is not intended as a personal criticism of any individual. Many of the men in Kansas holding these positions are not there by personal choice. The great majority of them certainly are doing the best they can to carry out the job that has been assigned to them. They simply are the results of a system which was created in the horse and buggy days and has never been changed.

So far as a trial of a traffic offender is concerned, Mr. Warren has this to say:

"It is axiomatic that all courts of law should be conducted in a manner calculated to inspire respect and deference for the element of government they exemplify. Any lack of impressiveness, any levity or disregard of high judicial tenets will not only nullify the effectiveness of the court, but will tend to create a disrespect for the entire judicial process. Courts with jurisdiction over traffic cases are particularly vulnerable for a number of reasons: *First,* because the defendants are above the average of criminal court defendants and they have higher standards to be met; *second,* in a vast number of cases this is the only court they will experience and their idea of the entire judicial system may well be founded on the impression received here; *third,* the aim of a traffic court is to impress defendants with the importance of, and need for, traffic law observance; and *fourth,* it is very important in traffic courts that the conduct should be of a high caliber so that attempts of "fixers" will not be invited or condoned. By reason of these factors the manner of a traffic court judge and the conduct of his court should be governed by standards no less high than those of any other tribunal."

If we reflect our experiences in these so-called minor courts we will be able to recall few that have been conducted upon the high plane set out above.

In defense of the judges, let it be here said by the writer who has had some experience, that the faultiness of the procedure is not altogether the fault of the judges. Many lawyers think nothing of presenting their cases to these minor court judges in a manner that they would not think of trying before a district court. Some lawyers attempt to try their cases on the street corner, over the telephone or at the judge's residence. The judges who sit on the benches of these minor courts are subjected to all manner of "wood-shedding." Many times I have had friends of individuals awaiting trial in police court call upon me and make suggestions that I know they would never think of making to a district judge.

One of the worst enemies of traffic enforcement is what Mr. Warren calls "the fixer." This is the procedure whereby individuals working through friends in police departments, prosecuting attorneys' offices or even the judges themselves are able to have a traffic offense of which they are charged dismissed. It has been definitely proven that cities where this condition is prevalent have much higher accident ratio than in cities where the traffic laws are more strictly enforced. Traffic charges are fixed in a great many ways. Cities which use the ticket or summons file the portion of the ticket kept by the officer in such way that it is a simple matter for some one to destroy it and thus remove all evidence of the issuance of the ticket. Frequently the courts innocently become the tool of the fixer by continuing cases until the evidence is lost or the case is forgotten about. Traffic laws, the same as any other law, can be effective only so long as they are fairly and impartially applied to all individuals. If the public at large knows that individuals who are close friends of those charged with enforcement are permitted to violate the law without punishment, they naturally lose all respect for those administering justice and their coöperation becomes indifferent.

There is a great deal of lack of uniformity throughout the United States in the ratio of convictions to acquittals. In the cities visited by Mr. Warren convictions run as low as 40 percent to as high as 99 percent. When it is remembered that probably most traffic offenses are on view arrests one would naturally expect a high percentage of convictions. When this conviction ratio falls too low either the police department or the court is at fault. If the court is turning loose obviously guilty individuals, one can readily see the effect it

will have upon the police department. Enforcement becomes lax and accidents and death increase.

Surveys have been made in a great many cities throughout the United States and these uniformly show that as the percentage of convictions increase the number of accidents decrease. The conclusion that Mr. Warren comes to is inescapable; that is, the size of the penalty is not so important as is the certainty. If every individual who violates a law realizes that just as certain as he does he will be penalized, this will probably be a sufficient determent. On the other hand, if he feels that there is in the first place a good chance that he will not be punished even if caught, he will probably be quite indifferent toward obedience to traffic regulations.

Mr. Warren also discusses the problem of penalizing the traffic violator. His survey has brought out an unbelievable lack of uniformity in penalties assessed against those who are convicted.

A very high percentage of the traffic offenses are committed by individuals between the years of sixteen and eighteen. The proper penalty to assess against them is a difficult one. In most instances this calls for special and sometimes extra legal penalties. In Kansas the judge has the choice of a fine or a jail sentence. The fine is more often than not paid by the parent and confinement in jail is undesirable with young offenders. Most courts follow the practice of paroles on condition that the young offender refrain from driving for a period of time or that he perform some sort of manual labor about the court. Much good could be done by further study in this field.

The writer has had this experience in dealing with boys and girls of this age group. When they are brought in for an offense for which the Vehicle Commissioner could not suspend their driver's license, the surrendering of their license to the court for a period of time in lieu of the payment of a fine is offered. Most of them accept this as a very desirable arrangement. However, nine times out of ten within a week they come to see me to try to get the license back. Second offenders who have been subjected to this treatment are very rare.

Mr. Warren's survey has brought out the fact that for the most part the penalties assessed for traffic violations are amazingly low. An interesting comparison is in the fines assessed for violations of the fish and game laws as compared to traffic violations. The fish and game violation penalties average from two to four times higher than those assessed for traffic violations and yet traffic violations involve danger to life and property.

