E. D. Grant.

KANSAS JUDICIAL COUNCIL BULLETIN

DECEMBER, 1932. PART 4—SIXTH ANNUAL REPORT.

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Application at post office at Topeka, Kansas, for second-class matter.

MEMBERS OF THE JUDICIAL COUNCIL.

W. W. Harvey, Chairman ..... Ashland.
Justice of the Supreme Court.

J. C. Ruppenthal, Secretary ..... Russell.
Formerly Judge Twenty-third Judicial District.

Edward L. Fischer ..... Kansas City.
Judge First Division, Twenty-ninth Judicial District.

Roscoe H. Wilson ..... Jetmore.
Judge Thirty-third Judicial District.

John W. Davis ..... Dodge City.
Chairman Senate Judiciary Committee.

George Austin Brown ..... Wichita.
Chairman House Judiciary Committee.

Charles L. Hunt ..... Concordia.

Robert C. Foulston ..... Wichita.

Chester Stevens ..... Independence.

Coöperating with the:
Kansas State Bar Association,
Southwestern Kansas Bar Association,
Northwestern Kansas Bar Association,
Local Bar Associations of Kansas,
Judges of State Courts and Their Associations,
Court Officials and Their Associations,
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.

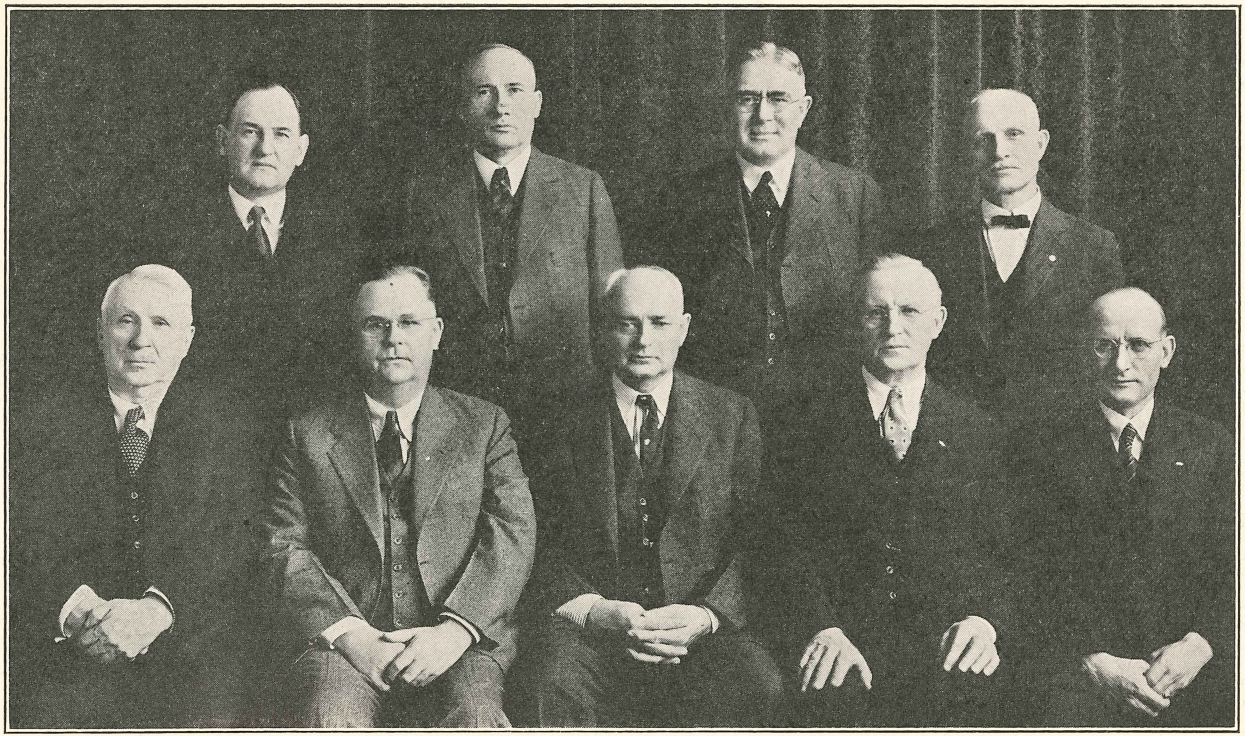
LETTER OF TRANSMITTAL.

TOPEKA, KAN., December 1, 1932.

To His Excellency, Harry H. Woodring, Governor of Kansas:

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

W. W. HARVEY, *Chairman,*
J. C. RUPPENTHAL, *Secretary,*
EDWARD L. FISCHER,
ROSCOE H. WILSON,
JOHN W. DAVIS,
GEORGE AUSTIN BROWN,
CHARLES L. HUNT,
ROBERT C. FOULSTON,
CHESTER STEVENS,
Members of the Judicial Council.



THE JUDICIAL COUNCIL.

Top row (left to right): Robert C. Foulston, Charles L. Hunt, Chester Stevens. J. C. Ruppenthal.
Bottom row (left to right): John W. Davis, Roscoe H. Wilson, W. W. Harvey (Chm.), Edward L. Fischer, George Austin Brown.

FOREWORD.

This is part four of our sixth annual report, and together with parts one, two and three, issued respectively in April, July and October, constitutes our report for this year. In this issue we print a group picture of the members of the Judicial Council. These men have been members of the Council since it was organized in June, 1927, except Judge Wilson and Mr. Brown who have served about two years. Neither Senator Davis nor Mr. Brown will be on the Council after the legislature meets. Their places will be taken by the new chairmen of the judiciary committees of the legislature. The members of the Council serve without pay, being reimbursed only for actual expenses of attending meetings of the Council. An appropriation is made to cover such expenses and to pay clerical help, postage and the like. Meetings of the Council are held on the call of the chairman. Recently meetings were held about every two months and for two days at a time. We find much more can be accomplished in a meeting of two days than in several meetings of one day each, and we effect a substantial economy in the expense of members attending meetings.

We had the clerk of the supreme court make a detailed report to us of the work of that court for the year ending June 30, 1932. This was published in our October BULLETIN. This is the fifth consecutive year we have obtained similar reports. Later herein are some general statistics taken from these reports, with some suggestions relating to the procedure therein.

For five consecutive years we collected detailed information from clerks of the district courts relating to the cases disposed of and pending in those courts. We did not collect such information this year for two reasons: First, we thought from the data collected we could make important recommendations to the legislature—perhaps as many as it would adopt; and, second, in view of the above, and considering the financial depression and the need for economy in governmental expenditures, we doubted the expediency of doing so. Last year, following the provisions of chapter 189, Laws 1931, our chairman issued certificates to clerks of the district courts by which they were paid by their respective counties sums aggregating $3,712.10. The statute contemplated the counties would be reimbursed by fees taxed to litigants as costs, but the fee authorized to be taxed was inadequate for full reimbursement. In view of all the circumstances we did not feel justified in creating an expense of approximately $3,700, irrespective of who had to pay it. Later herein we give some statistics gathered from reports received in the five-year period, and have framed some proposed bills prompted by the study of reports received.

In view of the approaching session of the legislature this BULLETIN is devoted primarily to proposed measures designed to improve the judicial system of our state and the more prompt and efficient conduct of business in our courts. It is not necessary to itemize these measures, or enlarge upon them here, as they will appear with appropriate explanatory discussions later herein.

Rules of Procedure.

There is a growing sentiment among lawyers and judges throughout the state that matters relating purely to proceedings in the courts of the state should be governed by rules of court rather than by statutes enacted by the legislature.

We have discussed this question from some angle in each of our former reports and it has been pointed out that the clear authority of the supreme court to promulgate rules of procedure in trial courts is limited. Attorneys and judges who have given thought to the matter almost uniformly agree that this authority should be extended. Naturally the courts should not by rule make the substantive law which the people, through the legislature, should be free to establish, but rules of practice and those which relate purely to procedure can be formulated best by the courts and can be much more readily changed when the need therefor becomes apparent.

In addition to modifying some of its own rules at the informal suggestion of the Judicial Council, the supreme court, on the recommendation of the Judicial Council, has promulgated a few rules relating to procedure in district courts. Generally speaking these rules have become in general use and have proved decidedly beneficial. We feel safe in saying that the promulgation of these rules and the compliance with them has done more to improve the efficiency of the work of our district courts, and the promptness of the dispatch of business therein, than has resulted from all the changes made by the legislature in our code of procedure in more than twenty years. We hear of occasional instances when trial judges or attorneys have failed to comply with some one or more of the rules, and in every instance called to our attention the failure to comply with the rules has resulted detrimentally to one or more of the litigants. Since the rules were first promulgated some of them have been modified so as to improve their usefulness. The facility with which that can be and has been done meets the hearty approval of all those who have given it attention. For many months we have had no suggestions of modifications of any of the rules promulgated. Some rules have been added since our last annual report. For the convenience of the bar and the judges we set out the rules herewith, with the numbers assigned to them by the supreme court.

"No. 26. In judicial districts, or divisions, the judge shall designate at least one day in each calendar month, except July and August, in each county, and division, and place where court is held, for the purpose of hearing motions, demurrers and other law questions, and for the transaction of any other court business wherein a jury is not required. Such designation shall be made at the beginning of each calendar year. A copy of the order making such designation shall be filed with the clerk of the supreme court, and the clerk of each district court in the district.

"No. 27. Counsel filing a motion or demurrer or pleading subsequent to the petition shall, on the day the same is filed, deliver or mail a copy thereof to counsel of record for all adverse parties.

"No. 28. All motions and demurrers shall stand for hearing at the first motion day following the fifth day after the filing of the same and service of copy, as provided by rule 27.

"No. 29. All motions, demurrers, matters and causes submitted to the court shall be decided expeditiously, and in no event later than the *next mo-*

tion day, after they are submitted, unless the court for good cause shall order a postponement of the decision and shall enter the reasons therefor on the journel of the court.

"No. 30. When any matter or cause is submitted to the court and taken under advisement, the court, at the time of deciding the same, shall notify counsel of record in such time and manner as will enable counsel to take the necessary steps under the statute to protect their rights for review or otherwise.

"No. 31. In all causes or matters in which adverse counsel has appeared of record, no default judgment shall be rendered except upon motion and the giving of at least a three days' notice to such adverse counsel of the hearing thereof: *Provided,* This rule shall not apply to the first day of a regular term of court fixed by the statute.

"No. 32. When any motion or demurrer is ruled upon, or any cause decided, counsel for the prevailing party shall, within ten days, prepare a journal entry of the ruling or decision and present it to counsel for all adverse parties, who shall approve it or note their objections to it and return it the same or within five days. If approved by counsel it shall be forthwith presented to the judge of the court for his approval. If counsel cannot agree on the journal entry it shall be notice to be taken up by the court not later than the next motion day, and its form and contents determined.

"No. 33. When approved the journal entry shall be signed by the judge, filed with the clerk, and recorded at length on the journal.

"No. 34. In all actions in which a party shall enter his appearance solely by personally signing an instrument designed for that purpose, the court in which the action is pending shall not regard the appearance as valid unless the signature of the party to the instrument is acknowledged before an officer authorized by law to take acknowledgments.

"No. 35. In all cases tried before the court without a jury, where either party shall urge the application of a presumption of law, the trial judge, upon timely written request of the party setting forth the presumption of law which the party contends applies, shall file with the clerk, either separately or as part of his findings of fact and conclusions of law, a written statement as to whether, in deciding the case, he did or did not give effect to the presumption of law contended for.

"No. 36. In trials before the court, without a jury, where evidence is admitted over proper objections, and not stricken out on timely motion therefor, it shall be presumed that such evidence was considered by the court and entered into its final decision in the case."

MOTION DAYS IN DISTRICT COURTS.

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1933. Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Allen	Iola	Frank R. Forrest	N. C. Kerr	37	7 14 21 28	4 11 18 25	4	1 8 15 22 29	6 13 20 27	3 10 17 24	2 9 16 23 30	7 14 21 28	4	2 9 16 23 30
Anderson	Garnett	Hugh Means	Tom Bowen	4	6	3	6	8	5	12	8	9	3	4
Atchison	Atchison	William A. Jackson	Joe C. Seibel	2	7 14 21 28	4 11 18 25	4 11 18 25	1 8 15 22 29	6 13 20 27	3 10 17 24	2 9 16 23 30	7 14 21 28	4 11 18 25	2 9 16 23 30
Barber	Medicine Lodge	George L. Hay	Edith Myers	24	5	13	4	24	12	9	9	23	9	8
Barton	Great Bend	Ray H. Beals	Sam M. Kellam	20	7	4	7	1	6	6	2	2	1	9
Bourbon	Fort Scott	W. F. Jackson	George T. Farmer	6	7 14 21 28	4 11 18 25	4 11 18 25	1 8 15 22 29	6 13 20 27	3 10 17 24	2 9 16 23 30	7 14 21 28	4 11 18 25	2 9 16 23 30
Brown	Hiawatha	C. W. Ryan	H. N. Zimmerman	22	24	28	28	25	23	20	26	24	28	21
Butler	El Dorado	A. T. Ayers, Geo. J. Benson	Charles G. Smith	13	7	4	6	7	6	12	2	7	13	5
Chase	Cottonwood Falls	Lon C. McCarty	Erma Buffon	5	27	24	31	28	26	30	29	27	24	29
Chautauqua	Sedan	A. T. Ayers, Geo. J. Benson	Bob Floyd	13	21	7	20	3	3	5	4	2	4	4
Cherokee Columbus div Galena div	Columbus	John W. Hamilton	Ernest Milton	11	 3 5	 7 9	 7 9	 4 6	 2 4	 6 8	 5 7	 3 5	 7 9	 5 7
Cheyenne	St. Francis	E. E. Kite	Minnie A. Lawless	17	21	17	27	3	22	6	16	7	27	4 16

MOTION DAYS IN DISTRICT COURTS—CONTINUED.

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1933.									
					Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Clark	Ashland	Karl Miller	Amy Dugan	31	12	16	16	13	11	15	7	5	9	14
Clay	Clay Center	Edgar C. Bennett	Annie L. Goheen	21	5	3	6	6	3	5	1	6	6	1
Cloud	Concordia	Tom Kennett	Lawrence Johnston	12	2	4	7	3	2	6	25	14	21	18
Coffey	Burlington	Lon C. McCarty	Bernice Thompson	5	30	27	27	24	29	26	25	30	27	26
Comanche	Coldwater	Karl Miller	B. F. Arnold	31	11	15	15	12	10	14	6	4	8	13
Cowley	Winfield	O. P. Fuller	Marie Snyder	19	2	6	6	3	1	5	4	2	6	4
Crawford	Girard	L. M. Resler, Jo E. Gaitskill	Jean Bell	38	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Girard div	.....	.....	.....	.....	9	6	6	3	1	5	4	2	6	4
Pittsburg div	.....	.....	.....	.....	16	20	20	17	8	19	18	16	20	18
Decatur	Oberlin	E. E. Kite	Dorothy McGee	17	.....	27	17	12	8	3	14	3	10	12
					.....	.....	.....	.....	.....	.....	.....	9	.....	.....
Dickinson	Abilene	C. M. Clark	Seth Barter, Jr	8	2*	17*	6†	15†	15*	5†	11*	13*	13†	16*
Doniphan	Troy	C. W. Ryan	L. D. Swiggett	22	26	23	30	27	25	22	28	26	29	22
Douglas	Lawrence	Hugh Means	John Callahan	4	7	6	4	1	1	3	9	7	6	2
Edwards	Kinsley	Roscoe H. Wilson	C. E. Burke	33	7	7	9	6	8	5	7	7	1	7
Elk	Howard	A. T. Ayers, Geo. J. Benson	Mary E. Johnson	13	2	6	18	1	1	1	18	2	1	2
Ellis	Hayes	Herman Long	Leo J. Staab	23	13	6	31	14	15	16	15	16	18	14
Ellsworth	Ellsworth	Dallas Grover	J. M. Wilson	30	23	27	25	24	26	5	2	9	18	26
Finney	Garden City	H. E. Walter	Mrs. Walter Harvey	32	9	1	7	5	8	5	25	27	8	4
Ford	Dodge City	Karl Miller	Susan A. Evans	31	9	13	13	10	8	12	4	2	6	11
Franklin	Ottawa	Hugh Means	Mary O. Stewart	4	2	4	3	3	6	2	11	6	4	1

MOTION DAYS IN DISTRICT COURTS—CONTINUED.

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1933.									
					Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Geary	Junction City	C. M. Clark	Geo. J. Webster	8	2†	17†	6*	15*	15†	5*	11†	13†	13*	16†
Gove	Gove City	Herman Long	Grant W. Peterson	23	27	21	20	28	12	19	13	13	20	15
Graham	Hill City	W. B. Ham	Elsie Parks	34	23†	1*	17†	28†	15*	17*	18*	10*	18†	16†
Grant	Ulysses	F. O. Rindom	Inez McAtee	39	2†	3†	3*	10*	4†	5†	2*	2†	6†	4*
Gray	Cimarron	Karl Miller	W. A. LeVan	31	14	18	18	15	13	17	9	7	11	16
Greeley	Tribune	H. E. Walter	T. P. Tucker	32	11	13	11	7	3	3†	15	16	11	8
Greenwood	Eureka	A. T. Ayers, Geo. J. Benson	Clyde Divine	13	16	1	17	1	15	7	7	9	3	18
Hamilton	Syracuse	H. E. Walter	Amelia J. Minor	32	21	27	9	8	6	1	8	23	18	9
Harper	Anthony	George L. Hay	Ed. C. Wolff	24	9	2	3	10	11	19	8	9	8	7
Harvey	Newton	J. G. Somers	Lloyd L. McMullen	9	5	15	17	6	8	9	21	26	13	8
Haskell	Sublett	F. O. Rindom	Geo. A. Tyler	39	2*	3*	13*	5*	4*	5*	18*	2*	6*	1*
Hodgeman	Jetmore	Roscoe H. Wilson	Frank Phillips	33	6	10	10	7	10	6	8	6	14	8
Jackson	Holton	Lloyde Morris	H. E. Hostetter	36	9	2	2	3	1	24	7	2	10	7
Jefferson	Oskaloosa	Lloyde Morris	Marguerite McCoy	36	4	7	6	7	5	5	8	6	6	8
Jewell	Mankato	W. R. Mitchell	Bernice Howard	15	7	2	6	15	26	5	23	31	13	23
Johnson	Olathe	G. A. Roberds	Mabel K. Adams	10	2	27	13	3	1	24	5	23	20	11
Kearny	Lakin	H. E. Walter	Ella Smith	32	12	18	13	6	5	2	7	12	13	7
Kingman	Kingman	George L. Hay	Nell H. Walter	24	7	4	27	8	13	5	25	7	10	11
Kiowa	Greensburg	Karl Miller	Alonson H. Dent	31	10	14	14	11	9	13	5	3	7	12

MOTION DAYS IN DISTRICT COURTS—CONTINUED.

