

MOTION DAYS, 1953

# KANSAS JUDICIAL COUNCIL BULLETIN

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President of the Bar Association of the State of Kansas

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## FOREWORD

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Each year the Judicial Council has published an article written by the President of the Bar Association of the State of Kansas, and this issue includes an article by the present incumbent, the Honorable Beryl R. Johnson, whose photograph appears on the front cover. Judge Johnson, who is a native of Kansas, received his education in the schools of Kansas and was graduated from Washburn College with an A. B. degree in 1915. Thereafter he received other degrees from Iowa State College and then entered Washburn Law School, but left to enter military service in World War I. In 1919 he was admitted to the Bar of Kansas and, after many years of practice, in 1948 he was elected as judge of the first division of the Shawnee county district court, a position he now holds. In addition to many other activities, Judge Johnson served as secretary of the Bar Association for a period of about seven years just prior to 1951. His article merits careful reading.

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At its last session the legislature enacted Chapter 346 of the Laws of 1951, which now appears as G. S. 1951 Supp. 59-2286, providing procedure for the termination of certain life estates and estates in joint tenancy and for the devolution of title to such estates. The act and whether its provisions are compulsory have been the subject of debate among lawyers. At the last meeting of the Central Kansas Bar Association the Honorable John G. Somers, formerly the judge of the ninth judicial district as then constituted, presented an article pertaining to the above legislation, which the Judicial Council prints herewith as worthy of the consideration of the Bar.

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In this issue, following our long-time custom, we print a list of the motion days in the district courts as fixed for the year 1953.

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### The Bar Association of the State of Kansas

BERYL R. JOHNSON

The other day I was discussing with the secretary of a state-wide charitable organization the prospective personnel of a fund-soliciting setup. We were commenting about the various ideas of different groups of people toward service to their fellow men. I ventured the statement that lawyers' lives are dedicated to the principle of service. Service to our families; service to the welfare of our own communities; service to our country, which we know to be a land of laws; untiring service to the best lawful interests of our clients, and service to our God. The secretary then made this interesting statement: "Of all the groups with whom I come in contact in my work, lawyers are generally the most willing to perform tasks of service to others."

The accumulated hopes, ambitions, purposes and ideals of the members of The Bar Association of the State of Kansas become those of the Association itself. Therefore, the Association is an organization of service to its members and to our profession. This requires an active—not a static—organization. It demands the active interest of each individual member for the ultimate good of the whole.

In these columns a year ago Elmer E. Euwer, the president of the Association, gave many of the basic reasons which have become responsible for an awakening on the part of the lawyers throughout our nation to the need for a better understanding of the legal profession on the part of the lawyers throughout our nation and to the need for a better understanding of the legal profession on the part of the lay public. In these remarks I am in a sense continuing the thoughts so ably expressed by Immediate Past President Euwer.

We have actually entered upon a new era in the life of the Association and its efforts in behalf of members and the profession. Greater facilities are now available for the benefit of members. The establishment of a Public Relations Committee in the Association and the ceaseless efforts of the committee under the leadership of Judge Clark A. Wallace, as chairman, was the first step toward this end. The Association office was opened on October 1, 1951, in Topeka, with John W. Shuart, executive-secretary, in charge. Through this office constant service is given to the 1,400 members of the Association and through them to the entire profession. At the close of the first year of the operation of the office we are able to report over 42,000 pieces of mail having been dispersed; publicity to newspapers, letters and literature to our various committees, to superintendents of schools, to the membership generally, to law school students and newly admitted lawyers, to local bar association officers, to other state associations of the country and to The American Bar Association. Each month a *Barletter* of news items goes to the membership. Radio programs have been broadcast over stations of the state. Local bar associations of the state have been encouraged and assisted in many public relations and activities in their communities. These are only a few matters demonstrating increased interest and effort by Association members.

Time and space permit only brief mention of part of Association activities:

#### MID-YEAR CONFERENCE

Last month there was held in Wichita the first mid-year conference of committees of the Association. It was the first time anything of this nature had been attempted in the program of the Association. We hope it will become an annual affair. To this meeting came more than 200 lawyers, from all parts of the state, as members of twenty-two Association committees. They sat around their separate committee tables discussing plans for the year's work. Many conferences between committees were held concerning matters where two or more committees might collaborate to accomplish desired results. It was a day of work broken only by a fine luncheon program with the Wichita Bar Association as hosts. All of the members present felt it to be a most helpful occasion.

#### LEGAL INSTITUTES

This work is in charge of a committee, F. C. Bannon, Leavenworth, chairman, composed of twenty members. The purpose of the committee is to plan and assist in holding legal institutes throughout the state and in all ways

encourage the continuing education of members of The Kansas Bar. A schedule of at least fourteen subjects, with speakers for each, has been drafted. A few of the subjects are Administrative Law, Appellate Practice, Corporation Law and Practice, Evidence, Law Office Management, Oil and Gas, Probate Law and Practice, Income Taxes and Estate Planning and Estate Taxes. All local and district associations are urged to plan individual institute programs during the year.

#### ILLEGAL PRACTICE OF THE LAW

This committee, James E. Smith, Topeka, chairman, co-operates with and assists the Supreme Court, the Board of Law Examiners and the Judicial Council of Kansas in the correction of faults in the administration of justice arising from the illegal practice of the law, and also considers complaints of illegal practice, takes such action by conference and agreement with other organizations or groups as may from time to time be possible, and institutes in its name or in the name of the Association such judicial proceedings as it may deem necessary to prevent or eliminate such practice. Recently an action was commenced in the Supreme Court of Kansas by this committee In The Matter of the Application for an order citing Owen E. Root for contempt of court on the charge that he was practicing in our courts without a license. The opinion in this original proceeding was handed down by the Supreme Court on November 8, 1952, adjudging the respondent guilty of contempt, and assessing a fine. The committee also has in charge proceedings against the National Pure Trust Service and other matters all of which serve to emphasize that lawyers are alert to the need of protecting the profession against unscrupulous individuals who disregard or violate our professional Code of Ethics.

#### PROFESSIONAL ETHICS

The chairman of this committee is J. G. Somers of Newton. The committee formulates and recommends standards and methods for the effective enforcement of high standards of ethics and conduct in the practice of law as a profession. It develops and recommends improved disciplinary methods and procedures and co-operation with disciplinary tribunals or committees established by courts or other public authority and co-operates and works with The American Bar Association committees created for the same purpose. It also investigates and makes recommendations as to proper action thereon.

This is a standing committee under our recently revised Association bylaws. It is typical of several association committees that receive no publicity in their work, but throughout the year are constantly "on the job." Many letters are received from the public which contain complaints against members of the Bar or request opinions regarding the violation of our Code of Ethics. Most of the letters contain no facts which disclose unethical conduct, but some require further careful investigation. Each complaint is acknowledged and the complainant given an answer. It is felt the public is entitled to this consideration by the Association.

Typical of complaints received are the following:

- (a) Complainant currently is serving a sentence in the Federal Penitentiary at Leavenworth. He complained of the failure of a Missouri attorney to press for new trial after receiving a fee. It was suggested this complaint be sent to the Missouri Bar Association.

- (b) A lady complains that she did not receive the proper division of property to which she was entitled in a divorce case. Facts disclosed no unethical conduct on the part of her attorney. He represented her but did not accomplish all she desired. Both sides in a lawsuit are seldom satisfied with the result.
- (c) A member of the Association requests an opinion from the committee as to a possible violation of the Code of Ethics in the manner in which a name is used on abstract forms. The opinion was given by the committee as requested.
- (d) Complainant is a soldier stationed overseas. He paid his attorney a fee plus cost deposit to obtain a divorce. This happened a year ago and the soldier stated he had not heard from the attorney since receipt of the fee was acknowledged. The matter is currently being investigated.
- (e) Complainant had given several chattel mortgages. Upon failure to pay on due dates and after several requests judgment was taken on the debts. The property was sold to satisfy the judgment. An accounting was made of the money received from the sale, less the amount of the judgment, interest, court costs and attorneys fee. Complainant felt that too much money was withheld. The committee investigated and found that letters from the attorney stated the matter correctly and there was no basis for the complaint.