After the individual brought before the court has been convicted and has paid his penalty the next problem is the matter of a record. It has been conclusively proven that individuals who have been repeatedly before the courts for traffic violations are the major cause of traffic accidents and fatalities. Each court should keep a record on every individual convicted of a traffic violation. Mr. Warren advocates a system whereby these records would become state wide. The desirability of this will be seen by us all. Some states follow the practice of noting on the back of the driver's license each conviction of a traffic violation. This system appeals to the writer of this review.

Mr. Warren devotes considerable portion of his book to the justice of the peace. His survey reveals an appalling condition. His chapter starts out with a sort of thumbnail sketch of the history of the justice of the peace. The

office originated in England during the reign of Edward the Third in the fourteenth century. The office was originated to try breaches of the king's peace. The individual who held the office was selected with considerable care. Mr. Warren quotes from Blackstone's Commentaries concerning these charges as follows:

"Touching the number and qualifications of these justices, it was ordained by statute Edw. III c.22, that two or three of the best reputation in each county, shall be assigned to be keepers of the peace. . . . And as to their qualifications, the statute just cited directs them to be of the best reputation, and most worthy men in the county, and the statute 13 Rich. 11 c. 7, orders them to be of the most sufficient knights, esquires, and gentlemen. And because, contrary to these statutes, men of small substance had crept into the commission, whose poverty made them both covetous and contemptible, it was enacted by statute 18 Hen. VI c. 11, that no justice should be put in commission if he had not lands to the value of 20 pounds per annum and, the rate of money being greatly altered since that time, it is now enacted by statute 5 Geo. II c. 18, that every justice, except as is therein excepted, shall have 100 pounds per annum clear of all deductions."

With the formation of the Colonies in this country the Colonists brought with them the justice of the peace system. It was first used in a similar manner to the English system. However, due to the scattered population the justice of the peace was clothed with general jurisdiction. Mr. Warren says that in forty-five of the forty-seven states where the office exists no attempt has ever been made to provide qualifications for the holder of this office. We adopted the English office without throwing around it the safeguards that were put on the English system.

In Kansas the justice of the peace is a constitutional officer. (Kansas Constitution, Art. 3, Sec. 9.) It is there provided that qualifications shall be such as are provided by law. The only qualification provided by law is that he be an elector of the township in which he is elected and that he remain a resident of the township during his tenure of office. (G. S. 1935, 80-202.) We go back again to the Constitution to find out what the qualifications of an elector are. (Art. 5, Secs. 1 and 2.) An elector must have resided in the state of Kansas for six months next preceding any election and in the township or ward in which he or she offers to vote at least thirty days preceding the election. He must be sane. If convicted of a felony, his civil rights must have been restored. If dishonorably discharged from the army, he must be reinstated. He must have refrained from defrauding the government of the United States or any of the states thereof. He must not have been guilty of giving or receiving a bribe and he would be disqualified if he ever bore arms against the government of the United States or aided or abetted in an attempt to overthrow the government. These would appear to be the only qualifications in Kansas for a justice of the peace.

It would appear that the office has existed very much as it was created at the time of statehood. Fortunately Kansas is no worse off than most of the other states in the union and from what Mr. Warren has to say we are considerably better off than most of them. Instances are cited in the book of trials which are nothing short of ridiculous. True enough, rights of appeal are always provided from justice of peace courts, but in many instances this is rather an empty hope, for the cost of appealing is frequently more expensive than paying off.

One of the biggest difficulties with the justice of the peace system is that the justices are dependent for their income from fees assessed as costs against individuals who appear before them. The judge therefore has a very personal interest in the outcome of the proceeding. It is difficult to see how a person can act as judge knowing that unless he convicts the defendant he will receive nothing for his time. As a result of this Mr. Warren's survey shows an extremely high ratio of convictions to acquittals in justice court.

Looking back over what I have just written, I cannot escape the feeling that I have fallen far short in my attempt to review George Warren's book. But perhaps a book of this character cannot be adequately reviewed when one realizes the time and effort that Mr. Warren has spent in gathering together his information and the assistance he has sought in developing his conclusions. If what has been said will prompt the reader to secure a copy of the book and read it carefully, perhaps then this review will have accomplished its purpose.

RECOMMENDATIONS

TRAFFIC LAWS

1. Traffic laws with inherent defects should be revised and those which are unenforceable or unnecessary should be repealed.
2. Traffic statutes should be founded upon the "Uniform Vehicle Code" and the "Model Traffic Ordinances" with only regulations purely local in nature left to local ordinance. However, an exception should be made where this would result in ousting local courts from jurisdiction to try traffic violations.

TRAFFIC COURTS

3. All courts should treat traffic cases apart from their other business.
4. Special courts for traffic cases are necessary when the number of cases reach 7,500 per year with a violations bureau in operation, and 15,000 cases per year when there is no bureau.
5. The ideal traffic court organization would be on a state basis with various district courts, and with circuits operating from each district.
6. Physical courtroom conditions should be improved as to facilities, arrangements, cleanliness, and appearance.
7. The taxing of court costs as a separate penalty should be eliminated, and the fine assessed in one sum. If costs are included, they should be in a reasonable amount.