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1933.									
					Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Labette	Oswego	L. E. Goodrich	H. L. Lane	16										
Oswego div.					27	24	24	28	26	23	22	27	24	22
Parsons div.					23	20	20	17	22	19	18	23	27	18
Lane	Dighton	H. E. Walter	Ora D. Smeltzer	32	13	4	27	25	15	6*	11	13†	27	12*
Leavenworth	Leavenworth	J. H. Wendorff	Max Frederick	1	7	4	4	1	6	3	2	7	4	2
					21	18	18	15	20	17	16	21	18	16
Lincoln	Lincoln	Dallas Grover	E. D. Harlow	30	14	20	4	15	15	3	16	14	13	29
Linn	Mound City	W. F. Jackson	Roy Dalton	6	2	6	6	3	1	5	4	2	6	4
					16	20	20	17	15	19	18	16	20	18
Logan	Russell Springs	Herman Long	A. W. Rogge	23	26†	20†	17†	3*	26†	26†	4*	12†	16†	4*
Lyon	Emporia	Lon C. McCarty	J. J. McClure	5	25	22	29	26	31	28	27	25	29	27
Marion	Marion	C. M. Clark	H. D. Cornelson	8	14*	6*	18*	10*	1*	17*	4*	2*	6*	23*
Marshall	Marysville	Edgar C. Bennett	Wallace J. Koppes	21	6	6	3	7	1	2	8	2	3	8
McPherson	McPherson	J. G. Somers	Donald Clark	9	6	17	13	7	12	5	22	27	17	4
Meade	Meade	Karl Miller	Lottie W. Stamper	31	13	17	17	14	12	16	8	6	10	15
Miami	Paola	G. A. Roberds	Charles W. Diediker	10	16	6	20	24	22	5	18	2	13	18
Mitchell	Beloit	W. R. Mitchell	John W. Hayes	15	9	1	2	17	25	29	25	27	29	22
Montgomery	Independence	Jos. W. Holdren	Clyde K. Gamble	14										
Independence div.					7	4	4	1	6	3	2	7	4	2
Coffeyville div.					21	18	18	15	20	17	16	21	18	16
Morris	Council Grove	C. M. Clark	A. J. Bruton	8	14†	18*	17*	3*	13*	19*	4†	14*	6†	4*
Morton	Richfield	F. O. Rindom	Mrs. Ray Crawford	39	3†	13*	4*	6*	5†	6†	4*	3†	7†	2*
Nemaha	Seneca	C. W. Ryan	Dorothy Ingalls	22	23	27	27	24	22	19	25	23	27	20

MOTION DAYS IN DISTRICT COURTS—CONTINUED.

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1933.									
					Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Neosho	Erie	J. T. Cooper	Lloyd Brown	7	7	14	14	1	9	6	2	10	7	5
Ness	Ness City	Roscoe H Wilson	Laura Jackson	33	4	8	7	8	11	1	5	4	7	5
Norton	Norton	E. E. Kite	Ethel Bechtold	17	9 18	14	15	17	4	2	4 13	5	8	14
Osage	Lyndon	Carey E. Carroll	Paul F. Cummings	35	2	6	14	3	1	13	5	2	14	4
Osborne	Osborne	W. R. Mitchell	B. F. Beeson	15	5	6	3	13	8	30	21	16	28	21
Ottawa	Minneapolis	Dallas Grover	Ray Jones	30	9	11	18	10	12	6	23	23	25	27
Pawnee	Larned	Roscoe H. Wilson	Rose Mason	33	14	11	11	3	13	3	9	3	9	9
Phillips	Phillipsburg	E. E. Kite	L. R. Halbert	17	17	6	16	13	1	1	12 18	4	9	13
Pottawatomie	Westmoreland	Lloyde Morris	Charles S. Smith	36	13	3	3	4	4	23	5	5	9	5
Pratt	Pratt	George L. Hay	Roy D. Skelton	24	6	3	13	7	15	10	11	6	13	9
Rawlins	Atwood	E. E. Kite	Ivy Morton Yoos	17	20	16	14 20	11	15	5	15	6	7 13	15
Reno	Hutchinson	J. G. Somers	Walter Mead	9	7 14 21 28	4 11 18 25	4 11 18 25	1 8 15 22 29	6 13 20 27	3 10 17 24	16 23 30	7 14 21 28	4 11 18 25	2 9 16 23 30
Republic	Belleville	Tom Kennett	Wm. R. Goodwin	12	3	6	4	4	1	3	19	16	18	19
Rice	Lyons	Ray H. Beals	L. A. Holloway	20	3	6	6	4	1	3	5	7	4	2
Riley	Manhattan	Edgar C. Bennett	C. E. Wood	21	2	2	2	3	4	1	4	5	2	7
Rooks	Stockton	W. B. Ham	George F. Crane	34	9	11	17	1	1	3	4	7	4	14

MOTION DAYS IN DISTRICT COURTS—CONTINUED.

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1933.									
					Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Rush	La Crosse	Roscoe H. Wilson	Edwin Popp	33	3	9	18	4	12	2	6	5	8	6
Russell	Russell	Herman Long	George W. Brandt	23	2	22	30	13	1	15	14	2	17	13
Saline	Salina	Dallas Grover	O. H. Ford	30	7	13	6	1	13	14	4	6	20	28
Scott	Scott City	H. E. Walter	Mrs. C. A. Easley	32	14	3	10	10	4	6†	12	14	7	11
Sedgwick	Wichita		A. E. Jacques	18										
First div		Ross McCormick	1st and 2d divisions		7	4	4	1	6	3	2	7	4	3
Second div		R. L. NeSmith			21	18	18	15	20	17	16	21	18	16
Third div		Grover Pierpont	3d and 4th divisions		14	11	11	8	13	10	9	14	11	9
Fourth div		I. N. Williams			28	25	25	22	27	24	23	28	25	23
Seward	Liberal	F. O. Rindom	H. W. Lane	39	9*	18*	18*	15*	22*	17*	16*	21*	13*	16*
Shawnee	Topeka		Matilda Binger	3										
First div		Geo. A. Kline			21	11	4	15	6	17	9	21	11	2
					.....	.....	25	.....	27	.....	30	.....	.....	23
Second div		George H. Whitcomb			7	18	11	1	13	3	16	7	18	9
					28	.....	.....	22	.....	24	.....	28	.....	30
Third div		Otis E. Hungate			14	4	18	8	20	10	2	14	4	16
					.....	25	.....	29	.....	.....	23	.....	25	.....
Sheridan	Hoxie	W. B. Ham	Noah Turner	34	7	20	17	28	25	5	15	2	18	16
Sherman	Goodland	W. B. Ham	William Mangus	34	6*	17†	20†	3*	26*	19†	16*	9†	20*	1*
Smith	Smith Center	W. R. Mitchell	Ruth W. Cole	15	6	3	27	14	24	19	22	30	27	4
Stafford	St. John	Ray H. Beals	Gertrude Bartle	20	2	7	4	3	2	5	4	3	2	1
Stanton	Johnson	F. O. Rindom	Nelle Helmick	39	3*	27*	3†	5†	5*	6*	11*	3*	7*	1†
Stevens	Hugoton	F. O. Rindom	John F. Fulkerson	39	23*	4*	27*	6†	3*	7*	2†	23*	8*	2†

MOTION DAYS IN DISTRICT COURTS—CONTINUED.

COUNTY.	County seat.	Judge.	Clerk.	No. Jud. Dist.	1933. Jan.	Feb.	Mar.	Apr.	May.	June.	Sept.	Oct.	Nov.	Dec.
Sumner	Wellington	Wendell Ready	Jessie Haverstock	25	3	2	2	6	2	1	5	5	2	7
Thomas	Colby	W. B. Ham	N. C. Knudson	34	6†	17*	20*	27†	25†	19*	15†	9*	6*	15†
Trego	Wakeeney	Herman Long	J. W. Bingham	23	14	18	6	15	13	5	16	14	6	16
Wabaunsee	Alma	Carey E. Carroll	Lizzie M. Frey	35	6	7	3	7	2	2	1	3	3	1
Wallace	Sharon Springs	Herman Long	Ida Ward	23	26*	20*	17*	17*	26*	26*	18*	12*	16*	18*
Washington	Washington	Tom Kennett	J. W. Hatter	12	4	7	6	1	3	5	20	18	20	16
Wichita	Leoti	H. E. Walter	Kate Elder	32	2	14	11	24	3	3*	11	13*	6	18
Wilson	Fredonia	J. T. Cooper	W. H. Timmons	7	3	6	6	4	1	3	5	2	14	9
Woodson	Yates Center	Frank R. Forrest	Kathryn Maxwell	37	6 13	24	3 10 17 24 31	7 14 21 28	5	2 9 16 23 30	1	6 13 20 27	3 10 17 24	1 8 15 ....
Wyandotte	Kansas City	.....	Pal E. Bush	29										
First div	.....	E. L. Fischer	.....	.....	7	4	4	1	6	3	2	7	4	2
Second div	.....	Clyde C. Glandon	.....	.....	14	11	11	8	13	10	9	14	11	9
Third div	.....	Wm. H. McCamish	.....	.....	21	18	18	15	20	17	16	21	18	16
Fourth div	.....	C. A. Miller	.....	.....	28	25	25	22	27	24	23	28	25	23

* a. m. † p. m.

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.

Supreme Court: Five-year Summary.

In the five years the clerk of the supreme court has furnished us detailed information of the work of that court, it has disposed of 3,108 cases, of which 954 were dismissed before final submission, and 2,154 were submitted on the merits and written opinions filed. By years and classes of cases they are as follows:

FIVE-YEAR SUMMARY, KANSAS SUPREME COURT.

Year ending June 30—	Cases.	Disposed of.	Dismissed.	Submitted.
1928	Appealed, civil	529	143	386
	Appealed, criminal	101	44	57
	Original	43	13	33
	Totals	673	200	473
1929	Appealed, civil	475	128	347
	Appealed, criminal	72	29	43
	Original	36	18	18
	Totals	583	175	408
1930	Appealed, civil	504	143	361
	Appealed, criminal	77	37	40
	Original	52	16	36
	Totals	633	196	437
1931	Appealed, civil	490	131	359
	Appealed, criminal	63	29	34
	Original	38	13	25
	Totals	591	173	418
1932	Appealed, civil	522	159	363
	Appealed, criminal	74	45	29
	Original	32	6	26
	Totals	628	210	418
	Grand totals	3,108	954	2,154

Of the 2,154 cases submitted, the written opinions were filed in 35 cases before the first regular opinion day; 1,971 on the first regular opinion day; 132 on the second; 12 on the third; 3 on the fourth and 1 on the fifth regular opinion day after they were submitted. The regular opinion day ordinarily is a month after the case is submitted, more accurately it is the Saturday of the week hearings are had the next month after the case is submitted.

The number of cases pending in the supreme court July 1, 1928, was 341; July 1, 1929, 376; July 1, 1930, 397; July 1, 1931, 393; July 1, 1932, 357. The following data may be of interest:

APPEALED CIVIL CASES.

Time between date of judgment appealed from and notice of appeal filed in trial court.

Year ending June 30—	In 1 month.	1 to 2 months.	2 to 3 months.	3 to 4 months.	4 to 5 months.	5 to 6 months.	After 6 months.	Total.
1928	188	80	66	55	48	65	15	517
1929	163	102	50	40	40	45	21	461
1930	209	77	69	34	38	58	17	502
1931	178	87	65	41	31	50	24	476
1932	210	71	64	42	44	57	27	515
Totals	948	417	314	212	201	275	104	2,471

APPEALED CRIMINAL CASES.

Time between date of judgment appealed from and filing notice of appeal in trial court.

Year ending June 30—	In 10 days.	10 to 30 days.	1 to 2 months.	2 to 3 months.	3 to 4 months.	4 to 5 months.	5 to 6 months.	After 6 months.	Total.
1928	62	14	7	3	2	4	0	6	98
1929	37	12	6	6	1	1	1	2	66
1930	53	8	8	3	1	0	0	0	73
1931	40	6	8	0	0	0	2	7	63
1932	26	25	12	4	3	1	0	3	74
Totals	218	65	41	16	7	6	3	18	374

APPEALED CIVIL CASES.

Time between date notice of appeal was filed in trial court and date it was filed in supreme court.

Year ending June 30—	In 10 days.	10 to 20 days.	20 to 30 days.	1 to 2 months.	2 to 3 months.	3 to 4 months.	4 to 5 months.	5 to 6 months.	After 6 months.	Total.
1928	316	93	44	32	17	10	5	3	0	520
1929	244	108	37	47	11	19	0	0	0	466
1930	233	117	41	13	6	4	1	1	2	418
1931	300	82	31	28	13	12	2	1	2	471
1932	277	85	61	55	21	9	6	2	2	518
Totals	1,370	485	214	175	68	54	14	7	6	2,393

APPEALED CRIMINAL CASES.

Time between date notice of appeal was filed in trial court and date it was filed in supreme court.

Year ending June 30—	In 10 days.	10 to 20 days.	20 to 30 days.	1 to 2 months.	2 to 3 months.	3 to 4 months.	4 to 5 months.	5 to 6 months.	After 6 months.	Total.
1928.....	48	21	13	8	2	1	5	1	1	100
1929.....	33	28	15	12	2	2	0	0	0	92
1930.....	44	10	6	7	3	2	0	3	2	77
1931.....	29	6	4	10	5	8	0	0	1	63
1932.....	35	12	8	3	7	2	4	2	1	74
Totals....	189	77	46	40	19	15	9	6	5	406

There is no unnecessary delay in disposing of cases in the supreme court when the parties are ready to present them there. Three things may be done to increase the promptness in presenting appealed cases to the supreme court. First, the time in which to appeal civil actions may be shortened from six months to two months, as recommended in one of our bills. Second, clerks of court could be more prompt in transmitting to the supreme court notices of the appeal filed with them. Third, when a transcript of the testimony is necessary, particularly if it is large, delays are sometimes caused because the court reporter with his other work does not have time to prepare the transcript, sometimes for several months.

District Courts: Five-year Summary.

In the five years the clerks of the district courts have furnished us detailed information of the work of the district courts throughout the state. As shown by such reports those courts have disposed of 55,794 civil actions, other than divorce cases, of which 18,170 were dismissed before trial on the merits, 33,900 were tried to the court, 3,584 to juries. A few were referred, and a few removed to federal court. They also disposed of 23,623 divorce cases, of which 6,279 were dismissed before trial on the merits, and 17,344 were tried to the court, of which trials 2,137 were contested. They also disposed of 19,510 criminal actions, of which 7,742 were dismissed before trial on the merits. In 8,872 cases there were pleas of guilty, and 3,196 cases were tried to juries.

The number of cases disposed of in district courts, as reported to us by the clerks, is shown by years and classes of actions for each county, and separately for each judicial district, in the following tables:

CASES DISPOSED OF IN DISTRICT COURTS, BY COUNTIES, 1927 TO 1931.

County.	Year.	Civil (other than divorce).	Divorce.	Criminal.	Total.
Allen	1927	122	49	35	206
	1928	226	46	48	320
	1929	170	46	43	259
	1930	136	27	18	181
	1931	145	34	34	213
Anderson	1927	111	21	5	137
	1928	71	20	11	102
	1929	70	30	10	110
	1930	73	24	11	108
	1931	88	19	15	122
Atchison	1927	111	51	68	230
	1928	126	76	145	247
	1929	150	81	108	339
	1930	157	95	60	312
	1931	159	78	75	311
Barber	1927	68	22	21	111
	1928	91	30	16	137
	1929	64	25	14	103
	1930	75	22	15	112
	1931	82	19	12	113
Barton	1927	74	44	36	154
	1928	74	50	35	159
	1929	105	47	47	199
	1930	75	54	34	163
	1931	103	47	24	174
Bourbon	1927	88	37	32	157
	1928	144	54	60	258
	1929	95	51	44	190
	1930	156	68	111	235
	1931	189	58	72	319
Brown	1927	81	18	27	126
	1928	75	35	50	160
	1929	75	29	34	138
	1930	69	20	33	122
	1931	119	38	61	218
Butler	1927	259	83	86	428
	1928	198	110	116	424
	1929	198	93	86	377
	1930	203	99	119	421
	1931	200	111	135	446
Chase	1927	38	7	15	60
	1928	48	8	7	63
	1929	52	4	4	60
	1930	34	8	10	52
	1931	70	11	5	86
Chautauqua	1927	42	18	8	68
	1928	32	14	26	72
	1929	30	25	20	75
	1930	42	19	22	83
	1931	30	17	22	69
Cherokee	1927	200	120	89	402
	1928	167	142	68	377
	1929	189	120	55	364
	1930	169	101	58	328
	1931	177	66	45	288
Cheyenne	1927	51	12	6	69
	1928	44	9	7	60
	1929	77	6	6	89
	1930	45	1	14	60
	1931	66	9	9	84

CASES DISPOSED OF IN DISTRICT COURTS, BY COUNTIES, 1927 TO 1931—CONTINUED.

