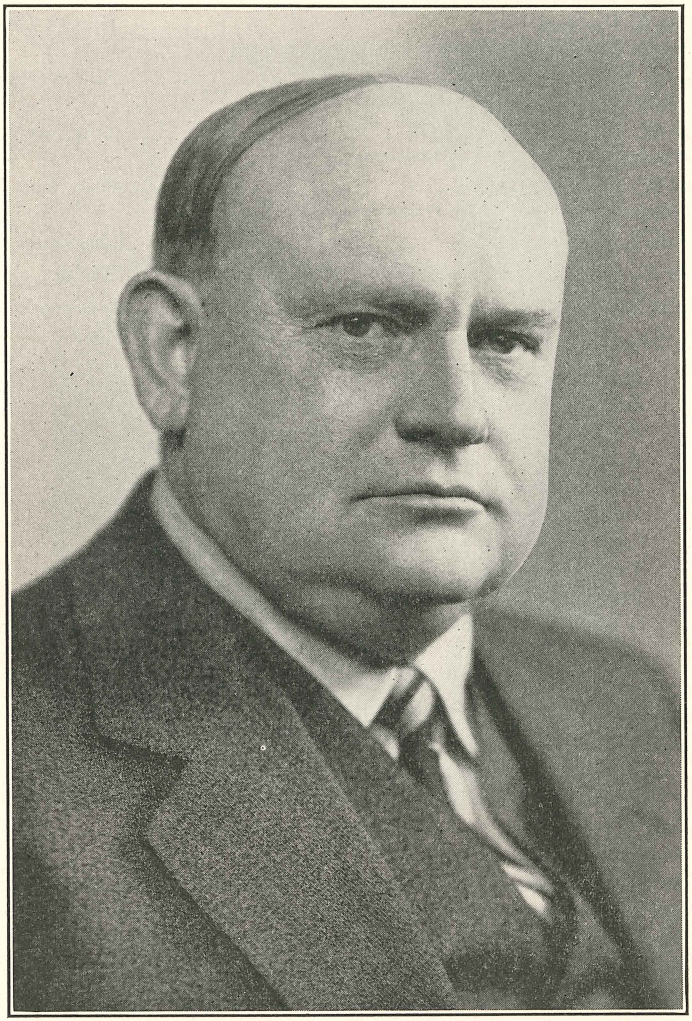
KANSAS JUDICIAL COUNCIL BULLETIN

JULY, 1938 PART 2—TWELFTH ANNUAL REPORT



AUSTIN M. COWAN

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For the improvement of our Judicial System and its more efficient functioning.

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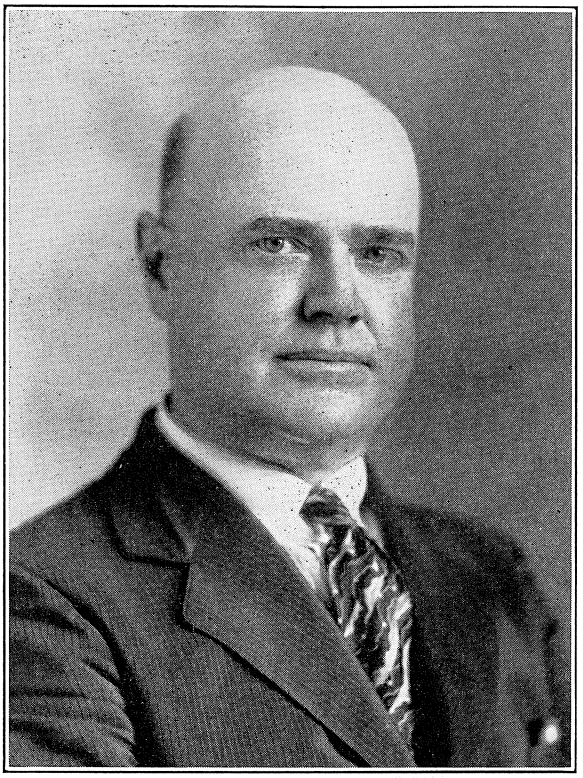
RAY H. BEALS

1881-1938

Born and reared in Stafford county, his home was at St. John. Always thrifty and self-reliant, when he was ready to study law he rode his bicycle to Lawrence and entered Kansas University Law School, from which he was graduated in 1903, having worked at sundry tasks to pay his expenses. Returning to St. John to practice law, he was elected four times as county