VIOLATIONS BUREAUS

8. Violations bureaus are to be used only when the number of traffic cases make it impossible for the court to properly dispose of them.
9. The basis for all violations bureaus should be a signed plea of guilty and waiver of trial.
10. Schedules of fines charged at the violations bureau are not to be alterable.
11. The bureau should handle the least hazardous violations and should deal with moving offenses only when they respond to treatment outside the courtroom. Major traffic law violations should never be handled in a violations bureau.
12. Assuming conformity with the recommended basis for violations bureau jurisdiction, the payment by fines by mail, properly safeguarded, is recommended.

13. Fines assessed at the violations bureau should be in average amounts used by the judge for the same offenses, and should be scaled higher for repeaters.

TRAFFIC JUDGES

14. Traffic judges should recognize the fact that a knowledge of traffic laws, traffic policing and engineering is necessary in addition to a legal background and should aim to obtain an understanding of these factors.
15. Traffic judges should not be selected by local authority or on a localized basis where appointment or election on a wider scale is possible.
16. The selection of alternates for traffic judges should be safeguarded.
17. Where more than one magistrate is available for the traffic bench, it is recommended that one judge be assigned to that post permanently or for a long period, rather than the use of a system of rotation of judges.
18. Traffic judges should be under the supervision of a chief magistrate who should be given regulatory powers.

PROSECUTORS

19. It is recommended that the title "Prosecutor" be eliminated in favor of "Public Attorney" or "Public Solicitor" or a similar term.
20. "Prosecutors" should be assigned to traffic courts for aid in the disposition of cases.
21. Where the information on the ticket or complaint does not afford the prosecutor sufficient detail, the arresting officer should be required to furnish him with an additional report.
22. Prosecutors should not be used for the purpose of deciding whether a traffic violation should be brought to trial.

DEFENCE COUNSEL

23. Bar associations should interest themselves in ascertaining what the function of a lawyer in the traffic courts should be, and in encouraging the maintenance of that standard.

TRAFFIC COURT PROCEDURE

PROCEDURE

24. Preliminary hearings in minor traffic cases should be eliminated.
25. Summonses and tickets should be returnable on particular days assigned to officers.
26. Where the volume of cases is large the time of appearance should be staggered according to the type of offense.
27. Complaints other than tickets are unnecessary and should not be used in traffic cases where the officer witnessed the violation.
28. Dockets should be kept by the court clerk's office and traffic cases should be kept in a separate docket.
29. Dockets should be in duplicate, the disposition to be marked on the original by the judge at the time of trial.
30. Each defendant should be treated as a single case regardless of the number of charges against him.
31. Appearances should be enforced by the service of warrants through the police department and by additional fines.

32. The traffic court judge should be made solely responsible for the granting and use of continuances.
33. Continuances should not be used for the purpose of allowing violators an opportunity to obtain the money needed for the fine. Instead, surrender of the offender's license until payment is made is recommended.

THE JURY

34. The use of juries in trials for summary or minor traffic offenses should be eliminated.

APPEALS

35. There is need for the study and revision of the appellate procedure available to persons convicted of traffic offenses.

TRAFFIC COURT ADMINISTRATION

CONDUCT OF A TRAFFIC COURT

36. There is a general need for higher standards of decorum and courtroom procedure in traffic cases.

PUNISHING THE TRAFFIC VIOLATOR

37. Juvenile traffic violators should be treated by traffic courts except where a behavior problem is involved.
38. Rigid and set fines (as distinguished from flexible standards) for the various traffic violations are to be discouraged.
39. The utilization of effective methods other than fines and sentences for the punishment and treatment of traffic violators, should be encouraged.
40. The primary aim of the traffic court should be to impress defendants with the need for traffic law observance rather than to penalize.

THE FIX

41. Reduction of charges in traffic cases should be a judicial power and exercisable only by the judge.
42. Judges should hold police officer, prosecutor, or both, strictly accountable for deliberate attempts to weaken the case against the defendant.
43. Clerical procedure should be revised for the purpose of permitting audits, allocating responsibility and providing checks on the handling of cases before they are tried.

RECORDS

44. Traffic judges should be furnished with the traffic record of the defendant by the police department, to be used only after deciding guilt in the present case, for the purpose of assessing the punishment.
45. Drivers' records should be state-wide for maximum effectiveness and made available through police departments to traffic courts throughout the state.
46. Traffic courts should keep daily cumulative records, broken-down by division into the common offenses, and published at least annually.

CONVICTION REPORTING

47. Bar associations and other interested groups should interest themselves, where necessary, in the problem of the failure of judges in traffic courts to report convictions as required by state law.

THE JUSTICE OF THE PEACE

THE JUSTICE OF THE PEACE COURT

48. The justice of the peace system is outmoded and its plan of organization ineffective for good traffic law enforcement. It is recommended that the justice of the peace should be replaced for the trial of traffic cases by a state-wide system of regular courts with trained personnel functioning on a circuit basis from centrally located seats and under the supervision of a chief judge.

