KANSAS JUDICIAL COUNCIL BULLETIN

DECEMBER, 1934 PART 4—EIGHTH ANNUAL REPORT

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MEMBERS OF THE PRESS,
OTHER ORGANIZATIONS, and leading citizens generally throughout the state,
For the improvement of our Judicial System and its more efficient functioning.

LETTER OF TRANSMITTAL

TOPEKA, KAN., December 1, 1934.

To His Excellency, Alf M. Landon, Governor of Kansas:

In accordance with the provisions of chapter 187 of the Laws of Kansas, 1927, we herewith transmit to you the eighth annual report of the Judicial Council, in three parts.

W. W. HARVEY, *Chairman,*
J. C. RUPPENTHAL, *Secretary,*
EDWARD L. FISCHER,
RAY H. BEALS,
HAL E. HARLAN,
S. C. BLOSS,
CHARLES L. HUNT,
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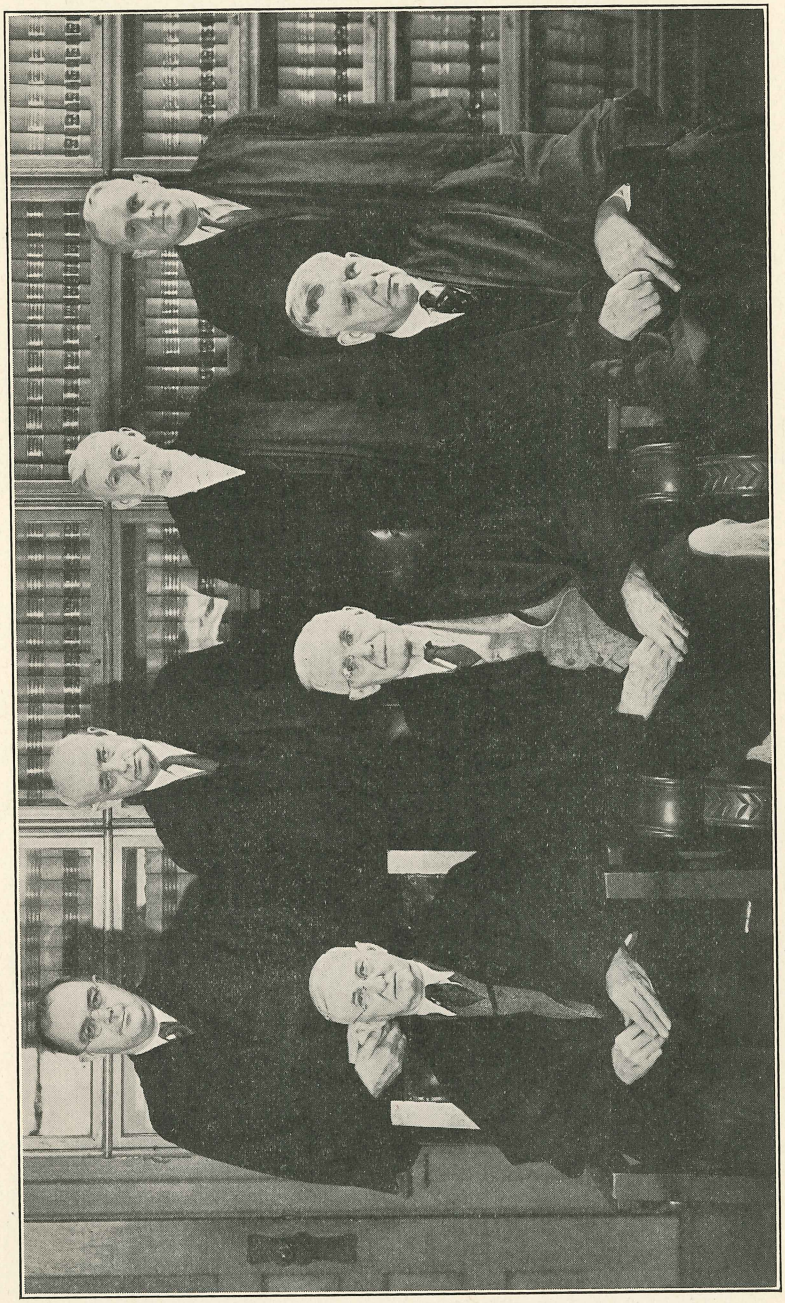
CHESTER STEVENS,
Members of the Judicial Council.



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JOHN S. DAWSON

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FOREWORD

We print herewith a group picture of the justices of the supreme court taken December 1, 1934, the day the chief justice had completed fifty years of continuous service as a member of the court. At the general election in November, 1884, W. A. Johnston was elected to the supreme court for the unexpired term of David J. Brewer, who had resigned earlier in the year to accept an appointment upon the federal court, and who later became a member of the supreme court of the United States. Justice Johnston, having been elected to fill an unexpired term, was eligible to take office as soon as the state canvassing board completed its canvass of the returns of the November election and issued to him a certificate, which was done on December 1, 1884. He served the remainder of the unexpired term of Justice Brewer, was elected to succeed himself as a member of the court, and has been reelected each six years since that time. By virtue of seniority of service he became chief justice, January 12, 1903. His present term will not expire until January, 1937.

This BULLETIN contains a schedule of motion days for the various district courts in the state for the year 1935. This schedule is prepared from lists of such days made by the various district judges throughout the state and filed with the clerks of the courts in their respective counties and with the clerk of the supreme court in accordance with rules relating thereto heretofore promulgated by the supreme court on the recommendation of the Judicial Council. These motion days have proved to be such an aid in the dispatch of business in district courts, and so satisfactory to the courts, attorneys and litigants, that they may be said to have become a part of our judicial structure.

We are recommending a statute, supplemental to existing statutes, relating to the appointment of a judge *pro tem.* in certain cases by the chief justice of the supreme court. We feel sure this measure will be welcomed.

We devote a part of this BULLETIN to suggested changes in our criminal procedure. Heretofore we have had occasion to say and now repeat, that the reports collected by us from year to year from clerks of the district courts and the clerk of the supreme court clearly establish the fact that on the whole and generally speaking there is very little delay in the disposition of criminal cases in this state. Many of the cases are tried in district court on their merits within thirty days after the information is filed, a great many of them within sixty days, and very few later than six months. The business of our district courts is such that a county attorney does not have to wait long, if at all, to try a case when he is ready to try it, and the supreme court disposes of the cases with reasonable promptness after they once are submitted to it. The record of our courts in these respects compared with that of some

other states of which we have information shows greatly to the advantage of our own state. While some of our statutes pertaining to trials may be improved upon, and we have suggested measures to bring about such improvements, there are, broadly speaking, two things which bring about such unreasonable delay as exists in the final disposition of criminal cases in this state. The first of these is the preparation of the case for trial. Our statutes relating to duties of county attorneys and sheriffs with respect to investigating crime and procuring evidence thereto are decidedly meager and inefficient. Most county attorneys and sheriffs do much more along these lines than any statute specifically prescribes for them to do. Even with that earnest activity on their part they are handicapped in procuring evidence to enable many criminal cases to be tried successfully by a lack of facilities and means for investigating crimes reported to them and procuring the evidence necessary for successful prosecutions. Since the Judicial Council was created primarily to study our courts and recommend improved procedure therein, of which it has had plenty to do, and since the detecting and investigating crime and procuring evidence in a sense antedates procedure in courts, we have not undertaken a complete study of the subject so as to recommend needed legislation thereon, but, as pointed out in some of our previous reports, there should be something in the nature of a state bureau or department equipped with appliances and personnel sufficient and capable of investigating crime, apprehending the criminals and procuring evidence for successful prosecutions. We have not given this sufficient study to justify expressing an opinion as to whether that should be simply a state bureau with comparatively a few capable men working in conjunction with sheriffs and city peace officers, or whether it should be more on the plan of a state police system such as has been organized and exists in many of the states. We understand the legislative council has given this matter attention. No doubt it will give the legislature the benefit of its study. We urge the legislature to give its recommendations favorable consideration. One thing is certain, we cannot hope to convict persons charged with crime without evidence, and in many instances we cannot expect county officers, however zealous they may be, to be able to procure the necessary evidence in many cases without sufficient equipment and with a limited personnel and without adequate funds.

The second principal thing which at times causes unreasonable delay in the final disposition of criminal cases concerns appeals from the district courts to the supreme court. Now the burden is not on the defendant to see that his appeal is promptly filed in the supreme court, and frequently that is not done. There are delays about ordering transcripts and the preparation of abstracts and briefs which could well be avoided. Since this has to do with procedure, we have prepared and print herein, with some comments, a proposed amendment of our laws relating to appeals in criminal cases. If that statute is enacted as outlined it will do away with all, or practically all, of the unreasonable delay between the time of the trial in the district court and submission to the supreme court.

We recommend, also, bills pertaining to the better selection of persons for jury service. Other bills for the trial by six jurors unless twelve are requested. It may be of interest to know that it costs the counties of this state more than a quarter of a million dollars per year to pay nothing but the per diem and mileage of jurors called to serve in the district courts. We think

these proposed measures would reduce that expense materially—certainly as much as $50,000, perhaps as much as $100,000 per year.

We have prepared and submit in this BULLETIN a statute authorizing the taking of depositions in criminal cases not only by the defendant, but by the state, where that is necessary; also a bill with respect to requiring defendant to plead an alibi if he desires to rely upon that as one of his defenses; also a bill authorizing comment upon and consideration of the fact that defendant did not testify. We also have prepared measures giving the state the same number of peremptory challenges of jurors as defendant, and other amendments to our criminal statute. We also have a discussion on the authority of a trial judge to comment on the evidence in criminal cases. Perhaps these suggested measures do not cover all that could be done, but we urge the passage of each of these proposed measures, assured that each will effect a substantial improvement.

This summer the Judicial Council has collected data from judges of the probate courts. Summaries and tables compiled from the reports made to us appear elsewhere in this BULLETIN. These reports from probate judges and our correspondence with them disclose what we have known in part before, that in most of the counties of the state the records of business transacted in probate courts are incomplete. Particularly that is true in most counties prior to the time of service of the present probate judges. It appears that most of the present judges are aware of the prudence and necessity of keeping more complete and accurate records than previously were kept in the courts. A few of them, at the expense of much time and labor, have gone back into the old papers and records and attempted to complete unfinished records and to close old cases. It is not infrequent for a probate judge to advise us that there are several hundred cases (apparently the number not definitely known) from three to twenty years old, and some of them older, in which it is extremely difficult—in many cases impossible—to determine what action was taken by the court, or how the cases finally were disposed of. Indeed, a great many of them never have been finally closed. These reports and the correspondence concerning them disclose more forcibly that it can be stated otherwise the inadequacy of our statutes pertaining to probate courts, the substantive law with respect to the business to be transacted therein, the procedure law with reference to how it should be transacted, and especially with reference to the record of what is done. They also disclose the magnitude of business handled in those courts. Perhaps they do not fully disclose that, but they do show that the property being administered and litigated upon in the probate courts exceeds in value that being litigated in the district courts of the state. While there is no way to compute it with accuracy, we feel confident in saying that the economic waste and expense to heirs and others interested in matters being litigated in probate courts exceeds by far the present cost of maintaining such courts. This is not said in criticism of probate judges, either individually or collectively, but is directed at the inadequacy of our statute which makes such a condition possible. The judges themselves are reputable, honorable citizens, desirous of performing their duty to the best of their ability. One trouble is, the majority of them have had no training for the work they are called upon to do. They do the best they can, or as someone tells them to do, without in many instances having any independent judgment as to how it should be done. Problems

arising in the probate of wills, the administration and distribution of estates of decedents, and the appointment of guardians and handling their estates, present many legal questions of importance. This appears to be especially so because of what we speak of as the "depression," by reason of which many of the estates are heavily encumbered. Of the 105 probate judges, about 25 of them have had legal training; perhaps that many more have had sufficient experience and by their application to the matters and their diligence have a fairly good conception of the law pertaining to their duties. We sorely need not only better statutes but a more capable personnel for the business of our probate courts. In this issue of the BULLETIN we have outlined a proposed act for the administration of the estates of those who die without known heir or will, discussed at page 46 of our October, 1934, BULLETIN. We also propose two acts designed to make it more certain as to the property of a decedent to be handled by the administrator and providing for the administration upon real as well as personal property. There also is proposed an act outlining a skeleton code of probate procedure and an article by Mr. Bartlett on revision of our statutes.