RAY H. BEALS

attorney, having previously served as assistant in that office, and at various times was city attorney of several of the cities in that county. He enjoyed a good general law practice, and was admitted to practice before the supreme court of the United States. In 1924 he was elected judge of the twentieth judicial district, composed of Barton, Rice and Stafford counties, where, owing to oil developments, there has been an unusual amount of important litigation; and in August, 1933, he became a member of the Judicial Council. These

latter positions he held until his death, June 11, 1938. He was a member of the Southwestern Kansas and of the State District Judges' Associations, and of the Southwestern Kansas and State Bar Associations. He filled all these positions with honor and with unusual ability. He loved the law, its study, and its proper application to human activities and enterprises. Few, if any, equaled him in his familiarity with our statutes and decisions. Friendship was one of his dominating qualities. He liked people, especially young people, and constantly sought to aid them. Always industrious and zealous to do his work well, he was a valuable member of our Council. We have lost a friend and an able co-worker.

FOREWORD

With this issue of our BULLETIN we introduce a new member of the Judicial Council. On the passing of Judge Beals, the chief justice appointed as a member of the Council, Hon. Edgar C. Bennett, of Marysville, who, since January 1, 1932, has been judge of the district court of the twenty-first judicial district. Although a comparatively young man, Judge Bennett has made an outstanding name for himself as a jurist. He is interested in work of the character we have and do, and we are sure that he will make a valuable member of the Council.

As a frontispiece of this issue we have the portrait of Austin M. Cowan, who has just completed his year of service as president of the State Bar Association. We are favored also with an article by him on "Some Observations on Instructions to the Jury." Mr. Cowan is especially well qualified to treat this subject from a practicing lawyer's viewpoint. For more than a quarter of a century he has been in the active practice of law and has tried many cases in the state and federal courts. In fact, his practice has taken him into many of the judicial districts of state as well as to neighboring states, hence his article comes to us from the viewpoint of a practicing lawyer and is all the more valuable for that reason. We are sure that it will be read with interest and profit.

At a recent meeting of the Northwestern Kansas Bar Association at Salina, our chairman read a paper on "The Growing Importance of Our Probate Court." Excerpts from this paper which may be of interest to the people of the state are embodied in an article in this issue.

For some time we have been having an increasing number of inquiries for an index covering reports and bulletins of the Council. One is published in this issue. It is the work of Mr. Charles L. Hunt, of Concordia, who is really the father of the Judicial Council idea in this state, and who has been a member of it since it was created. The compilation of this index was an exacting task which he has performed with painstaking care. We trust it will be found useful.

Our tentative draft of the probate code, published in our April BULLETIN, is receiving careful attention from many of the lawyers and groups of lawyers throughout the state, as we had hoped it would. We have received a number of letters from attorneys and groups of attorneys making constructive, helpful suggestions. These and such others as we received, together with our own

study of the subject, will receive careful attention of the members of the Council at a meeting to be held this month and also a meeting to be held in September. It is to be hoped that we can get the draft revised in the form we think it proper to present to the legislature so that it can be published in our October, or certainly in our December BULLETIN, together with notes and citations pertaining to the separate sections.

We are collecting data from clerks of the district court, and probate and county courts this year, as well as from the supreme court. These reports are already coming in much more rapidly, and apparently compiled with greater care than we have ever had heretofore. These reports are now being summarized and tables prepared from them for publication in later issues of our BULLETIN.

Some Observations on Instructions to the Jury

By AUSTIN M. COWAN, of Wichita, Kan.

Lack of experience in a given field frequently appears to be the prime requisite to a dissertation on the subject. As I have never had occasion to instruct a jury, I necessarily feel that I am fully qualified to speak with regard to the matter.

While the code of civil procedure does not require that general instructions to the jury be in writing unless requested by either party, yet it has been the general rule in the state courts to instruct in writing. (R. S. 60-2909 [5].)

It seems to me that written instructions lack something in concreteness and application to the particular facts of a case. Usually they contain too many abstract statements of the law. I have been surprised to find how few jurors know the plaintiff from the defendant in a lawsuit, yet almost all requested instructions, as well as those given by the court, refer to the parties throughout as "plaintiff" and "defendant." It would seem that a reference to the parties by name, or as "defendant Smith" or "plaintiff Jones," in a major part of the instructions would assist in getting the jurors acquainted with the actual parties plaintiff and defendant.