#### SCHOOL PROGRAM

This program is being offered by the Association to high schools and junior colleges of the state for the purpose of aiding and broadening the students' conception and understanding of the law, lawyers and legal processes. It is being offered by the legal profession as an educational service to the schools and as a means of promoting among the students more respect for the law and a better understanding of the rights, liberties and advantages to be enjoyed under a government by law. There is no thought that the schools are in anywise inefficient. It is thought, however, that the lawyers' specialization and broad experience will supplement the textbook and the lay instructors' knowledge on many aspects of the law and its application.

For too many years the legal profession has so cloistered itself, aided by the presumption that everyone is presumed to know the law, that today a great unknown gulf seems to exist between the lawyer and laymen. Present thinking is that a better public understanding of law and lawyers will very greatly enhance the esteem of the public, and that the public will be greatly benefited by more intimate knowledge of the law and the services lawyers are historically constituted to render.

A few of the subjects offered by this program are Constitution, Communism, Laws, Courts, Criminal Law and Citizenship.

Many schools of the state have already embarked upon this program. The Kingman County Bar assists high-school government students in an insight on current events. Every week a member of that Bar addresses classes on current events and their connection with problems of good government. The Cherokee County Bar is sponsoring an essay contest in the high schools and grade schools on the subject, "Why Freedom Depends on Government Under Law." These are only two examples of the fine work being done.

## SPEAKERS BUREAU

We cannot fail to note that many persons who need the services of lawyers never consult them, to their own serious detriment. In many instances this is because they feel the lawyer would overcharge for his services. This attitude is the result of long standing negative approach to the entire public relations problem. Those who believe that no planned program for telling the lawyers' story is necessary, as long as we live right and do our duty as lawyers, are mistaken.

There are many audiences in every community that would welcome hearing an explanation of our legal system and of the manner in which the system works. Almost any lawyer can and often does make a good public speech. How the attorney fits into our present day highly complicated mode of living is of interest to the public, giving them this understanding is a public service.

A few of the suggested list of titles for talks now being circulated throughout the state by the Association are as follows: The Declaration of Independence, The Function of a Lawyer, Freedom Under Law, The Duty of the Public to Serve as Juror and Witness, Real Estate Titles and Freedom of Speech, Press and Religion.

The Bar Association of the State of Kansas is "on the ball." It can no longer be said that we are unaware of the necessity to create within the minds of the public a true evaluation of the importance of the lawyer and the principles which guide him in his life of service.

I appreciate this opportunity to enter the offices of lawyers of Kansas, by the use of the pages of this BULLETIN, to discuss briefly things being done by our Association. For more than six years I served as secretary-treasurer of the Association before becoming president. Those were years well spent, and enjoyable, because of the personal opportunity to serve the members of my profession in the best interests of the practice of law.

### Procedure for Termination of Life Estates and Estates in Joint Tenancies

Condensation of Speech by J. G. SOMERS, of Newton, Kansas, at the Central Kansas Bar Association Meeting, Manhattan, Kansas, October 25, 1952.

While the title of this discussion is limited to procedural matters under chapter 346, Laws 1951, 2286 G. S. Supp., 1951, an intelligent discussion requires a little broader field.

We must remember that both tenancies by the entirety and joint tenancies existed in Kansas prior to 1891, the same as they had at common law. This was not the case in many other jurisdictions.

In 1891 the legislature enacted section 1 of chapter 203, which later appeared as 22-132 G. S. 1935, which by the employment of a number of superfluous words was probably intended to abolish both tenancies in entirety and joint tenancies by making them tenancies in common.

The Supreme Court in *Stewart v. Thomas*, 64 Kan. 511, gave full effect to the statute so far as estates in entirety were concerned, by holding that such estates were abolished.

However, the court was not nearly so certain of legislative intent to abolish

joint tenancies. *Withers v. Barnes*, 95 Kan. 798, held that this section abolished joint tenancies and the doctrine of survivorship *by operation of law*. But the grantor of a fee could purposely make a conveyance which would confer common ownership on two grantees or the entire fee on one of them upon the death of the other. (Emphasis is the court's.)

This case was followed by *Malone v. Williams*, 136 Kan. 193, in holding that this statute did not forbid joint tenancy with its incident of survivorship by negotiation or contract.

In effect then the statute—omitting reference to trust estates—merely changed the presumption of the common law that a joint tenancy was presumed, unless the contrary intent was clearly disclosed, to the presumption that a tenancy in common was presumed unless a joint tenancy was clearly shown to have been intended.

But, due probably to confusion between the law as enacted and the holding of the court, joint tenancies fell into disuse and, parenthetically, should have remained dormant. But, the legislature in 1939 by section 1 of chapter 181 of the laws of that session codified the decisions, making certain that estates in entirety would no longer be created and making certain that a tenancy in common, both by grant or devise to two or more persons, was created unless a joint tenancy was clearly shown.

This gave rise to the famous McGurnaghanism: "as joint tenants with right of survivorship and not as tenants in common." She certainly made the intent clear.

Immediately after the enactment of this statute, bankers, notaries, real estate dealers and even lawyers seized upon the idea that here was something new; a speedy, efficacious, certain and decidedly inexpensive way of insuring the descent of real property in the event of death of one owner, without the intervention of courts, lawyers or anyone else except usually the undertaker.

The right of survivorship being a peculiar attribute to joint tenancy when one died, the survivor immediately became the sole owner, or in the case of three or more joint tenants, the survivors became owners as tenants in common. However, death of a tenant always left an hiatus in the title. Some place, somewhere there had to be a record of that death where it was accessible to title searchers.

An affidavit of death, or a death certificate filed and recorded in the office of the register of deeds, would satisfy most title examiners as to the death, and a finding of the Inheritance Tax Division would show whether or not taxes were due and if due, a copy of the receipt for payment from the county treasurer, both filed in the office of the register of deeds would probably satisfy the tax problem, but another, greater problem remains.

I am still disregarding tenancies by the entirety, they have been abolished both by statute and decision except for those existing prior to 1891. However, we cannot disregard another attribute of joint tenancy; it can be discharged as easily as it can be created.

Just one citation to bolster that statement:

"A joint tenancy may be severed, either voluntarily, as by a partition of the property, or by a conveyance of the interest of any joint tenant, or involuntarily, as by an execution sale of any interest that is subject thereto. . . . Whenever such severance takes place the joint tenancy terminates and the right of survivorship is destroyed." 14 Am. Jur. 86.



In an attempt to establish judicially that one owner, designated as a joint tenant in the instrument conveying property to him, was a joint tenant of that property at the time of his death, and in an attempt to bar all others from claiming an interest in that property adverse to the surviving presumptive joint tenant or joint tenants, the legislature, in 1951, evolved a solution by enacting section 1, chapter 346, Laws of 1951 (59-2286, G. S. 1951 Supp.). The revisor of statutes, either by way of explanation or apology has appended a note: "Similar Oklahoma Statute, see Okla. Laws 1945, p. 191."

Before becoming too deeply involved in a discussion of this statute, it might be well to consider why life estates, life tenants or remaindermen were mentioned, and to wonder by what legalistic legerdemain, having some slight regard to the due process clause of the constitution, could any court in a hearing such as is provided by this statute deprive a remainderman of his fee title? He received the fee in the instrument of conveyance. He has the fee, the life estate holder the use, and is a mere tenant. No judgment of the probate court is needed; no judgment of a probate court in such a proceeding could add to or detract from this interest; that portion of the statute is superfluous, ought to be disregarded, and so far as this article is concerned, will be disregarded.