Some of us who have given thought to the matter are coming to the belief with respect to the structure of our judicial system that what we need in this state, and all we need below the supreme court, is a trial court in each county, with general legal and equitable jurisdiction in all classes of actions and proceedings, including probate and juvenile court matters. Have such a court equipped to handle any class of business which comes before it, and let it be open all the time for the transaction of business. Have one court clerk in each county, with authority to issue process, serve notices, and perform other duties clerical in their nature. In sparsely settled counties two or more counties might have the same judge. In our larger counties there could be divisions of the court, as there now are of the district court. This not only would assure a competent court to handle every class of business, but would avoid troublesome questions of jurisdiction which now frequently arise. Appeals from such courts, of course, would be to the supreme court on questions of law only. The thought is worthy of careful consideration.

Appointment of Judge *Pro Tem.*

We now have a statute (R. S. 1933 Supp. 20-311) for the appointment by the chief justice of the supreme court of a judge *pro tem.* for the district court under certain limited situations. We see no reason why that should not apply to other instances when a judge *pro tem.* of the district court is necessary and one has not been selected by the bar. Frequently there are practical difficulties encountered in selecting a judge *pro tem.* by the bar, and unsatisfactory results obtained. Naturally, if the selection can be made satisfactorily in that way there is no objection to it, but sometimes that cannot be done, or results in unnecessary delay in the dispatch of business. In many instances resort has been had to some agreement for another judge to come in and try a case, or several cases, or hold a term of court. These methods frequently result in much bickering and often the plan proves unsatisfactory in other respects. To avoid these difficulties we suggest the enactment of a bill as follows:

AN ACT relating to district courts, providing for the appointment of a judge *pro tem.* under certain circumstances, being supplemental to existing statutes relating to the selection of judges *pro tem.* for the district court.

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

SECTION 1. In any circumstance in which it is necessary or proper under existing statutes to select a judge *pro tem.* of the district court for the trial of a specific action, or several actions, or for holding a term of court, and a judge *pro tem.* has not been selected by the bar of the state, and these facts are certified to the supreme court by the clerk of the district court, if the judge *pro tem.* is needed for a term of court, or for the trial of several actions, or if certified to the supreme court by an attorney of record in an action where the judge *pro tem.* is required for a single action, the chief justice of the supreme court shall select some other district judge of the state and appoint him as judge *pro tem.* to hold the term of court, or to try the several actions, or the specific action, as the case may be. Such judge *pro tem.* so appointed shall have power and authority to hear and determine all actions and matters arising therein covered by his appointment to the same extent as the regular judge of such court would have were he not disqualified or absent.

SEC. 2. This act shall be construed as supplemental to existing statutes pertaining to the selection or appointment of a judge *pro tem.* of the district court.

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

Depositions in Criminal Cases

Our statutes (R. S. 62-1313, 62-1314 and 62-1315) make provision for the taking of depositions on behalf of a defendant in a criminal action, but they are not clear in their provisions (*State v. McCarty,* 54 Kan. 52, 59, 36 Pac. 338). It sometimes is essential to the successful prosecution of crime that the state have authority to take the deposition of witnesses outside of the state, or who, because of illness or other good reason, cannot be in attendance upon the trial. Our statutes make no provision for such a situation. Perhaps this omission arose from the thought that no such statute would be valid in view of our constitutional provision (§ 10, Bill of Rights) that the accused shall be

allowed to meet the witness face to face. Under similar constitutional provisions, however, it has been held in other states that a statute which provides for the taking of depositions on behalf of the state, and which also makes appropriate provision for the defendant to attend the taking of such depositions and thereby meet the witness face to face, is valid as meeting the requirements of the constitutional provision. (See our October, 1934, BULLETIN, p. 43.) There is no reason the state should be handicapped in its prosecution of crime by the lack of material evidence which could be given by a witness too ill to attend court, or who cannot be compelled to attend because of his nonresidence. The state and the defendant should be put to the same duty and be entitled to the same advantages with respect to the evidence of such witnesses, except that the state should make provision for the attendance of defendant at the time and place of the taking of the depositions. We therefore recommend the enactment of a statute substantially as follows:

AN ACT relating to criminal procedure and providing for the taking and use of depositions, and repealing sections 62-1313, 62-1314 and 62-1315 of the Revised Statutes of 1923.

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

SECTION 1. In any criminal action or proceeding pending in a court of this state, or before a judge thereof, depositions may be taken when allowed by an order of the court or judge; such order may be made only when the court or judge is satisfied that due diligence has been used in making application therefor, that the person whose deposition is wanted is a material witness, and that he resides without this state, or, residing in this state, is pregnant, sick, or infirm, or is about to or likely to leave the state, and that his attendance at the trial or examination cannot be procured by the use of ordinary diligence. Such application by the defendant shall be accompanied by proof of notice to the county attorney of the time and place it is to be presented, and such an application on the part of the state shall be accompanied by proof of like notice to the defendant or to his attorney of record. The order for the taking of the depositions shall direct whether they shall be taken on oral or written interrogatories.

SEC. 2. When the state procures such an order its notice, in addition to what is required by the preceding section, shall inform the defendant that he is required personally to attend the taking of such deposition and that his failure to do so shall constitute a waiver of his right to face the witness whose deposition is to be taken; and the failure of defendant to attend the taking of such depositions shall constitute such waiver unless the court or judge is satisfied when the deposition is offered in evidence that defendant was physically unable to attend. If the defendant be not then in custody he shall be paid by the county in which the action or proceeding is pending witness fees for travel and attendance upon the taking of such deposition; but if defendant be in custody the sheriff, at the request of the county attorney, shall have the defendant in attendance at the taking of such deposition, the expense to be paid by the county.

SEC. 3. Depositions taken under the provisions of this act may be read in evidence upon the hearing of the action or proceeding, subject to rulings applicable to the reception in evidence in a civil action of depositions taken upon due notice.

SEC. 4. Sections 62-1313, 62-1314 and 62-1315 of the Revised Statutes of 1923 be and the same are hereby repealed.

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

Pleading an Alibi

We discussed this question briefly in our October, 1934, BULLETIN (page 42). Clearly a suitable statute on this question, fairly administered, should produce desirable results. A similar practice has existed in Scotland for many years (5 Ency. Laws of Scotland, p. 227; Macdonald, Criminal Law of Scotland, 4th ed., p. 329). It was advocated by Professor Burdick in an article on "Criminal Justice in America" (1925), 11 American Bar Association Journal, 512, and in Willoughby's "Principles of American Administration," p. 450. Michigan, in 1927 (§ 20, ch. 8, Public Acts, 1927), and Ohio, in 1929 (Public Acts, 1929, p. 52), enacted statutes requiring such a plea. Some questions arising under these statutes have been construed by the courts. (*People v. Miller,* 250 Mich. 72, 229 N. W. 475; *People v. Wudarski,* 253 Mich. 83, 234 N. W. 157; *Woodruff v. State,* 36 Ohio App. 287, 173 N. E. 206; *State v. Nooks,* 123 Ohio St. 190, 174 N. E. 743; *State v. Thayer,* 124 Ohio St. 1, 176 N. E. 656; *Reed v. State,* 44 Ohio App. 318, 185 N. E. 558. For general discussion, see Journal of Criminal Law and Criminology, vol. 24, p. 849.) These statutes are said to have been "a body blow at organized crime." New Jersey passed an alibi defense law in 1934, and Wisconsin has reached the same result by a rule of court promulgated June 26, 1934, effective January 1, 1935. (See "The Panel" vol. 12, p. 25.) A similar statute proposed in New York was not enacted, possibly because it contained a provision requiring the defendant to furnish the prosecution with the names and addresses of witnesses by which he expected to prove the alibi. Other states are considering the adoption of such a statute. (See The Utah Bar Bulletin of November, 1934, pp. 152, 153.) In this state, where the prosecution is required to endorse the names of the state's witnesses on the information, there appears to be no reason why a similar requirement should not be made of a defendant with respect to his plea of alibi. One of the practical questions arising on the application of such a statute grows out of the fact that prosecuting officers cannot in all cases, with prudence, allege the specific time and place of the crime in the complaint or information. Clearly, when the time and place of the crime are not specifically alleged, defendant cannot, with certainty, plead that he was at some other place at the time in question. Some of the proposed statutes enacted or suggested require similar notice if defendant expects to plead insanity at the time the crime was alleged to have been committed, or at the time of trial. In this state there is little if any necessity of such a plea by defendant. As regards insanity at the time of the commission of the crime, our statute (R. S. 62-1532) relating to criminal insane, as that has been construed by our courts (*In re Ostatter,* 103 Kan. 487, 175 Pac. 377; *In re Wadleigh,* 108 Kan. 682, 197 Pac. 217; *In re Timm,* 129 Kan. 126, 281 Pac. 863; *Hodison v. Rogers,* 137 Kan. 950, 22 P. 2d 491), does away very largely, if not entirely, with the old difficulties arising by a plea on behalf of defendant of insanity at the time the crime was committed. Insanity at the time of the trial is a different question. But this also is covered by our statute (R. S. 62-1531) and our decisions (*State v. Ossweiler,* 111 Kan. 358, 207 Pac. 832; *State v. Detar,* 125 Kan. 218, 263 Pac. 1071, and *State v. Brotherton,* 131 Kan. 295, 291 Pac. 954). These provisions respecting a defense of insanity at the time of the commission of the crime, or insanity at the time of trial,

are fully and apparently satisfactorily covered by existing statutes and need not be included in any statute relating to the plea of alibi.

We suggest the following statute on the question and believe it has been worked out in such a way as to be beneficial in its purposes and fair in its application:

AN ACT relating to criminal procedure.

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

SECTION 1. In the trial of any criminal action in the district court, where the complaint or information charges specifically the time and place of the offense alleged to have been committed, and the nature of the offense is such as necessitated the personal presence of the one who committed the offense, and the defendant proposes to offer evidence to the effect that he was at some other place at the time of the offense charged, he shall give notice in writing of that fact to the county attorney. The notice shall state where defendant contends he was at the time of the offense, and shall have endorsed thereon the names of witnesses which he proposes to use in support of such contention. On due application, and for good cause shown, the court may permit defendant to endorse additional names of witnesses on such notice, using the discretion with respect thereto now applicable to allowing the county attorney to endorse names of additional witnesses on an information. The notice shall be served on the county attorney as much as seven days before the action is called for trial, and a copy thereof, with proof of such service, filed with the clerk of the court: *Provided,* on due application and for good cause shown the court may permit the notice to be served at any time before the jury is sworn to try the action. In the event the time and place of the offense are not specifically stated in the complaint or information, on application of defendant that the time and place be definitely stated in order to enable him to offer evidence in support of a contention that he was not present, and upon due notice thereof, the court shall direct the county attorney either to amend the complaint or information by stating the time and place of the offense as accurately as possible, or to file a bill of particulars so stating the time and place of the offense, and thereafter defendant shall give the notice above provided if he proposes to offer evidence to the effect that he was at some other place at the time of the offense charged. Unless the defendant gives the notice as above provided he shall not be permitted to offer evidence to the effect that he was at some other place at the time of the offense charged. In the event the time or place of the offense has not been specifically stated in the complaint or information, and the court directs it be amended, or a bill of particulars filed, as above provided, and the county attorney advises the court that he cannot safely do so on the facts as he has been informed concerning them; or if in the progress of the trial the evidence discloses a time or place of the offense other than alleged, but within the period of the statute of limitations applicable to the offense and within the territorial jurisdiction of the court, the action shall not abate or be discontinued for either of those reasons, but defendant may, without having given the notice above mentioned, offer evidence tending to show he was at some other place at the time of the offense.