The practice of copying the pleadings into the instructions as a statement of the claims of the parties is likewise confusing to jurors. The better practice, in my opinion, is to abstract the pleadings, leaving out all unnecessary allegations, and then state the matters admitted and the points on which there is a conflict of evidence. It might be that under such a procedure some of the issues would be erroneously stated or omitted, but the district judge has only to submit this part of the instructions to counsel and ask for any suggestions to cure any defects in this respect. If counsel do not object, they waive any right to complain thereafter. Oral instructions interspersed with illustrations certainly have the advantage of bringing to the jury the law applicable to the facts in the case, but oral instructions have other disadvantages which apparently outweigh the merits of that system. There is something about a written instruction that makes it cold and distant with relation to the drama which has been enacted in the courtroom in the trial of a case. Many times

I have endeavored to draw a written instruction so that it would sound life-like and real, but try as I may, the effort has been unsuccessful. Personally, I should like to see some of the district judges try instructing the juries orally. If all the issues are not covered, counsel have an opportunity to correct the court on the deficiencies, if any, while the jurors are still in the jury box.

This matter of requested instructions and objections by counsel brings us to another interesting phase of this subject, viz., the necessity of objecting. The fifth subdivision of G. S. 60-2909 provides in part:

"Before reading the instructions to the jury, the court shall, when requested, submit the same to counsel on either side and give counsel a reasonable time to suggest modifications thereof."

From this it would appear that an attorney is not required to suggest modifications unless he has requested submission of the instructions of the court to him for his perusal. However, there appear to be decisions of our court to the contrary. The same subdivision requires the court to give general instructions to the jury. For many years it was thought that it was the duty of the court to instruct on all issues generally and failure so to do constituted reversible error, although no instructions had been requested by the complaining party. (*Insurance Co. v. Despain,* 77 Kan. 654, l. c. 662; *Railway Company v. Woodson,* 79 Kan. 567.)

However, if a party wished an instruction on a particular phase of the case it was his duty to request it, and if he did not request it and the instructions of the court covered it in a general way, there could be no error predicated on the instructions.

In *Lambert v. Rhea,* 134 Kan. 10, the supreme court quoted from *Foley v. Crawford,* 125 Kan. 252, and in addition thereto said:

"Although plaintiffs complain that instructions were incomplete and should have included some additional matter, they did not request or suggest any additions or modifications of those given. Plaintiffs stood by without making objections, and not asking for modifications or additions they allowed the court and defendant to understand that they were satisfied with the charge. If a party thinks an instruction is not as full as it might be he should in fairness to the court point out the lack and request the additional matter, and if he fails to do this he has no right to complain."

Both in the Lambert case and the Foley case the complaint was that the instructions were incomplete and should have included some additional matter. The objections, on appeal, did not appear to have been to errors in the instructions given.

In *Williams v. Hanston State Bank,* 140 Kan. 260, the supreme court appears to have gone further, for, after quoting from *Foley v. Crawford,* supra, and *Lambert v. Rhea,* supra, it said:

"The instructions appear to be correct so far as they pertain to the issues on which the case was tried by the parties. The failure of the defendant to object to the instructions, as given, or to suggest modifications of them, bars him from complaining that additional instructions were not given, *or of those given.*" (Italics ours.)

Thus it would appear for the first time our supreme court adhered to the doctrine that failure to object to the instructions given precluded an appellant from complaining of errors in those actually given by the trial court.

In *Birdsong v. Meyers,* 141 Kan. 140, l. c. 143, the supreme court said:

"Moreover, the objection now raised to the instructions was not made at the trial; and if the matter were more serious than it is, we cannot discern how reversible error could be predicated upon it, since no request for alteration, modification or amplification of the instructions was raised for the trial court to consider before the case went to the jury. In *Skaer v. Bank,* 126 Kan. 538, 268 Pac. 801, this court, in discussing the statute governing instructions to juries (R. S. 60-2909), said:

> " 'The statute gives to counsel the right to inspect the instructions before they are given to the jury. If on inspection it is discovered that the instructions are not what counsel desires them to be, he has an opportunity to prepare special instructions to correspond with his wishes and submit them to the court with the request that they be given to the jury. Failure to do either of these things renders unavailing any complaint that the instructions were not as full and complete as they ought to have been.'

"In *Williams v. Bank,* 140 Kan. 260, 36 P. 2d 84, it was said:

> " 'The failure of the defendant to object to the instructions, as given, or to suggest modifications of them, bars him from complaining that additional instructions were not given, or of those given.'

"Sundry other criticisms of the instructions are urged on our attention, but the rule of trial practice just discussed sufficiently disposes of them."