COUNTY.	Year.	Civil (other than divorce).	Divorce.	Criminal.	Total.
Clark	1927	34	5	17	56
	1928	46	9	29	84
	1929	38	6	11	55
	1930	46	8	13	67
	1931	30	11	17	58
Clay	1927	40	30	5	75
	1928	42	26	6	74
	1929	48	21	8	77
	1930	47	17	5	69
	1931	52	18	11	81
Cloud	1927	74	18	11	103
	1928	78	19	6	103
	1929	36	9	13	58
	1930	86	18	20	124
	1931	83	25	11	119
Comanche	1927	42	5	6	53
	1928	30	13	4	47
	1929	32	6	10	48
	1930	27	5	14	46
	1931	30	5	3	38
Cowley	1927	254	128	94	476
	1928	201	116	103	420
	1929	283	73	81	437
	1930	216	106	75	397
	1931	345	136	111	592
Crawford	1927	86	208	79	373
	1928	258	209	70	537
	1929	224	43	45	312
	1930	297	109	57	463
	1931	337	200	72	609
Decatur	1927	28	8	3	39
	1928	49	8	3	60
	1929	51	15	17	83
	1930	51	10	6	67
	1931	48	10	10	68
Dickinson	1927	149	41	25	215
	1928	118	41	24	183
	1929	143	55	18	216
	1930	126	39	21	156
	1931	136	40	17	193
Doniphan	1927	78	17	19	114
	1928	92	19	14	125
	1929	72	27	9	108
	1930	85	24	14	123
	1931	96	22	17	135
Douglas	1927	136	69	88	293
	1928	102	64	75	241
	1929	116	64	46	226
	1930	100	52	45	197
	1931	182	90	85	357
Edwards	1927	57	13	22	92
	1928	36	15	5	56
	1929	54	18	7	79
	1930	54	24	23	101
	1931	48	18	20	86
Elk	1927	*	5	16	*21
	1928	41	8	11	60
	1929	74	15	8	97
	1930	58	4	13	75
	1931	75	10	24	109

* Report not furnished, or incomplete.

CASES DISPOSED OF IN DISTRICT COURTS, BY COUNTIES, 1927 TO 1931—CONTINUED.

COUNTY.	Year.	Civil (other than divorce).	Divorce.	Criminal.	Total.
Ellis	1927	97	8	20	125
	1928	87	8	18	113
	1929	92	5	21	118
	1930	103	10	9	121
	1931	38	17	40	95
Ellsworth	1927	74	9	15	98
	1928	60	10	7	77
	1929	54	15	21	90
	1930	54	20	10	84
	1931	64	13	13	90
Finney	1927	126	23	34	183
	1928	140	17	22	179
	1929	161	16	29	206
	1930	142	29	35	206
	1931	124	40	30	194
Ford	1927	130	52	36	218
	1928	144	58	33	235
	1929	150	62	51	263
	1930	189	87	65	341
	1931	189	80	63	332
Franklin	1927	133	49	58	240
	1928	133	61	50	244
	1929	69	51	39	159
	1930	174	70	52	296
	1931	119	79	46	244
Geary	1927	74	32	*	*106
	1928	82	43	22	147
	1929	59	35	22	116
	1930	70	41	26	137
	1931	84	36	20	140
Gove	1927	87	7	3	97
	1928	54	1	3	58
	1929	119	3	5	127
	1930	64	7	1	72
	1931	40	6	3	49
Graham	1927	38	11	12	61
	1928	112	8	8	128
	1929	119	12	10	141
	1930	71	6	12	89
	1931	32	6	15	53
Grant	1927	24	4	4	36
	1928	6	1	3	10
	1929	*	*	*	*
	1930	14	6	8	28
	1931	30	6	13	49
Gray	1927	55	6	0	61
	1928	43	7	4	54
	1929	37	10	13	60
	1930	57	10	14	81
	1931	52	18	20	90
Greeley	1927	82	4	2	88
	1928	41	1	0	42
	1929	61	4	*	*65
	1930	30	2	0	32
	1931	45	1	2	48
Greenwood	1927	162	74	48	284
	1928	185	63	51	299
	1929	137	62	49	248
	1930	104	52	50	206
	1931	160	42	47	249

* Report not furnished, or incomplete.

CASES DISPOSED OF IN DISTRICT COURTS, BY COUNTIES, 1927 TO 1931—CONTINUED.

COUNTY.	Year.	Civil (other than divorce).	Divorce.	Criminal.	Total.
Hamilton	1927	64	2	4	70
	1928	48	5	10	63
	1929	64	7	7	78
	1930	88	12	3	103
	1931	80	11	24	115
Harper	1927	91	23	31	145
	1928	103	28	20	151
	1929	56	20	43	119
	1930	56	23	34	113
	1931	71	14	25	110
Harvey	1927	41	4	15	60
	1928	48	33	15	96
	1929	98	31	11	140
	1930	86	61	13	160
	1931	72	41	48	161
Haskell	1927	22	2	4	28
	1928	27	2	0	29
	1929	25	2	*	*27
	1930	40	7	23	70
	1931	26	8	26	60
Hodgeman	1927	21	4	10	35
	1928	24	5	2	31
	1929	34	2	6	42
	1930	29	3	12	44
	1931	27	4	7	38
Jackson	1927	90	16	10	116
	1928	106	24	18	148
	1929	86	15	30	131
	1930	81	30	21	132
	1931	107	23	20	150
Jefferson	1927	67	14	41	122
	1928	84	18	20	122
	1929	65	19	24	108
	1930	70	20	19	109
	1931	74	20	22	116
Jewell	1927	95	18	7	120
	1928	97	6	5	108
	1929	97	22	15	134
	1930	96	22	8	126
	1931	70	15	10	95
Johnson	1927	173	47	72	292
	1928	173	48	103	324
	1929	172	56	77	305
	1930	208	58	122	388
	1931	113	43	73	229
Kearny	1928	23	3	2	28
	1928	32	4	10	46
	1929	20	9	7	36
	1930	65	8	12	85
	1931	34	4	4	42
Kingman	1927	114	11	30	155
	1928	88	10	20	118
	1929	76	9	16	101
	1930	84	15	16	115
	1931	68	13	15	96
Kiowa	1927	57	5	15	77
	1928	42	4	18	64
	1929	45	3	22	70
	1930	41	9	21	71
	1931	39	9	18	66

* Report not furnished, or incomplete.

CASES DISPOSED OF IN DISTRICT COURTS, BY COUNTIES, 1927 TO 1931—CONTINUED.

COUNTY.	Year.	Civil (other than divorce).	Divorce.	Criminal.	Total.
Labette	1927	119	104	*.....	*213
	1928	47	11	7	(1) 65
	1929	64	19	16	(1) 99
	1930	136	96	55	287
	1931	142	85	40	262
Lane	1927	17	3	0	20
	1928	29	5	4	38
	1929	*.....	*.....	*.....	*.....
	1930	32	5	5	42
	1931	35	8	6	49
Leavenworth	1927	185	160	112	457
	1928	111	113	130	354
	1929	130	213	148	491
	1930	140	187	130	457
	1931	181	153	193	527
Lincoln	1927	32	6	9	47
	1928	41	12	5	58
	1929	57	11	6	74
	1930	42	10	8	60
	1931	36	12	14	62
Linn	1927	68	6	29	103
	1928	59	23	40	122
	1929	33	13	19	64
	1930	65	10	32	107
	1931	73	14	28	115
Logan	1927	54	3	3	60
	1928	66	10	6	82
	1929	52	1	5	58
	1930	35	2	6	43
	1931	47	9	14	70
Lyon	1927	125	*.....	73	*198
	1928	92	73	48	213
	1929	108	70	55	233
	1930	164	92	53	309
	1931	216	49	50	315
Marion	1927	65	19	*.....	*84
	1928	81	13	1	95
	1929	103	12	19	134
	1930	63	12	20	95
	1931	106	16	29	151
Marshall	1927	89	10	7	106
	1928	101	37	12	150
	1929	111	26	16	153
	1930	79	34	13	126
	1931	69	44	12	125
McPherson	1927	70	10	14	94
	1928	78	19	35	132
	1929	73	23	21	117
	1930	168	28	48	224
	1931	130	34	50	214
Meade	1927	73	13	13	99
	1928	41	9	15	65
	1929	50	4	8	62
	1930	37	13	15	65
	1931	50	7	4	61
Miami	1927	175	34	18	227
	1928	175	61	26	262
	1929	120	44	34	198
	1930	128	58	33	219
	1931	143	34	52	229

* Report not furnished, or incomplete. (1) One division only.

CASES DISPOSED OF IN DISTRICT COURTS, BY COUNTIES, 1927 TO 1931—CONTINUED.

COUNTY.	Year.	Civil (other than divorce).	Divorce.	Criminal.	Total.
Mitchell	1927	50	5	22	77
	1928	75	29	23	127
	1929	69	18	25	112
	1930	51	21	23	95
	1931	70	25	10	105
Montgomery	1927	254	236	128	618
	1928	229	181	169	579
	1929	257	204	156	617
	1930	256	187	129	572
	1931	267	189	167	623
Morris	1927	69	22	7	98
	1928	37	15	11	63
	1929	50	8	7	65
	1930	38	21	6	65
	1931	53	20	9	82
Morton	1927	39	7	4	50
	1928	38	8	13	59
	1929	45	8	10	63
	1930	48	7	6	61
	1931	53	5	6	64
Nemaha	1927	58	13	33	104
	1928	95	10	27	132
	1929	148	9	25	182
	1930	180	18	19	217
	1931	127	13	26	166
Neosho	1927	21	18	18	57
	1928	60	76	41	177
	1929	92	56	37	185
	1930	76	64	18	158
	1931	114	48	35	197
Ness	1927	80	11	12	103
	1928	63	14	4	81
	1929	83	9	11	103
	1930	61	11	6	78
	1931	78	10	11	99
Norton	1927	35	19	9	63
	1928	62	25	2	89
	1929	58	24	5	87
	1930	70	22	10	104
	1931	63	14	8	85
Osage	1927	91	20	33	144
	1928	106	30	38	174
	1929	87	29	39	155
	1930	81	22	26	129
	1931	71	19	19	109
Osborne	1927	84	13	6	103
	1928	67	15	9	91
	1929	76	14	7	97
	1930	57	15	10	82
	1931	69	14	15	98
Ottawa	1927	87	18	9	114
	1928	35	14	9	58
	1929	70	9	19	98
	1930	42	8	22	72
	1931	61	15	23	99
Pawnee	1927	81	14	19	114
	1928	78	14	11	103
	1929	61	21	12	94
	1930	54	26	18	98
	1931	71	16	15	102

CASES DISPOSED OF IN DISTRICT COURTS, BY COUNTIES, 1927 TO 1931—CONTINUED.

COUNTY.	Year.	Civil (other than divorce).	Divorce.	Criminal.	Total.
Phillips	1927	51	17	10	78
	1928	75	23	9	107
	1929	75	16	7	98
	1930	75	18	5	98
	1931	66	18	4	88
Pottawatomie	1927	132	10	22	164
	1928	135	12	23	170
	1929	119	26	30	175
	1930	149	28	17	194
	1931	128	17	12	157
Pratt	1927	52	46	17	115
	1928	81	38	20	139
	1929	42	39	24	105
	1930	92	42	21	155
	1931	61	33	24	118
Rawlins	1927	46	2	8	56
	1928	42	9	3	54
	1929	40	10	11	61
	1930	51	6	19	76
	1931	33	10	9	52
Reno	1927	417	176	31	624
	1928	301	195	112	608
	1929	312	181	162	655
	1930	393	185	141	719
	1931	315	179	144	638
Republic	1927	56	13	17	86
	1928	51	7	12	70
	1929	54	12	8	74
	1930	62	16	11	89
	1931	56	18	17	91
Rice	1927	108	28	19	155
	1928	39	17	21	77
	1929	49	16	20	85
	1930	108	21	18	147
	1931	80	25	26	131
Riley	1927	45	32	25	102
	1928	49	23	15	87
	1929	80	36	23	119
	1930	67	39	23	129
	1931	86	22	34	142
Rooks	1927	97	15	8	120
	1928	181	15	5	201
	1929	89	6	7	102
	1930	46	5	12	63
	1931	67	5	13	85
Rush	1927	25	10	6	41
	1928	35	9	3	47
	1929	40	5	5	50
	1930	35	9	7	51
	1931	29	6	6	41
Russell	1927	132	20	23	175
	1928	111	23	13	147
	1929	104	16	17	137
	1930	109	24	28	161
	1931	81	13	22	116
Saline	1927	165	61	38	264
	1928	185	69	47	301
	1929	178	89	53	320
	1930	199	88	60	347
	1931	176	81	57	314

CASES DISPOSED OF IN DISTRICT COURTS, BY COUNTIES, 1927 TO 1931—CONTINUED.

COUNTY.	Year.	Civil (other than divorce).	Divorce.	Criminal.	Total.
Scott	1927	50	7	11	68
	1928	32	9	5	46
	1929	42	7	12	61
	1930	47	4	8	69
	1931	45	6	9	60
Sedgwick	1927	*	*	402	*402
	1928	*	*	*	*
	1929	1,083	961	1,044	3,088
	1930	940	816	666	2,422
	1931	1,119	1,012	628	2,759
Seward	1927	67	15	15	97
	1928	59	17	34	110
	1929	58	21	35	114
	1930	49	34	19	102
	1931	81	26	20	127
Shawnee	1927	729	452	376	1,557
	1928	662	444	300	1,406
	1929	737	595	595	1,927
	1930	637	505	495	1,637
	1931	673	549	528	1,750
Sheridan	1927	26	4	8	38
	1928	34	9	18	61
	1929	39	4	16	59
	1930	35	3	4	42
	1931	33	2	18	53
Sherman	1927	48	11	*	*59
	1928	41	8	3	52
	1929	*	*	8	*8
	1930	98	*	9	* 107
	1931	76	9	19	104
Smith	1927	60	14	11	85
	1928	44	16	4	64
	1929	68	23	10	101
	1930	48	17	8	73
	1931	31	17	9	57
Stafford	1927	64	15	19	98
	1928	49	11	30	90
	1929	68	21	13	92
	1930	81	18	32	131
	1931	74	19	45	138
Stanton	1927	33	1	19	53
	1928	30	0	3	33
	1929	29	2	*	*31
	1930	22	0	12	34
	1931	24	5	29	58
Stevens	1927	42	4	3	49
	1928	54	4	4	62
	1929	37	7	6	50
	1930	61	4	4	69
	1931	51	9	16	76
Sumner	1927	179	51	43	273
	1928	219	93	60	371
	1929	161	15	80	246
	1930	179	75	56	310
	1931	174	65	38	277
Thomas	1927	57	8	4	69
	1928	59	9	4	72
	1929	65	7	11	83
	1930	59	11	11	81
	1931	64	13	15	92

* Report not furnished, or incomplete.

CASES DISPOSED OF IN DISTRICT COURTS, BY COUNTIES, 1927 TO 1931—CONCLUDED.

COUNTY.	Year.	Civil (other than divorce).	Divorce.	Criminal.	Total.
Trego	1927	39	9	15	63
	1928	44	5	13	62
	1929	35	6	10	51
	1930	38	7	12	57
	1931	25	7	18	53
Wabaunsee	1927	36	10	33	79
	1928	53	12	15	80
	1929	34	11	16	61
	1930	47	13	12	72
	1931	57	13	3	73
Wallace	1927	43	6	5	54
	1928	53	8	3	64
	1929	38	4	7	49
	1930	38	7	3	48
	1931	36	16	14	66
Washington	1927	76	15	9	100
	1928	86	14	13	113
	1929	86	16	13	115
	1930	64	19	13	96
	1931	83	15	8	106
Wichita	1927	34	1	5	40
	1928	20	3	3	26
	1929	44	1	6	51
	1930	51	3	3	57
	1931	43	0	25	68
Wilson	1927	91	37	32	160
	1928	128	36	42	206
	1929	88	28	36	152
	1930	70	36	26	132
	1931	66	24	40	130
Woodson	1927	54	8	*.....	*62
	1928	76	4	6	86
	1929	61	14	*.....	*75
	1930	41	2	10	53
	1931	65	2	4	71
Wyandotte	1927	798	544	227	1,569
	1928	1,006	641	584	2,231
	1929	900	587	331	1,818
	1930	1,532	789	189	2,510
	1931	938	512	422	1,872

* Report not furnished, or incomplete.

CASES DISPOSED OF IN DISTRICT COURTS, BY DISTRICTS, 1927 TO 1931.

DISTRICT, WITH COUNTIES.	Number of judges.	1927.	1928.	1929.	1930.	1931.	Five-year total.	Five-year average per judge.
First district..... Leavenworth.	1	457	354	491	457	527	2,286	472
Second district..... Atchison.	1	230	247	339	312	311	1,439	288
Third district..... Shawnee.	3	1,557	1,406	1,927	1,637	1,750	8,277	552
Fourth district..... Anderson, Douglas, Franklin.	1	670	641	495	601	723	3,130	626
Fifth district..... Chase, Coffey, Lyon.	1	366	379	349	485	520	2,099	420
Sixth district..... Bourbon, Linn.	1	239	380	245	442	434	1,740	348
Seventh district..... Neosho, Wilson.	1	217	383	310	290	327	1,527	306
Eighth district..... Dickinson, Geary, Marion, Morris.	1	594	488	533	483	566	2,664	533
Ninth district..... Harvey, McPherson, Reno.	1	910	936	912	1,123	1,013	4,894	975
Tenth district..... Johnson, Miami.	1	475	586	511	604	458	2,654	531
Eleventh district..... Cherokee.	1	402	377	364	328	288	1,759	352
Twelfth district..... Cloud, Republic, Washington.	1	320	277	290	313	305	1,505	301
Thirteenth district..... Butler, Chautauqua, Elk, Greenwood.	2	800	855	797	795	863	4,110	411
Fourteenth district..... Montgomery.	1	618	579	616	571	623	3,007	602
Fifteenth district..... Jewell, Mitchell, Osborne, Smith.	1	384	390	422	376	355	1,927	386
Sixteenth district..... Labette.	1	223	.....	.....	287	267	777*	*259
Seventeenth district..... Cheyenne, Rawlins, Decatur, Norton, Phillips.	1	300	336	402	403	377	1,818	364
Eighteenth district..... Sedgwick.	4	.....	.....	3,088	2,422	2,759	*8,269	*689
Nineteenth district..... Cowley.	1	476	420	437	397	592	2,322	465
Twentieth district..... Barton, Rice, Stafford.	1	381	326	374	441	443	1,965	393
Twenty-first district..... Clay, Marshall, Riley.	1	293	311	367	324	348	1,643	329
Twenty-second district..... Brown, Doniphan, Nemaha.	1	344	417	428	462	519	2,170	434

* Three-year total, or average.

