KANSAS JUDICIAL COUNCIL BULLETIN

OCTOBER, 1934 PARTS 2 AND 3—EIGHTH ANNUAL REPORT

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Other Organizations, and leading citizens generally throughout the state,
For the improvement of our Judicial System and its more efficient functioning.

KANSAS JUDICIAL COUNCIL BULLETIN

Published Quarterly by the KANSAS JUDICIAL COUNCIL, Topeka, Kan.
OCTOBER, 1934

FOREWORD

The press of other business on members of the Council delayed and finally prevented our getting out the July BULLETIN. This issue of the BULLETIN is devoted to the summary of the work of the supreme court for the year ending June 30, 1934, with tabulations of the summaries for seven years. It contains a discussion of matters of immediate interest, which need not be enlarged upon here, and also contains proposed amendments to our constitution and statutes previously worked out in definite form by the Council and submitted to the legislature. We are convinced all these measures should be passed upon favorably by the legislature, and that such action will be given whenever time can be found to devote to it.

Our December issue will contain the list of motion days of the various district courts for 1935. In addition to that it will be devoted almost exclusively to probate courts, procedure therein, and the law of estates. We are now collecting data from the probate courts throughout the state which is being summarized and tabulated for that BULLETIN. We are also devoting such time as we can spare to it to the laws pertaining to estates of decedents and of minors and other incompetents and the procedure in probate court. Much work already has been done upon these questions, not only by members of the Council, but by bar associations and other attorneys in the state who appreciate fully the need of a thorough revision of our statutes pertaining to those matters. However, we find it to be a large task, and yet we hope to get it worked out in time to summarize it more completely in our December BULLETIN and to have the measures prepared to be introduced in our next session of the legislature.

Summary of the Work of the Supreme Court

The following is a summary of the work of the supreme court for the year ending June 30, 1934, and of cases pending on that date:

There were 427 appealed civil cases disposed of within the year ending June 30, 1934. Of this number 149 were dismissed without having been presented on the merits and 278 were submitted on the merits, 169 were affirmed, 91 reversed, and in 18 the judgment of the trial court was modified.

The court also disposed of 52 appealed criminal cases. Of this number 30 were dismissed without having been presented on the merits and 22 were submitted on the merits and written opinions filed. Of this number 19 were affirmed and 3 reversed.

The court also disposed of 42 original cases, of which 11 were dismissed before having been presented on the merits, 26 were submitted on the merits and written opinions filed and 5 were submitted on the merits and decided without written opinions.

This makes a grand total of 522 cases disposed of by the supreme court, of which 190 were dismissed without having been presented on the merits, 327 were submitted on the merits and written opinions filed, (in 10 cases there were rehearings, making 2 opinions in each of those cases) and 5 were submitted on the merits and decided without written opinions.

The cases pending on July 1, 1934, were as follows: 307 appealed civil cases, 38 appealed criminal cases, and 21 original cases.

Of the 327 cases submitted to the supreme court on their merits and in which written opinions were filed (in 10 cases there were rehearings, making 2 opinions in each of those cases with a total of 337 opinions filed), in 12 cases the opinions were filed before the first regular opinion day, in 301 cases on the first regular opinion day, in 17 cases on the second opinion day, in 5 cases on the third opinion day, in 1 case on the 4th opinion day, and in 1 case on the 6th 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.

In the appealed civil cases disposed of within the year ending June 30, 1934, and pending on that date, the time between the date of judgment appealed from and the date notice of appeal was filed in the trial court is as follows: Within 10 days, 203 cases; 10 to 30 days, 139 cases; in 1 to 2 months, 96 cases; in 2 to 3 months, 73 cases; in 3 to 4 months, 59 cases; in 4 to 5 months, 40 cases; in 5 to 6 months, 81 cases; over 6 months, 38 cases; time not stated, 5 cases.