The supreme court, however, failed to note that the doctrine set forth in the case of *Skaer v. Bank,* 126 Kan. 538, was apparently changed on rehearing in the same case under the title of *Skaer v. American National Bank,* 127 Kan. 682. The first opinion in the Skaer case was delivered July 7, 1928. The appellant (defendant below) had objected to instruction No. 3 of the court with reference to "accommodation to the parties" as being "misleading, ambiguous and prejudicial" and not sufficiently broad in its definition of what was meant by the word "parties." The judgment of the court below was affirmed on the basis of the quotation above set out in *Birdsong v. Meyer.* Petition for rehearing was filed both by the appellant and by *amici curiæ* who were interested in the question of practice on the matter of the necessity of objecting to instructions. The rehearing was granted, and on March 9, 1929, the second opinion (127 Kan. 682) was delivered, reversing the case because of the error in instruction No. 3. Between the dates of the two opinions, the State Bar Association held its annual meeting in Hutchinson, Kan., on November 16 and 17, 1928. Due to the first decision in the Skaer case, the committee on amendments of laws submitted at that meeting a supplemental report in which it suggested that the fifth subdivision of the Revised Statutes, section 60-2909, be amended by changing the period at the end of the section to a comma and adding the following:

"But the failure of counsel to request the reading of such instructions shall not cure any defect or error therein, nor shall such failure prevent a party from having any errors in said instructions reviewed by the appellate court." (Proceedings of the Bar Association, November, 1928, pages 37, 38.)

The report was adopted. There was some discussion on the floor of the meeting, but much more discussion of the question outside. However, in view of the reversal of the Skaer case in March, 1929, the matter of the proposed amendment was dropped, inasmuch as it was thought that the amendment was then unnecessary and that unless the instructions were shown to counsel by the court, parties were under no obligation to object to the same or suggest modi-

fications. It would now appear that the supreme court has reached a different conclusion and that formal objections, as are made in the federal court, must be entered.

Of course, as said in *Lambert v. Rhea,* 134 Kan. 10, if the trial court has submitted its instructions to counsel in advance, fairness requires that counsel make known their objections and suggested changes. But I regret that the supreme court appears to have gone further and adopted the federal practice of requiring counsel (where the instructions have not been submitted) to make objections and suggested modifications before the jury retires. I do not believe that such was the purpose of the code of 1909, which, in so many words, requires the trial court to give general instructions to the jury, which general instructions presumably must cover all the issues in the case.

In this connection it is interesting to note that prior to the adoption of the new federal rules (except in the seventh circuit) in making objections to instructions given by the court, it was not necessary to give the reasons for the objections or to point out modifications or changes. It was sufficient to merely refer to that portion of the instructions to which the party objected. Now, under the new federal rules of civil procedure, while the objections to instructions need not be taken in the presence of the jury, they must be quite specific. Rule 51 reads:

"At the close of the evidence, or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury."

I decry any adoption by our state court of the federal practice in this respect. It seems to me that the above Rule 51 is a step backwards into the period of unnecessary exceptions and objections. If the trial judge has any doubt about his instructions he can protect himself fully by presenting them to counsel before they are read to the jury, and then if counsel fail to make any objections or suggest modifications, counsel certainly are estopped to complain. But to require counsel where instructions are not so submitted, to object is too technical. Query: If it is necessary to object to instructions of the court where the same are not presented to counsel before reading to the jury, must such objections be made in the presence of the jury and before the jury retires?

Clearly the objections should be made before the jury retires or otherwise the objections and suggested modifications would be of no aid to the court. As to whether the objections should be made in the presence of the jury, it would seem immaterial as the objections and suggested modifications are for the benefit of the court. A discussion of the question in the presence of the jury might be confusing. Where such discussions have taken place, the same were usually held in chambers. It may be that I have misinterpreted the recent decisions of our supreme court. I hope that I am in error in this respect, but I fear I am not.

Many, no doubt, have had the same experience which the writer had some

years ago in a neighboring state where the practice requires very specific objections to instructions. It took us three fourths of a day to impanel a jury and introduce the evidence, but it required two and one-half days, with the assistance of three stenographers, to make objections to the instructions considered necessary under the practice of that state. May we not come to such a condition in this state?