CASES DISPOSED OF IN DISTRICT COURTS, BY DISTRICTS, 1927 TO 1931—CONCLUDED.

DISTRICT, WITH COUNTIES.	Number of judges.	1927.	1928.	1929.	1930.	1931.	Five-year total.	Five-year average per judge.
Twenty-third district..... Ellis, Gove, Logan, Russell, Trego, Wallace.	1	597	528	502	503	446	2,576	515
Twenty-fourth district..... Barber, Harper, Kingman, Pratt.	1	529	545	420	495	437	2,426	485
Twenty-fifth district..... Sumner.	1	273	372	256	310	277	1,488	298
Twenty-ninth district..... Wyandotte.	4	1,569	2,231	1,831	2,510	1,872	10,013	501
Thirtieth district..... Ellsworth, Lincoln, Ottawa, Saline.	1	640	494	577	563	565	2,839	568
Thirty-first district..... Clark, Comanche, Ford, Gray, Kiowa, Meade.	1	516	549	571	671	645	2,952	590
Thirty-second district..... Finney, Greeley, Hamilton, Kearny, Lane, Scott, Wichita.	1	606	520	456	584	508	2,674	535
Thirty-third district..... Edwards, Hodgeman, Ness, Pawnee, Rush.	1	393	318	352	344	366	1,773	355
Thirty-fourth district..... Sherman, Thomas, Sheridan, Graham, Rooks.	1	347	514	415	400	418	2,094	419
Thirty-fifth district..... Osage, Wabaunsee.	1	281	254	216	201	182	1,134	227
Thirty-sixth district..... Jackson, Jefferson, Pottawatomie.	1	454	402	381	435	423	2,095	419
Thirty-seventh district..... Allen, Woodson.	1	326	406	354	234	284	1,604	321
Thirty-eighth district..... Crawford.	2	373	537	312	463	609	2,294	230
Thirty-ninth district..... Grant, Haskell, Morton, Seward, Stanton, Stevens.	1	309	303	285	364	434	1,695	339

We have 46 district judges in 36 judicial districts. It has been suggested we could get along without so many. It is possible some of the judicial districts in the state might be rearranged so as to reduce the number of district judges without impairing the efficiency of our district courts, and effect a saving to the state in the salaries of judges and court officials. But this is a task of the legislature—not for the Judicial Council. Its duties relate to improving the procedure of courts. If the task is undertaken it should be done with care, and any error in result should be on the side of too many rather than too few trial judges.

Paroles by Judges of District Courts.

Clerks of the district courts reported to us that in the year ending June 30, 1927, district judges granted 564 paroles; in the year ending on the same day in 1928, 573 paroles were granted; in 1929, 650 paroles; in 1930, 729; and in 1931, 728. Several clerks were unable to give accurate reports because of imperfect records concerning paroles. These figures do not include, except in comparatively few instances, paroles granted by district judges in cases where the conviction or plea of guilty was in a court inferior to the district court, such as a justice of the peace, city, or county court. With respect to such paroles frequently there is no record in the district court. In most instances there is no record made of the discharge of a paroled person, as provided by Revised Statutes. Our inquiries further disclosed that as to fully a third of the persons paroled no attention was paid to the case or to the paroled person after the parole was granted.

Naturally the Judicial Council should not concern itself with whether a parole should be granted in a particular case, or with the number of paroles granted, or generally speaking with the terms on which they are granted, for these things in each case depend upon the circumstances peculiar to it. Two matters, however, about these paroles attract our attention. First, the lack of records in many instances, and imperfect records in others. We recommend that a complete record be kept in each parole case, including a record of the discharge of the paroled person, if he is discharged, for this may effect his future status, or his property rights. Second, the absence of supervision of the paroled person while on parole, where that is lacking. We understand the principal purpose of the parole law is to enable the paroled person to establish himself in industry and good citizenship, and to assist him in doing so. These purposes are lost when there is no supervision, and are partially lost when that is imperfectly done. In many counties and judicial districts the district judges give such supervision and assistance as fully and efficiently as they perform their other duties. In other judicial districts, including some of the larger centers of population we are told that cannot be done. The matter should receive legislative attention. We have not determined how it can best be handled. Perhaps a parole officer should be provided in some places.

A Proposed Constitutional Amendment.

Soon after the Judicial Council was organized its study of the structure of our judicial system and the procedure therein led to the belief that while substantial improvement in the functioning of our courts could be brought about by rules of court and statutory changes, additional improvements could be accomplished by the rewriting of the judicial article of our constitution providing a more unified system of courts and removing some of the barriers to judicial improvement contained therein. There is a discussion of this in our 1928 report (pages 9 to 11) which sets out some of the points which should be borne in mind in rewriting the article. Further consideration was given to

the subject in our 1929 report (page 18), and as the time of the meeting of the next legislature approached we prepared a tentative redraft of the judicial article of our constitution which was printed in our 1930 report (pages 14 to 17) with some comments thereon. This draft was designed primarily as a basis for study rather than for immediate adoption. It was presented to the legislature of 1931 (Senate Concurrent Resolution No. 10) for that purpose, and further discussion of it is contained in our 1931 report (pages 18 to 21). It has received, first and last, a great deal of consideration by the Judicial Council, aided by suggestions from members of the bar. It is set out in our July BULLETIN of this year (pages 35 to 41) with an article by C. L. Hunt discussing its provisions, and with later modifications, and a similar article in our October BULLETIN (pages 62 to 66). Because of further study given to it and suggestions from attorneys a few other modifications of its provisions have been made. We now submit it to the legislature with the earnest recommendation that it be adopted in the form now drafted, or substantially so, and submitted to the people to be voted upon at the next general election. It reads as follows:

A PROPOSITION to amend article III of the constitution of the State of Kansas, relating to the Judiciary.

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein:

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

ARTICLE III.—THE JUDICIARY.

Section 1. All of the judicial power of this state shall be vested in a system of courts composed of a supreme court, county courts, and such other courts, inferior to the supreme court, as may be created by law.

Sec. 2. The supreme court, district courts, and county courts shall be courts of record and each shall have a seal to be used in the authentication of all process and records.

Sec. 3. The supreme court shall be the highest court in the judicial system of the state. It shall have original jurisdiction in actions and proceedings presenting questions of law only submitted on a written statement of agreed facts and in proceedings in quo warranto, mandamus and habeas corpus. It shall have appellate jurisdiction from the final decision of the district court in civil and criminal actions and special proceedings, and such other appellate jurisdiction as may be provided by law. It shall consist of seven justices until the number shall be changed by law. It may make rules for the practice and procedure in all state courts. It may designate any district judge to sit temporarily as judge of another district or division with the same power and jurisdiction as the regular judge. It may call a judge of a district court to sit on the supreme court in the event a member of that court be ill or disqualified. In original proceedings in the supreme court which involve controversies of fact the supreme court may direct a judge of a district court to hear the evidence and make findings of fact and conclusions of law and report them to the supreme court. The justices of the supreme court may sit separately in divisions with full power in each division to determine the cases assigned to be heard by such division. Three justices shall constitute a quorum in each division and

the concurrence of three shall be necessary to a decision. Such cases only as may be ordered to be heard by the whole court shall be considered by all of the justices, and the concurrence of a majority shall be necessary to a decision in cases so heard. The justice who is senior in continuous term of service shall be chief justice, and in case two or more have continuously served during the same period the senior in years of these shall be the chief justice, and the presiding justice of each division shall be selected from the judges assigned to that division in like manner.

Sec. 4. Justices of the supreme court, judges of the districts courts, and judges of county courts may be removed from office by resolution of both houses of the legislature if two-thirds of the members of each house concur. But no such removal by such proceeding shall be made except upon complaint, the substance of which shall be entered upon the journal, nor until the party charged shall have had notice and opportunity to be heard.

Sec. 5. The supreme court, not more than two justices voting in the negative, after a hearing, on complaint and due notice, may ask the resignation of, or by order remove, a justice of that court or a judge of any court for the good of the service, and may prescribe rules of procedure therefor; and by like vote, after notice and hearing, may retire any justice of the supreme court or judge of a district court who shall have reached the age of seventy years, or whose physical or mental infirmities have rendered such retirement advisable. Such retirement shall be upon such conditions relating to pay or otherwise as may be provided by law.

Sec. 6. The supreme court shall appoint a reporter and a clerk for that court who shall hold office during the pleasure of the court and shall prescribe their respective duties.

Sec. 7. There shall be a district court in each county, but several counties may compose one district, and there may be divisions of the district court as the business therein may require. Judicial districts consisting of one or more counties, and the division of each district court and the number of judges therein, as they may exist at the time of the adoption of this amendment, shall continue to exist until changed by law. The district court shall be a court of original general jurisdiction for the trial of all civil and criminal actions and proceedings, except as the exclusive jurisdiction of any civil or criminal action or special proceeding is hereby vested in some other court, and shall have appellate jurisdiction in all civil and criminal actions and special proceedings originating in courts inferior to the district court, and before boards, commissions, officers and tribunals when exercising judicial functions, and such other jurisdiction as may be provided by law.

Sec. 8. There shall be a county court in each county, which shall have exclusive original jurisdiction for the probate of wills and in all matters relating to the estates of decedents, minors and incompetent persons, and shall have such jurisdiction in matters relating to the person of minors and incompetent persons, and in civil and criminal actions and special proceedings, as may be provided by law. The board of commissioners of the county shall establish such divisions of the county court as the condition of business therein requires. The judge or judges of such court shall be examining magistrates in prosecutions for felonies. There shall be at least one judge of the county court in each county, and such additional judges as may be provided by law. At the first session of the legislature following the adoption of this article the legislature shall provide for the organization of county courts in accordance with this section, the transferring to such courts of the records and pending business of trial courts inferior to the district court, and for the election of judges for such courts at the next general elec-

tion, so that such county courts may be fully organized and equipped to take care of the business on the second Monday in January following such general election.

Sec. 9. In each county there shall be a court clerk who shall be selected as provided by law and who shall act as clerk for both the district court and the county court in such county, and whose duties shall be prescribed by rule of the supreme court.

Sec. 10. To be eligible to hold the office of justice of the supreme court or judge of the district court a person must be duly admitted to practice law in this state, and shall be a citizen and resident of the state and district for which he is selected or appointed, and before taking such office must have been engaged in the active practice of law or shall have served as judge of a court of record, or both, in the aggregate as follows: For justice of the supreme court, ten years; for judge of the district court, five years. Additional requirements of eligibility may be provided by law. No person shall be ineligible to hold any judicial office in this state on account of his holding another judicial office therein at the time of his election or appointment. No person shall hold more than one judicial office concurrently. A justice of the supreme court, or a judge of the district court or county court, shall not be a candidate for a nonjudicial office, and in the event he files for, or accepts a nomination for, or an appointment to, a nonjudicial office, his office of justice or judge shall immediately become vacant.

Sec. 11. Justices of the supreme court and judges of the district courts and county courts shall be selected in such manner and shall hold office for such terms as may be provided by law, but terms shall not be less than six years for justices of the supreme court nor less than four years for judges of district and county courts.

Sec. 12. All appeals from county courts shall be to the district court, and all appeals from the district court shall be to the supreme court.

Sec. 13. The justices of the supreme court and judges of the district courts and county courts shall, at stated times, receive for their services such compensation as may be provided by law, but no such justice or judge shall receive any fee or perquisites, nor shall he practice law during his continuance in office.

Sec. 14. The several justices and judges of courts of record in this state shall have such jurisdiction at chambers as may be provided by rule of the supreme court.

Sec. 15. Provision shall be made by rule of the supreme court for the selection of a judge *pro tem.* of the district court or county court.

Sec. 16. In the event of a vacancy in the office of a justice or judge of any of the courts of record of this state the governor, with the written concurrence of a majority of the justices of the supreme court, shall appoint some eligible person to fill the position for the unexpired term and until his successor is selected and qualified as provided by law.

Sec. 17. The style of all process shall be "The State of Kansas," and all prosecutions shall be carried on in the name of the state. All process from any of the courts of the state shall be executed by a sheriff, undersheriff or deputy, or by the clerk of the district court if the sheriff be the party to be served.

SEC. 2. This proposition shall be submitted to the electors of the state of Kansas at the general election in 1934. The amendment hereby proposed shall be known on the official ballot by the title, "The Judiciary Amendment to the State Constitution," and the vote for and against such proposition shall be taken as provided by law.

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

STATUTORY PROPOSALS.

Courts Inferior to the District Court.

Early in the consideration of the efficiency of our judicial system we gave attention to the structure of our courts. As that relates to our district courts and our supreme court no suggestions of changes were made. They appear to be adequate and efficient. As to courts inferior to our district court the structure of our judicial system is something of a hodgepodge. We are not speaking now of the police courts of cities, for their jurisdiction is limited to complaints charging violation of city ordinance. They are not state courts in the sense that they deal with complaints under the criminal statutes of the state or with rights of litigants under state law. We refer to the probate court, justices of the peace, and city and county courts created with limited jurisdiction in controversies arising under the laws of the state. Our constitution provides for a probate court in each county and for justices of the peace. We found that in most of the townships the people had ceased to elect justices of the peace or elected them intermittently. While in a few instances justices of the peace are regularly elected and perform fairly efficiently, considered as a whole, justices of the peace courts have outlived their usefulness in this state. Our people have tried to get away from them in various ways. First, by declining to elect them, which method removed all of the business which would naturally go to such court into the district court unless some other court was provided. Second, by special acts, applicable to certain cities only, city courts were created with a full equipment of offices—judge, clerk, marshal, etc. Most of these acts give to the city court a larger jurisdiction than the justices of the peace had, and so limit the jurisdiction of the justices of the peace of the city in which it is created so as practically to eliminate them as judicial officers, but left the justices of the peace outside of the cities with their former jurisdiction. A general legislative act was passed authorizing cities of a certain population to create similar city courts, and several have been organized under that statute. Twelve cities of the state have such city courts created either under such special acts or under the general law. Generally speaking they are efficient units in our judicial system. Certainly some of them, perhaps all of them, cost more to operate than is necessary to be expended to accomplish the same purpose. In any event the people in the counties outside of the cities are entitled to as good a court as the people in the cities have, and they are just as entitled to be relieved of the unsatisfactory justice of the peace courts. These things can be accomplished under a measure we propose. Third, under a general statute county courts may be created in any county when the board of county commissioners passes a resolution for that purpose. Then the probate judge becomes the judge of the county court, with the jurisdiction throughout the county of a justice of the peace and additional jurisdiction for a limited class of criminal and civil actions. In twenty-four counties of the state county courts have been organ-

ized under this statute, which does not limit the jurisdiction of justices of the peace where they are adopted, although the practical effect of adopting the statute is that business formerly taken before justices of the peace is taken to the county courts. The county court has been an efficient unit in our judicial system to the extent only that the judge of the court is a person capable of handling the business of the court.

What the people need in this respect is to have a court in each county always open to transact business and equipped, not only as to its structure, but as to the personnel of its officers, to handle the business coming before it promptly and efficiently. To accomplish this we prepared an act reorganizing our judicial system below the district court, creating a probate and county court in each county with the jurisdiction of the other courts mentioned, eliminating the offices of clerk, marshal, and constable, providing that the process from it should be served by the sheriff or his deputy, placing the peace officers of the county under a unit of organization, providing for magistrates to issue warrants in criminal cases and dispose of noncontested criminal or civil actions of a limited jurisdiction, and providing that the procedure therein be governed by rules of court.

We are confident that this measure, if adopted, would greatly simplify the structure of our judicial system and provide much better courts than now exist and at less expense than the present cost of such courts, and would enable the business within their jurisdiction to be handled much more promptly and efficiently than heretofore done. The salaries provided by section 5 of our proposed bill may need modification in view of present financial conditions, otherwise we recommend the bill as written. As the provisions of this bill have been studied it has constantly grown in favor. A copy of the bill is as follows:

AN ACT relating to the judiciary, creating courts inferior to the district court, limiting the jurisdiction of justices of the peace, and repealing all acts in conflict herewith.

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

SECTION 1. In each county in the state there shall be a court known as a probate and county court, which is hereby created, and is to be organized so as to come into existence on the second Monday in January, 1935.

SEC. 2. The probate and county court shall be a court of record, and the court and the judge thereof shall have such jurisdiction as is now conferred upon probate courts and the judges thereof, and such jurisdiction as is now conferred upon justices of the peace, and in addition thereto shall have jurisdiction in civil actions for the recovery of personal property or money only where the amount claimed does not exceed one thousand dollars, and in proceedings for attachment and garnishment in such actions.

SEC. 3. The supreme court shall by rule prescribe the procedure for all actions and proceedings in the probate and county court and in appeals therefrom, which rules, when made, shall supersede any statutes relating thereto. When the volume of business in any probate and county court is sufficient to justify it the supreme court may by rule create divisions of the probate and county court, and when so created there shall be a judge for each division. The judges of the extra divisions so created shall, by virtue of their positions be judges *pro tem.* of probate court. The supreme court may by rule provide the procedure for designating a judge *pro tem.* for the probate and county court for temporary purposes. Where the centers of population in a county are such as to justify it the supreme court may by rule provide for the sitting

of the probate and county court at some place in the county in addition to the county seat, either for the trial of specific cases, or for permanent division of the court in such county. The supreme court shall, before the first Monday of March, 1934, designate divisions of the probate and county court in counties where such is deemed necessary, and the cities other than the county seat in which a division of the probate and county court shall sit, and changes in such divisions and places where the court shall sit shall not be made oftener than once in two years.