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

Defendant's Testimony in a Criminal Action

Shortly stated, our statute (R. S. 62-1420, 62-1421) now provides that defendant in a criminal action, or his wife (or husband) shall not be required to testify except as a witness on behalf of defendant, and that the neglect or failure of such person to testify shall not raise any presumption of guilt nor be referred to by the prosecuting attorney, or considered by the court or jury. These provisions became a part of our law in 1871 (Ch. 118, Laws 1871). Prior to that time we appear to have had no statute on the subject. That the statute as it now exists is unsatisfactory has long been recognized, and particularly in recent years has been the subject of much criticism. On the one hand, it is said, why should the state not be allowed to call as a witness the person who knows most about the question whether the crime charged has been committed, namely, the defendant. Further it is said the fact that the defendant did not testify cannot be kept from the jury or the court, since they hear all the witnesses and are bound to know whether he testified or not, and further that the fact of his failure to testify is almost sure to have weight with the jury, however much they may endeavor to keep it from doing so. On the other hand, it is said that one charged with crime is presumed to be innocent; that the burden is on the state to prove his guilt, hence that he is not required to do anything and may sit mute; that any other rule destroys in a sense that presumption of innocence. In practice it frequently is difficult for a prosecuting attorney to argue a case effectively without his argument in some degree brings out or emphasizes the fact that defendant did not take the witness stand—when that is the case—even though the prosecuting attorney strives to avoid any such reference. At times some of them do not strive so hard to avoid it and succeed in making that fact prominent by cunning indirection. In one case (*State v. Smith,* 114 Kan. 186, 217 Pac. 307), the county attorney specifically referred in his argument to the fact that the wife of defendant did not testify, and it was held on appeal that the judgment should not be reversed for that reason unless defendant was able to show that he was prejudiced thereby. From the very nature of the matter, however, such a showing could not be made, for it repeatedly has been held that jurors are not permitted to testify as to what influenced them in reaching their verdict.

The Judicial Council considered this matter as early as its 1928 Report and recommended (page 14): "That the statute (R. S. 62-1420) be so amended as to permit counsel for the state to comment upon and the jury to consider the fact that defendant, or his wife, did not testify (if they did not). The statute should be so amended, or should be charged so as to make such comment or consideration reversible error."

Later and more specifically to call it to the attention of the legislature the Judicial Council prepared a bill amending several sections of our criminal code, among other things recommending that R. S. 62-1420 be amended by adding to the last proviso therein: "The violation of this proviso shall require the granting of a new trial." Commenting on that in our 1929 Report (page 22) it was said regarding the statute as it now reads: "The principal change . . . was that the violation of the last proviso should require the

granting of a new trial. As at present construed its violation is regarded as error, but reversible only in the event defendant can show that he is prejudiced. But the nature of the matter is such that there is no practical way of determining what influence the violation of the provision has on the jury. The proviso should either be omitted from the law or made effective."

Since then the matter has received much more discussion. The State Bar Association and its legislative committee earnestly urge that the restriction prohibiting the county attorney from commenting upon, or the court or jury from considering the fact that a defendant did not testify, be removed. The Judicial Council at a recent meeting joined in that recommendation. We therefore recommend the enactment of a statute reading as follows:

AN ACT relating to criminal procedure, amending section 62-1420 of the Revised Statutes of 1923 and repealing said original section, and also repealing section 62-1421 of the Revised Statutes of 1923.

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

SECTION 1. That section 62-1420 of the Revised Statutes of 1923 be amended so as to read as follows: Section 62-1420. No person shall be rendered incompetent to testify in criminal causes by reason of his being the person injured or defrauded, or intended to be injured or defrauded, or that would be entitled to satisfaction for the injury, or is liable to pay the costs of the prosecution; or by reason of his being the person on trial or examination; or by reason of being the husband or wife of the accused; but any such facts may be shown for the purpose of affecting his or her credibility: *Provided,* That no person on trial or examination, nor wife or husband of such person, shall be required to testify except as a witness on behalf of the person on trial or examination.

SEC. 2. That sections 62-1420 and 62-1421 be and the same are hereby repealed.

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

Authority of Trial Judge to Comment on Evidence

For many years the question of whether a trial judge should be authorized or permitted to comment upon the evidence in cases tried to juries, particularly in criminal cases so tried, has been a subject of much discussion, upon which different views have been expressed. Recently we have been requested to recommend a statute specifically authorizing and permitting the trial judge to discuss his view of the evidence on the trial of a criminal action to the jury. It may be pointed out that neither our constitution nor our statutes contain any specific prohibition upon such comment. Indeed, one section of our criminal code appears to take it for granted that the trial judge has such authority. The Judicial Council is of the opinion that additional legislation on the subject is not desirable. Naturally, it is a power or authority which must be used with care, if used at all, but if so used will serve a good purpose. The section of the statute referred to reads as follows (we have italicized the sentence which seems to assume such authority to exist):

"The judge must charge the jury in writing, and the charge shall be filed among the papers of the cause. In charging the jury he must state to them all matters of law which are necessary for their information in giving their verdict. *If he presents the facts of the case, he must inform the jury that they are the exclusive judges of all questions of fact."* (R. S. 62-1447.)

Proposed Statutory Changes

AN ACT relating to appeals in criminal actions and repealing sections 62-1702, 62-1704, 62-1709, 62-1710, 62-1711, 62-1712, 62-1713, 62-1714 of the Revised Statutes of Kansas of 1923.

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

SECTION 1. In any criminal case tried to a jury in district court, in which a verdict of guilty is returned, if defendant is not then in custody of the sheriff, he shall be taken into custody at once; and unless he announces that he desires to file a motion for a new trial, he shall be sentenced either on that date or at a fixed time within ten days.

SEC. 2. If at the time the verdict of guilty is returned defendant announces that he desires to file a motion for a new trial, the court shall fix a time, not exceeding three days, in which to file the motion for a new trial, and such motion shall be heard and determined as expeditiously as possible and in no event later than thirty days after it is filed. Pending the filing and hearing of the motion for a new trial, if defendant desires to be at liberty on bond, and the offense is bailable after conviction, the court shall fix the amount of the bond, which bond shall be approved by the court, or, if the court so directs, by the clerk of the court. If the motion for a new trial is overruled, sentence shall be imposed at once. If defendant desires to appeal promptly, and has given bond pending the hearing of his motion for a new trial, the court may order the bond to be in force pending the application to the supreme court for bond.

SEC. 3. Proceeding on appeal: (*a*) If defendant does not seek to have execution of his sentence stayed, or release from custody on bond pending his appeal, he may appeal at any time within six months from the date of the sentence by serving notice of appeal on the county attorney of the county in which he was tried and filing the same with the clerk of the district court. He shall then prepare and present his appeal in accordance with the statutes and rules of court applicable thereto. (*b*) If defendant seeks stay of execution of the sentence, or release from custody, or both, pending his appeal, he shall serve notice of his intention to appeal on the county attorney and file the same with the clerk of the court, order a transcript of the testimony needed to present his case on appeal, see that the journal entry of trial and sentence is filed, and cause copies of such notice of appeal, with proof of service, order for transcript and journal entry to be filed with the clerk of the supreme court within ten days after sentence. On the application of defendant the supreme court, or any justice thereof, shall order execution of the sentence stayed, and if the offense is bailable after conviction shall fix the amount of the bond and direct that it be approved by the supreme court, or any justice thereof, or its clerk, or by the trial court, or its clerk. Defendant shall thereafter prepare and present his appeal in accordance with statutes and rules of court applicable thereto: *Provided*, If the offense of which defendant was convicted was a misdemeanor, and the bonds mentioned in section 62-1705 of the Revised Statutes of Kansas of 1923 have been given, and that fact duly certified, as required by section 62-1706 of the Revised Statutes of Kansas of 1923, defendant shall not be kept in custody pending his appeal.

SEC. 4. If the state desires to appeal in any case mentioned in section 62-1703 of the Revised Statutes of 1923, the county attorney, within ten days after the ruling complained of, shall serve notice of appeal upon the defendant and file the same with the clerk of the court, order a transcript of testimony needed to present the case on appeal, see that the journal entry of the ruling complained of is filed, and cause copies of such notice of appeal, with proof of service, order for transcript and journal entry, to be filed with the clerk of the district court. The appeal by the state in no case stays or affects the operation of the ruling or judgment appealed from until the ruling or

judgment is reversed. The state shall thereafter prepare and present its appeal in accordance with statutes and rules of the court applicable thereto.

SEC. 5. The supreme court shall have authority to make such additional rules, not repugnant to statute, as it may deem necessary or proper in order to facilitate the prompt and orderly preparation and presentation of the appeal and to carry into effect the final order of the court in such appealed actions.

SEC. 6. Sections 62-1702, 62-1704, 62-1709, 62-1710, 62-1711, 62-1712, 62-1713 and 62-1714 of the Revised Statutes of Kansas of 1923 are hereby repealed: *Provided*, That appeals in criminal actions in which the verdict of guilty was returned before the effective date of this act may be appealed and the appeals disposed of under the statutes in force at the time the verdict was returned.

SEC. 7. This act shall take effect and be in force from and after July 1, 1935, and its publication in the statute book.

AN ACT relating to the administration upon an estate of one who dies without known heir or will, and repealing sections 22-933, 22-934, 22-935, and 22-1201, 22-1202, 22-1203, 22-1204, 22-1205 and 22-1206 of the Revised Statutes of 1923.

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

SECTION 1. When it shall be brought to the attention of a probate court of any county that a resident of the county has died without known heir or will, but leaving an estate, the court shall appoint some suitable person as administrator to take possession of the estate and administer the same under the supervision of the court, and shall notify the county attorney of its action. The probate court shall have exclusive original jurisdiction of all questions, legal or equitable, arising in the administration and distribution of such an estate.

SEC. 2. The administrator so appointed shall qualify by taking oath and giving bond unto the state of Kansas in such sum as the court may direct for the faithful administration of the estate, which bond may be changed in amount or additional sureties required when the court deems that necessary or proper. He shall cause to be published in a newspaper of the county, authorized to publish legal notices, for five consecutive weeks, a notice of his appointment, which notice shall give the name and last place of residence of the decedent and recite that he died without known heir or will, and shall notify those who claim as heirs, or under a will of decedent, to present their claims to the probate court, and also those who have claims against decedent to present their claims in accordance with statutes pertaining to the presentation of claims against the estates of decedents. The administrator so appointed shall take into his possession all property of the decedent of whatever kind or character and wheresoever situated and shall prepare and file an inventory thereof within sixty days after his appointment, or earlier if ordered by the court. The court shall direct the personal property to be converted into cash as expeditiously as possible, and also shall direct the administrator to collect the rents, income, or profits, and to pay the taxes upon and to care for the real property. Creditors of decedent may present claims against the estate, which claims shall be considered and disposed of as similar claims against estates of other decedents. If no one appears to claim as an heir, devisee or legatee of the decedent within one year after the appointment of the administrator the court shall direct the real property of the decedent to be sold for cash, and also shall order to be sold any of the personal property of the decedent in the hands of the administrator, and the estate shall be closed as are the estates of other decedents.