The statute reads: "When any person being a joint tenant . . . (If he is a joint tenant, then why all this trouble to prove it?) in real property, (notice the statute is limited to real property, although joint tenancies can and frequently do exist in personal property) shall die, either testate or intestate (he would necessarily have to die either testate or intestate, but the legislature was careful, there might be some other way of dying), leaving no property or estate upon which administration proceedings have been had or commenced . . . (there is no provision for determining the fact of joint tenancy if administration proceedings have been had or commenced) any survivor of such joint tenancy, or any person claiming any right, title or interest (as used here the three words are synonymous) through said joint tenant, (the said refers back to the surviving joint tenant) may have the fact of the death of said joint tenant and the fact of the devolution of title to said real estate judicially determined by filing a petition in the probate court of the county in which said real estate or some part thereof is situated, or the county of the residence of the decedent."

It is conceivable that some person claiming under the decedent might want the devolution of the property determined to be in him, a determination that no joint tenancy existed at the time of death, however, such a contingency apparently is not provided for in this statute.

The proceedings may be initiated by the surviving joint tenant, but whether by any person claiming any right, title or interest through him, will depend upon what the interest is and how or when such interest was acquired, perhaps all three.

If this person claiming through the surviving joint tenant, acquired his interest by deed, contract for a deed, or other conveyance prior to the death of the first deceased joint tenant, the one whose death is under consideration, no joint tenancy existed at the time of such death. It had been severed and the right of survivorship destroyed. There being no joint tenancy, no action would lie under this statute.

While the statute under consideration seems to be sufficiently explicit on what to include in the petition, a careful lawyer will take into consideration

G. S. 59-2202, and add the requisites provided in that statute to the petition, particularly the name, address and residence of the petitioner, the interest of the petitioner and his right to apply, and in cases where venue is based on residence of the decedent at time of death rather than situs of real property, the fact of residence should be included. This last is not covered by this statute in any way, nor is there any prayer for relief provided in the determination of joint tenancy statute.

Certain other necessary allegations must be included in the petition; including the names and addresses, if known, of all of the heirs of the decedent if intestate. Then the statute indulges in pure nonsense by requiring that the names of the heirs, devisees and legatees be set forth, if testate. It requires considerable stretch of the imagination to conceive of any interest a legatee might have in real estate. Furthermore, this provision as to devisees is required notwithstanding the fact that the entire proceeding is based on the fact that no administration proceedings have been had or commenced. If a person dies testate, his will must be offered for probate, penalties are provided for failure to do so. If the names of the devisees and legatees are known to the applicant, then *ipso facto* he must know of the will. Knowing of the will, it is his duty to produce it. The property of the decedent, even that owned in joint tenancy, should be included in the estate, whether the will operates to transfer title or not. The decedent did own an interest at the time of his death and that interest should be accounted for, tax-wise at least.

Of course, a will might be offered for probate too long after the death of the decedent. In that case, it would not operate to devise real estate, but then there would be neither devisee nor legatee, only heirs.

The court, upon the filing of the petition enters an order, fixing the date and hour for hearing the same, which date should not be less than ten days from the date of the order. Our probate courts, not having dockets, do not "enter" orders, but construing enter as make, the objection is trivial.

Next the court clerk, and there is no provision for a court clerk in the probate code, issues a notice. Not having a court clerk, probably the ex-officio clerk, the probate judge, issues the notice under his hand and seal. A judge issuing a notice under his hand and seal is exceptional in Kansas and will probably cause confusion, but the statute so provides, or does it?

Notwithstanding the provision of the statute that the notice is to be given under the hand and seal of the court clerk, the form of notice, to be substantially followed, is set out in the next paragraph of the act. That form is to be signed by the petitioner.

The notice as set out, runs to the heirs, devisees, legatees and assigns of the deceased joint tenant. I have commented sufficiently, I hope, on devisees and legatees, but this is the first time assigns have appeared.

Always remember that a joint tenancy can be severed by voluntary act, such as a conveyance of either of the cotenants. If a cotenant has assigned his interest, the joint tenancy has been severed, hence no survival of interest and no use for this statute.

The statute provides that this notice be published once in some newspaper of general circulation in the county. This newspaper need not be what we term a "legal publication" as length of time the newspaper has been published prior to the publication of the notice is not mentioned in the act. However, the publication of this notice must be at least ten days prior to date of hearing and at least ten days prior to date of hearing, someone, not specified who,

shall mail a copy of the publication notice to each of the heirs, devisees, legatees and other persons interested in said real estate as named in the petition, and at the addresses shown in the petition, unless an affidavit is filed by the petitioner or his attorney that such addresses are unknown. As this has already been done in the petition, this affidavit seems to be surplusage, but not according to the act. Proofs of publication and mailing must be filed in the county court, according to the original wording of the statute. However, the revisor of statutes has bracketed probate court, knowing that the county court, if there should happen to be one in that county, would have nothing to do with the case. This must be done prior to entry of any order of decree upon the petition. Note that it is not prior to date of hearing as set forth in the notice. So, if one forgets to mail the notices and make proof, all he needs to do is fail to take the order at the time set and wait until ten days have elapsed from date of mailing. It could very easily happen that notice as mailed would set the time for hearing prior to date of mailing.

Upon the hearing of such petition being had, the court shall hear the evidence and proof of death. Is there any difference between evidence and proof? Should the statute not read, evidence in proof of death? The statute then continues that upon proof that any and all state inheritance taxes owing and due have been paid, shall make and enter the order and decree determining the following facts:

- (a) The death of the joint tenant.
- (b) The termination of the joint tenancy.

Death terminates the joint tenancy, the court's decree can add nothing to that fact, but probably it can detract nothing either, so no harm other than waste of time and paper is done.

(c) The fact of the devolution of title to said real estate to the survivor or survivors of such joint tenancy.

A certified copy of this decree shall be filed in the office of the register of deeds of the county in which said real property or any part thereof is situated, and such order or decree unless appealed to the district court within thirty days from the date issued shall, upon entry, be conclusive of the facts therein found as to all purchasers, encumbrancers or lienors of said real estate acquiring their titles, encumbrances or liens in good faith relying upon said decree.

Does that provision mean that a copy of the decree filed in Riley county is notice to anyone in Harvey county? That is what it says. It is not the filing in the office of register of deeds that imparts notice, it is the order or decree. Nor does the statute provide that either the entry of the decree or the filing of the copy in the office of the register of deeds shall be notice to purchasers, encumbrancers or lienors who acquire title in good faith in ignorance of the decree.

Furthermore, the statute provides only for filing in the office of the register of deeds, nothing said about recording. If not so filed, would the probate court's order be notice?

Why, since probate courts are courts of record, and since there are ample provisions for transcribing and recording proceedings in the probate court of one county to the probate court of any other county, put this additional requirement in the proceeding? No title examiner would be satisfied with a copy of the decree alone. He would want to examine the proceedings, to determine jurisdiction, sufficiency of notices, descriptions of real estate, and

probably other matters—including a finding by the inheritance tax division as to taxes.

Now to consider the principal objection to the use of this statute. It is in violation of the due process clause of the Constitution of the United States (14th Amendment) and Kansas, Section 18 of the Bill of Rights.

The notice to all concerned is published once. A publication in the *Kansas City (Missouri) Star* would comply in most of the counties of Kansas east of the Sixth Principal Meridian, because it need not be published in a newspaper published in the state, nor need it be published in what is generally termed a legal publication. What will an affidavit that copies have been mailed by a petitioner bent on dishonesty add? He need not mail the notices, all he needs do is commit a little perjury which is impossible of proof.

Most lawyers will agree that the notice is jurisdictional. It is tantamount to a summons, an entry of appearance for the purpose of obtaining jurisdiction over the party. We lawyers have become so familiar with notices of this kind that we usually refer to them as service by publication. However, in similar proceedings, where personal service on adverse parties cannot be obtained, many additional safeguards are provided in order to comply with the due process clause or in order not to violate the bill of rights concerning due course of law.