SEC. 4. The judges of the probate and county court shall be elected at the general election held biennially in November, the first election to be held in November, 1934, and shall hold their offices for a term of two years, beginning on the second Monday in January following such election. No one shall be qualified to act as judge of the probate and county court who is not regularly admitted to practice law in this state, or who has not served as a probate judge in this state for as long as two years prior to the beginning of his term as judge of the probate and county court. No judge of the probate and county court shall, while serving in this capacity, practice law in any of the courts of the state.

SEC. 5. The salary of the judge of the probate and county court in the various counties of this state shall be as follows: In counties with a population of less than five thousand, $2,000; in counties with a population from five to ten thousand, $2,400; in counties with a population from ten to twenty-five thousand, $3,000; in counties with a population of more than twenty-five thousand and not more than sixty thousand, $3,600; and in counties with a population over sixty thousand, $4,000; the salaries to be paid by the county in monthly payments. All fees received by the judge of the probate and county court for services performed by virtue of his office, except fees for performing marriage ceremonies, shall be by him paid into the county treasurer and become a part of the general fund of the county. The county commissioners shall provide such facilities in the way of a court room, supplies and clerical and stenographic help as may be necessary properly to conduct the business of the court. The clerical help shall be appointed by the judge, or judges, of the probate and county court and hold their positions at the pleasure of the court.

SEC. 6. On or before the first Monday in March, 1934, the board of county commissioners in each county shall divide the county, outside of the county seat, into not fewer than three nor more than seven magistrate districts, having due regard for the centers of population in the county. There is hereby created in such magistrate districts a magistrate court, which shall be organized so as to come into existence on the second Monday of January, 1935. At the general election of 1934, and every two years thereafter, one magistrate shall be elected in each of such magistrate districts, which election shall be for a term of two years, beginning on the second Monday in January after such election.

SEC. 7. Magistrate courts shall have jurisdiction to entertain complaints charging offenses under the laws of the state and to issue warrants thereon, including peace warrants and warrants for search and seizure; and where the complaint charges an offense which is a misdemeanor under the laws of the state, and the defendant enters a plea of guilty thereon, to impose the punishment provided by statute. But in the event a plea of not guilty is made the cause shall be transferred by the magistrate to the probate and county court, where it shall be docketed and proceeded with as though originally brought in that court. Where the magistrate shall issue a warrant for an offense charging a felony he shall promptly send the complaint on which the warrant was issued, together with a statement that the warrant was issued, giving the date, to the probate and county court, and the person arrested under such warrant shall be brought before the probate and county court, which shall handle the action as though the complaint had been originally filed and the warrant issued by that court. And the magistrate court shall have jurisdiction

in civil actions only for the recovery of money where the amount claimed does not exceed $100, and to issue garnishment or attachment in such cases, and to render judgment in the event there is no contest. But in the event the defendant contests the claim of the plaintiff on the merits, or contends that property sought to be taken by garnishment or attachment is exempt in whole or in part, the action shall be transferred to the probate and county court, where it shall be docketed and proceeded with as though originally brought in that court.

SEC. 8. The supreme court shall by rule prescribe the procedure in magistrate courts and in appeals therefrom.

SEC. 9. Each magistrate shall receive a salary, to be paid by the county and to be determined by the board of county commissioners, and which shall not exceed $120 per year, payable in monthly payments. All fees received by the magistrate by virtue of his official position shall be paid into the county treasury, to become a part of the general fund of the county.

SEC. 10. All process issued by the probate and county court, or magistrate court, shall be executed by the sheriff.

SEC. 11. On and after the first Monday in January, 1935, justices of the peace in this state shall have no jurisdiction in any case, civil or criminal, except in civil actions for the recovery of money only in which the amount claimed does not exceed one dollar.

SEC. 12. The following statutes are hereby repealed, the repeal to take effect on the second Monday of January, 1935: Sections 20-801 to 20-819, inclusive, and sections 20-1401 to 20-2025, inclusive, 80-204, and 80-701 to 80-707, inclusive, of the Revised Statutes of Kansas 1923, and all acts and parts of acts in conflict herewith. Courts existing under statutes repealed by this section shall cease to function at the time the repeal goes into effect, and the dockets, records and files of such courts shall be transferred to and become a part of the records and files of the probate and county court, and all actions then pending in such courts shall proceed in the probate and county court as though ordinarily brought in that court.

SEC. 13. This act shall take effect and be in force from and after its publication in the statute book.

Books and Records of Courts.

In undertaking to collect data relating to business transacted and pending in the courts of record of the state we discovered a lack of uniformity among the district courts, not only of the books used for records, but of the entries made therein. We discovered instances of the lack of records of important matters, and even more frequently what seemed to be unnecessary delay in completing records of the business of the courts. This lack of uniformity of records and absence of complete records was more prevalent in probate courts than in district courts. We take it all will agree that at least fairly complete records should be made, with reasonable promptness, of all business transacted in courts of record. Our present statutes relating to those matters appear to be imperfect and quite indefinite. For the purpose of correcting imperfections in this regard we prepared a proposed measure authorizing the supreme court, by rule, to provide a uniform system of dockets, records and bookkeeping for the district courts and probate courts and for the making of entries therein. Naturally it is not important that this be accomplished by rule of the supreme court. We simply propose that as a way to get it done. If the legislature (or some member or committee of it) would take the time to make the necessary investigation and pass a statute governing this matter the Judicial

Council and the supreme court would be glad to have it done that way. But it is quite a task, and perhaps no member or committee of the legislature would undertake it. For that reason we recommend the proposed bill, which is as follows:

AN ACT relating to books and records of courts of record, authorizing the supreme court to promulgate rules relating thereto, and repealing sections 60-3801, 60-3802, 60-3803, 60-3804, 60-3805, 60-3811, 60-3812, 60-3813 of the Revised Statutes of Kansas of 1923.

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

SECTION 1. The supreme court may by rules of the court provide a uniform system of dockets, records and bookkeeping for the district courts, probate courts, and other courts of record of the state, with rules for the making of entries therein to apply to judges, clerks, sheriffs and other court officials.

SEC. 2. It shall be the duty of the judge of any court of record in this state to see that the books and records of the court are kept as prescribed by the rules of the supreme court, and that the clerk and other court officials promptly make the proper entries therein.

SEC. 3. The clerks of the district court and the clerks of other courts of record shall preserve the records and books and papers of their respective courts and shall record the judgments, decrees, orders and proceedings thereof, and perform such other clerical duties relating to the administration of justice by the court as may be prescribed by uniform rules of the supreme court, or in default thereof by rule or direction of the court for which he is clerk.

SEC. 4. That Revised Statutes of Kansas of 1923, 60-3801, 60-3802, 60-3803, 60-3804, 60-3805, 60-3811, 60-3812 and 60-3813, 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 statute book.

Civil Code Amendments.

We proposed a bill to amend several sections of our civil code to correct defects therein which have been called to our attention. Our present statute (R. S. 60-3001) defines a new trial to be a reëxamination in the same court of "issues of fact" which were determined in the trial of the case. This definition seems inconsistent with the definition of a trial (R. S. 60-2901) as an examination of the issues, "whether of law or fact"; also to be inconsistent with the grounds for a new trial which may be "erroneous rulings or instructions of the court" (R. S. 60-3001), and when a new trial is granted the issues determined are of law or fact as in a trial (R. S. 60-3901). Our proposed bill changes this definition of a new trial to be a reëxamination of "issues of law or of fact" which arose or were determined in the action. The present statutory definition of a new trial has led to much confusion, as will be noted by an examination of the decisions of the court cited under the section. Even in recent years some of the better lawyers of the state have been unable to determine under our statutes and decisions whether a motion for a new trial was necessary in a particular case, with the result that their cases have been dismissed for lack of it. Perhaps the proposed change would require a motion for a new trial in every case that is appealed, and to that extent it may be broader than is absolutely necessary. To avoid that perhaps there should be a section providing just when a motion for a new trial is not necessary, as on a demurrer to pleadings, a motion for judgment on pleadings, or on the answer to special

questions by a jury, or where the case has been submitted on an agreed statement of facts. We think it important that a motion for a new trial should be required when a demurrer is sustained to evidence, for if the supreme court reverses the ruling of the court below in such a case the only relief it can grant is to direct a new trial, and where a demurrer is sustained to evidence and plaintiff on appeal contends that proper evidence offered was erroneously excluded by the trial court, that question can be examined in the supreme court only when the motion for a new trial has been filed and the excluded evidence placed upon the record by the affidavit, deposition or testimony of a witness. (R. S. 60-3004.)

The next section of the proposed bill reduces the time for appealing civil actions to two months, which under the present law is six months. Approximately fifty-five per cent of civil actions are appealed within sixty days. We think this affords ample time, and for the more prompt disposition of business this limitation should be made. It may be noted that under our present statute certain insurance companies must appeal within sixty days (R. S. 1931 Supp. 40-713), workmen's compensation cases must be appealed within twenty days (R. S. 1931 Supp. 44-556), and an appeal from an order granting a divorce must be taken within ten days (R. S. 60-1512). We have not heard it seriously contended that litigants have been unduly deprived of their rights by these limitations, and we think litigants in civil actions generally would be deprived of no substantial right by being required to appeal within sixty days.

The third section of the proposed bill is designed to clarify our statute concerning the time of filing abstracts in appealed cases. Perhaps it would be as well to repeal our present statute sought to be amended by this section, for, because of the confusion in the statute, the supreme court has promulgated rules covering the subject, which rules are now being followed.

The fourth section of the proposed bill requires notice of a cross-appeal to be filed within twenty days after notice of appeal. Under the present provisions this notice of cross-appeal may be given in the brief filed by appellee. At times that works to the disadvantage of the appellant.

The fifth section covers a matter long regarded as important.

The proposed bill is as follows:

AN ACT relating to civil procedure, amending sections 60-3001, 60-3309, 60-3312, 60-3314 of the Revised Statutes of 1923, and repealing said original sections. and also repealing section 60-3313 of the Revised Statutes of 1923.

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

SECTION 1. That section 60-3001 of the Revised Statutes of 1923 be amended so as to read as follows: A new trial is a reëxamination in the same court of issues of law or of fact which arose, or were determined, in the trial of the case, after a verdict by a jury, report of a referee, or a decision by the court. The former verdict, report or decision shall be vacated and a new trial granted, on the application of the party aggrieved, when it appears that the rights of the party are substantially affected:

First. Because of abuse of discretion of the court, misconduct of the jury or party, or accident or surprise which ordinary prudence could not have guarded against, or for any other cause whereby the party was not afforded a reasonable opportunity to present his evidence and be heard on the merits of the case.

Second. Erroneous rulings or instructions of the court.

Third. That the verdict, report or decision was given under the influence of passion or prejudice.

Fourth. That the verdict, report or decision is in whole or in part contrary to the evidence.

Fifth. For newly discovered evidence material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial.

Sixth. That the verdict, report or decision was procured by the corruption of the party obtaining it. In this case the new trial shall be granted as a matter of right, and all the costs made in the case up to the time of granting the new trial shall be charged to the party obtaining the decision, report or verdict.

SEC. 2. That section 60-3309 of the Revised Statutes of 1923 be amended so as to read: The appeal shall be perfected within two months after the rendition of the judgment or order appealed from, and security for costs in cases appealed to the supreme court shall be given within such time and in such manner as such court, by rule or special order, may provide: *Provided, however,* That appeals from judgments and appealable orders entered or rendered before this act shall take effect may be perfected within two months from the date of such judgment or order.

SEC. 3. That section 60-3313 of the Revised Statutes of 1923 be amended so as to read: In all cases in which a transcript of the evidence is not necessary in order to review the questions presented on appeal, the abstract of appellant shall be served on the opposing party or his counsel and filed in the supreme court within thirty days after the notice of appeal is filed with the clerk of the trial court, and in all cases in which a transcript of the testimony is necessary to present the questions presented on appeal the abstract of appellant shall be so served and filed within four months after the notice of appeal is filed with the clerk of the trial court. The abstract of the appellant shall contain a synopsis of so much and of such parts of the pleadings, record, evidence and proceedings in the case as appellant deems necessary for the consideration of the court. If appellee deems the abstract of appellant to be insufficient to present the questions for review he may, within thirty days after the service upon him of appellant's abstract, serve upon appellant, or his counsel, and file with the clerk of the supreme court a counter abstract. Abstracts not challenged shall be deemed accurate and sufficiently complete to present the questions sought to be reviewed. In the event the accuracy of any abstract is challenged the court shall make such an order as the nature of the case and justice warrant. Abstracts shall be printed unless, on application therefor and for good cause shown, the court orders that they be presented otherwise. The abstract may be bound separately or with the brief, as the party presenting the same desires.

SEC. 4. That section 60-3314 of the Revised Statutes of 1923 be amended so as to read: When notice of appeal has been served in a case and the appellee desires to have a review of rulings and decisions of which he complains, he shall, within twenty days after the notice of appeal is filed with the clerk of the trial court, give notice to the adverse party, or his attorney of record, of his cross-appeal and file the same with the clerk of the trial court, who shall forthwith forward a duly attested copy of it to the clerk of the supreme court.

SEC. 5. When a party appeals from a final judgment he may have reviewed any ruling adverse to him which was made at any time in the case.

SEC. 6. That sections 60-3001, 60-3309, 60-3312, 60-3313 and 60-3314 of the Revised Statutes of 1923 be and the same are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after its publication in the official state paper.

Criminal Code Amendments.

Our attention has been called to several sections of the code of criminal procedure which we think it would be well to amend, and we have prepared a bill for that purpose. Section 1 provides the number of peremptory challeges of jurors defendant may have in criminal cases and the next section provides that the prosecution may have the same number. Section 3 relates to persons who may be retained as jurors in criminal cases and the fourth section relates to the competency of certain classes of witnesses. The principal change in the last section is that the violation of the last proviso therein shall require the granting of a new trial. Our information is that this proviso is frequently violated clearly by indirection or devise. To place the burden on defendant of showing that he is prejudiced thereby is in effect to afford him no relief. Perhaps the proviso should be taken out of the statute, but if it is permitted to remain some effective relief should be given for its violation. The proposed bill is as follows:

AN ACT relating to procedure in criminal cases, amending sections 62-1402, 62-1403, 62-1405, 62-1420 of the Revised Statutes of 1923, and repealing said original sections, and repealing section 62-1404 of the Revised Statutes of 1923.

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

SECTION 1. That section 62-1402 of the Revised Statutes of 1923 be amended so as to read as follows: Each defendant in an indictment or information shall be entitled to peremptory challege of jurors as follows:

First, If the offense charged is murder, to the number of nine, and no more.

Second, If the offense charged is a felony other than murder, to the number of six, and no more.

Third, If the offense charged is a misdemeanor, to the number of three, and no more.

SEC. 2. That section 62-1403 of the Revised Statutes of 1923 be amended so as to read as follows: In all criminal trials the state may challege peremptorily the same number of jurors allowed the defendant, or defendants, by the preceding section.

SEC. 3. That section 62-1405 of the Revised Statutes of 1923 be amended so as to read as follows: No person shall be retained as a juror whose answers to questions propounded by counsel or the court discloses that he has any opinion, bias or prejudice which would prevent him from giving both to the prosecution and to the defendant a fair and impartial trial, or whose physical infirmity or lack of knowledge of the English language would prevent him from comprehending the business being conducted in court.

SEC. 4. That section 62-1420 of the Revised Statutes of 1923 be amended so as to read as follows: 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 his 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: *And further provided,* That the neglect or refusal of the person on trial to testify, or of a wife to testify in behalf of her husband, shall not raise any presumption of guilt, nor shall that circumstance be referred to by any attorney prosecuting in the case, nor shall the same be considered by the court or jury before whom

the trial takes place. The violation of this proviso shall require the granting of a new trial.

SEC. 5. That sections 62-1402, 62-1403, 62-1404, 62-1405 and 62-1420 of the Revised Statutes of 1923 be and the same are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its publication in the official state paper.

Pleadings in Action for Divorce.

Our present statutes relating to pleadings as applied to actions for divorce or alimony appear to require that the facts constituting the grounds or cause of action be set forth in the petition. This frequently results in placing scandalous matter relating to one of the parties on the permanent records, or in the files of the court. This should be avoided, particularly if there are children of the union. In addition to that we are advised that threats of filing scandalous charges sometimes are made for the purpose of forcing an unreasonable settlement of property rights or the custody or maintenance of children. Sometimes charges of this kind are made unjustly, but publicity is given to them to the disgrace frequently of innocent parties. The importance of the matter is further disclosed by the fact that our records show approximately thirty per cent of all civil actions disposed of by our district courts are divorce cases. To avoid this we have prepared and recommended the passage of a bill, as follows:

AN ACT relating to procedure in actions for divorce or alimony, or both, and supplementing section 60-1501 of the Revised Statutes of 1923.

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

SECTION 1. That in all actions for divorce, or for alimony, or for both divorce and alimony, the petition, or cross-petition, shall allege the causes relied upon, as nearly as possible in the language of the statute (R. S. 60-1501), and without detailed statement of facts. If the opposing party desires a statement of facts relied upon the same shall be furnished to him by the petitioner or cross-petitioner in a bill of particulars. A copy of this bill of particulars shall be furnished to the court and shall constitute the specific facts upon which the action is tried. The statements therein shall be regarded as being denied by the adverse party, except as they may be admitted. The bill of particulars shall not be filed with the clerk of the district court, nor become a part of the records of such court, but if the action be appealed, and the question sought to be reviewed relate to the facts set forth in the bill of particulars, it shall be embodied in the abstract for the supreme court.

SEC. 2. This act is supplemental to section 60-1501 of the Revised Statutes of 1923.

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

Jurors—Jury Trials.