In the appealed civil cases disposed of within the year ending June 30, 1934, and pending on that date, the time between the date notice of appeal was filed in the trial court and the date notice of appeal was filed in the supreme court is as follows: Within 5 days, 286 cases; in 5 to 10 days, 141 cases; in 10 to 20 days, 136 cases; in 20 to 30 days, 74 cases; in 1 to 2 months, 54 cases; in 2 to 3 months, 18 cases; in 3 to 4 months, 9 cases; in 4 to 5 months, 2 cases; over 5 months, 12 cases; time not given, 2 cases.

In the appealed civil cases disposed of within the year ending June 30, 1934, and pending on that date, the time between the date the notice of appeal was filed in the supreme court and the date deposit for costs was made is as follows: Within 5 days, 177 cases; in 5 to 15 days, 128 cases; in 15 to 30 days, 181 cases; in 1 to 2 months, 63 cases; in 2 to 3 months, 22 cases; over 3 months, 18 cases; time not stated, 145 cases.

In the appealed civil cases disposed of within the year ending June 30, 1934, the time between the date the notice of appeal was filed in this court and the date the case was submitted on its merits is as follows: Within 3 months, 7 cases; in 3 to 4 months, 3 cases; in 4 to 5 months, 23 cases; in 5 to 6 months, 29 cases; in 6 to 9 months, 140 cases; in 9 to 12 months, 51 cases; in 12 to 15 months, 16 cases; in 15 to 18 months, 8 cases; in 18 months to 2 years, 1 case.

In the appealed criminal cases disposed of within the year ending June 30, 1934, and pending on that date, the time between the date of the judgment appealed from and the date the notice of appeal was filed in the trial court is as follows: On the same day, 19 cases; not the same day but within 5 days, 9 cases; from 5 to 10 days, 7 cases; from 10 to 20 days, 16 cases; from 20 to 30 days, 12 cases; from 1 to 2 months, 14 cases; from 2 to 3 months, 5 cases; from 3 to 4 months, 1 case; from 4 to 5 months, 1 case; from 6 to 12 months, 5 cases; from 18 months to 2 years, 1 case.

In the appealed criminal cases disposed of by the supreme court within the year ending June 30, 1934, and pending on that date, the time between the date the notice of appeal was filed in the trial court and the date it was filed in the supreme court is as follows: Within 5 days, 41 cases; in 5 to 10 days, 16 cases; in 10 to 20 days, 15 cases; in 20 to 30 days, 8 cases; in 1 to 2 months, 5 cases; in 2 to 3 months, 2 cases; in 4 to 5 months, 1 case; in 6 months to 1 year, 2 cases.

In the appealed criminal cases disposed of within the year ending June 30, 1934, and pending on that date, the time between the date notice of appeal was filed in the supreme court and the date deposit for costs was made is as follows: Within 5 days, 5 cases; in 5 to 15 days, 3 cases; in 15 to 30 days, 36 cases; in 1 to 2 months, 15 cases; in 2 to 3 months, 4 cases; over 3 months, 3 cases; time not stated, 24 cases.

In the appealed criminal cases disposed of within the year ending June 30, 1934, the time between the date the notice of appeal was filed in the supreme court and the date the case was submitted on its merits, is as follows: Within 3 months, 1 case; in 3 to 4 months, 2 cases; in 4 to 5 months, 5 cases; in 6 to 9 months, 5 cases; in 9 to 12 months, 7 cases; in 12 to 15 months, 1 case; in 15 to 18 months, 1 case.

In the appealed civil cases disposed of within the year ending June 30, 1934, the costs in 427 cases reported on is as follows: Minimum amount $3.10; maximum, $39.50; aggregate, $5,322.60; average, $12.46.

In the appealed criminal cases disposed of within the year ending June 30, 1934, the costs in 52 cases reported on is as follows: Minimum amount $4.95; maximum, $35.85; aggregate, $623.05; average, $11.98.

In the original cases disposed of within the year ending June 30, 1934, the costs in 42 cases reported on is as follows: Minimum, $3.90; maximum, $493.05; aggregate, $1,440.67; average, $34.30.