SEC. 3. The net proceeds of the estate shall be paid to the state treasurer and become temporarily a part of the state school fund. The state school fund commissioners shall invest and handle this money as other moneys of the

state school fund, except that it shall be kept as a temporary fund until ten years after it shall have been first received, at which time it shall be covered into the perpetual school fund of the state, provided no one in the meantime has established his right thereto as heir, devisee or legatee of the decedent.

SEC. 4. One who claims the estate, or some part thereof, as heir of decedent, shall present his claim therefor to the probate court not later than ten years after the administrator was appointed or such claim shall be forever barred. If he establishes his claim it shall be allowed by the court. If two or more such claimants have claims pending at the same time the court shall determine which of such claimants has established his claim and the share or portion of the estate each is entitled to receive. If at the time of such determination the estate is still in the hands of the administrator, the same shall be delivered or paid to those found entitled to receive it, less claims previously allowed and cost of administration. If at the time of such determination the proceeds of the estate have been delivered to the state treasurer and are temporarily a part of the state school fund, the school fund commissioners shall pay to such claimants the sum or portion of the estate the court has adjudged they are entitled to receive. A party aggrieved at the ruling or judgment of the probate court may appeal to the district court as other appeals are taken from the probate court, and the appeal when so taken shall be tried *de novo* in the district court, and a party aggrieved at the ruling or judgment of the district court may appeal to the supreme court as in civil actions.

SEC. 5. If the estate or its proceeds, or some part thereof, has been delivered or paid to one or more who claimed as an heir of decedent and whose claim was established, and later, but within ten years after the administrator was appointed, someone else presents to the probate court a claim for the estate, or some portion thereof, as heir of decedent, and upon a hearing establishes his claim, neither the state nor the school fund commissioners shall be liable to such claimants for moneys previously paid out to those found to be heirs of the decedent, but the party in whose favor such later claim was established shall have a cause of action in the district court against the party to whom such payment was made, to determine their respective rights to the property or its proceeds.

SEC. 6. The state shall be regarded as a party to all actions in the probate court for the administration or distribution of the estate of a resident of this state who dies without known heir or will. The county attorney shall represent the state and shall be the legal adviser of the administrator of such an estate. He shall diligently protect, defend and conserve such estate for the benefit of the state school fund and closely scrutinize all claims of whatever character against such estate, including claims of heirs, and diligently defend in any and all courts actions or proceedings against all claims not clearly meritorious. Those having claims of any character against such an estate shall have the burden of establishing their respective claims by clear and convincing evidence. Expenses incurred by the county attorney in representing the state in such actions or proceedings shall be paid by the county, as are other expenses incident or necessary to the conduct of the office of the county attorney. On request of the county attorney, the probate court, the administrator, or any party in interest, or on his own motion, the attorney-general may appear and assist the county attorney, and upon permission or order of the probate court, or direction of the governor, may take full charge of the conduct of the estate in lieu of the county attorney. Expenses of the attorney general incident or necessary to his conduct of the case shall be paid from the funds provided for the expenses of the attorney-general's office. In no event shall attorneys' fees be allowed or paid from the estate to anyone representing the state or the administrator.

SEC. 7 This act in the main is designed to be procedural and to apply to estates of residents of this state who have died without known heir or will and whose estates have not heretofore been administered, or whose estates are not now in the process of administration, as well as to the estates of residents of this state who hereafter die without known heir or will. It is not intended to

apply to such estates previously administered or now in process of administration, except that in those estates the regularity of the appointment of the administrator, the fact that the administrator took charge of and administered upon real property of the decedent, and orders of the probate court allowing costs of administration, including attorneys' fees, if any, shall not again be inquired into, and such acts and proceedings and orders shall be regarded as final.

SEC. 8. Sections 22-933, 22-934, 22-935, 22-1201, 22-1202, 22-1203, 22-1204 22-1205 and 22-1206 of the Revised Statutes of Kansas of 1923 be and the same are hereby repealed.

SEC. 9. This act shall take effect and be in force from and after its publication in the official state paper.

Administration Upon Decedent's Real Property

Many questions have arisen respecting the extent of the authority of the administrator of an intestate decedent with respect to real property. Where decedent left a will the authority of the executor over both real and personal property ordinarily is governed by the terms of the will, aided by applicable legal principles. When the decedent left no will the general rule is that the administrator has nothing to do with the real property of decedent unless such property, or part of it, is necessary to pay debts of the decedent. Although this general rule has existed since the organization of our state, in many instances it appears that the administrator, the heirs of the decedent, and even the probate court, are not aware of it, with the result that the administrator assumes the same general authority over real property that he does over personal property—perhaps makes leases, collects rents, pays taxes and insurance, expends money for upkeep, and at times pays interest or principal on encumbrances—to find out, perhaps at the close of his administration, that none of this was done under his authority as administrator, and perhaps to learn to his sorrow that he must account to heirs for money so collected and disbursed by him. To avoid the financial loss that arises from such a situation, courts sometimes have regarded the administrator as agent for the heirs, by their acquiescence or consent, even though no such agency was specifically created. But that holding is difficult or impossible to enforce as against minor or other incompetent heirs. On the other hand, heirs sometimes find that the income from the property has been dissipated by the administrator, and that he is not liable on his administrator's bond. Questions as to what income, if any, of the real property becomes a part of the assets of the estate for the payment of debts of decedent sometimes are difficult of solution. All of these difficulties can be avoided by a statute providing that the administrator shall take charge of and administer nonexempt real property substantially in the same way as he administers nonexempt personal property. The laws of many states so provide. No reason suggests itself to us why statutes making such provisions should not be enacted in this state. Simplicity and certainty of the law with respect to the authority of an administrator and his duties and with respect to what property of decedent is available for the payment of his debts will avoid much confusion and unnecessary litigation. To correct our statutes in these regards we propose two measures. The first of these amends certain sections of our existing statutes.

The other is more comprehensive in its scope and more complete in its provisions. Both of them should be enacted. They are as follows:

AN ACT respecting executors and administrators and the settlement of the estates of deceased persons, amending sections 22-504, 22-507, and 22-601 of the Revised Statutes of Kansas of 1923, and section 22-702 of the Revised Statutes Supplement of 1931, and repealing said original sections.

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

SECTION 1. That section 22-504 of the Revised Statutes of Kansas of 1923 is hereby amended to read as follows: Section 22-504. The personal estate and effects, together with the real estate chargeable with the payment of debts, comprised in the inventory, shall be appraised by three disinterested householders of the county, who shall be appointed by the court.

SEC. 2 That section 22-507 of the Revised Statutes of Kansas of 1923 is hereby amended to read as follows: Section 22-507. The appraisers shall proceed to estimate and appraise the personal property, together with the real estate, or interest in real estate, chargeable with the payment of debts, and each article or item of personal property and each tract of real estate, shall be set down separately, with the value thereof in dollars and cents, distinctly, in figures, opposite to the articles or items of personal property, or tracts of real estate, respectively.

SEC. 3. That section 22-601 of the Revised Statutes of Kansas of 1923 is hereby amended to read as follows: Section 22-601. The executor or administrator shall, within such time as the court may order, sell the whole of the personal property belonging to the estate, not exempt by law from payment of debts, and is assets in his hands to be administered: *Provided,* That such personal property as is specifically bequeathed shall not be sold until the court, by its order, shall have determined the residue of the personal estate, subject to the payment of debts, to be insufficient for the payment of debts of the estate and costs of administration, and direct the personal property specifically bequeathed to be sold: *And provided further,* That whenever the court shall find that the sale of the personal property, or any part thereof, is not necessary for the payment of debts, legacies, or costs of administration, it may, in its discretion, order such property not sold.

SEC. 4. That section 22-702 of the Revised Statutes Supplement of 1931 is hereby amended to read as follows: Section 22-702. All demands, whether due or to become due, whether absolute or contingent, not thus exhibited within one year shall be forever barred, saving to infants, persons of unsound mind, imprisoned, or absent from the United States, one year after the removal of their disabilities, the right to participate in any assets remaining unadministered in the hands of the executor or administrator.

SEC. 5. That sections 22-504, 22-507, and 22-601 of the Revised Statutes of Kansas of 1923, and section 22-702 of the Revised Statutes Supplement of 1931, are hereby repealed.

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

AN ACT relating to decedents' estates, providing what property of deceased persons shall be chargeable with payment of debts and costs of administration, and for the possession, management, control, and disposition of such property, and the rents, issues, and profits thereof, by executors and administrators.

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

SECTION 1. The property of the deceased persons shall be chargeable with the payment of debts and costs of administration in the following order: *First.* The personal property belonging to the deceased, except that allowed

as exempt to the widow or minor children, under existing statutes, but including emblements or annual crops raised by labor, and whether or not served from the land of the deceased at the time of his death. *Second.* The rents, issues, and profits of the real estate of the deceased, except real estate exempt as the homestead, whether such rents accrued before, or accrue after, the death of the deceased, and including rents, issues, and profits, during the running of the redemption period, of real estate of the deceased, except that exempt as his homestead, sold at execution or judicial sale, whether such execution or judicial sale was held before or after the death of the deceased. *Third.* All of the real estate of the deceased, or any interest he may have in any real estate situated within this state, except that exempt as his homestead, including redemption rights in any real estate, except the homestead, sold at execution or judicial sale either before or after the death of the deceased.

SEC. 2. The executor or administrator shall have a right to the possession, and shall have the management and control, of all of the real estate and personal property of the deceased chargeable with the payment of debts, including real estate in which there are redemption rights from execution or judicial sales thereof held either before or after the death of the deceased.

SEC. 3. Upon the order of the court, administrators or executors may lease the real estate under their control for any term not more than two years, and shall receive the rents, issues, and profits of all such real estate, and, subject to approval of the court, keep up the repairs, insurance, and taxes thereon, or such part thereof as the court may direct.

SEC. 4. If in the judgment of the court it will promote the interest of the estate, and not be prejudicial to creditors, the court shall have power to order the administrator or executor to pay interest or installments of principal or any mortgage or other lien on any real or personal property chargeable with payments of debts of the deceased, or to entirely discharge or pay off any such liens, or to redeem, for the benefit of the estate, any nonexempt real estate sold at execution or judicial sale either before or after the death of the deceased, out of the personal assets of the estate in the hands of the administrator or executor, or to order the sale of any of the nonexempt real estate to provide funds for any of the purposes mentioned in this section: *Provided,* This act shall not be construed so as to take away or alter the right of the heirs or devisees of the deceased to redeem, for their own benefit, pledged personal property, or to redeem, for their own benefit, real estate sold at execution or judicial sale, in the event that the executor or administrator does not elect to redeem for the benefit of the estate any such personal property or real estate, and upon the application of any of the heirs or devisees interested in such pledged personal property, or real estate subject to redemption, the court, if such redemption appears to be to the best interest of the estate and the creditors, shall make an order directing the executors or administrator to redeem such property for the benefit of the estate, but if the court shall find that such redemption will not be to the best interest of the estate or creditors, the court shall order such redemption right surrendered, and the property turned over to the heirs or devisees.

SEC. 5. Whenever the court shall be satisfied that any real estate need not be sold or leased for the payment of debts of the estate, legacies, or costs of administration, the executor or administrator may be ordered to deliver possession of the same to those entitled to it as heirs or devisees.