We have considered, first and last, numerous suggestions for the improvement of the efficiency and the reduction of the expense of jury trials. In our 1928 report (page 8) we considered suggestions that the jury might return a verdict agreed upon by less than the entire number of jurors. From the investigation made and information then at hand we concluded we were not justified in making recommendations of that character. Perhaps the great lack of efficiency in our jury trials results from an imperfect system of selecting persons for jury service. The list now is made up in the first instance by the township trustees and mayors of cities without any instructions to them with regard to the class of persons who should be selected, and frequently it is done in a very inefficient manner. In the two largest counties of the state the judges of the district court are authorized by statute (R. S. 43-135) to prepare the lists of persons for jury service, but frequently in doing so they have but little information concerning the persons other than the fact that their names were on the tax roll of the preceding year. Thinking perhaps the legislature would not care to disturb the method of selecting jurors in those counties, but deeming it necessary that provision should be made for a more intelligent selection of persons for jury service, we have drafted a measure which we are confident would effect that purpose, and with no additional expense from the method now used. The proposed bill for that purpose is as follows:

AN ACT relating to the selection of jurors, creating a board of jury commissioners, and repealing sections 43-101, 43-102, 43-103 of the Revised Statutes of 1923.

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

SECTION 1. That in all counties of this state having a population of less than 90,000 there is hereby created a board of jury commissioners which shall be composed of the judge of the district court, the county clerk, the clerk of the district court and the probate judge. Such jury commissioners shall, prior to November first of each year, advise the trustee of each organized township and the mayor of any city not included in any corporate limits of any township, either orally or in writing, as to the duties of such officers in compiling the list of jurors hereinafter provided for. Pursuant to such instructions and advice each of such trustees and mayors in each county shall, during the month of November of each year, make a list of persons to serve as jurors for the ensuing year as hereinafter provided.

SEC. 2. They shall select from those assessed on the assessment roll for the current year suitable persons having the qualifications of electors, and in making such selection they shall choose only those who are not exempt from serving on juries and who are possessed of good moral character and of proved integrity, in possession of their natural faculties, with a good knowledge of the English language, who are not infirm or decrepit, and who are well informed and free from legal exceptions. Such selection shall be in the proportion of two persons for each fifty inhabitants of such township or city: *Provided,* That no person shall be selected as such juror who, either in person or by any other means, shall solicit his selection as such.

SEC. 3. In making such selection each person who shall have served as a juror in a court of record within the year next preceding such selection shall be excluded from a list of jurors for the then ensuing calendar year, and if any such person shall be selected or drawn it shall be the duty of the court to which such juror shall be summoned to strike the names of such persons from the list of jurors, and it shall be good cause of challenging any juror that such juror shall have served as a juror in any court of record during the year pre-

ceding any such selection, and no juror called or summoned who shall have so served during such preceding year shall draw any pay for more than one day during the term of court to which he shall be so summoned. A list of the persons so selected shall be immediately after such selection certified by the officers making the same to the county clerk of such county. Such lists shall be accompanied by a written statement made by the officer preparing the same, setting forth the correct name, age, occupation and general characteristics of each person whose name shall appear on such lists, together with such other information as such officer may deem of value in determining the fitness and qualification of such person as a juror. Within thirty days after the certification of such list, the board of jury commissioners shall examine the same, inquire into the qualifications and general fitness of such persons as jurors, and shall select therefrom the name of one person for each fifty inhabitants of each township and each city not included in any corporate limits of any township in the county, and such list shall be filed with the county clerk, and the same shall constitute the list of jurors for the year beginning January first thereafter.

SEC. 4. That sections 43-101, 43-102 and 43-103 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 statute book.

In more recent months we have had our attention called to the expense to the counties, particularly in the larger counties in the state, of the per diem and mileage of jurors. For the purpose of getting something tangible as a basis for recommendation we have collected the information of the amount paid in the several counties for jury service for the year beginning July 1, 1930, and ending June 30, 1931. The reports of the various counties are as follows:

Allen, $3,266.40; Anderson, $1,277; Atchison, $743.30; Barber, $793.30; Barton, $1,770.50; Bourbon, $2,627.90; Brown, $1,391.90; Butler, $6,891.04; Chase, $748.90; Chautauqua, $2,344.90; Cherokee, $3,878.70; Cheyenne, $1,159.47; Clark, $393; Clay, $1,422.55; Cloud, $668.50; Coffey, $1,431.30; Comanche, $440.65; Cowley, $6,296.55; Crawford, $6,186.05; Decatur, $391.20; Dickinson, $1,160.35; Doniphan, $1,383.35; Douglas, $2,031.70; Edwards, $1,620.80; Elk, $491.45; Ellis, $1,295.72; Ellsworth, $1,510.40; Finney, $2,669.60; Ford, $1,945.80; Franklin, $2,649.75; Geary, $1,390.65; Gove, $400.10; Graham, $770.50; Grant, $1,199.30; Gray, $681.90; Greeley, $627.85; Greenwood, $2,165.75; Hamilton, $1,012.69; Harper, $1,573.40; Harvey, $1,007.55; Haskell, $623.35; Hodgeman, $507.60; Jackson, $1,066.44; Jefferson, $1,353.70; Jewell, $568.90; Johnson, $3,734.15; Kearny, $250; Kingman, $1,277.80; Kiowa, $748; Labette, $1,442.80; Lane, $750.40; Leavenworth, no report; Lincoln, $1,534.80; Linn, $1,223.85; Logan, $663.80; Lyon, $934.30; Marion, $1,133.15; Marshall, $3,388.90; McPherson, $2,226.45; Meade, $204.60; Miami, $3,793.10; Mitchell, $1,709; Montgomery, $9,585.10; Morris, $3,762.80; Morton, $714.15; Nemaha, $1,735.85; Neosho, $1,922.80; Ness, $1,236; Norton, $683.40; Osage, $1,793.65; Osborne, $574.20; Ottawa, $1,614.85; Pawnee, $930.10; Phillips, $579.35; Pottawatomie, $1,968.80; Pratt, $483.45; Rawlins, $18.80; Reno, $5,608.20; Republic, $913.60; Rice, $1,999.10; Riley, $3,566.30; Rooks, $1,441.35; Rush, $14.25; Russell, $798.70; Saline, $4,652.25; Scott, $638.60; Sedgwick, $31,325.40; Seward, $1,703.20; Shawnee, $19,323.93; Sheridan, $1,600.55; Sherman, $3,159.70; Smith, $1,215.10; Stafford, $2,145.05; Stanton, $795.20; Stevens, $861.50; Sumner, $3,699.55; Thomas, $1,201.10; Trego, $1,756; Wabaunsee, $529.90; Wallace, $169.20; Washington, $1,398.70; Wichita, $127.45; Wilson, $3,171.20; Woodson, $1,571.15; Wyandotte, $29,745.80. Total, $253,582.14.

It has been suggested that this expense might be materially reduced if juries of six were used where the parties consent to it. A few of our district judges have experimented with this suggestion and advise us that when an intelligent selection of persons for jury service is made, the results of the trials are as satisfactory to the litigants as when a jury of twelve is used; that there is some saving of time in the trial, and a substantial saving of expense to the county. To enable that to be done we need change but one section in the statute relating to civil procedure and another section of the statute relating to criminal procedure. Appropriate bills for that purpose are as follows:

AN ACT relating to civil procedure, amending section 60-2903 of the Revised Statutes of Kansas of 1923, and repealing said original section.

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

SECTION 1. That section 60-2903 of the Revised Statutes of Kansas of 1923 be and the same is hereby amended to read as follows: 60-2903. Issues of fact arising in actions for the recovery of money or of specific real or personal property shall be tried by jury, unless a jury trial is waived or a reference be ordered as hereinafter provided. All other issues of fact shall be tried by the court, subject to its power to order any issue or issues to be tried by a jury or referred as provided in this code. *Unless a jury of twelve be demanded by either party within ten days after the issues are joined the trial shall be by six jurors.*

SEC. 2. That section 60-2903 of the Revised Statutes of Kansas of 1923, and all acts or parts of acts in conflict herewith, are hereby repealed.

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

AN ACT relating to criminal procedure, amending section 62-1401 of the Revised Statutes of Kansas of 1923, and repealing said original section.

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

SECTION 1. That section 62-1401 of the Revised Statutes of Kansas of 1923 be and the same is hereby amended to read as follows: 62-1401. The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court, except in cases of felonies. All other trials shall be by jury, to be selected, summoned and returned as prescribed by law. *In all misdemeanor cases, unless a jury of twelve be demanded by the defendant or complainant or prosecuting attorney before the case is called for trial, they shall be tried by six jurors.*

SEC. 2. That section 62-1401 of the Revised Statutes of Kansas of 1923, and all acts and parts of acts in conflict with this act, are hereby repealed.

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

Redemption of Real Property.

Following the discussion of this subject (page 21, April BULLETIN; page 66, October BULLETIN) we have completed the draft of a bill modifying our present statute concerning the redemption of real property sold on execution or orders of sale. Briefly, it provides that the sale shall be had at the end of the redemption period rather than at the beginning. It makes more certain just what is being sold, especially under general execution. It does not shorten the period of redemption now provided by statute. It results in economy in handling this class of cases, and we think it fully protects the rights of all parties even better than our present law, and it will eliminate controversy over some troublesome questions which now arise. The proposed bill as we have prepared it is as follows:

AN ACT relating to the sale of property on general execution, special execution, and order of sale and the redemption thereof, and amending sections 60-3408, 60-3416, 60-3438, 60-3455, 60-3457, 60-3459, 60-3460, 60-3461, 60-3462, 60-3465, and 60-3466 of the Revised Statutes of 1923, and sections 60-3430 and 60-3443 of the 1931 Supplement to the Revised Statutes of 1923, and repealing sections 60-3408, 60-3416, 60-3438, 60-3440, 60-3441, 60-3442, 60-3444, 60-3445, 60-3446, 60-3447, 60-3448, 60-3449, 60-3450, 60-3452, 60-3455, 60-3456, 60-3457, 60-3459, 60-3460, 60-3461, 60-3462, 60-3463, and 60-3466 of the Revised Statutes of 1923, and sections 60-3439 and 60-3443 of the 1931 Supplement to the Revised Statutes of 1923.

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

SECTION 1. That section 60-3408 of the Revised Statutes of 1923 be and the same is hereby amended to read as follows: Section 60-3408. The officer to whom a writ of execution is delivered shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found the officer shall indorse on the writ of execution "No goods," and forthwith levy the writ of execution upon the lands and tenements of the debtor which may be liable to satisfy the judgment; the officer shall make a return showing the lands and tenements of the debtor levied upon, and the judgment creditor shall file an application with the court describing the lands and tenements levied upon and the court shall fix the date after which an order of sale may issue, and the court shall make an order making known and unknown persons claiming or having an interest in the property levied on, parties to the proceeding, and shall determine the interest of the execution debtor in the lands and tenements levied upon. If any of the lands and tenements of the debtor so levied upon shall be encumbered by mortgage or any other lien or liens, such lands and tenements may be levied upon and sold subject to such lien or liens.

SEC. 2. That section 60-3416 of the Revised Statutes of 1923 be and the same is hereby amended to read as follows: Section 60-3416. Lands and tenements taken on execution or to be sold on order of sale shall not be sold until the expiration of the date fixed by the court after which an order of sale may issue. After the date so fixed, on the præcipe of a party to the action, an order of sale shall issue to the sheriff who shall cause public notice of the time and place of sale to be given for at least thirty days before the day of sale, by advertisement in some newspaper regularly printed and published and having a general circulation in the county, to be designated by the party ordering the sale, or in case no newspaper be printed in the county, in some newspaper in general circulation therein. All sales made without such advertisement shall be set aside on motion by the court to which the execution is returnable. And no greater sum shall be taxed as costs for advertising in any case than the amount received or to be received by the publisher, printer, or editor of the

paper doing the printing, and which shall not exceed the amount prescribed by law for such publication.

SEC. 3. That section 60-3439 of the 1931 Supplement to the Revised Statutes of 1923 is hereby amended to read as follows: Section 60-3439. The defendant owner may redeem any real property sold under execution, special execution, order of sale, for the amount sold for, together with interest, cost and taxes, as provided in this act at any time within ten days from the day of sale as provided herein, and shall in the meantime be entitled to possession of the property, and the date after which an order of sale may issue shall not be fixed at less than eighteen (18) months from the date of the judgment or date of levy, except where the court or judge shall find that the lands and tenements have been abandoned or not occupied in good faith, then, in that event, the court may fix the date not less than six months from the date of judgment or date of levy: *Provided,* That oil and gas leases or oil and gas leasehold estates may be sold immediately after judgment or levy, and in all sales of oil and gas leases under order of sale or levy the property shall be appraised and sold for not less than two-thirds of its appraised value: *And provided further,* That any contract and any mortgage or deed of trust agreeing to the sale of the real property within any period less than eighteen (18) months from the date of the judgment or waiving the ten-days' period of redemption after the sale shall be null and void, except that any corporation organized under the laws of the United States, the District of Columbia or any state of the United States, may, as mortgagor, agree in the mortgage instrument to a sale being made at a shorter period than eighteen (18) months after the date of judgment or may consent to a sale of the property being made immediately after the judgment as against said corporation mortgagor owner, and all such agreements when so made shall be fully binding on such mortgagor.

SEC. 4. That section 60-3443 of the 1931 Supplement to the Revised Statutes 1923 is hereby amended to read as follows: Section 60-3443. During the period allowed between the date of judgment or the date of levy and the date fixed after which an order of sale may issue, the judgment creditor may pay the taxes on the land and tenements ordered sold or levied on, the insurance premium on the buildings thereon, and interest or sums due upon any prior lien or encumbrance thereon, and may move to have the sums so paid added to his judgment, and upon due notice and hearing the court may adjudge such sums with interest at the rate of six per cent since their payment to be added to the amount of the judgment previously rendered. The order of sale when issued shall include the sums so adjudged to be added. If the property is sold, the debtor shall have the right to redeem the property at any time within ten days after the sale by paying to the clerk of the district court the sum for which the property was sold with interest at six per cent from the day of sale and the costs of redemption, and the property shall not be subject to further sale to satisfy the judgment or any sums allowed herein.

SEC. 5. That section 60-3455 of the Revised Statutes of 1923 be and the same is hereby amended to read as follows: Section 60-3455. That the lands and tenements levied on, or sold on order of sale, may be sold or transferred by the defendant owner, and the transferee may have the same rights as the defendant owner, but the property levied on or ordered sold shall not be subject to levy or sale on execution after the date of judgment or after the court fixes the date for sale on execution, and the defendant owner or his transferee shall be entitled to possession and all the rents and profits therefrom until expiration of the ten-day period of redemption, and the rents and profits therefrom for such time shall be exempt from levy or sale on execution.

SEC. 6. That section 60-3456 of the Revised Statutes of 1923 be and the same is hereby amended to read as follows: Section 60-3456. The holder of the legal title at the time of the issuance of the execution or order of sale shall have the same right to pay the judgment and other sums due the judgment creditor upon the same terms and conditions as the defendant in execution, and also shall be entitled to the possession of the property the same as the defendant in execution as herein provided.

SEC. 7. That section 60-3457 of the Revised Statutes of 1923 be and the same is hereby amended to read as follows: Section 60-3457. If the defendant in execution or order of sale or his transferee or the owner of the legal title, fail to redeem, the sheriff shall, at the end of the period of redemption herein provided upon the confirmation of the sale by the court, execute a deed to the purchaser or his assignee. If the person entitled to the deed be dead, the deed shall be made to his heirs or devisees; but the property will be subject to all liens or to the payment of all debts of such deceased person in the same manner as if acquired during his lifetime.

SEC. 8. That section 60-3459 of the Revised Statutes of 1923 be and the same is hereby amended to read as follows: Section 60-3459. The purchaser or party entitled to a deed under sale as herein provided, may, after the deed is made to him by the sheriff, recover damages for any injury or waste permitted upon the property purchased after date of judgment or after the time is fixed for sale on execution and before possession is delivered under the conveyance.

SEC. 9. That section 60-3460 of the Revised Statutes of 1923 be and the same is hereby amended to read as follows: Section 60-3460. The land and tenements once sold upon order of sale, special execution or general execution shall not again be liable for sale for any balance due upon the judgment or decree under which the same is sold, or any judgment or lien inferior thereto: *Provided, however,* If the real property sells for more than enough to satisfy the judgment or decree, any inferior judgment or lien shall be a lien upon the excess proceeds.

SEC. 10. That section 60-3461 of the Revised Statutes of 1923 be and the same is hereby amended to read as follows: Section 60-3461. After the date of judgment or after the time fixed for the sale on execution the judgment creditor shall be entitled to prevent any waste or destruction of the premises purchased, and for that purpose the court, on proper showing, may issue an injunction; or, when required to protect said premises against waste appoint and place in charge thereof a receiver, who shall hold said premises until such time as the purchaser is entitled to a deed and shall be entitled to rent and control and manage the same; but the income during said time, except what is necessary to keep up the repairs and prevent waste, shall go to the owner or defendant in execution or the owner of its legal title.

SEC. 11. That section 60-3463 of the Revised Statutes of 1923 be and the same is hereby amended to read as follows: Section 60-3463. The sheriff shall at once make a return of all sales made under this act to the court; and the court, if it find the proceedings regular and in conformity with law and equity, shall confirm the same and shall order the sheriff to make the purchaser a deed as provided for herein, and shall direct the clerk to make an entry of such findings and order on the journal.

SEC. 12. That section 60-3466 of the Revised Statutes of 1923 be and the same is hereby amended to read as follows: Section 60-3466. Whenever a lien shall be given for the purchase price of any real estate, and default shall be made in the conditions of the mortgage or instrument giving such lien before one-third of the purchase price of said real estate shall be paid by the purchaser thereof, such purchase-money lien may be foreclosed by the legal holder thereof in the manner now provided by law for the foreclosure of other mortgages, and such real property may be sold on judgment of foreclosure as now provided by law: *Provided,* That whenever any such purchase-money lien is foreclosed the court shall fix the date of sale six months from the date of judgment, and if said property is not redeemed as herein provided within ten days after the date of sale the purchaser shall be entitled to a deed.

SEC. 13. That sections 60-3408, 60-3416, 60-3438, 60-3440, 60-3441, 60-3442, 60-3444, 60-3445, 60-3446, 60-3447, 60-3448, 60-3449, 60-3450, 60-3452, 60-3455, 60-3456, 60-3457, 60-3459, 60-3460, 60-3461, 60-3462, 60-3463 and 60-3466 of the Revised Statutes of 1923, and sections 60-3438 and 60-3443 of the 1931 Supplement to the Revised Statutes of 1923, are hereby repealed.