In the year ending June 30, 1934, the court disposed of 1,007 motions, of

which 37 were withdrawn before presented, 770 were allowed, 168 denied, and 32 were pending on July 1, 1934.

There were pending in the supreme court July 1, 1934, a total of 366 cases, compared with 333 on the same date in 1933; 357 in 1932; 393 in 1931; 397 in 1930; 376 in 1929; and 341 in 1928.

Supreme Court: Seven-year Summary

In the seven years the clerk of the supreme court has furnished us detailed information of the work of that court, it has disposed of 4,177 cases, of which 1,319 were dismissed before final submission, and 2,858 were submitted on the merits and written opinions filed.

SEVEN-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	331
	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
1933	Appealed, civil	459	135	324
	Appealed, criminal	66	35	31
	Original	23	5	18
	Totals	548	175	373
1934	Appealed, civil	427	149	278
	Appealed, criminal	52	30	22
	Original	42	11	31
	Totals	521	190	331
	Grand totals	4,177	1,319	2,858

Of the 2,858 cases submitted, there were 5 cases decided without written opinions. Written opinions were filed in 52 cases before the first regular opinion day; 2,598 on the first regular opinion day; 180 on the second; 21 on the third; 8 on the fourth; 3 on the fifth and 1 on the sixth regular opinion day after

DISPOSITION OF APPEALED CASES BY WRITTEN OPINIONS

Year Ending June 30.	Cases.	Affirmed.	%	Reversed.	%	Modified.	%	Total.
1928.....	Appealed, civil.....	261	68	104	27	21	5	386
	Appealed, criminal.....	52	91	5	9	0	0	57
1929.....	Appealed, civil.....	238	69	94	27	15	4	347
	Appealed, criminal.....	39	91	4	9	0	0	43
1930.....	Appealed, civil.....	258	72	92	25	11	3	361
	Appealed, criminal.....	31	78	9	22	0	0	40
1931.....	Appealed, civil.....	258	72	73	20	28	5	359
	Appealed, criminal.....	28	82	6	18	0	0	34
1932.....	Appealed, civil.....	267	74	80	22	16	4	363
	Appealed, criminal.....	24	83	5	17	0	0	29
1933.....	Appealed, civil.....	215	66	87	27	22	7	324
	Appealed, criminal.....	26	84	5	16	0	0	31
1934.....	Appealed, civil.....	169	61	91	33	18	6	278
	Appealed, criminal.....	19	86	3	14	0	0	22
Totals..	Appealed, civil.....	1,666	69	621	26	131	5	2,418
Totals..	Appealed, criminal.....	219	86	37	14	0	0	256
	Grand totals.....	1,885	.....	658	.....	131	.....	2,674

they were submitted. In 10 cases there were rehearings, making two opinions in each of those cases. 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; July 1, 1933, 333; July 1, 1934, 366. The following data may be of interest:

APPEALED CIVIL CASES DISPOSED OF

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

Year Ending June 30.	In 1 mo.	1-2 mos.	2-3 mos.	3-4 mos.	4-5 mos.	5-6 mos.	After 6 mos.	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
1933.....	168	83	60	34	29	48	19	441
1934.....	219	45	38	30	26	45	22	425
Totals.....	1,335	545	412	276	256	368	145	3,337

APPEALED CRIMINAL CASES DISPOSED OF

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

YEAR ENDING JUNE 30.	10 days.	10-30 days.	1-2 mos.	2-3 mos.	3-4 mos.	4-5 mos.	5-6 mos.	After 6 mos	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
1933	32	13	8	3	3	0	2	3	64
1934	19	15	8	4	0	1	0	5	52
Totals	269	93	57	23	10	7	5	26	490