SEC. 6. Upon final settlement and distribution of the estate, all real estate not sold for the payment of debts, legacies, or costs of administration, and remaining in the possession of the administrator or executor, shall be turned over to the heirs or devisees entitled to the same.

SEC. 7. All acts and parts of acts in conflict herewith are hereby repealed.

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

Probate Code

For more than a year the Judicial Council has given considerable thought to a code of probate procedure. The necessity for such a code is recognized by all who have given the subject serious attention. In attempting to draft such a code we found that many sections of our present statute relating to the substantive law of estates of decedents, minors and other incompetents have interwoven in them provisions relating to procedure. If a code of probate procedure is formulated it is thought that it will be necessary to redraft the substantive law pertaining to such estates in such a way as to eliminate the procedural provisions mingled therein. This altogether has proven to be more of a task than the Council has had time to complete, in the way its members necessarily must work upon such a task. We have, however, outlined an act, which together with our proposed act relating to probate and county courts (pages 50 to 52, October, 1934, BULLETIN), if both are adopted, will enable the Judicial Council to complete the formulation of such a code of probate procedure, to be promulgated by rules of the supreme court. Mr. Samuel E. Bartlett, of Ellsworth, who has found time to give a great deal of detailed study to the matter, and whose suggestions concerning guardianship estates previously were published in our BULLETIN, has combined sections pertaining to such estates with similar provisions pertaining to estates of decedents. We also publish this, under the title of "General Provisions Relating To All Estates," for the more comprehensive study of those questions. The proposed act above mentioned is as follows:

AN ACT providing for a code of probate procedure.

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

SECTION 1. This act shall be known as the code of probate procedure of the state of Kansas.

SEC. 2. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. Its provisions, and all proceedings under it, shall be liberally construed, with a view to promote its object and to assist the parties in obtaining justice.

SEC. 3. As used in this act, the term "fiduciary" includes executor or administrator (except special administrator), guardian (other than a guardian under the uniform veterans' guardianship act) of the estate of a minor, an incompetent, or an imprisoned convict, and trustee for the estate of a person under disability and subject to the jurisdiction of the probate court. The term "person under disability" includes a minor, an incompetent, and an imprisoned convict. The term "incompetent" includes insane, lunatic, idiot, imbecile, distracted person, feeble-minded person, drug habitue, and habitual drunkard. The term "imprisoned convict" means any person who is imprisoned in the penitentiary under the sentence of any court.

SEC. 4. All proceedings relating to the estates of decedents or of persons under disability or for the appointment of a fiduciary thereof shall be adversary in their nature and shall be by action in the probate court. There shall be but one form of action, which shall be called a probate action.

SEC. 5. Each of the following proceedings shall constitute one probate action: (1) the proceedings for the appointment of an administrator and all matters necessary for the full and final administration of the estate of a decedent; (2) the proceedings for the admission of a will to probate, the appointment of an executor or administrator thereunder, and all matters

necessary for the full and final administration of the property of the testator, whether disposed of under the terms of the will or not; (3) the proceedings for the appointment of a guardian of the estate of a person under disability and all matters connected with such guardianship; and (4) the proceedings for the appointment of or relating to a trustee for a person under disability and all matters connected therewith over which the probate court has jurisdiction. Whenever property passes by the laws of intestate succession, or under a will to a beneficiary or beneficiaries not named in such will, the proceedings in the probate court shall include a determination of the persons entitled to such property. This enumeration of probate actions does not exclude others within the jurisdiction of the probate court.

SEC. 6. An action for the appointment of an administrator or for the admission of a will to probate must be brought in the county in which the decedent was a resident at the time of his death. An action for the appointment of a guardian must be brought in the county in which the person under disability is a resident. If an imprisoned convict has no known place of residence, such action shall be brought in the county in which the conviction was had. In case probate actions are pending in two or more counties for the probate of a will or the appointment of a fiduciary, jurisdiction being claimed in each, the controversies and proceedings as to jurisdiction shall be determined by the authority and in the manner prescribed by rule of the supreme court. The appointment of a fiduciary for the estate of a nonresident decedent or of a nonresident person under disability may be made by the probate court of any county of the state in which property of such estate is located. The appointment, first made, shall extend to all the property of the estate within the state and shall exclude the jurisdiction of the probate court of any other county.

SEC. 7. The supreme court shall have the power to prescribe and determine by general rules for the probate courts of the state, the necessary and proper parties to probate actions, the forms of process, notice, writs, pleadings, and motions, and the practice and procedure in probate actions, including provisions for the presentation and allowance of claims, the time and manner of appeals to the district court, and the security and payment of costs. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. They shall take effect three months after their promulgation and publication in the official state paper, and thereafter all laws in conflict therewith shall be of no further force or effect.

SEC. 8. Issues of fact on the trial of a probate action, or the determination of any controverted matter therein, shall be in accordance with the rules of evidence provided for civil cases by the code of civil procedure.

SEC. 9. Trials and hearings in probate actions shall be by the court; and the decision of the court therein or in any matter pertinent thereto shall have the same force and effect as a judgment at law or a decree in equity, as the particular case may require, and shall be final as to all persons having notice of the hearing, except: (1) upon appeal according to law; (2) in case of fraud or collusion; (3) as against rights which are saved by statute to persons under disability; (4) nothing in this act shall be construed to abridge or modify the provisions of chapter 160 of the Laws of 1925 relating to the contest of wills in the district court.

SEC. 10. Every judgment in a probate action, and every order which affects the substantial rights of a party, is appealable to the district court of the county. The district court shall on appeal try and determine the same as if originally filed therein and may, in its discretion, order further or amended pleadings to be filed therein.

SEC. 11. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 12. This act shall take effect and be in force from and after its publication in the statute book.

General Provisions Relating to All Estates

(Executors, administrators, guardians, and trustees that are subject to the jurisdiction of the probate court)

BY SAMUEL E. BARTLETT

NOTE.—The chief criticism of the proposed guardianship act as published, so far as such criticisms have come to the writer, has been that the draft is too long. It has seemed to the writer that fully half of the sections of the act as published in the Judicial Council BULLETIN (April, 1934) may be combined with like sections relating to decedents' estates. It appears that such provisions relating to the oath, letters of appointment, bonds and qualifications of sureties, the requirements for new or additional bonds, successor bonds, release of sureties, depositories of trust funds, inventory and appraisement, sale of personal property, sale of real property, investment of funds, completing real contracts, insolvent estates, accounting, etc., do admit of a uniform statement that will do much to clarify and simplify any restatement of the substantive probate law that may be undertaken. This draft of forty-six sections is an attempt to unite such provisions, which are similar in character and will admit of a uniform statement. It will be noted that this draft does not undertake to say when a trustee is subject to the jurisdiction of the probate court. What is left of the guardianship act may be rewritten or rearranged and placed in a separate article.

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1. As used in this act, the term "fiduciary" means guardian as herein defined, executor or administrator, or any other person, association, or corporation appointed by the probate court, or under the control thereof, or accountable thereto, and acting in a fiduciary capacity for any person, asso-

ciation, or corporation, or charged with duties in relation to any property, interest, trust, or estate for the benefit of another.

2. Every fiduciary, before entering upon the execution of his trust, shall take and subscribe an oath that he will faithfully and impartially and to the best of his ability discharge the duties of fiduciary, and shall receive letters of appointment from a probate court having jurisdiction of the subject matter of the trust. No act or transaction of a guardian shall be valid prior to the issuance of letters of appointment to him, except necessary acts for the preservation of the trust estate and an executor named in a will may pay funeral expenses.

3. Unless otherwise provided by law or the instrument making the appointment, every fiduciary shall, prior to the issuance of his letters, file in the probate court in which letters are to be issued, a bond with a penal sum in such amount as may be fixed by the court, but in no event less than two hundred per centum of the probable value of the personal estate and the annual real estate rentals which will come into his hands as such fiduciary, if executed by personal sureties, or one-hundred twenty-five per centum thereof if executed by corporate surety or sureties: Provided, that the penal sum of the guardian of a person only may be the same per centum of the probable expenditures to be made by the guardian for the ward during one year. Such bond shall be in such form as the court shall approve, shall be signed by such sureties as are required by law and approved by the court, and shall be conditioned that the fiduciary will faithfully and impartially and to the best of his ability discharge the duties devolving upon him as such fiduciary.

4. No bond of a fiduciary shall be approved unless executed by two or more personal sureties or one or more corporate sureties. The qualifications of personal and corporate sureties shall be such as are provided by law.

5. When a testator or other person in the instrument appointing the fiduciary shall have ordered or requested that such bond shall not be given, the bond shall not be required, unless from a change in the situation or circumstances of the fiduciary, or for other sufficient cause, the court shall deem it proper to require such bond; but no provision in an instrument authorizing a fiduciary therein named to serve without bond, shall be construed to relieve a successor fiduciary from the necessity of giving bond, unless the instrument clearly evidences such intention.

6. If the bond is executed by personal sureties, one or more of such sureties shall be resident of the county in which the appointment is made, and the sureties shall own real property worth double the sum to be secured, over and above all encumbrances, and shall have property in this state liable to execution equal to that amount. No corporate surety shall be acceptable on a bond in the probate court unless such surety is acceptable to the United States government on surety bonds in like amount, as shown by inclusion in the list published by the Secretary of the Treasury of the United States, and such surety shall be qualified to do business in this state.

7. The court by which a fiduciary is appointed may, on its own motion or otherwise, require a new or an additional bond or new or additional sureties whenever, in the opinion of such court, the interests of the trust demand it. Such court may also reduce the amount of the bond of such fiduciary at any time for good cause shown.

8. In any case where a bond is or shall be required by the probate court from a fiduciary, and the value of the estate or fund is so great that the probate court deems it inexpedient to require security in the full amount prescribed by law, the court may direct that any certificates of stock, bonds, notes, or other securities belonging to the estate or fund be deposited with a state or national bank or trust company, duly incorporated and authorized to do business in this state as a trust company as may be designated by the probate court.

9. Such deposit shall be made in the name of the fiduciary, and the certificates, bonds, notes, or other securities thus deposited shall not be with-

drawn from the custody of such bank or trust company except upon the special order of the probate court; and no fiduciary shall receive or collect the whole or any part of the principal represented by such certificates, bonds, notes, or other securities so deposited without special order of the probate court. Such an order can be made in favor of the fiduciary only when the penalty of the bond or bonds theretofore given and then in force will be sufficient in amount to satisfy the provisions of law relating to the penalty thereof, if the property so withdrawn is also reckoned in the estate or fund.

10. A surety of a fiduciary or the executor or administrator of a surety may be released as such surety if, on application duly made, and after hearing by the court, the court is of the opinion that there is good reason therefor. Such application may be made by the surety, his executor or administrator, or by the fiduciary. If, upon the hearing, the court is of the opinion that there is good reason to release said sureties, it shall order said fiduciary to file an account, as provided by law, and said sureties shall be released upon said fiduciary filing a new bond and its approval by the court. Such original surety or sureties shall not be released until the fiduciary so gives bond, but the original surety or sureties shall be liable for said fiduciary's acts only from the time of the executing of the original bond to the filing and approval by the court of the new bond.

11. Every fiduciary (except a guardian of the person only) shall within thirty days after his appointment and qualification as such, cause notice of his appointment to be published for three consecutive weeks in some newspaper of the county authorized by law to publish legal notices.