QUALIFICATIONS AND SUPERVISION

49. *Minimum qualifications should be prescribed for candidates for the office of justice of the peace.
50. The basis governing the number and location of justices of the peace should be revised to allow the existence of a reasonable number of officers and an efficient distribution.
51. Adequate supervision should be provided, and regular inspections made of all functioning justice courts.

THE FEE SYSTEM AND SALARIES

52. The present fee system in use in most states as a method of remuneration for justices of the peace, should be abolished and replaced by a means of compensation not dependent in any manner upon the decision in the case.
53. Where practical, fair and adequate salaries should be given justices of the peace.

THE ADMINISTRATION OF JUSTICE IN THE JUSTICE COURT

54. Courtrooms should be furnished to justices in the various localities.
55. The choice or selection of a particular justice court by the arresting officer should not be permitted if the practical necessity therefor is removed.
56. The practice of taxing costs should be eliminated.
57. All justices should be furnished with, and required to keep, satisfactory dockets, financial and other records, and should be obliged to report to a county or state office at least monthly.

KANSAS LAWYERS IN THE MILITARY SERVICE

SUPPLEMENTAL LIST OF KANSAS LAWYERS IN THE MILITARY OR NAVAL SERVICE OF THE UNITED STATES

Harry Akers, Coffeyville
George L. Allred, Emporia
Leon L. Askren, Atchison

Kenneth R. Baxter, Marysville
Oscar F. Belin, Wichita

Roy W. Cliborne, Marysville
O. J. Connell, El Dorado

Claude S. Cravens, Jr., Topeka
Rex Lawrence Culley, Mullinville
William E. Cunningham, Arkansas City

Perry A. Ennis, Topeka

Erle W. Francis, Topeka

Henry Morris Garvin, St. John

* Recommendations numbers 49 to 57 are subject to recommendation number 48.

Ford E. Harbaugh, Wellington
Murray H. Hodges, Olathe
Robert M. Holford, Hutchinson
William S. Hyatt, Jr., Kansas City

Robert R. Irwin, Topeka

Orin C. Jordan, Beloit

George L. Keller, Pratt
W. W. Kennedy, Pittsburg
Gerald E. Kolterman, Wamego

Auburn G. Light, Liberal
J. W. Lowry, Atchison

Ora D. McClellan, Neodesha
Lee R. Meador, Wichita
Lloyd S. Miller, Kansas City
Robert Haskins Miller, Lawrence
Stanley C. Miner, Ness City
John H. Morse, Mound City
Ralph Mullin, Olathe

Joseph Scott Payne, Kansas City
Robert A. Peterson, Topeka
Robert T. Price, Topeka

George E. Ramskill, Burlingame
Oliver D. Rinehart, Paola
Max Dale Robinson, Emporia
D. V. Romine, Abilene

Ray S. Schulz, Great Bend
Jay W. Scovel, Independence
John Seitz, Kansas City
Clem H. Silvers, El Dorado
Alan R. Sleeper, Jr., Iola
Charles H. Stewart, Kingman
Earl B. Swarner, Kansas City

John M. Wall, Sedan
Jack F. Wayman, Pittsburg
L. A. Willett, Beloit
Arno Windscheffel, Smith Center
W. R. Womer, Manhattan

STATUTES ENACTED BY THE 1943 LEGISLATURE

By RANDAL C. HARVEY

In its 1943 regular session, the legislature enacted a number of statutes relating to procedure before the courts and others of interest to the lawyers of Kansas. In this issue, we are printing some of these new laws which we deem of particular interest, so that the bar may become familiar with them as soon as possible; but we call attention to the fact that some of these laws will not become effective until their publication in the statute book.

AMENDMENTS TO PROBATE CODE

Senate bill No. 110, by Senator Jones of Reno, amends sections 59-617, 59-618, 59-2237, and 59-2260, G. S. 1941 Supp., being a part of the probate code. These amendments were sponsored by the Judicial Council, and make three important changes in probate procedure: (1) by providing for the probate of a will which has been intentionally withheld after one year and within five years after the death of the testator, protecting the rights of innocent purchasers; (2) providing that demands against estates shall be deemed duly exhibited from the date of the filing of petition, changing the rule in *In re Estate of Dotson,* 154 Kan. 562, and *In re Estate of Whittelsey,* 156 Kan. 157, wherein it was held that such demands are not exhibited until set for hearing; (3) providing that an adjudication of insanity shall be prima facie evidence in proceedings for the appointment of a guardian. After careful con-

sideration of all the proposed amendments to the probate code, the Judicial Council agreed upon those contained in this bill, and the same were enacted in the form we recommended. This bill is printed in this issue, and becomes effective upon publication *in the statute book.*

The old procedure, particularly with reference to demands, must be followed until this law becomes effective.

House bill No. 2 amends section 59-2209, G. S. 1941 Supp., with relation to mailing of notice of hearings in probate proceedings; adding the words "or guardian and ward, as the case may be, other than the petitioner," to the persons required to be notified. This bill was introduced by Mr. Woodward, and had the approval of the Judicial Council, and is printed in this issue. It also becomes effective upon publication in the statute book.