APPEALED CIVIL CASES DISPOSED OF

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

YEAR ENDING JUNE 30.	10 days.	10-20 days.	20-30 days.	1-2 mos.	2-3 mos.	3-4 mos.	4-5 mos.	5-6 mos.	After 6 mos.	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
1933	247	87	47	48	8	8	3	2	0	450
1934	266	68	39	28	9	6	2	8	0	426
Totals	1,883	640	300	251	85	68	19	17	6	3,269

APPEALED CRIMINAL CASES DISPOSED OF

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

YEAR ENDING JUNE 30.	10 days.	10-20 days.	20-30 days.	1-2 mos.	2-3 mos.	3-4 mos.	4-5 mos.	5-6 mos.	After 6 mos.	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
1933	32	11	7	6	5	1	0	2	0	64
1934	37	9	4	1	1	0	0	0	0	52
Totals	258	97	57	47	25	16	9	8	5	522

Recognition of Foreign Attorneys

At times our trial courts have difficulty in setting and disposing of cases when the only attorney representing a party is a nonresident of the state. Attorneys in this state representing the other party in the litigation have experienced similar difficulty. In some states a foreign attorney is required by statute to have associated with him a local attorney upon whom service of copies of pleading, notices of hearings and the like may be made. In some other states and in some, if not all, of the federal districts rules of court to the same effect have been promulgated. It is suggested that such a rule be promulgated in this state. We would like advice from the judges and attorneys on the advisability of asking the supreme court to promulgate a rule reading as follows:

"An attorney residing outside of this state, in good standing as an attorney at the place of his residence, will be recognized as an attorney by the courts of this state, for any action or proceeding in court, only if he has associated with him as attorney of record an attorney of this state residing in the county in which the action or proceeding is pending, upon whom service may be had in all matters connected with such action or proceeding proper to be served upon an attorney of record."

Unification of the Bar

The question of unity of action among the lawyers of the state respecting such matters as they of necessity have as a common interest and purpose, such as the admission of new members of the bar, the investigation of questionable practices of those previously admitted, with appropriate discipline or disbarment, the prevention of the practice of law by unauthorized persons, and in general improving and maintaining the standards of the profession, has been the subject of much discussion in recent years, not only in this state but elsewhere. In some states statutes have been enacted, usually spoken of as statutes for the incorporation of the bar. However, the entire subject is a judicial one and properly falls in the field of the judicial branch of our government. There is no reason why all of it cannot be handled by appropriate rules promulgated by the court. Indeed, much of it is so handled now in this state. Last spring the supreme court of Missouri appointed a committee of attorneys to investigate the question and make recommendations to the court. This was done. As a result of these investigations and recommendations the supreme court of Missouri has promulgated four rules, numbers 35, 36, 37 and 38, effective November 1, 1934.

The first of these, rule 35, sets out and promulgates canons of ethics, most of which were adopted from those of the American Bar Association, and adds: "Nothing herein contained shall be construed as a limitation upon the power of the courts to reprimand and discipline any member of the bar for conduct which, in the opinion of the court, is fraudulent, unlawful and unethical."

Rule 36 provides the machinery and sets up procedure for the hearing of any complaints against any lawyer charged with professional misconduct, and for the final disposition by the court of such complaints. Rule 37 requires each practicing attorney of the state to pay an annual fee of $3 to create a fund to

make the rules effective, and rule 38 deals with the admission of new attorneys to the bar.

In this state our rules respecting the admission of new attorneys to the bar are already of such a high standard that a statewide unification of the bar is not especially needed for that purpose. The other purposes to be accomplished by such a unification of the bar, however, are needed and might well be combined with our provisions for the admission of new attorneys in such a manner as to cover the entire subject completely. We would be glad to have the views of the attorneys throughout the state as to the advisability of unifying the bar for its better protection and to render it a more useful unit in the administration of justice. Perhaps the wording of the rules adopted in Missouri should be modified in some respects to be best adapted to our needs, but those are details which can be worked out if we once reach the agreement that the measure as a whole should be carried out.