12. Every fiduciary (except guardian of the person only), within one month after his appointment and qualification as such unless the court for good cause shown grants an extension of time, shall make and return upon oath into court a true inventory of all the real and personal property of the trust. Such real and personal property and, in case of guardians, the yearly rent of the real estate shall be duly appraised by three commissioners appointed by the court as hereinafter provided. Where the real estate lies in two or more counties the court may appoint commissioners in any or all of the counties in which such real estate or a part thereof is situated.

13. The probate court shall have power to appoint three distinterested and judicious persons as commissioners to perform any duties provided by law. All commissioners appointed by the court shall be under the direction thereof; they shall take and subscribe to an oath that they will faithfully and impartially and to the best of their ability discharge their duties as commissioners, and they shall make their report in writing under oath. When a person appointed by the court as a commissioner fails to discharge his duties, the court on its own motion or otherwise, may appoint another. Commissioners shall be paid for the services performed by them such compensation as the court shall find reasonable and proper.

14. If an estate is or becomes insolvent it shall be settled by proceedings in the probate court and the assets remaining in the hands of the fiduciary shall be prorated and paid over to and among such creditors as prove their debts pursuant to such order as is made by the court. Such creditors as have been duly paid shall not be liable to refund any part of what was received by them.

15. A fiduciary, whether appointed by a court of this state or elsewhere, shall have authority, by order of the court and with its approval, to complete any real contract of his ward or decedent, or any authorized contract of a guardian who has died or been removed, or to agree to its alteration or cancellation with the consent of the other party. If at the hearing the court is satisfied that it is to the best interests of the ward or estate, it may order the fiduciary to complete said contract or to agree to its alteration or cancellation, and to execute and deliver such deeds or other instruments for and on behalf of his ward or estate to the purchaser as are required to make the order of the court effective. Before making such order the court shall cause to be paid or secured to or for the benefit of the estate of the ward or decedent its

just part of the consideration of the contract. Such deeds or other instruments as are executed and delivered pursuant to such order shall recite the order and be as binding if made by the ward prior to his disability or the decedent in his lifetime.

16. No executor or administrator shall have authority to invest the funds belonging to the estate without the approval of the probate court unless the will or other instrument creating the trust permits. Except as otherwise provided by the instrument creating the trust, a fiduciary having funds belonging to the trust which are to be invested may invest them in the following: 1. Bonds or other interest-bearing obligations of the United States or of the state of Kansas. 2. Bonds or other interest-bearing obligations of any county, city, school district, or other legally constituted political taxing unit within the state of Kansas, provided such county, city, school district or other taxing unit has never defaulted in the payment of the principal or interest on any of its bonds or other interest-bearing obligations. 3. Bonds or other interest-bearing obligations of any other state which has never defaulted in the payment of principal or interest on any of its bonds or other interest-bearing obligations. 4. Notes or bonds secured by first mortgage on real estate of at least double the value of the total amount secured by such mortgage, provided such notes or bonds, if they comprise a part only of the obligations secured by such mortgage, belong to the highest and most preferred class of obligations secured by such mortgage, and have equal priority with all other obligations in the same class so secured. The buildings on the mortgaged property, if any, must, by the terms of the mortgage, be insured in an amount equal to their full insurable value against loss by fire, the proceeds of any insurance policies in the event of loss to be applied first for the benefit of the owners of the notes and bonds of the class in which the fiduciary has invested. On failure of the mortgagor to keep the premises insured as herein required, the mortgagee shall insure them and the expense of such insurance shall be repaid by the mortgagor to the mortgagee and be a lien on the property concurrent with the mortgage. 5. With the approval of the probate court, in productive real estate located within the state of Kansas, provided neither the fiduciary nor any member of his family has any interest in such real estate or in the proceeds of the purchase price paid therefor. The title to any real estate so purchased must be taken in the name of the ward. 6. In such other securities or property as the court having control of the administration of the trust approves.

17. A fiduciary may retain, until maturity, any security or investment which was a part of the trust estate as received by him even though such security or investment is not of the class permitted to fiduciaries under the law, unless the circumstances are such as to require the fiduciary to dispose of such security or investment in the performance of his duties according to law. A fiduciary entitled to the distributive share of the assets of an estate or trust shall have the same right as other beneficiaries to accept or demand distribution in kind, and may retain any security or investment so distributed to him as though it were a part of the original estate received by him.

18. In all public sales of personal property the fiduciary shall give notice containing a particular description of the personal property to be sold, and stating the time, place, and terms of sale, by advertising the same in the manner provided by law for the sale of personal property on execution issued out of the district court.

19. Within thirty days after any public or private sale of personal property the fiduciary shall make a report thereof in writing under oath to the probate court. Such report shall include proof of proper notice of such sale if at public auction, and if a clerk was employed for such sale shall be accompanied by a sale bill signed by such clerk.

20. In all sales of real estate, if an appraisement of the real estate is contained in the inventory, the court may order a sale thereof in accordance therewith; or it may order a new appraisement. If a new appraisement is not ordered, the value set forth in the inventory shall be the appraised value of

the real estate. If the court orders a new appraisement the value returned shall be the appraised value of the real estate. If a new appraisement is ordered, the court shall appoint three commissioners to appraise the real estate in whole and in parcels at its true value in money.

21. No real estate shall be sold at private sale for less than the appraised value thereof, nor at public sale for less than two-thirds of the appraised value thereof, except as otherwise specially provided.

22. When the actual market value of the real estate to be sold is less than five hundred dollars as determined by the court, it may in its discretion by summary order authorize the sale of the real estate at private sale, on such terms as it deems proper; and in such proceedings the other requirements of this act as to sale proceedings shall be waived.

23. If, in private sales, the fiduciary, makes a *bona fide* effort to sell and no sale has been effected; or, if in public sales the real property remains unsold for want of bidders when offered pursuant to advertisement; then the court may fix the price for which such real estate may be sold, or it may set aside the appraisement and order a new appraisement. If such new appraisement does not exceed five hundred dollars, and on the first offer thereunder at public sale there are no bids, then the court may on its own motion or otherwise order the real estate to be readvertised and sold at public sale to the highest bidder.

24. Before any sale or lease of real estate, the fiduciary may be required by the court, if it deems it necessary, to give an additional bond in such sum as the court shall determine, to secure the further assets arising from the sale or lease of the real estate. In case of sale under the terms of any lease, the fiduciary may be required to give such additional bond before the confirmation of the sale.

25. If the court is satisfied that it is to the best interests of the estate to sell the real estate and that a sale thereof may be authorized, it shall order the real estate described in the application, or so much thereof as the court may deem proper, to be sold at public or private sale, as the court may direct, by the fiduciary, for cash in hand or upon deferred payments with interest as shall be ordered by the court. In sales by executors or administrators payments shall not exceed one year, with interest.

26. The court, with the consent of the mortgagee, may authorize the sale of real estate subject to mortgage, but such consent shall release the estate from the debt secured by such mortgage, should a deficit later appear.

27. The order of sale shall describe the real estate to be sold, and shall prescribe the terms and conditions of the sale and payment of the purchase money either in whole or in part for cash in hand or on deferred payments.

28. In all public sales of real estate the fiduciary shall give notice containing a particular description of the real estate to be sold, and stating the time, place, and terms of sale, by advertising the same in the manner provided by law for the sale of real estate upon execution.

29. The fiduciary shall make return of his proceedings under the order of sale, stating that he did not directly or indirectly purchase such real estate, or any part thereof, or any interest therein, and that he is not directly or indirectly interested in the property sold, except as stated in the report.

30. The court shall examine the return, and if it be satisfied that the sale has been made in all respects in conformity to law and equity, it shall confirm the same and order the fiduciary to execute and deliver a deed to the purchaser. The deed shall refer to the order of sale and the court by which it was made, and shall convey to the purchaser all the right, title, and interest of the decedent or the ward in the premises sold.

31. Such order shall require that before delivery of such deed the deferred installments, if any, of the purchase money be secured by mortgage on the real estate sold, and mortgage note or notes bearing interest at such rate as the court may prescribe. But if after the sale is made and before delivery of

such deed the purchaser offers to pay the full amount of the purchase money in cash, the court may order that it be accepted, if for the best interest of the estate, and direct its distribution.

32. The court in such order may also direct the sale, without recourse, of any or all of the notes taken on deferred payments, if for the best interest of the estate, at not less than their face value with accrued interest, and direct the distribution of the proceeds.

33. The money arising from the sale of the real estate shall be applied and distributed as provided by law and in the manner and upon such terms as shall be approved by the court.

34. The court in its discretion may allow a real estate commission, but such allowance shall be passed upon by the court prior to the sale and found to be reasonable. The court shall have authority to allow reasonable payment for certificate or abstract of title or policy of title insurance in connection with the sale of any real estate or the mortgage thereof.

35. When compensation is not otherwise fixed by law, the court shall make allowance to fiduciaries for their services and expenses in executing their trust as it deems reasonable and proper.

36. No fiduciary shall at any time make any personal use of the funds or property belonging to the trust, and for any violation of this provision he shall be liable and also his bondsmen in an action for any loss occasioned by such use and for such additional amount by way of penalty not exceeding the loss occasioned by such use as may be fixed by the court hearing such cause. Such amounts shall be payable for the benefit of the beneficiaries, if living, and to their estates if they are dead. Conservators shall not buy from nor sell to themselves or have any dealings with the corpus of the estate.

37. The probate court at any time may accept the resignation of any fiduciary, upon his proper accounting, if such fiduciary was appointed by, or is under the control of, or accountable to such court. The court may remove any such fiduciary for habitual drunkenness, neglect of duty, incompetency, fraudulent conduct, removal from the state, because the interest of the trust demands it, or for any other cause authorized by law.

38. If a sole fiduciary dies, is dissolved, declines to accept, resigns, is removed, or becomes incapacitated or otherwise unable to act, prior to the termination of the trust, the court shall require a final account of all dealings of such trust to be filed forthwith by such fiduciary if a living person and able to act; or if such fiduciary be a living person but unable to act, by his guardian, if any, or if there be no guardian, by some other suitable person in his behalf, appointed or approved by the court, or if such fiduciary be a deceased person, by his executor or administrator; or if such fiduciary be a dissolved corporation, by such person or persons as may be charged by law with winding up the affairs of such corporation. Thereupon the probate court shall cause such proceedings to be had as are provided by law as to other accounts filed by fiduciaries. Whenever such a vacancy of fiduciary occurs and such a contingency is not otherwise provided for by law, or by the instrument creating the trust, or where such instrument named no fiduciary whatever, the court shall, either on its own motion or otherwise, appoint and issue letters of appointment as fiduciary to some competent person or persons who shall qualify according to law to execute the trust to its proper termination. Such vacancy, and the appointment of a successor fiduciary, shall not affect the liability of the former fiduciary, or his sureties, previously incurred.

39. When two or more fiduciaries have been appointed jointly to execute a trust, and one or more of them dies, declines, resigns, or is removed, the title shall pass to the surviving or remaining fiduciary or fiduciaries, who shall execute the trust, unless the creating instrument expresses a contrary intention or unless the court otherwise determines. The surviving fiduciary or fiduciaries shall, within ninety days after the death, resignation, or removal of

a cofiduciary, file in the court a complete account covering all matters to the time of such death, resignation, or removal.

40. At least once each year, unless otherwise provided by law, every fiduciary must render an account of the execution of his trust to the probate court of the county in which he was appointed, including in such account an itemized statement of receipts and expenditures verified by voucher or proof of all investments and of any changes in investments since the filing of his last account. An account shall be rendered by the fiduciary at any other time or times, on order of the court made upon its own motion or otherwise for good cause shown. At the expiration of his trust, the fiduciary must fully account for and pay over the trust estate to the proper person or persons.