If objections and requests for modification are necessary, then it becomes doubly important to prepare with care requested instructions. Such requests perform a two-fold duty. In the first place, they set forth to the trial court the views of counsel as to the law applicable to the facts, but in the second place they form a basis on which to claim error by the refusal of the trial court to give them. Generally, the same question can be raised either by objection to the instructions given by the court or by a refusal of the court to give an instruction covering the point involved. Hence, if the point is rather difficult to express in an objection or if there is fear that the objection may be overlooked in the haste of the trial, it is well to prepare requested instructions on all important phases and then if the trial court refuses to give a requested instruction on a particular phase, the point can be raised on appeal on the refusal of the court to instruct, even though no objection has been made to the court's instructions on that point. In drafting requested instructions, it is good practice to cover each phase by a separate instruction, because if the requested instruction covers more than one phase, the danger of error in it is thereby increased. If a requested instruction is erroneous in part, the trial court is justified in refusing to give it. On the other hand, it is frequently advisable to cover the same point by several different forms of requests, as in this manner the views more favorable to the party requesting can be presented in successive requests. If a party makes a request which is incorrect and the court gives such requested instruction, such party, on appeal, cannot complain of the error.

It is not necessary that instructions submit to the jury for its determination a phase of the case as to which there is no dispute in the evidence or which is conceded. (*Mitchell v. Derby Oil Company,* 117 Kan. 520.) Neither is it proper to submit to the jury as an issue a phase on which there is no evidence unless it be in the form of an instruction as to the duty of the jury on failure of proof of a necessary element.

Sometimes there are two theories on which a case is submitted to the jury, such as express and implied warranty. In such a situation, even though the instruction on one theory is erroneous, yet if there is evidence to sustain the other theory and the instruction thereon is correct, the erroneous instruction becomes harmless in the absence of special findings of the jury to indicate the theory which it adopted. (*Thomas v. Warrensburg,* 92 Kan. 576.)

Time and effort carefully spent in preparing requested instructions will pay greater dividends in the long run than the same amount of time and effort spent on any other phase of the case. If one has doubt as to the correctness of an instruction given, it is well to request the submission of a special question covering the same phase. The error of an incorrect instruction has many times been cured by the answer of the jury to a special question on the same matter.

Of all the phases of our civil code the matter of instructions as actually

given is probably the weakest. Something should be done to liven up the instructions, to make them more concrete and understandable to a jury. I have heard many judges speak with pride of the shortness of their instructions, but these short instructions frequently leave the jury in the dark as to important phases of the questions. Short instructions, like short briefs, are to be commended, but they are worse than none at all if they do not cover the issues fully, because they direct the jury's attention to certain features of the lawsuit without calling attention to the other phases. Such instructions tend to unduly emphasize certain matters involved.

The suggestions I have made are from a practitioner's viewpoint. I may be guilty of overemphasis as to the type of instructions complained of. I would not have the jury dominated by the court's instructions, but I would have the jury fully informed of all matters of law involved, presented in language and by illustrations which the jury can understand.

The Importance of Our Probate Courts

By W. W. HARVEY

When our constitutional convention met at Wyandotte (now Kansas City), in July, 1859, and formulated the constitution on which the state was admitted into the Union a year and a half later, it provided specifically for four classes of court: *First,* the supreme court, of which there should be one for the entire state; *second,* district courts, of which five districts were created to serve the thirty-five counties then organized; *third,* probate courts, of which there should be one for each county; and *fourth,* justices of the peace courts, two for each township. In other words, the judicial setup was one court for the state at large, one court for a district composed of several counties, and two local courts. While jurisdiction of these respective courts was not definitely fixed in the constitution, it is clear the two local courts were designed for different classes of business; the probate courts generally for the administration upon estates, and justice of the peace courts for other immediate local needs, and statutes making that clear were soon enacted. It is worthy of note that the number and jurisdiction of justice of the peace courts was one of the half dozen most important questions discussed in the constitutional convention. This discussion disclosed that what was thought to be needed were local courts, open and available to the people at all times, for such matters as were not appropriate to take directly into the district court or the supreme court.