Pleading an Alibi

In the prosecution of offenses the commission of which requires the personal presence of the criminal at the time and place of the crime—for example, highway robbery—prosecuting officers frequently are confronted with evidence on behalf of defendant in support of an alibi. This evidence is presented under the general issue raised by the defendant's plea of not guilty and at a time in the trial after evidence in chief on behalf of the prosecution is completed. Then for the first time the prosecuting attorney learns where defendant claims to have been when the crime was committed. It is impossible for him then to investigate the facts and produce evidence in rebuttal. The result frequently is a miscarriage of justice, for, as it is later learned, the evidence given in support of the alibi has been fabricated in whole or in part. While prosecutions for perjury would lie for false evidence in support of an alibi, there are practical difficulties in such a prosecution, as a result of which they are not often brought.

This situation has been so general and has continued for so long in this state that a defense of alibi is looked upon with suspicion by the public generally and by jurors, and this fact is sometimes enlarged upon by prosecuting officers. The result of this is that honest evidence in support of an alibi is given little credence, and on the other hand it sometimes happens that one guilty of a heinous crime escapes merited punishment.

To remedy both of these defects it has been suggested that one charged with crime, the nature of which requires the presence of the criminal at the time and place of the crime, who contemplates offering evidence in support of an alibi, should plead that fact, setting out where he was at the time the crime is alleged to have been committed, and perhaps the names of the witnesses by whom he expects to support the plea, a sufficient length of time before the case comes on for trial to enable the prosecuting attorney to investigate the facts. In support of this suggestion it is argued an investigation by the prosecuting attorney of the plea of alibi might result in a dismissal of the case, if he thought the alibi well sustained, and on the other hand would enable the prosecuting officer to prevent a failure of justice when it was improperly raised.

This is a comparatively new thought in criminal procedure, but that is no

good reason for not requiring it in this state if we deem it to be needed. We are told that three states recently have enacted statutes of this kind. The official draft of the code of criminal procedure by the American Law Institute contains no suggestion of such a plea, but does contain a provision (§ 235) for a similar plea by one who proposes to show in evidence that he was insane or mentally defective at the time of the alleged offense. Our statute (R. S. 62-1532) relating to criminal insane has enabled us to get away from the difficulties inhering in pleas of insanity by defendants in criminal cases. We mention these matters only to show that such a special plea may be provided for in a code of criminal procedure, or statutes may be enacted pertaining to a particular defense which have the effect of eliminating the practical difficulties arising from having such special defenses presented under the general issue of not guilty.

If a statute were enacted in this state requiring defendant in such a case to make a special plea of alibi it would be necessary to require the prosecution, either in the information or in a bill of particulars, to fix definitely the time and place of the offense charged, for naturally a defendant cannot well plead that he was at some other place when an alleged crime was committed when he does not know with certainty the time and place it is claimed the crime was committed. Requiring the prosecuting attorney to fix definitely the time and place of an alleged crime has its practical difficulties in some cases. It is possible, however, that this question of pleading could be worked out, if given careful attention, in such a way as to be fair both to the prosecution and to one charged with crime.

Depositions on Behalf of the Prosecution in Criminal Cases

In the prosecution of criminal cases it sometimes happens that the prosecuting attorney finds material evidence in possession of witnesses who are nonresidents of the state, or of a witness in this state who, by reason of illness or some other good cause, cannot be produced at the trial. Because of our constitutional provision, common to the constitutions of most states, to the effect that one charged with crime shall be allowed "to meet the witness face to face," it has been thought the testimony of such witnesses could not be used. This has resulted in a serious handicap to the prosecution in many cases, and no doubt in some cases has resulted in the nonprosecution or verdicts of not guilty of those actually guilty of serious crime. In a number of states statutes have been enacted to provide for the taking of testimony of such witnesses in harmony with the constitutional provision. A number of the decisions on these statutes are collected in the annotations 90 A. L. R. 368. We deem it proper to enact such a statute in this state. Perhaps the statute of Wisconsin, herein set out, should be changed in some respects before it is adopted in this state, but it serves well as a basis of discussion, and we would appreciate the views of judges and attorneys as to the advisability of adopting a similar statute.