41. The probate court may examine under oath all fiduciaries touching their accounts. If it deems it proper to do so, it may reduce such examination to writing, and require the fiduciary to sign it. Such examination shall be filed in the case.

42. If a fiduciary neglects or refuses to file an account when due, according to law or when ordered by the court, the court may on its own motion or otherwise issue citation by publication or otherwise to compel the filing of the overdue account. If the fiduciary fails to file such account within thirty days after he has been notified by the probate court to do so, no allowance shall be made for his services unless the court finds that the delay was reasonable.

43. The probate court may hear and determine all matters relative to the manner in which the fiduciary has executed his trust, and as to the correctness of his accounts, and also require any fiduciary appointed within such county, on the determination of his trust, or removal, or resignation, or on his death, his executor or administrator, to render a final account of the manner in which he executed his trust; and such court may hear and determine all matters relating thereto.

44. The determination of the court on the settlement of an account shall have the same force and effect as a judgment at law or decree in equity, as the particular case may require, and shall be final, as to all persons having notice of the hearing, except: (1) Upon appeal according to law; (2) When an account is settled in the absence of a person adversely interested and without actual notice, it may be opened as provided by law; (3) Upon any settlement of an account mistakes or errors in any former account may be corrected with leave of the court upon good cause shown; (4) In case of fraud or collusion; (5) As against rights which are saved by statute to persons under disability.

45. Every notice by publication shall be proved by the affidavit of the printer or other person knowing the same; and such affidavit shall be filed in said cause.

46. A duly authenticated copy of any proceedings relating to any estate in any probate court in this state may be filed and recorded in the probate court of any other county of the state, and when so filed and recorded shall have the same force and effect in such other county as in the county of origin.

SUMMARY OF PROBATE COURTS

The following is a summary of the business of the probate courts of the state, compiled from reports sent us from the probate judges, covering all of the counties in the state in so far as they have reported:

There were 3,117 decendents' estates and 841 estates of minors, insane persons and other incompetents closed within the year ending July 1, 1934. There have been 34 defalcations by guardians, executors, or administrators since July 1, 1930. The amount of the defalcations was $154,631.25, the amount recovered being $68,542.32. The reports indicate there have been 82 juvenile officers employed under the supervision of the probate judges since July 1, 1933, some of such officers being part time only, and the amount they received was $14,491.05. There have been 19 habeas corpus cases since July 1, 1933. In cases pending in district courts, 249 orders have been issued by probate judges since July 1, 1933, in the absence of the district judge from the county. There have been 50 proceedings in aid of execution since July 1, 1933. There have been 240 adoptions with the consent of parents, and 149 adoptions without the consent of one or both parents, since July 1, 1933.

There were 9,955 estates of deceased persons pending July 1, 1934. Of this number 2,023 had been pending 6 months or less, 1,735 from 6 months to 1 year, 2,146 from 1 to 2 years, 1,379 from 2 to 3 years, 1,198 from 3 to 4 years, 302 from 4 to 5 years, 711 from 5 to 10 years, and 461 more than 10 years. There were 5,249 wills filed and in 61 cases the wills were contested. The gross value of the estates was $108,558,423.35, the number of cases in which the values were given were 8,383. In 6,723 cases inventories were filed in 60 days. There were 5,129 annual reports. There were 80 citations issued. There were 90 appeals to the district court. The total costs as allowed to date were $771,309.01. The total executors' or administrators' fees as allowed to date were $446,995.79. The total attorneys' fees as allowed to date were $286,-135.58. The estimated value of property listed but not appraised was $8,094,-452.44.

There were 4,413 estates of minor persons, 1,194 estates of insane persons, and 444 estates of other incompetents pending July 1, 1934. Of these cases 564 had been pending 6 months or less, 407 from 6 months to 1 year, 688 from 1 to 2 years, 688 from 2 to 3 years, 678 from 3 to 4 years, 493 from 4 to 5 years, 1,461 from 5 to 10 years, 1,072 more than 10 years. There were 212 cases tried by jury and 1,395 cases tried by commission. The gross value of the estates was $11,365,099.11, the number of cases in which values were reported being 3,725. In 1,907 cases inventories were filed within 30 days. There was 13,096 annual reports. There were 39 citations issued. There were 11 appeals to the district court. The total costs as allowed to date were $192,-470.81. The total executors' or administrators' fees as allowed to date were $109,502.42. The total attorneys' fees as allowed to date were $80,555.89. The estimated value of property listed but not appraised was $421,859.61.

There were 918 juvenile cases pending July 1, 1934. Of this number 254 had been pending 6 months or less, 232 from 6 months to 1 year, 137 from 1 to 2 years, 295 more than 2 years. In 462 cases paroles were granted. There were 188 cases the children were sent to state institutions, in 67 cases

to orphans' homes, in 165 cases to private homes and in 36 cases no disposition was shown. The causes in these cases are as follows: dependent and neglected, 266 cases; stealing, 221 cases; forgery, 4 cases; arson, 3 cases; incorrigible, 121 cases; immoral conduct, 39 cases; delinquent, 264 cases. The total costs as allowed to date were $2,410.36.

The tables prepared from probate court reports will be printed in our next BULLETIN.

MOTION DAYS IN DISTRICT COURTS

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1935. Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Allen	Iola	Frank R. Forrest	N. C. Kerr	37	5 12 19 26	2 9 16 23	2	6 13 20 27	4 11 18 25	1 8	7 14 21 28	5 12 19 26	2	7 14 21 .....
Anderson	Garnett	Hugh Means	Erma Miller	4	4	1	4	5	3	10	6	14	1	2
Atchison	Atchison	Lawrence Day	Hal Weisner	2	5 12 19 26	2 9 16 23	2 9 16 23 30	6 13 20 27	4 11 18 25	1 8 15 22 29	7 14 21 28	5 12 19 26	2 9 16 23 30	7 14 21 28 .....
Barber	Medicine Lodge	George L. Hay	Edith Myers	24	10	11	9	22	10	14	7	28	8	6
Barton	Great Bend	Ray H. Beals	Jack Morrison, Jr.	20	2	2	5	6	4	4	7	5	2	7
Bourbon	Fort Scott	W. F. Jackson	Geo. T. Farmer	6	5 12 19 26	2 9 16 23	2 9 16 23 30	6 13 20 27	4 11 18 25	1 8 15 22 29	7 14 21 28	5 12 19 26	2 9 16 23 30	7 14 21 28 .....
Brown	Hiawatha	C. W. Ryan	H. N. Zimmerman	22	29	26	26	23	28	18	24	29	26	19
Butler	El Dorado	A. T. Ayres, Geo. J. Benson	Charles Smith	13	5	2	4	5	4	10	7	5	11	3
Chase	Cottonwood Falls	Lon C. McCarty	Clinton W. Scott	5	25	22	29	26	31	28	27	25	29	27
Chautauqua	Sedan	A. T. Ayres, Geo. J. Benson	R. S. Floyd	13	19	5	18	1	11	4	2	8	4	2
Cherokee	Columbus	V. J. Bowersock	Ernest Milton	11										
Columbus Div.					8	5	5	2	7	4	3	8	5	3
Galena Div.					10	7	7	4	9	6	5	10	7	5
Cheyenne	St. Francis	E. E. Kite	Minnie A. Lawless	17	26	16	25	1	27	7	14	12	25	2 14
Clark	Ashland	Karl Miller	Amy Dugan	31	17*b*	14*b*	14*b*	11*b*	16*b*	13*b*	5*b*	10*b*	7*b*	12*b*

MOTION DAYS IN DISTRICT COURTS—CONTINUED

County.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1935.									
					Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Clay	Clay Center	Edgar C. Bennett	Harold Crawford	21	3	8	4	4	10	3	5	10	4	4
Cloud	Concordia	Tom Kennett	Lawrence Johnston	12	7	5	5	1	7	4	23	22	19	16
Coffey	Burlington	Lon C. McCarty	Bernice Thompson	5	28	25	25	29	27	24	30	28	25	30
Comanche	Coldwater	Karl Miller	Jessie Chamness	31	16*a*	13*a*	13*a*	10*a*	15*a*	12*a*	4*a*	9*a*	6*a*	11*a*
Cowley	Winfield	O. P. Fuller	Mrs. Marie Snyder	19	7 21	4 18	4 18	1 15	6 20	3 17	3 16	7 21	4 18	2 16
Crawford	Girard	L. M. Resler	Jean Bell	38										
Girard Div					14	4	4	1	6	3	2	7	4	2
Pittsburg Div					21	18	18	15	13	17	16	21	18	16
Decatur	Oberlin	E. E. Kite	Dorothy McGee	17	24	14 25	15	12	13	5	12	8 14	7	10
Dickinson	Abilene	C. M. Clark	Seth Barter, Jr	8	7*a*	15*a*	4*c*	13*c*	20*a*	3*c*	9*a*	18*a*	11*c*	14*a*
Doniphan	Troy	C. W. Ryan	L. D. Swiggett	22	31	28	28	25	29	20	26	31	27	20
Douglas	Lawrence	Hugh Means	John Callahan	4	5	4	2	6	6	1	7	5	4	7
Edwards	Kinsley	Lorin T. Peters	C. E. Burke	33	9	4	6	2	1	5	4	21	7	5
Elk	Howard	A. T. Ayres, Geo. J. Benson	Mary E. Johnson	13	7	4	16	6	6	3	16	7	5	3
Ellis	Hays	Herman Long	C. J. Werth	23	18	4	13	11	20	14	12	21	15	12
Ellsworth	Ellsworth	Dallas Grover	James M. Wilson	30	21	16	6	22	10	5	7	14	6	27
Finney	Garden City	Fred J. Evans	Mrs. Walter Harvey	32	14	6	8	10	13	13	10 23	23	12	6
Ford	Dodge City	Karl Miller	Susan A. Evans	31	19*a*	16*a*	16*a*	13*a*	18*a*	15*a*	7*a*	12*a*	9*a*	14*a*
Franklin	Ottawa	Hugh Means	Ann M. Shiras	4	7	2	1	1	4	8	9	4	2	6

MOTION DAYS IN DISTRICT COURTS —CONTINUED

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1935.									
					Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Geary	Junction City	C. M. Clark	Geo. J. Webster	8	7*c*	15*c*	4*a*	13*a*	20*c*	3*a*	9*c*	18*c*	11*a*	14*c*
Gove	Gove City	Herman Long	J. B. Chenoweth	23	21	18	18	22	17	17	13	4	18	13
Graham	Hill City	W. K. Skinner	Elsie Parks	34	19	4	7	16	20	14	16	2	15	10
Grant	Ulysses	F. O. Rindom	Jewell Rowland	39	2*d*	4*d*	4*b*	8*b*	1*d*	10*d*	7*d*	7*d*	4*d*	2*b*
Gray	Cimarron	Karl Miller	Molly Parks	31	14*e*	11*e*	11*e*	8*e*	13*e*	10*e*	2*e*	7*e*	4*e*	9*e*
Greeley	Tribune	Fred J. Evans	T. P. Tucker	32	10*c*	11	13*a*	9	9	11*a*	13*c*	21	8	28
Greenwood	Eureka	A. T. Ayres, Geo. J. Benson	Warren Willis	13	21	6	15	5	20	10	3	14	6	4
Hamilton	Syracuse	Fred J. Evans	Amelia J. Minor	32	11	25	16	13	17	15	19	28	16	14*c*
Harper	Anthony	George L. Hay	Ed C. Wolff	24	14	7	8	8	9	17	6	14	7	5
Harvey	Newton	J. G. Somers	Lloyd L. McMullen	9	9	11	15	3	13	7	18	28	12	6
Haskell	Sublette	F. O. Rindom	Edith M. Yarbrough	39	2*b*	4*b*	11*b*	3*b*	1*b*	10*b*	16*b*	7*b*	4*d*	9*b*
Hodgeman	Jetmore	Lorin T. Peters	Frank Phillips	33	10	18	7	3	13	6	5	8	4	6
Jackson	Holton	Lloyde Morris	H. E. Hostetter	36	14	8	8	4	6	7	5	7	8	5
Jefferson	Oskaloosa	Lloyde Morris	Marguerite N. McCoy	36	18	4	4	5	10	3	6	11	4	6
Jewell	Mankato	W. R. Mitchell	Bernice Howard	15	5	2	4	13	3	3	18	10	11	21
Johnson	Olathe	G. A. Roberds	Mabel K. Adams	10	7	25	20	8	6	24	3	28	18	9
Kearny	Lakin	Fred J. Evans	Paul Wood	32	4	14	11	11	21	21	18	24	11	14*a*
Kingman	Kingman	George L. Hay	Nell H. Walter	24	12	9	25	6	11	3	23	5	9	9
Kiowa	Greensburg	Karl Miller	Herbert Miller	31	15*d*	12*d*	12*d*	9*d*	14*d*	11*d*	3*d*	8*d*	5*d*	10*d*