POWERS OF ATTORNEY

House bill No. 33 provides for the recording of powers of attorney, and also provides that the death of the principal shall not operate to revoke an agency created by him, where the instrument creating the agency has been recorded, as to those who act in good faith without notice of such death. This will permit action under powers of attorney executed by members of the armed forces until actual notice of death is received; otherwise, persons might hesitate to deal with the agent of a soldier on foreign duty whose whereabouts is unknown. This bill was introduced by Mr. Glick and had the approval of the Judicial Council. It is published in this issue and is already in effect.

RIGHT TO PRIVATE CONSULTATION WITH ATTORNEY

House bill No. 84 protects the rights of persons restrained of their liberties to consult with an attorney in private, without barriers and without listening in or recording devices. This bill was introduced by Mr. Malone and was approved by the Judicial Council. It became effective upon publication in the official state paper, and is printed in this issue.

CHANGE OF NAME AND RIGHTS OF MAJORITY

House bill No. 246, by committee on judiciary, relates to the proceedings for change of name, amending G. S. 60-2302. The Judicial Council made no recommendation on this bill, which becomes effective upon its publication in the statute book, and is printed in this issue.

House bill No. 247, by committee on judiciary, relates to the conferring of rights of majority on minors, amending G. S. 38-109. The Judicial Council made no recommendation on this bill, which becomes effective on its publication in the statute book, and is printed in this issue.

COMPUTATION OF TIME

Senate bill No. 75, by Senator Cassler, relates to the computation of time, amending G. S. 60-3819, and provides for the exclusion of Sundays and statutory holidays if the time within which an act is to be done is one week or less. This changes the rule announced in the case of *Smith v. Robertson,* 155 Kan. 706. This bill was approved by the Judicial Council and becomes effective on its publication in the statute book, and is printed in this issue.

ACKNOWLEDGMENTS OF INSTRUMENTS

Senate bill No. 118, by Senator Griffith, relating to acknowledgments of written instruments, provides for the taking of acknowledgments by any commissioned officer in the United States Army, Navy, or Marine Corps. This bill was approved by the Judicial Council, and is printed in this issue, having already become effective.

TRANSCRIPTS PREPARED BY OFFICIAL REPORTERS

Senate bill No. 233, by Senator Jones of Reno, provides that the transcript of notes of official court reporters may be introduced in evidence. This bill was sponsored by the Judicial Council to re-enact a section which was repealed by mistake in 1941. This bill is printed in this issue and has already become effective.

PROPOSED CONSTITUTIONAL AMENDMENT—MORTGAGE OR LEASE OF HOMESTEAD

Senate concurrent resolution No. 12 is a proposition to amend section 9, article 15, of the state constitution, to permit the legislature to provide for the mortgage or leasing of the homestead of an insane person for oil and gas, etc. This resolution is printed in this issue, and will be submitted to the voters at the general election in November, 1944. If adopted, this amendment will change the rule discussed in the concurring opinions in *Starke v. Starke*, 155 Kan. 331, and in previous cases cited therein. The Judicial Council has not yet taken any formal action upon this proposition, but may consider it at a later meeting.

TERMS OF COURT, TWENTIETH JUDICIAL DISTRICT

House bill No. 122, by Mr. Rinker, changes the terms of court in the twentieth judicial district. It becomes effective on its publication in the statute book. The Judicial Council took no action on this bill, but it is printed herein because it will change some of the motion days in these counties (printed in our December, 1942, BULLETIN) for the latter part of 1943.

OTHER LAWS ENACTED

In addition to the statutes which are printed in this BULLETIN, the following laws enacted may be of interest to some of our readers:

House bill No. 20 amends section 17-4504, relating to corporations, and has the effect of providing that Kansas insurance companies must comply with the Kansas insurance laws regardless of whether they do business in Kansas. This bill was introduced by Mr. Vance and takes effect upon publication in the statute book.

House bill No. 108 provides for the commitment and custody of children by the juvenile courts, amending section 38-407. This bill was introduced by the committee on public welfare, and becomes effective upon its publication in the statute book. The Judicial Council made no recommendation on this bill.

House bill No. 151 relates to the drawing of jurors in counties having a population of 90,000 or over, amending G. S. 43-143 and 43-147. This bill was introduced by Messrs. Finigan and Towers, and became effective upon its

publication in the official state paper. The Judicial Council took no action on this bill, and it is not printed herein because of its limited interest.

House bill No. 276, by Messrs. Malone, Bryant and Williams, makes it unlawful to sell or distribute magazines and other publications which are not admissible to the United States mails or which contain cruel, indecent, or immoral matter. The Judicial Council made no recommendation with reference to this bill, which becomes effective upon its publication in the statute book.

Senate bill No. 108, by Senator Jones of Reno, amends the statute relating to the Judicial Council, and provides for the collection of statistics for county and city courts as well as district and probate courts.

Senate bill No. 163, by Senator Kahrs, relates to city courts in certain counties. It became effective upon its publication in the official state paper. The Judicial Council took no action on this bill, which relates principally to salary changes.