In *State, ex rel. Drew, v. Shaughennsy,* 249 N. W. 522, 90 A. L. R. 368, the supreme court of Wisconsin sustained an order of a trial judge of that state for the taking of depositions by the state in a criminal action at Chicago. The case was one charging embezzlement over a term of years, in which the prosecution set out that certain persons in Chicago were in possession of docu-

mentary evidence necessary in the prosecution. The statutes involved read as follows:

"Section 326.06, Stats., provides:

"(1) In any criminal or quasi-criminal action or examination in a court of record or before a judge thereof, depositions may be taken when allowed by an order of the court or presiding judge; such order may be made only when the court or judge is satisfied that due diligence has been used in making such application, that the person whose deposition is wanted is a material witness, and is in imminent danger of death, or that he resides without the state, at the time of the examination or the trial, and that his attendance cannot, by the use of due diligence, be procured upon the examination or the trial. Such application by the defendant shall be accompanied by proof of notice to the district attorney of the time and place it is to be presented; and such an application on the part of the state shall be accompanied by proof of a like notice to the defendant or his attorney of record. The order shall direct whether the deposition shall be taken on oral or written interrogatories.

"(2) When the state procures such an order, its notice (in addition to what is required by the section) shall inform the defendant that he is required to personally attend at the taking of such deposition, and that his failure so to do shall constitute a waiver of his right to face the witness whose deposition is to be taken; and failure to attend shall constitute such waiver unless the court or judge is satisfied, when the deposition is offered in evidence, that the defendant was physically unable to attend. If the defendant be not then in jail he shall be paid witness fees for travel and attendance; but, in case the defendant be in jail, the sheriff, at the request of the district attorney, shall at the expense of the county have the defendant in attendance at the taking of such deposition. If the defendant is in custody, leave to take such deposition on behalf of the state shall not be granted, unless all states in which the sheriff will travel with the defendant in going to the place where such deposition is to be taken shall have conferred upon the officers of this state the right to hold and convey prisoners in and through them."

Appeals in Criminal Cases

There has been discussion lately about the delay which sometimes occurs between the trial of a criminal case in the district court and its submission to the supreme court on appeal. Instances have been pointed out in which it is apparent that there was considerable unnecessary delay. Our study of the matter indicates several causes contribute to this result. Our statute fixes no definite time in which a motion for a new trial shall be filed in a criminal case, except that it shall be before sentence. The records of some cases show a lapse of several weeks, and even months, between the date of the verdict of guilty and the time a motion for a new trial is finally determined and sentence pronounced. After this is done and notice of appeal is served there are cases in which there is a delay of several weeks, or even months, in sending the notice of appeal with copy of journal entry to the clerk of the supreme court. Necessary transcripts are not always ordered promptly, which fact may force a continuance of the case in the supreme court. We hear no criticism with respect to the promptness with which the case is disposed of by the supreme court after it is submitted. The difficulty comes from the delay in the disposition of the motion for a new trial and sentence in the trial court and in the preparation of the appeal for submission to the supreme court. To avoid such unnecessary delays we are suggesting a statute embodying in substance the following:

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

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

Proceeding on appeal: (*a*) If defendant does not seek to have execution of his sentence stayed, or release from custody on bond pending his appeal, he may appeal at any time within two years from the date of the sentence by serving notice of appeal on the county attorney of the county in which he was tried and filing the same with the clerk of the district court. He shall then prepare and present his appeal in accordance with the statutes and rules of court applicable thereto. (*b*) If defendant seeks stay of execution of the sentence, or release from custody, or both, pending his appeal, he shall serve notice of his intention to appeal on the county attorney and file the same with the clerk of the court, order a transcript of the testimony needed to present his case on appeal, see that the journal entry of trial and sentence is filed, and cause copies of such notice of appeal, with proof of service, order for transcript and journal entry to be filed with the clerk of the supreme court within ten days after sentence. On the application of defendant the supreme court, or any justice thereof, shall order execution of the sentence stayed, and if the offense is bailable after conviction shall fix the amount of the bond and direct that it be approved by the supreme court, or any justice thereof, or its clerk, or by the trial court, or its clerk. Defendant shall thereafter prepare and present his appeal in accordance with statutes and rules of court applicable thereto.