For instance, in the code of civil procedure (60-2527, 1951 Supp.), notice is for three consecutive weeks, in some newspaper printed and published in the county where the petition is filed and which newspaper is authorized by law to publish legal notices, and 41 days' time between first publication and judgment must elapse. In divorce cases, in addition to publication notice, a copy of the petition must be mailed. (60-1504 G. S.) In the administration of estates, notice, unless waived, is published once a week for three consecutive weeks in some newspaper of the county authorized by law to publish legal notices. In addition copies must be mailed (59-2209 G. S.). And the earliest date for hearing is seven days after the date of the last publication, so at least twenty-one days must elapse. That notice is merely for the appointment of an administrator or executor, then an additional notice of appointment for three consecutive weeks (59-709), and if real estate is sold still another notice for three consecutive weeks (59-2304 G. S.), and when the estate is closed a fourth notice for three consecutive weeks. (59-2247 G. S.) In proceedings for determination of descent, where no administration has been had, after a lapse of a year from death, three consecutive weeks' notice is required. (59-2250 G. S.)

In most judicial proceedings where jurisdiction is obtained through notice by publication, three consecutive weeks seems to be basic, and such notice must be published in a newspaper published in and of general circulation in the county where the venue lies.

But, in case of determination of the existence or otherwise of joint tenancy where title to real estate is involved, one notice in an out of county, out of state even, newspaper complies with the statute.

Now apply the statute to a set of facts that could very easily exist. A and B own several pieces of real estate in joint tenancy, in several counties, including a lot in an abandoned townsite in a far western county. A, during his lifetime, contracts to sell his interest in one piece to C, and then dies. B, knowing of this contract, and having more larceny in his heart than common, immediately on A's death commences a proceeding to determine the devolu-

tion of the real estate out where the worthless lot lies. *B* publishes his notice, then just overlooks mailing a copy but does make the necessary affidavit. *B* completes his proceeding, delays more than thirty days in filing the order in the register of deed's office where the land under contract to *C* lies. *C* then wakes up. Has this proceeding barred his interest? Has due process or due course of law been met? There is no doubt, hard cases make poor law, but justice would demand that *C* be given an opportunity to assert his rights.

*Berry v. Berry*, 168 Kan. 253, states no new law. It holds simply that a contractual mutual will, and it is hard to conceive of a mutual will that is not contractual, severed the joint tenancy existing prior to the execution of the will. *Berry v. Berry* merely called attention to a legal proposition that we should have known. However, since that decision, most lawyers have been withholding approval of titles dependent upon joint tenancy termination until a year has elapsed from the date of death of the deceased joint tenant.

The question is, will this proceeding for the determination of joint tenancies shorten this time?

I will suppose a state of facts and let you answer that question for yourselves.

Assume *H* and *W* are husband and wife. They own \$15,000 worth of real property in joint tenancy. *W* owns \$25,000 as her own separate property. She has a son, *C*, who would be the stepson of *H*.

*H* and *W* make a joint and mutual will, each leaving to the other a life estate in all his or her property, remainder to *C*, son of *W*. *W* dies. *H*, relying upon his acquiring sole ownership in the joint tenancy property, and a fee in one-half of the separate property of his wife, where under the will he would have a life estate only in the \$25,000 property, withholds the will from probate. *C*, knowing that the will existed at one time, starts searching for it, and shortly before a year from the date of his mother's death, finds the will and offers it for probate.

Had *H*, prior to the lapse of one year from date of death of his wife, instituted a proceeding under this determination statute, would *C*, the son be barred?

You will say, that as an heir of his mother, he would have notice. He was not an heir in this particular \$15,000 property. But then, as a devisee, he would have notice. He was not a devisee until a will was discovered naming him as such.

All right then, assume that he not only had notice but actual knowledge of the pendency of the determination, and even appeared and said he thought there might be a mutual will; that there had been one; that he was looking for it, none of which would constitute any defense to his stepfather's action, so the court, lacking evidence to the contrary, makes the necessary finding of devolution. Is the stepson out in the cold? I think I could win his case.

Other statutes give him a year within which to produce and prove a will. He produced and proved it and that will conclusively showed that no joint tenancy existed from and after the date of its, the will's execution.

Assume another set of facts: *H*, a resident of Kansas, owns Kansas real property as a joint tenant with his wife, *W*, who has never lived in Kansas. *H* enters into an agreement with *B* to sell him, *H*'s undivided one-half interest in the real property, the agreement and deed to be placed in escrow, payments to be made to the escrow agent and to extend over a number of years. *H* dies. His widow, *W*, conducts a determination proceeding either at *H*'s residence,

which was foreign to the county where this land lay, or in some county where he owned land in joint tenancy other than where the land, the subject of this sale, lay. Notice is given and the statute complied with. *B*, not having heard of *A*'s death continues his payments, the real estate enhancing in value by leaps and bounds as it has during the past few years. Is he to be barred from his interest in this real estate by this notice? That would make a very interesting lawsuit.

Still another case. *H* and *W* owning real property in joint tenancy, convey to *M*, a minor. *M* fails to record his deed. *H* dies, then *W* dies and her heirs, not knowing of this deed, conduct a determination of joint tenancy proceeding on the decedent, *H*. No provision is made in this proceeding for appointment of guardians *ad litem*, and in this case, the petitioners would have no means of knowing that a minor was interested. In the face of *Steinkirchner v. Linscheid*, 164 Kan. 179; 165 Kan. 390, would the minor be barred?

When the Ohio court stated that joint tenancies did not exist under Ohio law (*Sergeant v. Steinberger*, 2 Ohio 305) and stated further:

"The reasons which gave rise to this description of estate in England never existed with us. The *ius accrescendi* is not founded in principles of natural justice, nor in any reasons of policy applicable to our society or institutions. But on the contrary, it is adverse to the understandings, habits and feelings of our people."

that court was not only stating a fact as it existed then, but was prophesying as to what would occur in the future.

The legislature in 1891 undoubtedly thought it prohibited the creation of joint tenancies and estates in entirety. The supreme court was of the same opinion regarding estates in entirety, but a "hard" case, *Withers v. Barnes*, 95 Kan. 798, followed by a second, *Malone v. Williams*, 136 Kan. 193, induced the supreme court to do justice rather than give effect to the statute, so the same language that abolished tenancies by the entirety merely changed the presumption as to joint tenancies.

So long as joint tenancies exist, lawyers are going to be in doubt as to marketability of title after death of one joint owner.

Probably a judicial proceeding can be created by act of the legislature to determine that a joint tenancy existed at the death of one co-owner. But that proceeding will have to be within the due process clause of both state and federal constitutions, and that will require careful wording.

Perhaps the easiest and best way to accomplish this is to do what the 1891 legislature thought it was doing, ban the future creation of joint tenancies.

MOTION DAYS IN DISTRICT COURTS—1953

(Please see notes on page 93)