Senate bill No. 234, by Senator Jones of Reno, provides for the granting of conditional military pardons to permit the induction into the armed forces of men otherwise acceptable. The Judicial Council took no action on this bill.

BILLS NOT ENACTED

A considerable number of other proposals, introduced in the 1943 legislature, which failed of enactment, were of interest to the bench and bar of the state.

Senate bill No. 24, to create an integrated state bar, was passed by the Senate and recommended by the House judiciary committee, but was defeated in the House in the committee of the whole.

A number of bills were introduced to change divorce laws, including Senate bill No. 232, which was sponsored by the Judicial Council, providing that permanent alimony might be terminated by death or remarriage. This bill passed the Senate and was recommended by the House judiciary committee, but died on the House calendar in the closing hours of the session. Other changes in the divorce statutes were also defeated.

Senate bill No. 101, increasing judicial salaries, and Senate bill No. 102, providing for the retirement of justices and judges, were also defeated.

Senate bill No. 117, the uniform act relating to simultaneous deaths, previously recommended by the Judicial Council (July, 1942, BULLETIN, page 54), was defeated on account of amendments upon which the two houses failed to agree.

House bill No. 26, providing for the sale of real estate of a decedent in the probate court, passed the House but was defeated in the Senate.

TEXT OF BILLS ENACTED

The following is the text of the bills above referred to, which were enacted by the 1943 legislature, and are printed in this issue:

SENATE BILL No. 110

AN ACT relating to the probate code, amending sections 59-617, 59-618, 59-2237, and 59-2260 of the General Statutes Supplement of 1941, and repealing said original sections.

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

SECTION 1. That section 59-617 of the General Statutes Supplement of 1941 is hereby amended to read as follows: 59-617. *Limitation on probate of a written will.* No will of a testator who died while a resident of this state shall be effectual to pass property unless an application is made for the probate of such will within one year after the death of the testator, except as hereinafter provided.

SEC. 2. Section 59-618 of the General Statutes Supplement of 1941 is hereby amended to read as follows: 59-618. *Liability and effect of withholding will.* Any person who has possession of the will of a testator dying a resident of this state, or has knowledge of such will and access to it for the purpose of probate, and knowingly withholds it from the probate court having jurisdiction to probate it for more than one year after the death of the testator, shall be barred from all rights under the will and shall be liable for all damages sustained by such beneficiaries who do not have such possession of the will and are without such knowledge thereof and such access thereto; and the said will may be admitted to probate as to any innocent beneficiary on the application by him for such probate, if such application is made within ninety days after he has knowledge of such will and access thereto and within five years after the death of the testator: *Provided,* The title of any purchaser in good faith, without knowledge of such will, to any property derived from the fiduciary, heirs, devisees, or legatees of the decedent, shall not be defeated by the production of the will of such decedent and the application for probate thereof after the expiration of one year from the death of the decedent.

SEC. 3. Section 59-2237 of the General Statutes Supplement of 1941 is hereby amended to read as follows: 59-2237. *Exhibition of demands and hearing thereon; allowance without hearing, when.* Any person may exhibit his demand against the estate of a decedent by filing his petition for its allowance in the proper probate court. Such demand shall be deemed duly exhibited from the date of the filing of said petition. 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 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.

SEC. 4. Section 59-2260 of the General Statutes Supplement of 1941 is hereby amended to read as follows: 59-2260. *Requirements for hearing.* At the hearing of a petition for the commitment of an insane person and the appointment of a guardian of such person or his estate, or for the appointment of a guardian of an incompetent person or his estate, such person shall have the right to be present and shall be represented by counsel. If none is selected in his behalf, the court shall appoint suitable counsel to represent him. The court shall determine whether the presence of such person at the hearing is required, but the hearing shall not proceed until the person is represented by counsel. If such person has been duly adjudged insane or incompetent by

any court of competent jurisdiction, in this state or elsewhere, a duly authenticated copy of said adjudication shall be prima facie evidence of his insanity or incompetency, and, where such adjudication is relied upon for the appointment of a guardian in this state, the court may hear and determine the cause without a trial by jury or a hearing by commission.

SEC. 5. Sections 59-617, 59-618, 59-2237 and 59-2260 of the General Statutes Supplement of 1941 are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL No. 2

AN ACT relating to notice of hearings in proceedings under the probate code, amending section 59-2209 of the General Statutes Supplement of 1941, and repealing said original section.

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

SECTION 1. Section 59-2209 of the General Statutes Supplement of 1941 is hereby amended to read as follows: Sec. 59-2209. When notice of hearing is required by any provision of this act, by specific reference to this section, such notice shall be published once a week for three consecutive weeks in some newspaper of the county authorized by law to publish legal notices. The first publication shall be had within ten days after the order fixing the time and place of the hearing; and within seven days after first published notice the petitioner shall mail or cause to be mailed a copy of the notice to each heir, devisee, and legatee or guardian and ward, as the case may be, other than the petitioner, whose name and address are known to him. The date set for the hearing shall not be earlier than seven days nor later than fourteen days after the date of the last publication of notice.