If the state desires to appeal in any case mentioned in R. S. 62-1703, the county attorney, within ten days after the ruling complained of, shall serve notice of appeal upon the defendant and file the same with the clerk of the court, order a transcript of testimony needed to present the case on appeal, see that the journal entry of the ruling complained of is filed, and cause copies of such notice of appeal with proof of service, order for transcript and journal entry, to be filed with the clerk of the supreme court within ten days after the notice of appeal is filed with the clerk of the district court. On application by the county attorney or attorney-general, and due notice to defendant, the supreme court may make such order respecting the custody or bail of defendant pending the appeal as the circumstances of the case justify. The state shall thereafter prepare and present its appeal in accordance with statutes and rules of the court applicable thereto.

Estate of Decedent Without Known Heir or Will

Several cases have arisen in recent years involving the question of how to handle the estate of one who dies leaving no heir or will known to his business associates or immediate acquaintances. Our constitution provides that the proceeds of all estates of persons dying "without heir or will" shall go to the support of the common schools. Even though one dies without known heir or will, persons may later be found, or show up, who are able to establish the fact that they are heirs of the decedent, in which event they are and should be entitled to the estate or its proceeds, for it is only the estate of one who dies without heir or will which, by our constitution, goes to the school fund.

Our statutes on the question (R. S. 22-933 to 935; 22-1201 to 1206; 67-238), while dealing with the subject, leave much uncertainty about what action should be taken, and by whom, and in what court, for the preservation and disposition of the estate of one who dies without known heir or will. Many other states have statutes dealing specifically with the matter. Our statutes upon the question should be clear enough that responsible officials should know what steps to take and in what court they should be taken. In view of our constitutional provision that probate courts shall have such probate jurisdiction and care of estates of deceased persons as may be prescribed by law, we see no reason why the original jurisdiction of all questions pertaining to such an estate could not be vested exclusively in the probate court, with the right of appeal, of course, to those aggrieved at its ruling. We suggest a statute on the question substantially as follows:

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

The administrator so appointed shall qualify by taking an oath and giving bond in such sum as the court may direct for the faithful administration of the estate. He shall cause notice to be published of his appointment, which notice shall give the name of the decedent and recite that he died without known heirs or will, and shall invite those who claim as heir, or under a will of decedent, to present their claims to the probate court. The court shall take into possession all property of the decedent of whatever kind or character, and wheresoever situated, and shall prepare and file an inventory thereof. The court shall direct the personal property to be converted into cash as expeditiously as possible, and also shall direct the administrator to collect the rents, income, or profits, and to pay the taxes upon and care for the real property. Creditors of decedent may present claims against the estate, which claims shall be considered and disposed of as similar claims against estates of other decedents. If no one appears to establish his claim as an heir, devisee, or legatee of the decedent within two years of the appointment of the administrator, the court shall direct the real property of the decedent to be sold for cash, and at that time also shall order to be sold any of the personal property of the decedent in the hands of the administrator, and the estate shall be closed.

The proceeds of the estate shall be paid to the state treasurer and become temporarily a part of the state school fund. The state school fund commissioners shall invest and handle this money as other moneys of the state school fund, except that it shall be kept as a temporary fund until ten years after it shall have been first received, at which time it shall be covered into the permanent school fund of the state, provided no one in the meantime has established his right thereto as an heir, devisee, or legatee of the decedent.