While district courts have been increased in number and the practice now insures a sitting of the court in each county as often as once a month, local needs have caused the legislature to add to the duties of the probate court, or the probate judge. A partial list of these added duties may be found in *In re Johnson,* 12 Kan. 102, and *State, ex rel., v. Anderson,* 114 Kan. 297, and will not be repeated here. In addition to that, estates administered upon have become more numerous and more valuable, and the questions involved in them have become more numerous and intricate as the years pass and our civilization becomes more complex. On the other hand, the justice of the peace courts have been fading out of the picture as useful judicial units. In ten cities of the state, having an aggregate population of 440,637, city courts

have been created and justice of the peace courts so reduced in jurisdiction as to put them out of business; and in thirty-two counties of the state, having a total population of 411,658, county courts have been created, under an optional statute, which makes the probate judge the judge of the county court. This statute does not limit the jurisdiction of justices of the peace, but as a rule in those counties the justice of the peace business is taken to the county court, with the result that justices of the peace courts in those counties have little or nothing to do. So, among almost half the population of our state, justice of the peace courts are either specifically or practically eliminated. In the remainder of the state only about fifteen percent of the number of justices of the peace are elected who could be chosen under our constitution.

This historical review discloses that the time is coming, indeed is here in some counties, when it will be recognized that the wants and needs of our people as to local courts is for a well-equipped court in each county—call it by whatever name you choose—with jurisdiction to handle all the business the probate court proper now handles, and also such matters now or formerly handled by justices of the peace.

It has been said that the probate court is fully as important to the people of a county as is the district court. Let us see what the figures show, so far as they are available. On July 1, of last year, there were pending in the probate courts of this state 11,544 estates of decedents in which there was property being administered upon of the value of $117,157,183. In many of these estates separable controversies arose, any one of which would be comparable to an action in district court. In addition to that, in probate courts in this state there were pending at the same time 8,461 guardianship estates of property of the aggregate value of $15,995,337, making a total of 20,005 estates pending, involving property of the aggregate value of $133,152,540. At the same time there were pending in the district courts of the state 14,842 cases. We have no record of the value of the property involved in those cases. Some of them, of course, did not involve property, but from general information of those matters we may safely say the amounts involved in the 20,005 estates pending in probate court greatly exceeded the amounts involved in the 14,842 cases pending in district courts, indeed, several times as much.

Another comparison, which at first thought may not be so obvious, yet I believe it to be true. If the people of any county in this state had to get along without the probate court of their county, or without the supreme court of the state, for a period, say of ten years or twenty-five years they could get along for that time better without the supreme court than they could without the probate court. The principal appellate function of a supreme court is to interpret constitutional and statutory provisions and pertinent general rules of law so they will apply uniformly throughout the state and to see that trials in the lower courts have been conducted in harmony with law. The state of Georgia had no supreme court for the first fifty years of its existence as a state. The circuit courts, with jurisdiction corresponding to our district courts, were the courts of last resort. We are told that for several years the people of the state did not find themselves seriously inconvenienced by this arrangement, but as the years passed it came about that some statutes were held valid by some of the circuit courts and invalid by others, and certain

principles of law were held to be applicable in some circuits and not in others. The result was, the laws of the state became a patchwork of circuits. For a time this was attempted to be remedied by a conference of circuit judges, but this proved to be insufficient; hence a supreme court was created. Obviously, had there been no probate courts for that length of time the hardships of the people would have been much greater. When death comes to an owner of property a suitable tribunal for the administration upon and the distribution of his estate is a present necessity.

Do not understand me to say the probate courts are more important than are our district courts, or the supreme court. The functions of these three courts differ materially in some respects, so that comparison of relative importance, when all their respective functions are considered, is difficult. Each of them is a court of record, created by our constitution, and each has its special field of operation. The point I seek to make is that of the three courts of record the probate court is of no less importance to the citizens of any county than is either of the other two.

This brings us to a consideration of the importance of courts in our scheme of government. Because of its brevity and completeness I repeat a statement previously used. Our government, as we have organized and endeavor to maintain it, is designed to be of benefit to our people; our judicial system is a branch of our government; therefore it should be so constructed and operated as to be as beneficial to our people as it is reasonably possible to make it. Every controverted question of consequence arising among our people respecting their domestic relations, their relations with other people and with the government and its several subdivisions, with respect to their contracts, their business transactions, their ownership, use, disposition of property, and its devolution, eventually find their way into the courts. An adequate judiciary requires a system of courts consisting of one or more trial courts in each county, open and available to the people at all times, presided over by a competent jurist, with adequate quarters and equipped with court officials, appropriate to enable it to transact the business presented to it with reasonable promptness. If there is more than one class of local courts their jurisdiction and functions should be clearly defined.