| County   | County seat         | Judge                          | Clerk                     | No. Jud. Dist. | Jan.                    | Feb.                | Mar.                | Apr.                     | May                 | June                | Sept.               | Oct.                     | Nov.                | Dec.                |
|--|---------------------|--------------------------------|---------------------------|----------------|-------------------------|---------------------|---------------------|--------------------------|---------------------|---------------------|---------------------|--------------------------|---------------------|---------------------|
| Allen.<br>(See Note 8)                                   | Iola.....           | Spencer A. Gard.....           | Ina F. West.....          | 37             | 13                      | 2<br>16             | 9<br>23             | 6<br>20                  | 5<br>18             | 8<br>22             | 14                  | 6<br>19                  | 2<br>16             | 21                  |
| Anderson.....  | Garnett.....        | Floyd H. Coffman.....          | Mrs. Nelle R. Graves..... | 4              | 13                      | 6                   | 2                   | 3                        | 7                   | 8                   | 4                   | 12                       | 5                   | 10                  |
| Atchison.....  | Atchison.....       | Lawrence F. Day.....           | Hal Waisner.....          | 2              | 7<br>14<br>21<br>28     | 4<br>11<br>18<br>25 | 4<br>11<br>18<br>25 | 1<br>8<br>15<br>22<br>29 | 6<br>13<br>20<br>27 | 3<br>10<br>17<br>24 | 9<br>16<br>23<br>30 | 7<br>14<br>21<br>28      | 4<br>11<br>18<br>25 | 9<br>16<br>23<br>30 |
| Barber.....  | Medicine Lodge..... | Clark A. Wallace.....          | Edith Myers.....          | 24             | 8                       | 9                   | 6                   | 27                       | 15                  | 11                  | 11                  | 26                       | 5                   | 10                  |
| Barton.....  | Great Bend.....     | Roy J. McMullen.....           | Geneva Steincamp.....     | 20             | 7                       | 4                   | 9                   | 1                        | 6                   | 2                   | 2                   | 7                        | 2                   | 2                   |
| Bourbon.....   | Fort Scott.....     | Harry W. Fisher.....           | Amy Armstrong.....        | 6              | 2<br>5<br>9<br>16<br>23 | 6<br>13<br>20<br>27 | 6<br>13<br>20<br>27 | 3<br>10<br>17<br>24      | 1<br>8<br>15<br>22  | 5<br>12<br>19<br>26 | 4<br>11<br>18<br>25 | 2<br>9<br>16<br>23<br>30 | 6<br>13<br>20<br>27 | 4<br>11<br>18<br>25 |
| (See Note 10)  |                     |                                |                           |                |                         |                     |                     |                          |                     |                     |                     |                          |                     |                     |
| Brown.....   | Hawatha.....        | John L. Gernon.....            | Edna Boicourt.....        | 22             | 20                      | 17                  | 17                  | 21                       | 19                  | 2                   | 22                  | 20                       | 17                  | 22                  |
| Butler<br>Div. No. 1.....<br>Div. No. 2.....             | El Dorado.....      | Carl Ackerman<br>W. N. Calkins | Harry R. Martin.....      | 13             | 14                      | 4                   | 2                   | 1                        | 6                   | 8                   | 2                   | 14                       | 9                   | 9                   |
| Chase.....   | Cottonwood Falls    | Jay Sullivan.....              | Mildred Speer.....        | 5              | 30                      | 27                  | 27                  | 24                       | 29                  | 26                  | 25                  | 30                       | 27                  | 29                  |
| Chautauqua<br>Div. No. 1.....<br>Div. No. 2.....         | Sedan.....          | Carl Ackerman<br>W. N. Calkins | Edith K. Ross.....        | 13             | 22                      | 6                   | 5                   | 6                        | 14                  | 4                   | 1                   | 8                        | 4                   | 7                   |
| Cherokee<br>Columbus Div.<br>Galena Div.<br>(See Note 5) | Columbus.....       | Jerome Harman.....             | Julia Wantiez.....        | 11             | 13<br>8                 | 3<br>5              | 3<br>5              | 7<br>2                   | 5<br>7              | 2<br>4              | 1<br>3              | 6<br>1                   | 3<br>12             | 1<br>3              |

MOTION DAYS IN DISTRICT COURTS—1953—CONTINUED

(Please see notes on page 93)

| County    | County seat | Judge               | Clerk                | No. Jud. Dist. | Jan.  | Feb.  | Mar.  | Apr.  | May   | June  | Sept. | Oct.  | Nov.  | Dec.  |
|-----------|-------------|---------------------|----------------------|----------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Cheyenne  | St. Francis | Robert W. Hemphill  | Charles N. Roberts   | 17             | 24    | 14    | 6     | 6     | 25    | 10    | 19    | 3     | 4     | 7     |
| Clark     | Ashland     | Karl Miller         | Hope Grimes          | 31             | 7f    | 4f    | 4f    | 8f    | 6f    | 3f    | 2f    | 7f    | 4f    | 2f    |
| Clay      | Clay Center | Lewis L. McLaughlin | Hazel K. Chestnut    | 21             | 7     | 4     | 2     | 8     | 6     | 1     | 10    | 7     | 2     | 7     |
| Cloud     | Concordia   | Marvin O. Brummett  | Hazel Champlin       | 12             | 5     | 4     | 4     | 6     | 5     | 3     | 21    | 20    | 17    | 15    |
| Coffey    | Burlington  | Jay Sullivan        | Ruth H. Johnson      | 5              | 26    | 24    | 30    | 27    | 25    | 29    | 28    | 26    | 30    | 28    |
| Comanche  | Coldwater   | Karl Miller         | Mary Guyer           | 31             | 7c    | 4c    | 4c    | 8c    | 6c    | 3c    | 2c    | 7c    | 4c    | 2c    |
| Cowley    | Winfield    | Albert Faulconer    | Sallie K. Smith      | 19             | 2     | 6     | 6     | 3     | 1     | 5     | 4     | 2     | 6     | 4     |
|           |             |                     |                      |                | 16    | 20    | 20    | 17    | 15    | 19    | 18    | 16    | 20    | 18    |
| Crawford  | Girard      | Perry Owsley        | Grace Webb           | 38             | 5     | 13    | 6     | 6     | 1     | 5     | 4     | 5     | 6     | 4     |
|           |             |                     |                      |                | 19    | 10    | 16    | 20    | 5     | 15    | 21    | 19    | 10    | 21    |
|           |             |                     |                      |                | 22    | 12    | 4     | 14    | 11    | 3     | 17    | 1     | 5     | 17    |
| Decatur   | Oberlin     | Robert W. Hemphill  | Mrs. Alice J. Vernon | 17             | ..... | 23    | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Dickinson | Abilene     | James P. Coleman    | Seth Barter, Jr.     | 8              | 5     | 5     | 4     | 1     | 18    | 3     | 14    | 7     | 2     | 2     |
| Doniphan  | Troy        | John L. Gernon      | Virgil W. Begesse    | 22             | 21    | 18    | 18    | 22    | 20    | 3     | 23    | 21    | 18    | 23    |
| Douglas   | Lawrence    | Floyd H. Coffman    | Lucille Allison      | 4              | 3     | 2     | 7     | 4     | 4     | 27    | 5     | 2     | 2     | 12    |
| Edwards   | Kinsley     | Lorin T. Peters     | John Stoner          | 33             | 7     | 9     | 3     | 7     | 4     | 2     | 7     | 26    | 3     | 8     |
|           |             |                     |                      |                | ..... | 3     | ..... | 4     | ..... | ..... | ..... | 6     | ..... | ..... |
| Elk       | Howard      | Floyd B. Magers     | Floyd B. Magers      | 13             | 5     | 5     | 10    | 3     | 4     | 5     | 21    | 2     | 5     | 3     |
|           |             |                     |                      |                | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
|           |             |                     |                      |                | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Ellis     | Hays        | C. A. Spencer       | Walter J. Staab      | 23             | 16    | 2     | 9     | 14    | 18    | 22    | 3     | 19    | 9     | 6     |



MOTION DAYS IN DISTRICT COURTS—1953—CONTINUED

(Please see notes on page 93)