SEC. 14. That this act shall take effect and be in force from and after its publication in the statute book.

EMINENT DOMAIN.

The Administrative and Judicial Methods of Procedure.

By CHESTER STEVENS.

The Judicial Council has been making a study of the constitution and the statutes relative to the appropriation of private property under the power of eminent domain. In the April, 1932, BULLETIN the subject was generally discussed, attention being directed primarily to the lack of uniformity in the statutes authorizing the exercise of the power. In the July issue a proposed act concerning the exercise of the power of eminent domain, and attempting to outline a code of procedure following the administrative method, was published. In the October issue this proposed act was further discussed, and through the courtesy of Franklin Corrick a synopsis of the numerous statutes in Kansas pertaining to eminent domain was included. The utter lack of uniformity, ambiguity in practically all of the statutes conferring the power of eminent domain, and the almost total absence of provision for procedure are strikingly illustrated. This compilation refers to 113 sections of the Revised Statutes relating in some manner or to some extent to the power of eminent domain and the method of its exercise.

The necessity for the elimination of these numerous and scattered sections, and the adoption of a uniform code of procedure applicable and workable for all purposes of condemnation and procedure is certainly beyond dispute.

Mr. Corrick has prepared a proposed act concerning the exercise of the power of eminent domain, and establishing a code of procedure for the exercise of the same following the judicial method.

Two methods of procedure are quite well defined and recognized. One is known as the administrative procedure and the other as the judicial procedure. The first obviates the necessity of proceedings in the courts except upon appeal. The second takes the matter directly to the court in the first instance, and all proceedings from the institution to the conclusion are matters of judicial action and record. The proposed bill by Mr. Corrick is excellently drawn and outlines a very definite procedure by the judicial method.

The attention of the bench and bar of Kansas is particularly desired as to the merits of the two methods of procedure, or a blending of the two methods whereby one uniform, plain and simple code can be devised for this state covering the whole field of eminent domain.

The power of eminent domain is inherent in sovereignty. It is sovereign power. This power is vital to the very existence of sovereignty. It was an incident of sovereignty prior to written constitutions and is not dependent upon constitutions for its exercise or recognition. It is dormant until it is invoked, and method of its exercise is prescribed by the law-making body. Therefore it follows that the state must prescribe how it may be exercised.

The merits of the administrative method are largely in its simplicity and the expeditious manner in which it may be exercised, appropriations effected, damages paid, and possession or right to use secured. It naturally is less expensive than the judicial method, but, unless carefully safeguarded, lacks the certainty of adjudication of the rights of all parties interested in the land and the finality which characterizes the judicial method.

In the judicial method outlined, the proceeding originates in the court designated by the statute. The proposed bill largely follows the procedure of the civil code concerning the institution of civil actions. Application is made by the filing of a petition and the issuance of summons, and authorizes publication service where the parties interested are nonresidents of the state. Provision is made for joining of issues, trial on the merits, and the rendition of judgment from which an appeal is allowed to the supreme court. The judgment of the court is final unless appealed from, as authorized. The method naturally involves a careful examination of the title to the land, making all persons interested in the land in any manner parties defendant to the action.

The Judicial Council desires to recommend legislation on this subject and seeks the help and coöperation of the bench and bar in the preparation and presentation of a proposed act which will most effectually accomplish the enactment of a law providing for the most desirable, expeditious and inexpensive procedure.

The Judicial Council plans to have a meeting early in the legislative session, at which time it hopes, with the aid of suggestions of attorneys and others interested, to be able to put in final form a proposed bill for the exercise of the right of eminent domain, broad enough in its scope to be applicable to all cases, simple in its procedural provisions, and yet definite enough to give full protection to the respective parties and to embody the elements of finality of determination. As a basis for that study we are printing both of the bills heretofore referred to. The one proceeding on the administrative method is as follows:

AN ACT concerning the power of eminent domain, and providing a code of procedure for the exercise thereof.

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

SECTION 1. Any person, copartnership, corporation and the state, including its municipal subdivisions, may exercise the power of eminent domain only in accordance with the provisions of this act.

SEC. 2. No right of way shall be appropriated to the use of any corporation until full compensation therefor first be made in money or secured by a deposit of money to the owner irrespective of any benefit from any improvement proposed by such corporation.

SEC. 3. The right to take private property shall depend solely upon the public use of the property sought to be taken, and if the use will be beneficial to the public the power may be invoked in accordance with the provisions of this act.

SEC. 4. Any person, copartnership, corporation, the state or any of its municipal subdivisions shall file in the office of the clerk of the district court of the county in which the land proposed to be taken is located an application in writing, duly verified, stating the name of the petitioner, and if the state or municipality is the petitioner, a certified copy of the resolution, ordinance or other proceedings authorizing the same, a description of the lands involved and the exact boundaries of the part sought to be taken and the extent and character of the use to which the petitioner proposes to subject the land.

SEC. 5. Said application shall be presented to the judge of the district court of said county, and in his absence or inability to act, the same may be presented to the probate judge of such county, who shall examine said application, and if said proposed purpose is impressed with public use or benefit the district judge or probate judge, as the case may be, thereupon shall appoint three competent disinterested householders of such county as commissioners, upon actual view, to proceed to lay off and condemn the lands sought to be taken as described in the application. If the judge shall deny said application the petitioner forthwith may file with the clerk of the district court a notice of

appeal, and thereupon the clerk forthwith shall certify the same to the supreme court for immediate decision.

SEC. 6. The appointment of the commissioners shall be in writing and signed by the judge and filed with the clerk of the district court. The commissioners forthwith shall take an oath honestly and faithfully to discharge their duties as such commissioners, and thereupon shall proceed to an actual view of the lands sought to be taken and shall appraise the same at its actual cash value and shall assess the damages to those parts, portions and parcels not taken, the valuation and assessment of damages to be allotted to the respective owners of such lands. Except in cases of condemnation of rights of way for corporations, the commissioners shall offset against the damages allowed to those portions of the several tracts, portions or parcels not taken, such benefits as they shall determine will result to the owner or respective owner of the lands affected, but in no event shall the allowance of benefits exceed the amount of damages. The commissioners shall embody their doings in a written report to which their oath shall be attached, sign and file the same with the clerk of the district court.

SEC. 7. If the petitioner desires immediately to occupy the lands proposed to be taken, he thereupon shall pay to the clerk of the district court the respective sums allowed to the respective owners as compensation for the land taken, and damages, if any, to the lands not taken, and shall execute and file with the clerk, to be approved by the clerk, a good and sufficient bond in a sum equal to the allowance made by the commissioners to indemnify the respective landowners for additional compensation and all damages which may be allowed in the event of an appeal, as hereinafter provided, and thereupon the petitioner may enter into the possession of the land.

SEC. 8. Upon the filing of the report of the commissioners the clerk of the district court shall issue a summons to each of the owners of the property affected by the condemnation proceedings, if their residence is within the state of Kansas and known, such summons to be directed to such owner and delivered or sent to the sheriff of the county of such owner's residence to be served by such sheriff and return made thereof as in case of summons in civil actions. If service of summons cannot be made upon such owners within the state of Kansas, or if their whereabouts or residence is unknown, such owners and all nonresident owners of the state of Kansas thereupon shall be notified of said condemnation by said clerk by publication of a notice once each week for four consecutive weeks in some newspaper published and of general circulation in such county, or if none be published therein then one of general circulation in such county, which notice shall state the name of the petitioner, a description of the several tracts and parcels of land owned by such unknown or nonresident owners, and an accurate description of the several parts thereof sought to be taken, together with the amount of compensation allowed for the part or parts taken, the amount of damages assessed and the amount of benefits, if any, deducted, and which notice further shall notify such owners that unless they shall appeal from the award of said commissioners on or before a certain date therein specified, which shall be twenty days after the last publication, said award will become binding and final on them. Proof of publication shall be made and filed as in other cases.

SEC. 9. Any owner affected by such condemnation proceedings upon whom service of summons has been made by the sheriff as in the last preceding section provided within ten days after the return day of said summons may appeal to the district court of the county wherein said lands are situated by filing with the clerk of the district court a written notice, stating his name, a description of the land which he claims to own and which is affected by said condemnation proceedings, and stating that he appeals to the district court from the award of the commissioners, and thereupon the clerk shall docket the appeal as in other cases.

SEC. 10. If the petitioner shall feel aggrieved by the award of the commissioners as to any particular tract or parcel of land affected by the condemnation proceedings, he may enter into the occupancy of the land by complying with the provisions of section 7, and filing with the clerk of the district court within

twenty days after the filing of the report of the commissioners with said clerk, a notice of appeal, stating his name, the name of the owner or owners of the tract or tracts affected, and stating that he appeals to the district court from such award, and the clerk shall thereupon docket said appeal as in other cases.

SEC. 11. All such appeals shall be tried as other civil actions.

SEC. 12. Either party may appeal from the district court to the supreme court as appeals are taken in civil cases under the code of civil procedure.

SEC. 13. In all proceedings in the district court the code of civil procedure shall govern the same.

SEC. 14. All costs and expenses of filing the application and appointment of the commissioners, of the report, and of all summons issued and served and all notices published, as in this act provided, and the fees of the commissioners to be fixed by the judge, shall be paid by the petitioner, and in all appeals from the award of the commissioners the party appealing shall make security for costs as provided in the code of civil procedure.

SEC. 15. Upon final payment of the award or in case of appeal, on final judgment, the petitioner thereupon shall become vested with the fee-simple title to the lands taken under the condemnation proceedings.

SEC. 16. All statutes relating to condemnation proceedings now in force in this state are hereby repealed: *Provided, however,* That any and all condemnation proceedings instituted or commenced and not completed before the publication of this act shall be in accordance with the statutes now in force.

SEC. 17. This act shall take effect and be in force from and after its publication in the official state paper.

The one proceeding upon the judicial method is as follows:

AN ACT concerning the power of eminent domain and providing a uniform code of procedure for the exercise thereof.

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

SECTION 1. Any person, copartnership, corporation and the state, including its political and municipal subdivisions, having the power of eminent domain, may exercise such power only in accordance with the provisions of this act.

SEC. 2. The right to take private property under the power of eminent domain shall depend solely upon the public use of the property sought to be taken, and if the use will be beneficial to the public the power may be invoked in accordance with the provisions of this act.

SEC. 3. For the purpose of obtaining information as to the advantages and disadvantages of the land and the amount of land that may be required, the condemning party may, upon proper notice to the landowner, enter upon the land for the purpose of surveying such land and for locating the improvement. The manner of making the survey shall be compatible with the greatest public benefit and the least injury to private property. Such entry shall constitute no cause of action in favor of the owner except for actual damages for injuries resulting from negligence, wantonness or malice.

SEC. 4. Any person, copartnership, corporation and the state, including its political and municipal subdivisions, desirous of exercising its right of eminent domain must bring its proceedings in the district court of the county in which the property or some part thereof is situated. Such proceedings shall be commenced by filing a petition the same as an ordinary civil action under the code of civil procedure. The petition may be filed in vacation as well as in term time. The district court shall be open at all times for hearing and determining such actions, and the time for pleading and for hearing may be advanced so as to give precedence over other actions.

SEC. 5. The following matters shall be set forth in the petition: (1) The name of the condemning party as plaintiff and the names of the owners or parties having an interest in the property as defendants, including all lien holders of record, as shown by the records of such county. (2) A description of each lot and parcel of land sought to be condemned, and, where a right of way is sought, a map thereof shall be attached as an exhibit. (3) An allega-

tion of the purpose for which the property is sought, with facts showing that it is necessary for such purposes. (4) A statement that the plaintiff has been unable to agree with the owner or owners as to the price of the property sought. (5) Facts showing that all preliminary proceedings required by law have been taken. The form of the petition shall in all respects, so far as possible, be the same as in ordinary civil actions.

SEC. 6. Upon the filing of the petition the clerk of the district court shall issue a summons to each of the owners or persons owning any interest in the property, including holders of liens thereon, named in the petition as defendants, if their residence is within the state of Kansas and known, such summons to be directed to such owners or lienholders and delivered and sent to the sheriff of the county of such owner's or lienholder's residence to be served by such sheriff and return made thereof as in case of summons in civil actions. If service of summons cannot be made upon such owners or lienholders within the state of Kansas, or if their whereabouts or residence is unknown, such owners or lienholders and all nonresident owners or lienholders of the state of Kansas thereupon shall be notified of said petition by said clerk by publication of a notice once each week for two consecutive weeks in some newspaper published and of general circulation in such county, or if none be published therein then one of general circulation in such county, which notice shall state the name of the petitioner, a description of the several tracts and parcels of land of such unknown owners or lienholders or nonresident owners or lienholders, and an accurate description of the several parts thereof sought to be taken. Proof of publication shall be made and filed as in other cases.

SEC. 7. Any person having an interest in the property sought to be condemned, though not named in the petition, may apply to be made a party and may appear, plead and defend in respect to his own interest, in the same manner as if named in the petition.

SEC. 8. Any city seeking condemnation of property within its territorial limits shall, by ordinance or resolution, determine necessity for the proposed improvement and the necessity of taking the particular property. As soon as practicable after the adoption of such ordinance or resolution the city shall file a petition in the district court as in this act provided. In all other cases plaintiff's allegations as to the necessity of taking property for a designated public use shall be taken as true unless issues are joined on that question, in which case the necessity shall be determined by the court without a jury.

SEC. 9. The plaintiff may, after the action is commenced and necessity has been determined, upon proper notice to the owner, apply to the court for a right to occupy the premises proposed to be taken and begin the improvements thereon pending the action. On the hearing of the application, proof by affidavit or otherwise shall be taken as to the reason for requiring a speedy occupation and the damages likely to accrue from such condemnation, and the application shall be granted or refused according to the equities of the case. The application shall not be granted unless the plaintiff shall execute a good and sufficient indemnity bond, with sureties, in a penal sum to be fixed by the court at not less than double the amount of damages likely to result from the condemnation; but such amount shall be determined for the purposes of the application only and shall be inadmissible in evidence on the final hearing. Such a bond shall not be required of the state and its municipal subdivisions, but in lieu thereof the state or any of its municipal subdivisions shall deposit the amount of damages likely to accrue with the clerk of the district court. In case of substantial building or buildings situated on the land or valuable business being conducted in building or buildings thereon, the application may be granted only on condition that the plaintiff waive his right to abandon the proceedings. In case the application provided for in this section is granted the plaintiff shall proceed with all diligence to carry the proceedings to final judgment.

SEC. 10. The assessment of damages shall be determined by such three disinterested persons as may be agreed upon by the parties. If the parties do not agree on all the commissioners they shall be appointed by the court, giving preference to those agreed upon by the parties. The appointment of the com-

missioners shall be in writing signed by the judge and filed with the clerk of the district court. Said commissioners shall take an oath to honestly and faithfully perform and discharge their duties as such commissioners, and upon actual view shall proceed to lay off and condemn the land sought to be taken as described in the petition. The commissioners shall be allowed such compensation for their services as the court may deem just and proper, which shall be taxed as part of the costs in the case.

SEC. 11. Said commissioners shall appraise the property sought to be condemned at its actual cash value and shall assess the damages to those parts, portions and parcels not taken, the valuation and assessment of damages to be allotted to the respective owners of such lands. Except in cases of condemnation of rights of way for corporations, the commissioners shall offset against the damages allowed to those portions of the several tracts, portions or parcels not taken, such benefits as they shall determine will result to the owner or respective owners of the property affected, but in no event shall the allowance of benefits exceed the amount of damages. The commissioners shall embody their doings in a written report to which their oath shall be attached, sign and file the same with the clerk of the district court.

SEC. 12. Unless written exceptions to the commissioners' report are filed with the clerk of the district court within 30 days after the filing of such report a personal judgment shall be rendered by the court in accord with said report. Upon the filing of exceptions to the commissioners' report by either party the question of damages shall be tried as other civil actions by the court without a jury, except that the court may refer the report back to the same or different commissioners for a reassessment. The court may modify, alter or change the report and may diminish or increase the damages, and its decree shall be final unless appealed from. In other cases the power of the court shall be the same as in ordinary civil actions.

SEC. 13. For the purpose of assessing compensation and damages the right thereto shall be deemed to have accrued at the date of issuance of process or other commencement of the action and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken but injuriously affected, in all cases where such damages are allowed, as provided in sec. 11 of this act: *Provided,* That in any case in which the issue is not tried within one year after the date of the commencement of the action, unless the delay is caused by the defendant, the compensation and damages shall be deemed to have accrued at the date of the trial: *Provided further,* That nothing in this section shall be construed or held to affect litigation pending at the date this act becomes effective. Where it appears that the plaintiff is unreasonably delaying the prosecution of the action the court shall, on motion of the defendant, dismiss the action, awarding to defendant his costs and expenses. If the plaintiff is permitted to occupy the premises pending the action, as in this act provided, the compensation and damages shall draw interest from the date of the order of possession.

SEC. 14. The plaintiff must, within 30 days after final judgment, pay to the parties entitled thereto, the sum of money assessed. Where the plaintiff is the state of Kansas, or a political or municipal subdivision thereof, and it appears by affidavit or other evidence that benefits are to be assessed and collected, or that bonds of said state or subdivision thereof must be issued and sold in order to provide the money for payment of the award, the sum may be paid at any time within one year from date of such judgment: *Provided,* That if the sale of any such bonds cannot be had by reason of litigation affecting the validity thereof, then the time during which such litigation is pending shall not be considered a part of the one year's time in which payment must be made. If for any reason it is impossible or unsafe for the plaintiff to make payment to any defendant entitled thereto, the sum or sums may be deposited in court and shall be distributed under the direction of the court. If the money be not so paid or deposited the defendant may have execution as in civil cases, and if satisfaction cannot be had thereon the court, upon a showing to that effect, shall set aside and annul the entire proceedings and restore

possession of the property to the defendant, if possession has been taken by the plaintiff under the provisions of sec. 9 of this act.