MOTION DAYS IN DISTRICT COURTS—CONTINUED

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1935. Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Labette	Oswego	L. E. Goodrich	H. L. Lane	16										
Oswego division					25	22	29	26	24	28	13	25	25	20
Parsons division					21	18	18	8	27	17	16	21	18	16
Lane	Dighton	Fred J. Evans	Q. H. Jewett	32	8	13*a*	25	23*a*	14	12*a*	11	16*a*	25	10*a*
Leavenworth	Leavenworth	J. H. Wendorff	Howard Oliver	1	5	2	2	6	4	1	7	5	2	7
					19	16	16	20	18	15	21	19	16	21
Lincoln	Lincoln	Dallas Grover	Ernest D. Harlow	30	5	18	8	5	13	4	4	1	11	28
Linn	Mound City	W. F. Jackson	C. B. Platt	6	1	4	4	8	6	3	3	7	4	2
					14	18	18	22	20	17	16	21	18	16
Logan	Russell Springs	Herman Long	Alfred Rogge	23	4	15*c*	14*c*	1	16*c*	12*c*	2	18*c*	13*c*	2
Lyon	Emporia	Lon C. McCarty	J. J. McClure	5	30	27	27	24	29	26	25	30	27	26
Marion	Marion	C. M. Clark	Peter P. Flaming	8	19*a*	4	16	8	6	15	3*a*	7	4*a*	21
Marshall	Marysville	Edgar C. Bennett	Wallace Koppes	21	4	4	8	5	6	7	6	7	7	6
McPherson	McPherson	J. G. Somers	Donald S. Clark	9	10	14	11	4	16	3	19	29	14	2
					11	15	.....	5	17	.....	20	30	15	.....
Meade	Meade	Karl Miller	Mrs. Lottie Stamper	31	18*b*	15*b*	15*b*	12*b*	17*b*	14*b*	6*b*	11*b*	8*b*	13*b*
Miami	Paola	G. A. Roberds	Hugh W. Campbell	10	21	4	18	22	20	3	5	7	12	16
					.....	.....	.....	.....	.....	30	.....	.....	.....	.....
Mitchell	Beloit	W. R. Mitchell	Herbert Shaefer	15	14	1	1	15	1	27	23	4	9	20
Montgomery	Independence	Jos. W. Holdren	Clyde K. Gamble	14										
Independence div.					5	2	2	6	4	1	7	5	2	7
Coffeyville div.					19	16	16	20	18	15	21	19	16	21
Morris	Council Grove	C. M. Clark	J. A. Burton	8	19*c*	16	15	1	18	17	3*c*	19	4*c*	2
Morton	Richfield	F. O. Rindom	Kathleen Crawford	39	3*d*	11*b*	5*b*	4*b*	2*d*	11*d*	2*b*	8*d*	5*d*	10*b*
Nemaha	Seneca	C. W. Ryan	Clifford Hannum	22	28	25	25	22	27	17	23	28	25	18

MOTION DAYS IN DISTRICT COURTS —CONTINUED

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1935. Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Neosho	Erie	J. T. Cooper	Lloyd E. Brown	7	4	12	1	5	3	7	6	8	1	6
Ness	Ness City	Lorin T. Peters	Laura Jackson	33	11	7	4	6	4	7	2	10	8	2
Norton	Norton	E. E. Kite	Ethel Bechtoldt	17	7 14 23	13	13	15	9	4	2 11	10	5	12
Osage	Lyndon	Robert T. Price	Paul F. Cummings	35	16	1	12	12	3	11	6	18	12	6
Osborne	Osborne	W. R. Mitchell	B. F. Beeson	15	3	4	2	11	13	28	20	21	8	19
Ottawa	Minneapolis	Dallas Grover	R. W. Jones	30	7	5	9	8	9	3	3	2	5	7
Pawnee	Larned	Lorin T. Peters	Rose Mason	33	8	5	5	1	2	4	3	7	6	4
Phillips	Phillipsburg	E. E. Kite	L. R. Halbert	17	22	4	14	13	6	3	10 16	9	6	11
Pottawatamie	Westmoreland	Lloyde Morris	Chas. S. Smith	36	17	7	7	2	9	6	3	10	7	3
Pratt	Pratt	George L. Hay	Roy D. Skelton	24	11	8	11	5	20	15	9	4	11	7
Rawlins	Atwood	E. E. Kite	Ivy Martin Yoos	17	25	15	12 18	11	20	6	13	11	4 11	13
Reno	Hutchinson	J. G. Somers	Walter Mead	9	5 12 19 26	2 9 16 23	2 9 16 23 30	6 13 20 27	4 11 18 25	1 8 15 22 29	14 21 28	5 12 19 26	2 9 16 23 30	7 14 21
Republic	Belleville	Tom Kennett	Wm. R. Goodwin	12	8	4	6	2	6	5	24	21	20	17
Rice	Lyons	Ray H. Beals	L. A. Holloway	20	1	4	2	2	6	1	3	7	1	2
Riley	Manhattan	Edgar C. Bennett	Hal McCord	21	7	7	7	1	9	6	3	11	8	5
Rooks	Stockton	W. K. Skinner	Geo. F. Crane	34	14	16	15	15	6	1	2	1	16	9

MOTION DAYS IN DISTRICT COURTS—CONTINUED

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1935. Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Rush	La Crosse	Lorin T. Peters	Edwin Popp	33	7	6	18	5	3	3	16	9	5	3
Russell	Russell	Herman Long	Geo. W. Brandt	23	7	19	15	12	6	13	11	7	14	11
Saline	Salina	Dallas Grover	Howard Ford	30	4	4	11	4	8	1	6	4	4	2
Scott	Scott City	Fred J. Evans	Nellie Scheuerman	32	9	12	21	8	8	12*c*	12	15	13	9
Sedgwick	Wichita		A. E. Jacques	18										
First division		Ross McCormick	1st and 2d divs		5	2	2	6	4	1	7	5	2	7
Second division		R. L. NeSmith			19	16	16	20	18	15	21	19	16	21
Third division		Grover Pierpont	3d and 4th divs		12	9	9	13	11	8	14	12	9	14
Fourth division		I. N. Williams			26	23	23	27	25	22	28	26	23	28
Seward	Liberal	F. O. Rindom	H. W. Lane	39	14*b*	16*b*	16*b*	13*b*	27*b*	15*b*	21*b*	19*b*	11*b*	21*b*
Shawnee	Topeka		Matilda Binger	3										
First division		Geo. A. Kline			5	16	9	20	11	1	14	5	16	7
					26	.....	30	.....	.....	22	.....	26	.....	28
Second division		Paul H. Heinz			12	2	16	6	18	8	21	12	2	14
					.....	23	.....	27	.....	29	.....	.....	23	.....
Third division		Otis E. Hungate			19	9	2	13	4	15	7	19	9	21
					.....	.....	23	.....	25	.....	28	.....	30	.....
Sheridan	Hoxie	W. K. Skinner	Noah Turner	34	28	25	1	29	18	3	26	7	14	11
Sherman	Goodland	W. K. Skinner	Wm. Mangus	34	5	18	16	1	3	15	28	18	18	2
Smith	Smith Center	W. R. Mitchell	Ronald McClain	15	4	26	25	12	2	17	19	11	7	2
Stafford	St. John	Ray H. Beals	Gertrude Bartle	20	4	5	1	1	7	7	2	1	4	3
Stanton	Johnson	F. O. Rindom	J. E. Saunders	39	3*b*	25*b*	4*d*	3*d*	2*b*	11*b*	9*b*	8*b*	5*b*	9*d*
Stevens	Hugoton	F. O. Rindom	John F. Fulkerson	39	28*b*	5*b*	25*b*	4*d*	3*b*	12*b*	17*b*	28*b*	6*b*	10*d*

MOTION DAYS IN DISTRICT COURTS—CONCLUDED

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1935. Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Sumner	Wellington	Wendell Ready	Jessie Haverstock	25	1	7	7	4	7	6	3	3	7	5
Thomas	Colby	W. K. Skinner	N. C. Knudson	34	4	2	18	13	2	17	27	17	4	12
Trego	Wakeeney	Herman Long	J. W. Bingham	23	19	16	4	13	18	3	14	19	4	14
Wabaunsee	Alma	Robert T. Price	Lizzie Frey	35	22	5	5	9	7	4	4	1	5	3
Wallace	Sharon Springs	Herman Long	Ida Ward	23	3	15*a*	14*a*	15	16*a*	12*a*	16	18*a*	13*a*	16
Washington	Washington	Tom Kennett	J. W. Hatter	12	9	6	4	3	8	3	25	23	18	18
Wichita	Leoti	Fred J. Evans	Mrs. Kate Elder	32	10*a*	13*c*	13*c*	22	27	11*b*	13*a*	16*c*	21*a*	18
Wilson	Fredonia	J. T. Cooper	Leslie V. York	7	1	5	5	2	7	4	3	1	5	3
Woodson	Yates Center	Frank R. Forrest	Kathryn P. Maxwell	37	4 11	1	1 8 12 22 29	5 12 19 26	3	7 11 21 28	6	4 11 18 25	1 9 12 22	6 13 20 ....
Wyandotte	Kansas City	..... E. L. Fischer Willard M. Benton Wm. H. McCamish C. A. Miller	Pal E. Bush 1st division 2d division 3d division 4th division	29	5 12 19 26	2 9 16 23	2 9 16 23	6 13 20 27	4 11 18 25	1 8 15 22	7 14 21 28	5 12 19 26	2 9 16 23	7 14 21 28

a = 9:00 a. m. *b* = 10:00 a. m. *c* = 1:30 p. m. *d* = 2:00 p. m. *e* = 1:00 p. m. mountain time.

NOTE.—The four divisions of the court in Wyandotte county work with three jury divisions and one "law division," which is rotated among the judges. The "law division" has a motion day each week. The day of the week is designated by the judge at the beginning of the term. Except as modified by the work of the "law division," the motion days are as shown in the above tabulation.

NOTE.—For the months of July and August, in the judicial districts having two or more divisions, one or more judges holds court for the hearing of matters needing prompt attention, and in all the judicial districts some provision is made for the hearing of urgent matters. The days for such hearing are not stated in the above schedule. Parties interested should take the matter up with the judge or clerk of the court with respect to the time of hearing. In a few districts there is a publication, such as the *Legal News* in Shawnee county, in which notice is given of matters not covered by the above schedule.