| County                                | County seat   | Judge                             | Clerk             | No. Jud. Dist. | Jan.             | Feb.                    | Mar.                    | Apr.             | May                    | June             | Sept.                   | Oct.                          | Nov.             | Dec.             |
|---------------------------------------|---------------|-----------------------------------|-------------------|----------------|------------------|-------------------------|-------------------------|------------------|------------------------|------------------|-------------------------|-------------------------------|------------------|------------------|
| Ellsworth                             | Ellsworth     | A. R. Buzick                      | J. M. Wilson      | 30             | 26               | 27                      | 27                      | 27               | 27                     | 1                | 2                       | 12                            | 6                | 21               |
| Finney                                | Garden City   | Ray H. Calihan                    | G. Mae Purdy      | 32             | 12               | 5a                      | 5a                      | 4a               | 11                     | 5a               | 28                      | 3a                            | 5a               | 4a               |
| Ford                                  | Dodge City    | Karl Miller                       | Elta J. Riley     | 31             | 9a<br>16a<br>23a | 6a<br>13a<br>20a<br>27a | 6a<br>13a<br>20a<br>27a | 3a<br>10a<br>17a | 1a<br>8a<br>15a<br>22a | 5a<br>19a<br>26a | 4a<br>11a<br>18a<br>25a | 2a<br>9a<br>16a<br>23a<br>30a | 6a<br>13a<br>20a | 4a<br>11a<br>18a |
| Franklin                              | Ottawa        | Floyd H. Coffman                  | Christina Woke    | 4              | 5                | 7                       | 6                       | 6                | 1                      | 2a               | 14                      | 1                             | 6                | 11               |
| Geary                                 | Junction City | James P. Coleman                  | C. W. Marston     | 8              | 10               | 7                       | 2                       | 4                | 2                      | 1                | 12                      | 3                             | 9                | 5                |
| Gove                                  | Gove          | C. A. Spencer                     | Louise Brown      | 23             | 14               | 11                      | 16                      | 17               | 25                     | 15               | 1                       | 2                             | 16               | 14               |
| Graham                                | Hill City     | W. K. Skinner                     | Cora A. Roberts   | 34             | 5                | 2                       | 12                      | 16               | 11                     | 4                | 21                      | 2                             | 13               | 2                |
| Grant                                 | Ulysses       | L. L. Morgan                      | Juanita Barber    | 39             | 7d               | 3d                      | 2a                      | 13a              | 5d                     | 2d               | 4a                      | 6d                            | 3d               | 7a               |
| Gray                                  | Cimarron      | Karl Miller                       | Carrie Borland    | 31             | 6c               | 3c                      | 3c                      | 7c               | 5c                     | 2c               | 1c                      | 6c                            | 3c               | 1c               |
| Greeley                               | Tribune       | Ray H. Calihan                    | Laura M. Holmes   | 32             | 6a               | 9                       | 3a                      | 1a               | 1a                     | 2a               | 15a                     | 19                            | 3a               | 1a               |
| Greenwood<br>Div. No. 1<br>Div. No. 2 | Eureka        | Carl Askarianian<br>W. N. Calkins | Alma Long         | 13             | 19               | 13                      | 3                       | 2                | 18                     | 11               | 10                      | 12                            | 6                | 11               |
| Hamilton                              | Syracuse      | Ray H. Calihan                    | Amelia J. Minor   | 32             | 8a               | 23                      | 3d                      | 1d               | 6a                     | 4a               | 17a                     | 26                            | 3d               | 1d               |
| Harper                                | Anthony       | Clark A. Wallace                  | Helen Pearl       | 24             | 12               | 5                       | 5                       | 13               | 14                     | 15               | 10                      | 12                            | 4                | 9                |
| Harvey                                | Newton        | Alfred G. Schroeder               | Mabel A. McMullen | 9              | 22               | 9                       | 26                      | 23               | 11                     | 18               | 17                      | 22                            | 9                | 17               |
| Haskell                               | Sublette      | L. L. Morgan                      | Evelyn Yount      | 39             | 7a               | 3a                      | 9a                      | 7a               | 5a                     | 2a               | 21a                     | 6a                            | 3a               | 15a              |

MOTION DAYS IN DISTRICT COURTS—1953—CONTINUED  
(Please see notes on page 93)

| County                   | County seat          | Judge                                  | Clerk                      | No. Jud. Dist. | Jan. | Feb. | Mar. | Apr. | May | June | Sept. | Oct. | Nov. | Dec. |
|--------------------------|----------------------|--|----------------------------|----------------|------|------|------|------|-----|------|-------|------|------|------|
| Hodgeman.....            | Jetmore.....         | Lorin T. Peters.....                   | F. S. Haun.....            | 33             | 7    | 28   | 3    | 7    | 18  | 2    | 7     | 6    | 9    | 8    |
| Jackson.....             | Holton.....          | Robert H. Kaul.....                    | Chelcia Shelly.....        | 36             | 12   | 4    | 4    | 8    | 4   | 3    | 2     | 5    | 4    | 2    |
| Jefferson.....           | Oskaloosa.....       | Robert H. Kaul.....                    | Myrtle Kimmel.....         | 36             | 16   | 6    | 2    | 10   | 8   | 1    | 4     | 9    | 2    | 4    |
| Jewell.....              | Mankato.....         | Donald J. Magaw.....                   | Mrs. Wiley N. Sloan.....   | 15             | 15   | 5    | 2    | 23   | 14  | 1    | 24    | 22   | 9    | 9    |
| Johnson, Div. No. 1..... | Olathe.....          | John L. Kirkpatrick<br>Clayton Brenner | Mrs. Gertrude S. Hedberg.. | 10             | 5    | 9    | 2    | 6    | 4   | 8    | 8     | 19   | 9    | 7    |
| Kearny.....              | Lakin.....           | Ray H. Calihan.....                    | Bertha Adams.....          | 32             | 8d   | 3d   | 9    | 3a   | 6d  | 4d   | 17d   | 1d   | 9    | 3a   |
| Kingman.....             | Kingman.....         | Clark A. Wallace.....                  | Nell H. Walter.....        | 24             | 10   | 7    | 23   | 11   | 16  | 1    | 28    | 9    | 6    | 14   |
| Kiowa.....               | Greensburg.....      | Karl Miller.....                       | Eunice E. Rich.....        | 31             | 7a   | 4a   | 4a   | 8a   | 6a  | 3a   | 2a    | 7a   | 4a   | 2a   |
| Labette.....             | Oswego.....          | Hal Hyler.....                         | Quincy B. Greer.....       | 16             | 9    | 27   | 6    | 6    | 8   | 12   | 11    | 11   | 6    | 4    |
| Oswego Div.....          |                      |  |                            |                | 30   | 27   | 27   | 30   | 29  | 20   | 25    | 30   | 20   | 18   |
| Parsons Div.....         |                      |  |                            |                | 12   | 9    | 30   | 13   | 25  | 15   | 14    | 26   | 16   | 14   |
| Lane.....                | Dighton.....         | Ray H. Calihan.....                    | Mrs. Eva Cramer.....       | 32             | 7a   | 4a   | 23   | 2a   | 5a  | 3a   | 16a   | 2a   | 23   | 2a   |
| Leavenworth.....         | Leavenworth.....     | Joseph J. Dawes.....                   | Dorothy Harrison.....      | 1              | 2    | 6    | 6    | 3    | 1   | 5    | 4     | 2    | 6    | 4    |
| Lincoln.....             | Lincoln.....         | A. R. Buzick.....                      | Wilbur Powers.....         | 30             | 3    | 16   | 7    | 4    | 11  | 5    | 3     | 5    | 9    | 18   |
| Linn.....                | Mound City.....      | Harry W. Fisher.....                   | Will H. Bayless.....       | 6              | 8    | 5    | 5    | 6    | 7   | 4    | 3     | 1    | 5    | 7    |
| (See Note 12)            |                      |  |                            |                | 22   | 19   | 19   | 23   | 21  | 18   | 17    | 22   | 19   | 17   |
| Logan.....               | Russell Springs..... | C. A. Spencer.....                     | Ada F. Rogge.....          | 23             | 13   | 12   | 12   | 6    | 2   | 8    | 7     | 1    | 12   | 7    |
| Lyon.....                | Emporia.....         | Jay Sullivan.....                      | Mrs. Roe C. Collins.....   | 5              | 28   | 25   | 25   | 29   | 27  | 24   | 30    | 28   | 25   | 30   |