My view, in common with that of many others who have given it thought, concerning the needs of the people of our state with respect to local courts, is that there should be one court in each county having substantially the jurisdiction of our present probate court, and also substantially the jurisdiction now provided by law for justice of the peace courts, except that the jurisdiction in civil actions should be increased from $300 to $1,000; that this court should be open all the time and available to the people, and that it should be equipped with a personnel, a place to work, and such clerical assistance as would enable it, with reasonable promptness and efficiency, to handle the business brought before it. This court should have county-wide jurisdiction, but for the need of persons away from the county seat, such as local merchants, there should be a tribunal, such as magistrate courts, sought to be created by Senate bill No. 493 of the 1937 legislative session, in which actions for small amounts, or criminal matters, might be initiated without the necessity of those interested taking time to go to the county seat. We are approaching this situation in the county courts already organized in thirty-

two counties, and to some extent by the city courts; but this should be made state-wide, and the jurisdiction of the court and the procedure therein in the several counties should be made uniform. In my opinion such local courts, together with the district courts and the supreme court, substantially as we now have them, would make an adequate system of courts for this state.

It is one thing to have a structure of a system of courts suitable to the needs of the state, and another thing to have them equipped with a personnel, equipment and a procedure adequate to handle the business properly. The experience of mankind with courts over the centuries has developed the wisdom of a few principles so sound that they may be said to have become maxims. One of these is that whatever the judicial structure may be no court can be more efficient than its presiding officer. The truth of this maxim becomes more evident every year. At the beginning of our history as a state there was no educational qualification required by the constitution or our statutes for judges of any of our courts, or for county attorneys; but years ago it was found necessary, or at least prudent, to provide such qualifications for justices of the supreme court, judges of the district court and county attorneys. There are many evidences to sustain the view that this should be done for probate judges. With the vast amount of business in those courts, and the many legal questions arising, many of them as intricate and as difficult of solution as those which arise in any court, it would seem prudent to require some qualifications in addition to honesty and good citizenship. A jurist who has to depend upon the recommendation of an interested party, or of his attorney, as to the wisdom or justice of an order to be made, indeed works under a serious handicap. That serious losses arise from that fact to heirs, beneficiaries under wills, and creditors of a decedent, and wards in guardianship matters, is a fact well known to everyone familiar with the subject. I am not so concerned as some may be where one who presides over the probate court learns enough to enable him to have a sound, independent judgment upon the questions which arise before him as I am that he learn it somewhere. Perhaps the fault in this respect now existing in this state cannot be located at one place. Perhaps a part of it is chargeable to our law schools, which until six or eight years ago never had in their courses of study anything directly bearing upon the administration of estates, and even now, as I understand it, their courses of study lack much of being thorough and complete on that subject. Perhaps some of it is chargeable to the attorneys as a class, perhaps some of it to the people as a whole, perhaps some to the probate judges. But whatever be the cause, the fact remains that generally speaking the efficiency of probate courts will depend primarily upon the learning and ability of the probate judge.

Another maxim which comes to us from the experience of ages, and accords with common sense and fair dealing, is that when any important matter is to be determined by a court all those having an adverse interest should have notice of the contemplated action and an opportunity to be heard. The inadequate method under which that is done under the present procedure for handling business in probate courts has resulted, and continues each year to result, in substantial financial loss to heirs, beneficiaries under wills, and others interested in estates.

Another bit of wisdom which has come to us from the experience of ages

is that no individual should ever attempt to act in the dual capacity of an adviser of those interested in a court proceeding and as a jurist to pass upon the merits of the question involved. Early in the history of this state a prohibition against doing so was written into our statutes with respect to probate and justice of the peace courts. Word comes to us that this appears to have been forgotten or purposely ignored in some localities. The maxim is as sound with reference to the work of probate courts as it is with respect to the work of any other court, and the more thoroughly it is realized and followed the more just and efficient our courts will be.

Another truism worthy to be taken into account is that ordinarily one gets about the type of service for which he pays. Possibly that is more true in private employment than it is in public service, but I am convinced that the salary of a public official has much to do with the capability of those who will seek the place. Except in a few of the largest of our counties, where the need of an adequate salary for the probate judge has been impressed upon the members of the legislature, I think the probate judges throughout the state are grossly underpaid. The fact someone will seek the office irrespective of the low salary is not an answer to this question. Perhaps if the salaries of the chancellor of our university, the governor of the state, or the justices of the supreme court were placed at $100 a month there would be applicants for the positions.