SEC. 15. When payments have been made, as provided in sec. 14 of this act, the court shall make a final order of condemnation which shall describe the property condemned and the purposes of such condemnation. Thereupon a certified copy of the order shall be filed in the office of the register of deeds of the country in which the property is located and a copy served upon the owner, thereby vesting title to the property described therein in the plaintiff.

SEC. 16. When title or right of possession has passed to the plaintiff, and after service of a copy of the order of condemnation has been made upon the defendant, if he refuses to deliver possession of the property described in the order to the plaintiff on demand, the plaintiff may apply to the court for writs of assistance. Upon such application, and after proof of service of the order of condemnation and of the demand and the noncompliance of the defendant therewith, the court shall issue writs of assistance directing the sheriff of the county to put the plaintiff into possession of said property.

SEC. 17. The estates and rights in lands, subject upon final order of condemnation to be taken for public use, are as follows: (1) A fee simple when the property is taken for public buildings or grounds, for reservoirs and dams and permanent flooding occasioned thereby. (2) An easement when the property is taken for any other purpose: *Provided,* That when the taking is by a municipal corporation a fee simple may be taken if the governing body of such municipal corporation shall by ordinance or resolution determine the taking thereof to be necessary. (3) The right of entry upon and occupation of lands and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

SEC. 18. If the title to the property sought to be condemned is found to be defective from any cause, the plaintiff may institute new proceedings to acquire the same in the manner prescribed by this act.

SEC. 19. Pending an appeal from the judgment of the district court to the supreme court, when the plaintiff shall have paid into court, for the defendant, the full amount of the judgment, and such further sum as may be required by the court as an indemnity fund to pay any further damages and costs that may be recovered in said proceeding, as well as all damages that may be sustained by the defendant, if, for any cause, the property shall not finally be taken for public use, the district court in which the proceeding was tried may by order authorize the plaintiff to take possession of the property, or, if already in possession, to continue in possession pending final determination of the litigation. In ascertaining the amount to be paid into court, the court shall take care that the same be sufficient and adequate.

The defendant, who is entitled to the money paid into court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the court. It shall be the duty of the court upon application being made by such defendant to order and direct that the money so paid into court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor with the clerk of the district court, and an abandonment of all defenses to the action or proceeding except his claim to greater damages or compensation.

SEC. 20. The provisions of article 33 of chapter 60 of the Revised Statutes of Kansas of 1923 relative to appeals, except in so far as they are inconsistent with the provisions of this act, shall apply to the proceedings under this act, subject to the following provisions: (1) Either party may appeal to the supreme court from the final judgment of the district court, but such appeal shall be perfected within 30 days from the date of the rendition of such judgment. (2) Such appeal shall be heard, determined and reviewed on its merits by the supreme court without reference to technical assignments of error, and final judgment may be entered doing justice to the parties.

(DRAUGHTSMAN'S NOTE.—If a provision containing this subdivision, in substance, is adopted it is suggested that in section 12, in the sixth line after the word "actions," the words "by the court without a jury," be inserted, since the rights of the parties would be amply protected without authorizing a resubmission of the assessment of damages to a jury. In this manner a small assessing tribunal would always be used, and thus the proceedings would be more speedily determined.)

(3) In other respects the power of the court over the report shall be the same as in ordinary civil actions.

SEC. 21. The costs of the proceedings in the district court shall be paid by the plaintiff. The costs of appeal shall be taxed against such party or parties as the court shall direct, as in ordinary civil actions.

SEC. 22. The plaintiff may abandon the proceedings at any time after filing the petition and before the expiration of 30 days after final judgment by filing in court and serving upon the defendant a written notice of such abandonment upon such terms as to the court shall seem just and which shall not be inconsistent with the provisions of this section. The failure to make payment or deposit within the prescribed time, as provided in sec. 14 of this act, shall constitute an implied abandonment of the proceedings. Upon such abandonment, express or implied, on motion of the defendant, the court shall enter a judgment dismissing the proceedings and shall award the defendant his costs and expenses incurred in preparing for trial, including a reasonable attorney's fee, and all damages caused by any possession of the plaintiff. Such judgment dismissing the proceedings shall state whether or not a new proceeding to acquire the same property for the same use shall be permitted and upon what terms same may be allowed, and the good faith of the plaintiff shall be taken into consideration by the court in determining same.

SEC. 23. In all cases where the costs of the improvement are to be paid for, in whole or in part, by means of apportionment of benefits on all property benefited, such assessment shall be levied and collected as the statutes now authorize, or may hereafter authorize the plaintiff to assess, levy and collect the expense of public improvements, and such special assessments shall be no part of the condemnation proceedings.

SEC. 24. All courts, in which condemnation actions to enforce the right of eminent domain under the provisions of this act are pending, shall give such actions preference over all other civil actions therein, in the manner of setting the same for hearing or trial, and in hearing the same, to the end that all such actions shall be quickly heard and determined.

SEC. 25. This act shall be known as the Uniform Code of Eminent Domain Procedure of the State of Kansas.

SEC. 26. Any and all condemnation proceedings under the right of eminent domain instituted or commenced and not completed before this act takes effect shall proceed under and be in accordance with the statutes in force prior to the enactment of this act.

SEC. 27. All acts and parts of acts relating to condemnation procedure under the right of eminent domain in conflict with the provisions of this act are hereby repealed.

SEC. 28. This act shall take effect and be in force from and after its publication in the official state paper.

Proposed Code of Probate Procedure.

The proposed code of probate procedure printed in our October BULLETIN, following the previous discussion upon the subject, has aroused much interest. We have received a number of letters pertaining to it from lawyers and judges throughout the state. The consensus of opinion appears to be that something of this kind is badly needed. Some think the proposed code cumbersome and that it may result in additional expense in administering upon estates. We are confident a full consideration of it will convince one that it is not open to either of these objections. The largest part of it as printed is that taken from the civil code concerning the issuance and service of summons or other process and relating to rules of evidence on the hearing of any contested matter. In the bill providing for the code of probate procedure these pro-

visions may be adopted by reference. They are familiar to the bar and to the courts and will cause little, if any, confusion. With these provisions eliminated the proposed code of probate procedure is comparatively brief, and its provisions when clearly understood are quite comprehensive. The code is limited to establishing a procedure for administering upon the estates of deceased or incompetent persons. The first step in the procedure is to file a petition and to bring into court, by appropriate summons or other process, all necessary parties. Thereafter, the probating of a will, if there is one, the allowance of claims, and the collection and distribution of property, shall be by orders of the court on appropriate motions therefor, of which the necessary parties have notice. Such orders of the court and the judgment determining to whom the estate should be distributed, and making the distribution, are each final unless appealed from within the time provided. The procedure for appeal is simple, and on appeal the question determined by the order or judgment appealed from is tried *de novo*. The more we study this proposed code the more clearly we see its simplicity, its comprehensiveness and its inherent fairness. No doubt some modification of its provisions are yet to be made. We will appreciate suggestions respecting them and inquiries concerning the proposed measure. With it, of course, should be an act rewriting many of the sections of our statute embodying the substantive law relating to estates of deceased or incompetent persons. Work is now progressing on that matter. Possibly it can be completed in time to present to the legislature, soon to meet. We plan to have a meeting of the Judicial Council January 20 and 21, and prior to that time will be glad to have suggestions as to the substantive law as well as to procedural provisions. For the purpose of aiding this study we print the proposed code of probate procedure, with some modifications of the former text and including by reference the provisions of the civil code relating to the issuance and service of process and the rules of evidence, as follows:

AN ACT concerning the 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 assist the parties in obtaining justice.

SEC. 3. The proceedings for the appointment of an administrator, and all matters necessary for the full and final administration of the estate of a decedent, shall constitute one action. The proceedings for the admission of a will to probate, the appointment of an executor or administrator thereunder, and all proceedings necessary for the full and final administration of the property of the testator, whether disposed of under the terms of the will or not, shall constitute one action. The proceedings for the appointment of the guardian of the property of an incompetent person, and all matters connected with such guardianship, shall constitute one action.

SEC. 4. There shall be but one form of action under this code, which shall be called a probate action. In such action the party complaining shall be known as the plaintiff, and all other parties as defendants.

SEC. 5. A probate action may be commenced in the probate court by filing in the office of the clerk of the proper court a petition and causing a summons to be issued thereon.

SEC. 6. A copy of the petition need not accompany the summons, but the

defendant or plaintiff shall be entitled to a copy of the petition, or any other paper filed in the action, upon application to the clerk therefor; and the costs of such copy shall be taxed among the costs in the action.

SEC. 7. An action shall be deemed commenced within the meaning of this article, as to each defendant, at the date of the summons which is served on him, or on a codefendant who is a joint contractor, or otherwise united in interest with him. Where service by publication is proper the action shall be deemed commenced at the date of the first publication. An attempt to commence an action shall be deemed equivalent to the commencement thereof within the meaning of this article when the party faithfully, properly and diligently endeavors to procure a service; but such attempt must be followed by the first publication or service of the summons within sixty days.

SEC. 8. Every action must be prosecuted in the name of, and by some person having a substantial interest in obtaining the relief demanded in the petition.

SEC. 9. The action of an incompetent person must be brought by his guardian or next friend. When the action is brought by his next friend the court has power to substitute the guardian, or any person, as the next friend.

SEC. 10. In any proper case service may be made on minors, insane and other incompetent persons by a summons personally served or by publication notice as provided in this code, the same as upon other persons defendants in action. If there be a natural or legally appointed guardian for such minor, insane or incompetent person, service shall also be made in the same manner upon such guardian. If there be no legally appointed guardian for such minor, insane or incompetent person, or if such guardian fail to appear and answer in the action within the time fixed by the summons or publication notice, the court shall appoint a guardian *ad litem* for such minor, insane or incompetent person and such guardian *ad litem* shall file proper pleadings in such cause, which shall include a general denial of the plaintiff's petition, as shall put the plaintiff to proof of his cause of action. Such guardian *ad litem* shall receive such reasonable compensation as the court or judge before whom the action is pending, or tried, may order, the same to be taxed and collected as costs in the action. The appointment cannot be made until after the service of the summons in the action, and no default judgment shall be rendered against such minor, insane or incompetent person.

SEC. 11. The appointment may be made upon the application of the infant, if he be of the age of fourteen years, and apply within twenty days after the return of the summons. If he be under the age of fourteen, or neglect so to apply, the appointment may be made upon application of any friend of the infant, or on that of the plaintiff in the action.

SEC. 12. All persons having an interest in obtaining the relief demanded may be joined as plaintiffs.

SEC. 13. In all actions for the appointment of an administrator and the administration of an estate, and in all actions for the admission of a will to probate and the administration of an estate, all persons who would inherit the property of the decedent under the law of descents and distribution of this state, together with all persons named as legatees or devisees in such will, shall be made defendants, except such of them as may be plaintiffs in the action. Any person who enters an appearance in any action shall be a party to such action for the purpose of determining his rights therein. In all actions for the appointment of a guardian for an incompetent person, the incompetent person shall be made the defendant. Any person may be made a defendant who has, or claims, an interest in any matter connected with the action, or who is a necessary party to its complete determination or settlement of all matters connected with the action.

SEC. 14. Actions 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. Actions for the appointment of a guardian for the property of an incompetent person must be brought in the county in which the incompetent person is domiciled.

SEC. 15. The pleadings are the written statements by the parties of the facts constituting their respective claims and defense; the only pleadings

allowed are the petition by the plaintiff; the answer by the defendant; the reply by the plaintiff.

SEC. 16. The petition must contain: First, the name of the court and the county in which the action is brought, and the names of the parties plaintiff and defendant, followed by the word "petition." Second: A statement of the facts constituting the cause of action in ordinary and concise language and without repetition. Third: A demand for the relief to which the party supposes he is entitled.

SEC. 17. The answer shall contain: First: A general or specific denial of each material allegation of the petition controverted by the defendant. Second: A statement of any new matter constituting a defense; the defendant may set forth in his answer as many grounds of defense as he may have.

SEC. 18. The guardian of an incompetent person, or attorney for a person in prison, shall deny in the answer all of the material allegations of the petition prejudicial to such defendant.

SEC. 19. When the answer contains new matter the plaintiff may reply to such new matter, denying generally, or specifically, each allegation controverted by him. A defendant may, in his answer, request that he be given notice of any motions filed in said action, specifying particularly the matters regarding which he desires notice to be given, and in such event it shall be the duty of the clerk of said court to notify such defendant regarding such motions in the manner hereinafter provided for the giving of notice of motions.

SEC. 20. A motion is an application for an order addressed to a court or judge by any party to a suit or proceeding, or one interested therein, or affected thereby. All orders in probate actions subsequent to the appointment of an administrator or executor of the estate of a decedent, or subsequent to the appointment of a guardian for a minor, shall be made upon motion.

SEC. 21. Where notice of a motion is required it must be in writing and shall state the names of the parties to the action or proceeding in which it is made, the place where and the day on which it will be heard, and the nature and terms of the order or orders applied for. Such notice shall be served by depositing the same in the post office, not less than ten days before the time fixed for the hearing of said motion, addressed to the party to be notified, shall be sent by registered mail, and the receipt of the postmaster for such registered mail shall be *prima facie* evidence of service of such notice.

SEC. 22. The answer by the defendant shall be filed within twenty days after the day on which the summons is returnable. The reply to the answer shall be filed within thirty days after the day on which the summons was made returnable. The court or any judge thereof may, in his discretion and upon such terms as may be just, allow an answer or reply to be made, or other act to be done after the time limited by this act, or by an order to enlarge such time.

SEC. 23. Every pleading and motion must be subscribed and verified by the party or his attorney.

SEC. 24. All allegations contained in the petition shall be taken as true unless the denial of the same be verified by the affidavit of the party, his agent, or attorney.

SEC. 25. The provision of the code of civil procedure relating to the issuance and service of summons, or other process upon defendants in a civil action, shall be used and applied to the issuance and service of summons or other process upon defendants in a probate action.

SEC. 26. Issues of fact on the trial of a probate action, or the determination of any controverted matter there, shall be in accordance with the rules of evidence provided for civil actions by the code of civil procedure.

SEC. 27. On the filing of a petition plaintiff shall give security for costs, to be paid by him if the petition be not sustained.

SEC. 28. The court may, for good cause shown, continue an action at any stage of the proceedings upon such terms as may be just. When a continuance is granted on account of the absence of evidence, it shall be at the cost of the party making the application, unless the court otherwise order.

SEC. 29. A motion for a continuance on account of the absence of evidence can be made only upon affidavit, showing the materiality of the evidence expected to be obtained, and that due diligence has been used to obtain it, and where the evidence may be; and if it is for an absent witness the affidavit must show where the witness resides, if his residence is known to the party, and the probability of procuring his testimony within a reasonable time, and what facts he believes the witness will prove, and that he believes them to be true. If thereupon the adverse party will consent that on the trial the facts alleged in the affidavit shall be read and treated as the deposition of the absent witness, or that the facts in relation to other evidence shall be taken as proved to the extent alleged in the affidavit, no continuance shall be granted on the ground of the absence of such evidence.

SEC. 30. Immediately after the issues are made up in any probate action the court shall set such action for trial at a time not less then ten days nor more than thirty days after such time, and shall give notice to all parties to such action in the manner herein prescribed for the giving of notice of the hearing of the motions.

SEC. 31. After a date has been fixed for the trial or hearing of a matter, and on or before such date, the court may, for good cause shown and upon such terms as it deems proper, continue the trial or hearing to some future date.

SEC. 32. All trials and hearings under the provisions of this code shall be by the court without a jury.

SEC. 33. The court shall, on timely request of any party, make findings of fact and conclusions of law in writing in any trial or hearing.

SEC. 34. A judgment is the order entered in an action which finally determines the rights of all the parties thereto.

SEC. 35. Every direction of a court or judge, made and entered in any action and not included in a judgment, is an order.

SEC. 36. Every judgment in a probate action, and every order which affects the substantial rights of a party, is appealable by a notice of appeal.

SEC. 37. All appeals from the probate court in probate actions shall be by notice of appeal, specifying the order, ruling, decision, or judgment complained of, and shall be filed in the court from which the appeal is taken within ten days from the date of such order, ruling, decision, or judgment; except, if the appeal be from an order admitting a will to probate the notice of appeal may be filed within six months from the date of such order.

SEC. 38. The party appealing shall file a good and sufficient bond in the court from which the appeal is taken to secure the costs of the appeal, unless, by reason of his poverty, he is unable to give security for costs, which fact shall be shown by affidavit filed in such court at the time the appeal is taken, and thereupon the appeal shall be deemed perfected.

SEC. 39. The judge from whose court the appeal is taken shall forthwith make up a complete transcript of all proceedings before him regarding the matter, or matters, appealed from, and transmit the same, together with all the papers in the case, to the clerk of the district court of his county. The district court shall 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. 40. The taking of the appeal provided for in this act shall not stay proceedings for the enforcement of the judgment or order appealed from unless the party appealing shall, within ten days from the date of the judgment or order, enter into an undertaking with at least one good and sufficient surety, to be approved by the judge of the probate court, and not less than double the amount of the judgment and costs, conditioned that he will prosecute the appeal without unnecessary delay and satisfy the judgment which may be rendered against him.

SEC. 41. The supreme court is authorized to change, modify, or add to any of the provisions of this code by rule of court.

SEC. 42. This act shall take effect and be in force from and after its publication in the statute book.

Conclusion.

This completes our sixth annual report. The members of the Judicial Council have done a great deal of work endeavoring to ascertain facts, in studying the data collected, and in making recommendations for the improvement of the functioning of our judicial system. Recommendations made directly to the courts, in the main, have been adopted, although at times with some reluctance, due in part to inertia and the natural hesitancy about changing from a customary method of transacting business to another one, even though it may be an improved one. Our recommendations to the legislature have not received the attention they deserve. Perhaps this is because of the comparatively short time of the session and the many other things presented for the consideration of legislators. We hope this defect can be overcome to a substantial degree at the approaching session. We are making a number of important recommendations which require legislative action to be carried out. In making them we have studied primarily the needs of the people. The recommendations, if carried out, will unify our system of courts, simplify procedure therein, prevent overlapping of jurisdiction, result in substantial economy, and enable the business of the courts to move more promptly and with more efficient results.

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