MOTION DAYS IN DISTRICT COURTS—1953—CONTINUED  
(Please see notes on page 93)

| County   | County seat        | Judge                    | Clerk                    | No. Jud. Dist. | Jan.          | Feb.    | Mar.          | Apr.    | May     | June          | Sept.         | Oct.         | Nov.    | Dec.    |
|--|--------------------|--------------------------|--------------------------|----------------|---------------|---------|---------------|---------|---------|---------------|---------------|--------------|---------|---------|
| Marion.....  | Marion.....        | James P. Coleman.....    | Virgil M. Wiebe.....     | 8              | 8             | 2       | 5             | 3       | 4       | 5             | 10            | 5            | 5       | 3       |
| Marshall.....  | Marysville.....    | Lewis L. McLaughlin..... | W. J. Koppes.....        | 21             | 9             | 2       | 6             | 10      | 4       | 5             | 11            | 5            | 6       | 11      |
| McPherson.....   | McPherson.....     | Alfred G. Schroeder..... | Donald S. Clark.....     | 9              | 12<br>23      | 20      | 27            | 6<br>24 | 22      | 26            | 18            | 5<br>23      | 20      | 18      |
| Meade.....   | Meade.....         | Karl Miller.....         | Ethel R. Copenhaver..... | 31             | 8c            | 5c      | 5c            | 9c      | 7c      | 4c            | 3c            | 8c           | 5c      | 3c      |
| Miami<br>(See Note 11)                                   | Paola.....         | Harry W. Fisher.....     | Ethel J. Hunt.....       | 6              | 6<br>20       | 2<br>17 | 3<br>17<br>31 | 7<br>21 | 5<br>19 | 1<br>16<br>30 | 1<br>15<br>29 | 6<br>5<br>20 | 3<br>17 | 1<br>15 |
| Mitchell.....  | Beloit.....        | Donald J. Magaw.....     | Ida B. Jamison.....      | 15             | 12            | 6       | 5             | 20      | 15      | 4             | 28            | 23           | 12      | 10      |
| Montgomery.....<br>Independence Div.<br>Coffeyville Div. | Independence.....  | Warren B. Grant.....     | M. D. Smith.....         | 14             | 3<br>2        | 7<br>6  | 7<br>6        | 4<br>3  | 2<br>1  | 6<br>5        | 5<br>4        | 3<br>2       | 7<br>6  | 5<br>4  |
| Morris.....  | Council Grove..... | James P. Coleman.....    | Virginia Scholes.....    | 8              | 9             | 4       | 6             | 6       | 1       | 15            | 11            | 1            | 4       | 7       |
| Morton.....  | Richfield.....     | L. L. Morgan.....        | Irene Kuder.....         | 39             | 6d            | 9a      | 3a            | 8a      | 6d      | 3d            | 8a            | 7d           | 4d      | 16a     |
| Nemaha.....  | Seneca.....        | John L. Gernon.....      | Ruth Shaffer.....        | 22             | 19            | 16      | 16            | 20      | 18      | 1             | 21            | 19           | 16      | 21      |
| Neosho.....  | Erie.....          | B. M. Dunham.....        | Merle Estes.....         | 7              | 14            | 11      | 11            | 8       | 13      | 10            | 9             | 14           | 11      | 9       |
| Ness.....  | Ness City.....     | Lorin T. Peters.....     | Gladys K. Bondurant..... | 33             | 8             | 4       | 9             | 8       | 11      | 3             | 1 1/2         | 7            | 4       | 1 1/2   |
| Norton.....<br>(See Note 6)                              | Norton.....        | Robert Hemphill.....     | Arthur V. Poage.....     | 17             | 5<br>12<br>21 | 11      | 7             | 20      | 15      | 4             | 7<br>16       | 6            | 6       | 16      |
| Osage.....   | Lyndon.....        | A. K. Stavely.....       | Mrs. Shirley Burns.....  | 35             | 2             | 6       | 10            | 3       | 1       | 9             | 4             | 2            | 10      | 4       |
| Osborne.....   | Osborne.....       | Donald J. Magaw.....     | Elma McCoil.....         | 15             | 16            | 2       | 6             | 24      | 11      | 5             | 25            | 19           | 13      | 11      |

MOTION DAYS IN DISTRICT COURTS—1953—CONTINUED  
(Please see notes on page 93)

| County                  | County seat       | Judge                    | Clerk                     | No. Jnd. Dist. | Jan.               | Feb.                | Mar.                | Apr.                | May                | June                | Sept.               | Oct.               | Nov.                | Dec.                |
|-------------------------|-------------------|--------------------------|---------------------------|----------------|--------------------|---------------------|---------------------|---------------------|--------------------|---------------------|---------------------|--------------------|---------------------|---------------------|
| Ottawa.....             | Minneapolis.....  | A. R. Buzick.....        | A. H. Finley.....         | 30             | 12                 | 11                  | 4                   | 13                  | 9                  | 4                   | 5                   | 26                 | 27                  | 19                  |
| Pawnee.....             | Larned.....       | Lorin T. Peters.....     | Rose Wood.....            | 33             | 26<br>6            | 2                   | 2                   | 18<br>6             | 1                  | 1                   | 6                   | 12<br>5            | 2                   | 7                   |
| Phillips.....           | Phillipsburg..... | Robert W. Hemphill.....  | Gene Britt.....           | 17             | 20                 | 2                   | 3                   | 17                  | 4                  | 2                   | 15<br>21            | 5                  | 7                   | 15                  |
| Pottawatomie.....       | Westmoreland..... | Robert H. Kaul.....      | Deane L. Arnold.....      | 36             | 15                 | 5                   | 5                   | 7                   | 7                  | 4                   | 1                   | 8                  | 5                   | 1                   |
| Pratt.....              | Pratt.....        | Clark A. Wallace.....    | Verna Barber.....         | 24             | 9                  | 6                   | 9                   | 10                  | 18                 | 12                  | 14                  | 8                  | 9                   | 11                  |
| Rawlins.....            | Atwood.....       | Robert W. Hemphill.....  | Mrs. Louise Portschy..... | 17             | 23                 | 13                  | 5                   | 15                  | 18                 | 9                   | 18                  | 2                  | 3                   | 18                  |
| Reno.....               | Hutchinson.....   | John Fontron.....        | G. R. Williams.....       | 40             | 2<br>9<br>23<br>30 | 6<br>13<br>20<br>27 | 6<br>13<br>20<br>27 | 3<br>10<br>17<br>24 | 1<br>8<br>15<br>22 | 5<br>12<br>19<br>26 | 4<br>11<br>18<br>25 | 2<br>9<br>16<br>23 | 6<br>13<br>20<br>27 | 4<br>11<br>18<br>25 |
| Republic.....           | Belleville.....   | Marvin O. Brummett.....  | Warren A. Scott.....      | 12             | 7                  | 2                   | 3                   | 8                   | 4                  | 2                   | 23                  | 19                 | 18                  | 16                  |
| Rice.....               | Lyons.....        | Roy J. McMullen.....     | Laura Saint.....          | 20             | 6                  | 2                   | 2                   | 7                   | 4                  | 1                   | 1                   | 5                  | 3                   | 7                   |
| Riley (See Note 7)..... | Manhattan.....    | Lewis L. McLaughlin..... | Joseph F. Musil.....      | 21             | 5                  | 6                   | 4                   | 6                   | 8                  | 3                   | 8                   | 9                  | 4                   | 9                   |
| Rooks.....              | Stockton.....     | W. K. Skinner.....       | George F. Crane.....      | 34             | 12                 | 12                  | 11                  | 15                  | 4                  | 3                   | 7                   | 1                  | 12                  | 1                   |
| Rush.....               | La Crosse.....    | Lorin T. Peters.....     | Esta Manahan.....         | 33             | 12<br>6            | 2                   | 2                   | 6                   | 1                  | 1                   | 28<br>6             | 5                  | 2                   | 7                   |
| Russell.....            | Russell.....      | C. A. Spencer.....       | George W. Brandt.....     | 23             | 5                  | 10                  | 10                  | 15                  | 4                  | 23                  | 4                   | 5                  | 10                  | 17                  |
| Saline.....             | Salina.....       | A. R. Buzick.....        | Winifred Groth.....       | 30             | 2                  | 4                   | 9                   | 7                   | 8                  | 12                  | 7                   | 7                  | 4                   | 22                  |
| Scott.....              | Scott City.....   | Ray H. Calihan.....      | Nellie Scheuerman.....    | 32             | 7d                 | 4d                  | 4d                  | 13                  | 5d                 | 3d                  | 16d                 | 2d                 | 4d                  | 14                  |