SEC. 2. Section 59-2209 of the General Statutes Supplement of 1941 is hereby repealed.

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

HOUSE BILL No. 33

AN ACT relating to powers and letters of attorney, providing for the revocation of such powers and letters of attorney and for recording of them, and repealing sections 67-225, 67-226 and 67-227 of the General Statutes of 1935.

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

SECTION 1. All letters of attorney or powers of attorney intended for use in this state may be acknowledged or proved in the same manner as conveyances of land are acknowledged or proved; and when any letter of attorney or power of attorney is acknowledged or proved in such manner, the same may be recorded in the same manner as a conveyance of land is recorded; and copy of any such letter of attorney or power of attorney, duly certified, shall be admitted in evidence without accounting for the nonproduction of the original thereof.

SEC. 2. Any instrument in writing revoking or purporting to revoke any letter of attorney or power of attorney when acknowledged or proved in the same manner as a conveyance of land is acknowledged or proved, may be recorded in the same manner as a conveyance of land is recorded, and with like effect from the time of its recording.

SEC. 3. The death of the principal shall not operate as a revocation of an agency created by him, where the instrument creating such agency has been filed for record, as to those, who, without notice of such death, in good faith and under circumstances repelling the imputation of fraud or negligence, deal thereunder.

SEC. 4. Sections 67-225, 67-226 and 67-227 of the General Statutes of 1935 are hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its publication in the official state paper.

Published in the official state paper March 22, 1943.

HOUSE BILL No. 84

AN ACT relating to persons restrained of their liberties, granting certain privileges, and providing penalties for violations of this act.

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

SECTION 1. That any person held in restraint of his liberty pending trial or held for investigation in any jail or other place of confinement in this state, shall be permitted upon request to immediately confer privately with an attorney of his choice in the same room with such attorney and without any barriers between such person and his attorney, and without any listening in or recording devices.

SEC. 2. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof be fined not less than fifty dollars, nor more than five hundred dollars, or confined to the county jail for thirty days, or both such fine and imprisonment, and such person shall be subject to immediate removal from office.

SEC. 3. This act shall take effect and be in force after its publication in the official state paper.

Published in the official state paper March 22, 1943.

HOUSE BILL No. 246

AN ACT relating to the code of civil procedure, providing for change of name, amending section 60-2302 of the General Statutes of 1935, and repealing said original section.

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

SECTION 1. Section 60-2302 of the General Statutes of 1935 is hereby amended to read as follows: 60-2302. That any person desiring to change his or her name may file a petition in the district court of the county in which such person may be a resident, setting forth: *First,* that the petitioner has been a bona fide citizen of such county for at least one year prior to the filing of the petition; *second,* the cause for which the change of petitioner's name is sought; third, the name asked for. Such petition shall be filed as in other cases and notice of the hearing on said petition shall be given by publishing said notice for three consecutive weeks in some newspaper authorized by law to publish legal notices and the time for the hearing on said petition shall be not less than thirty days from the date of the first publication. Upon the hearing of said petition if the court be duly satisfied by proof in open court of the truth of the allegations set forth in the petition, and there exists proper and reasonable cause for changing the name of the petitioner, it shall be the duty of the court to order and direct a change of the name of such petitioner, and that an order for that purpose be made in the journals of such court.

SEC. 2. Section 60-2302 of the General Statutes of 1935 is hereby repealed.

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

HOUSE BILL No. 247

AN ACT relating to the conferring of rights of majority on minors, amending section 38-109 of the General Statutes of 1935, and repealing said original section.

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

SECTION 1. Section 38-109 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 38-109. Any minor, desiring to obtain the rights of majority for the purposes named in the preceding section, may, by his or her next friend, file a petition in the district court of the county in which such minor shall reside, setting forth, *first,* the age of the minor petitioner, and

that said petitioner is then and has been a bona fide resident of such county for at least one year next preceding the filing of the petition; *second,* the cause for which petitioner seeks to obtain the rights of majority. Such petition shall be filed as in other cases and notice of the hearing on said petition shall be given by publishing such notice for three consecutive weeks in some newspaper authorized by law to publish legal notices and the time of the hearing on said petition shall be not less than thirty days after the date of the first publication of said notice. Upon proof in open court of the truth of the allegations in such petition and that said petitioner is a person of sound mind and able to transact his or her own affairs and that the interest of the petitioner shall be promoted thereby, the court may, in its discretion, order and decree that the petitioner be empowered to exercise the rights of majority for any and all purposes mentioned in section 38-108 of the General Statutes of 1935 or any acts amendatory thereof or supplemental thereto; and thereupon such order and decree shall be entered on the records of said court; and thereafter all acts by said petitioner done and performed concerning any contract, rights in action, or interests in real or personal property, shall have the same force, validity and effect as if made by a person of full age.

SEC. 2. Section 38-109 of the General Statutes of 1935 is hereby repealed.

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

SENATE BILL No. 75

AN ACT relating to the computation of time, and amending section 60-3819 of the General Statutes of 1935, and repealing said original section.