One who claims the estate, or some part thereof, as heir of decedent, or upon any other ground, shall present his claim therefor to the probate court not later than ten years after the administrator was appointed, or such claim shall be forever barred. If he establishes his claim it shall be allowed by the court. If two or more such claimants have claims pending at the same time, the court shall determine which of such claimants has established his claim, and the share or portion of the estate each is entitled to receive. If the estate is in the hands of the administrator at the time of such determination the same, less claims previously allowed and cost of administration, shall be delivered or paid to those found entitled to received it. If at the time of such determination the proceeds of the estate have been delivered to the state treasurer, and are temporarily a part of the state school fund, the school fund commissioners shall pay to such claimants the sum or portion of the estate the court has adjudged they are entitled to receive. A party aggrieved at the ruling or judgment of the probate court may appeal to the district court as other appeals are taken in the probate court. If the estate or its proceeds have been delivered or paid to one whose claim to the estate, or some part thereof, as an heir of decedent, or on some other ground, and whose claim was established, and later, but within ten years after the administrator was appointed, someone else presents to the probate court a claim for the estate, or some portion thereof, as heir of decedent, or upon some other ground, and upon a hearing establishes his claim, neither the state nor the school fund commissioners shall be liable to such claimants for moneys they previously had paid out, but the party in whose favor such later claim was established shall have a cause of action in the district court against the party to whom such payment was made with respect to their respective rights to the property or its proceeds.

Upon the hearing of all claims against such an estate by a creditor, or one claiming as an heir, or in any other capacity, the county attorney shall appear in opposition to the claim. In all such cases the burden of proof shall be upon the claimant, and care shall be exercised by the county attorney and by the court that fraudulent or unjust claims be not established.

The above suggested statutory provisions would take the place of R. S. 22-933 to 935; 22-1201 to 1206. We have not attempted as yet to draft this proposed measure in final form. Perhaps it should contain some provision not suggested above, or those suggested should be modified. The half-dozen or more substantial estates of this class which our courts have had to wrestle with in the last three or four years make it clear that our present statutes pertaining to the question are entirely inadequate.

Proposed Constitutional and Statutory Changes

We have heretofore prepared and caused to be introduced in the legislature a proposed amendment to art. 3 of our constitution relating to the judiciary; also several bills designed to improve the functioning of our judicial system. These measures and the purposes they are designed to accomplish have been discussed in our previous Reports and Bulletins. We shall not take space here to repeat this discussion. All of them have received much favorable comment, and each of the proposed statutes has been reported favorably by one or more of the legislative committees to which it was referred. Several of them have passed one house of the legislature, and because they reached the other house late in the session when its members had their time taken up with other important matters, they failed of final passage. They will be presented for consideration to the next regular session of the legislature. We print them at this time to direct attention to them and with the hope that time will be found for their passage.

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, district courts, 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 district 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 also 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 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 election, 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 become vacant immediately.

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 be not 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 other 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 1936. 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.

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, 1937.

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, 1936, 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, 1936, 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 treasury 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, 1936, 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, 1937. At the general election of 1936, 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, 1937, 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, 1937: 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 courts 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.

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.

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.

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 challenge 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 challenge 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.

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.

AN ACT relating to foreign judgments of divorce, amending section 60-1518 of the Revised Statutes of 1923, and repealing said original section.

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

SECTION 1. That section 60-1518 of the Revised Statutes of 1923 be amended so as to read: Section 60-1518. A judgment or decree of divorce rendered in any other state or territory of the United States, or in any foreign country, in conformity with the laws thereof, shall be given full faith and credit in this state; except, that in the event the defendant in such action, at the time of such judgment or decree, was a resident of this state and had not been served personally with process, or did not personally appear and defend the action in the court of such foreign state, territory, or country, all matters relating to alimony, or to the property rights of the parties and to the custody and maintenance of the minor children of the parties, shall be subject to inquiry and determination in any proper action or proceeding brought in the courts of this state within two years after the date of the foreign judgment or decree, to the same extent as though the foreign judgment or decree had not been rendered.

SEC. 2. That section 60-1518 of the Revised Statutes of 1923 be and the same is hereby repealed.

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

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 preceding 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.

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.