MOTION DAYS IN DISTRICT COURTS—1953—CONTINUED

(Please see notes on page 93)

| COUNTY   | County seat       | Judge   | Clerk                     | No. Jud. Dist. | Jan. | Feb. | Mar. | Apr. | May | June | Sept. | Oct. | Nov. | Dec. |
|--|-------------------|---|---------------------------|----------------|------|------|------|------|-----|------|-------|------|------|------|
| Sedgewick (See Note 4)<br>Div. No. 1.....<br>Div. No. 2.....<br>Div. No. 3.....<br>Div. No. 4..... | Wichita.....      | William C. Kandt.....<br>Howard C. Kline.....<br>Clair E. Robb.....<br>George Austin Brown..... | L. D. Leland.....         | 18             | 12a  | 21a  | 21a  | 20a  | 16a | 20a  | 19a   | 12a  | 21a  | 19a  |
|  |                   |   |                           |                | 9    | 20   | 13   | 3    | 15  | 5    | 18    | 9    | 20   | 11   |
|  |                   |   |                           |                | 30   | 6    | 20   | 10   | 1   | 12   | 4     | 16   | 6    | 18   |
|  |                   |   |                           |                | 16   | 27   | 27   | 22   | 25  | 27   | 25    | 27   | 27   | 27   |
| Seward.....  | Liberal.....      | L. L. Morgan.....   | Mary Lindley.....         | 39             | 12a  | 21a  | 20a  | 16a  | 20a | 19a  | 12a   | 21a  | 19a  |      |
| Shawnee (See Note 3)<br>Div. No. 1.....  | Topeka.....       | Beryl R. Johnson.....   | Lucile Carter.....        | 3              | 9    | 20   | 13   | 3    | 15  | 5    | 18    | 9    | 20   | 11   |
|  |                   |   |                           |                | 30   | 6    | 20   | 10   | 1   | 12   | 4     | 16   | 6    | 18   |
| Div. No. 2.....  |                   | Paul H. Heinz.....  |                           | 6              | 16   | 6    | 20   | 10   | 1   | 12   | 4     | 16   | 6    | 18   |
| Div. No. 3.....  |                   | Dean McElhenny.....   |                           | 2              | 23   | 13   | 6    | 17   | 8   | 19   | 11    | 2    | 13   | 4    |
| Sheridan.....  | Hoxie.....        | W. K. Skinner.....  | Marjorie M. Hilburn.....  | 34             | 6    | 23   | 13   | 17   | 18  | 5    | 10    | 5    | 14   | 3    |
| Sherman.....   | Goodland.....     | W. K. Skinner.....  | Sylvia R. Riley.....      | 34             | 8    | 14   | 14   | 6    | 9   | 8    | 12    | 10   | 16   | 5    |
| Smith.....   | Smith Center..... | Donald J. Magaw.....  | Lucille Figg.....         | 15             | 14   | 4    | 23   | 22   | 13  | 15   | 23    | 21   | 10   | 7    |
| Stafford.....  | St. John.....     | Roy J. McMullen.....  | Wanda Tucker.....         | 20             | 9    | 3    | 4    | 6    | 5   | 3    | 7     | 6    | 4    | 1    |
| Stanton.....   | Johnson.....      | L. L. Morgan.....   | Marjorie E. Harmon.....   | 39             | 6a   | 23a  | 2d   | 7d   | 6a  | 3a   | 14a   | 7a   | 4a   | 15d  |
| Stevens.....   | Hugoton.....      | L. L. Morgan.....   | John F. Fulkerson.....    | 39             | 20a  | 17a  | 23a  | 8d   | 14a | 4a   | 4d    | 26a  | 13a  | 16d  |
| Sumner.....  | Wellington.....   | Wendell Ready.....  | Laura McCormick.....      | 25             | 6    | 3    | 3    | 7    | 5   | 2    | 15    | 6    | 3    | 1    |
| Thomas.....  | Colby.....        | W. K. Skinner.....  | Winifred G. Van Horn..... | 34             | 7    | 13   | 16   | 18   | 25  | 6    | 11    | 3    | 2    | 4    |
| Trego.....   | Wakeney.....      | C. A. Spencer.....  | Mrs. Albert H. Acres..... | 23             | 15   | 9    | 2    | 13   | 11  | 1    | 2     | 3    | 2    | 15   |
| Wabauwsee.....   | Alma.....         | A. K. Stavely.....  | Eva Dorman.....           | 35             | 6    | 3    | 3    | 7    | 5   | 2    | 2     | 6    | 3    | 1    |

MOTION DAYS IN DISTRICT COURTS—1953—CONCLUDED  
(Please see notes below)

| Country                      | County seat       | Judge  | Clerk                     | No. Jud. Dist. | Jan. | Feb. | Mar. | Apr. | May | June | Sept. | Oct. | Nov. | Dec. |
|------------------------------|-------------------|--|---------------------------|----------------|------|------|------|------|-----|------|-------|------|------|------|
| Wallace.....                 | Sharon Springs... | C. A. Spencer.....   | Ida Ward.....             | 23             | 12   | 13   | 13   | 20   | 29  | 25   | 21    | 26   | 13   | 21   |
| Washington.....              | Washington.....   | Marvin O. Brummett.....  | Alta Hennon.....          | 12             | 6    | 3    | 2    | 7    | 6   | 1    | 22    | 21   | 16   | 17   |
| Wichita.....                 | Leoti.....        | Ray H. Callihan.....   | Kate Elder.....           | 32             | 6d   | 3a   | 4a   | 27   | 1d  | 2d   | 15d   | 1a   | 4a   | 21   |
| Wilson.....                  | Fredonia.....     | B. M. Dunham.....  | Dwaine Spoon.....         | 7              | 6    | 5    | 5    | 7    | 7   | 4    | 1     | 1    | 5    | 3    |
| Woodson.....<br>(See Note 9) | Yates Center..... | Spencer A. Gard.....   | Mrs. Maundie Beckett..... | 37             | 20   | 17   | 3    | 21   | 12  | 2    | 8     | 13   | 3    | 15   |
| Wyandotte (See Note 2)       | Kansas City.....  | E. L. Fischer.....<br>Willard M. Benton.....<br>Harvey J. Emerson.....<br>William H. McHale..... | Richard D. Shannon.....   | 29             | 3    | 7    | 7    | 4    | 2   | 6    | 12    | 3    | 7    | 5    |
| Div. No. 1.....              |                   |  |                           |                | 10   | 14   | 14   | 11   | 9   | 13   | 12    | 10   | 14   | 12   |
| Div. No. 2.....              |                   |  |                           |                | 17   | 21   | 21   | 18   | 16  | 20   | 19    | 17   | 21   | 19   |
| Div. No. 3.....              |                   |  |                           |                | 24   | 28   | 28   | 25   | 23  | 27   | 26    | 24   | 25   | 24   |

e—9:00 a. m. a—10:00 a. m. c—1:30 p. m. d—2:00 p. m. b—1:00 p. m. f—3:30 p. m.

Note 1.—Italicized dates indicate the first day of a regular term of court.  
 Note 2.—Wyandotte county—The division having law and equity cases has a motion day, on Thursday of each week of term in addition to above mentioned days. Wyandotte county has a regular motion day in four divisions during July as follows:  
 Division No. 1—Judge E. L. Fischer: July 6.  
 Division No. 2—Judge Willard M. Benton: July 6.  
 Note 3.—In Shawnee county the schedule continues through July and August as follows:  
 Division No. 1—Judge Beryl L. Johnson: July 3 and August 7 and 28.  
 Division No. 2—Judge Paul H. Heinz: July 3 and August 14.  
 Division No. 3—Judge Dean McElhenny: July 10 and 31; August 21.  
 Note 4.—In Sedgewick county if the regular motion day in any division comes on a legal holiday, motions will be presented on the next regular motion day of each division.  
 Note 5.—Cherokee county motion days shall run through July and August as follows: Columbus Division, July 7 and August 4; Galena Division, July 2 and August 6.  
 Note 6.—In Norton county August 24 is motion day.  
 Note 7.—Opening day in Riley county delayed one day on account of Labor Day.  
 Note 8.—In Allen county July 27 is motion day.  
 Note 9.—In Woodson county July 28 is motion day.  
 Note 10.—In Bourbon county July 10-17, 24 and 31 are motion days.  
 Note 11.—In Miami county July 14 and 28 are motion days.  
 Note 12.—In Linn county July 2-13 and 30 are motion days.

Division No. 3—Judge Harvey J. Emerson: July 11.  
 Division No. 4—Judge William H. McHale: July 11.

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