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

SECTION 1. Section 60-3819 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 60-3819. The time within which an act is to be done shall be computed by excluding the first day and including the last; if the last day be Sunday or a statutory holiday, it shall be excluded: *Provided,* That if the time within which an act is to be done is one week or less, Sundays and statutory holidays shall be excluded.

SEC. 2. That where any law of this state or any rule or regulation lawfully promulgated thereunder prescribes the time within which an act is to be done, if not otherwise specifically provided, the time within which such act is to be done shall be computed by excluding the first day and including the last; if the last day be Sunday or a statutory holiday, it shall be excluded: *Provided,* That if the time within which an act is to be done is one week or less, Sundays and statutory holidays shall be excluded.

SEC. 3. Section 60-3819 of the General Statutes of 1935 is hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its publication in the statute book.

SENATE BILL No. 118

AN ACT relating to acknowledgments of written instruments.

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

SECTION 1. *Acknowledgments by persons serving in or with the armed forces of the United States within or without the United States.* In addition to the acknowledgment of instruments in the manner and form and as now provided by law, any person serving in or with the armed forces of the United States may acknowledge the same whenever located before any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or ensign or higher in the navy or United States coast guard. The instrument shall not be rendered invalid by the failure to state therein the place of execution or acknowledgment. No authentication of the officer's certificate of acknowledgment shall

be required but the officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in the following form:

On this the.....day of....., 19....., before me,....., the undersigned officer, personally appeared.....known to me to be serving in or with the armed forces of the United States and to be the person whose name is subscribed to the within instrument and acknowledged that.....he.....executed the same for the purposes therein contained. And the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the armed forces of the United States.

(*Signature of Officer.*)

(*Rank of Officer and Command to which attached.*)

SEC. 2. *Acknowledgments not affected by this act.* Nothing herein shall be construed to alter, invalidate, limit or affect any acknowledgment heretofore or hereafter made as now or hereafter otherwise permitted by the law or usages in this state.

SEC. 3. *Time of taking effect.* This act shall take effect from and after its publication in the official state paper.

Published in the official state paper March 24, 1943.

SENATE BILL No. 233

AN ACT relating to official reporters for the district courts, providing that the transcript of notes of such reporters, duly certified, may be introduced in evidence.

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

SECTION 1. That the transcript of notes of any duly appointed official reporter of the district court of any proceedings taken by such reporter in any court in the state of Kansas, which shall thereafter be transcribed by such reporter, and certified by him to be a true copy of all the evidence of any witness or witnesses examined, or other proceedings had in such court, may be introduced in evidence by any party desiring to use the same under like circumstances and with like effect as the deposition of such witness or witnesses, or for any purpose for which the same may be competent.

SEC. 2. This act shall take effect and be in force from and after its publication in the official state paper.

Published in the official state paper March 24, 1943.

SENATE CONCURRENT RESOLUTION No. 12

A PROPOSITION to amend section 9, article 15, of the constitution of the state of Kansas relating to homesteads.

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. The following proposition to amend the constitution of the state of Kansas is hereby submitted to the qualified electors of the state for their approval or rejection: That section 9, article 15, of the constitution of the state of Kansas be amended to read as follows:

SEC. 9. A homestead to the extent of one hundred and sixty acres of farming land, or of one acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon: *Provided,* The provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife: *And provided further,* That the legislature by an ap-

propriate act or acts, clearly framed to avoid abuses, may provide that when it is shown the husband or wife while occupying a homestead is adjudged to be insane, the duly appointed guardian of the insane spouse may be authorized to join with the sane spouse in executing a mortgage upon the homestead, renewing or refinancing an encumbrance thereon which is likely to cause its loss, or in executing a lease thereon authorizing the lessee to explore and produce therefrom oil, gas, coal, lead, zinc, or other minerals.

SEC. 2. This proposition shall be submitted to the electors of the state at the general election in the year of 1944 for their approval or rejection. The amendment hereby proposed shall be designated on the ballot by the following title: "the amendment to the homestead section of the constitution," and shall be voted for or against, as provided by law, under such title.

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

HOUSE BILL No. 122

AN ACT relating to terms of the district court in the twentieth judicial district, amending section 20-1020 of the General Statutes of 1935, and repealing said original section.

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

SECTION 1. Section 20-1020 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 20-1020. That the terms of the district court of the twentieth judicial district shall commence in each year as follows: In the county of Rice, on the first Tuesday of January, on the first Tuesday of April, and on the first Tuesday of September; in the county of Stafford, on the first Tuesday of February, on the first Tuesday of May, and on the first Tuesday of October; in the county of Barton, on the first Tuesday of March, on the first Tuesday of June, and on the first Monday of November.

SEC. 2. Section 20-1020 of the General Statutes of 1935 is hereby repealed.

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

CORRECTION

On Motion Day schedule for Morton county, the date September 14 should be changed to September 7.

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PRINTED BY KANSAS STATE PRINTING PLANT
W. C. AUSTIN, STATE PRINTER
TOPEKA, 1943
19-6950