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(ELEVEN YEARS—1927 TO JULY 1, 1938)

By CHARLES L. HUNT

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Decedents' estates, administration of real property, act recommended	18	April	1935
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Decedents' estates, administration of real property, act recommended, bill drafted	191	Dec.	1936
Decedents' estates, administration without known heir or will, amendment recommended, bill drafted	72	Dec.	1934
Decedents' estates, allowance and payment of claims, bill drafted, statute amended	11	April	1937
Decedents' estates, control of property and payment of debts, bill drafted, statute enacted	9	April	1937
Decedents' estates, management of property chargeable with debts, amendment recommended, bill drafted	20	April	1935
Decedents' estates, management of property chargeable with debts, act recommended	75	Dec.	1934
Decedents' estates, management of property chargeable with debts, amendment recommended, bill drafted	192	Dec.	1936
Demands against estates, barring of, law amended, chap. 180, Laws 1933, sec. 1; sec. 22-702, G. S. 1935	13	April	1933
Estates of Absentees, Administration of, article by Samuel E. Bartlett	91	Oct.	1935
Estate of decedent without known heir or will, administration of; amendment; chap. 168, Laws 1935, secs. 1, 2, 3, 4, 5, 6; secs. 22-1207 to 22-1212, inc., G. S. 1935	9	April	1935
Executors, administrators, guardians and trustees, act proposed by Samuel E. Bartlett	79	Dec.	1934
Guardianship, revised draft of law concerning, by Samuel E. Bartlett	20	April	1934
Law concerning clerks, assistants and records amended; chap. 165, Laws 1933, sec. 1; sec. 19-1102, G. S. 1935	12	April	1933
Nonresident Decedents, Administration of Estate of, article by Ray H. Beals	16	April	1934
Partnership, Winding up of, article by Chester Stevens	98	Oct.	1935
Payment of fees, reports to Judicial Council, bill drafted, statute amended	12	April	1937
Practice and procedure in, proposed new draft (draft by Samuel E. Bartlett)	6	April	1938
Probate Code, article by Hon. W. W. Harvey, chairman	77	Oct.	1934
Probate law, suggested redraft, article by Samuel E. Bartlett,	16	April	1933
Procedure, new, suggested by Samuel E. Bartlett	14	April	1936
Procedure recommended	27	Dec.	1931
Proposed code of procedure, comments on	87	Oct.	1932
Proposed Code of Procedure, Draft of, by Hon. Roscoe H. Wilson	88	Oct.	1932
Proposed statutes concerning, address by Samuel E. Bartlett,	8	April	1936
Recommended act creating, bill drafted	138	Dec.	1932
Recommended bill relating to, bill drafted	26	Dec.	1929
Records concerning	15	Dec.	1928

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Sale of Mineral Rights under Direction of, article by Ray H. Beals	75	July	1937
Suggestions Bar Association relating to jurisdiction appointment administrators	17	Dec.	1929
Tabulations, miscellaneous information, year ending 7-1-34	32	April	1935
Tabulations, miscellaneous information, year ending 7-1-36	22	April	1937
Tabulations, miscellaneous information, year ending 7-1-37	52	April	1938
Work of, summarized to 7-1-28	62	Dec.	1928
Work of, to 7-1-28, by tabulation	122	Dec.	1928
Work of, to 7-1-30, by tabulation	107	Dec.	1930
Work of, summarized to 7-1-30, for state as a whole	71	Dec.	1930
Work of, summarized to 7-1-34	86	Dec.	1934
Work of, summarized to 7-1-34, by tabulation	36	April	1935
Work of, summarized to 7-1-36, by counties (76 counties)	81	Oct.	1936
Work of, summarized to 7-1-36, by counties (continued from October report)	196	Dec.	1936
Work of, summarized to 7-1-36, for state as a whole	230	Dec.	1936
Work of, summarized to 7-1-36, by tabulation	26	April	1937
Work of, summarized to 7-1-37, by counties	212	Dec.	1937
Work of, summarized to 7-1-37, for state as a whole	343	Dec.	1937
RECOMMENDATIONS:			
Alibi, pleading of, criminal procedure, bill drafted	68	Dec.	1934
Appeals, civil actions to supreme court, bill drafted, statute amended	8	April	1937
Appeals, criminal actions, amendment, bill drafted	187	Dec.	1936
Appeals, criminal actions to supreme court, bill drafted, statute amended	6	April	1937
Appeals, justice, city and county courts, civil cases, bill drafted	23	Dec.	1929
Appeals, justice, city and county courts, civil cases, bill drafted (Senate bill No. 170)	196	Dec.	1931
Appeals to supreme court, civil actions, amendment recommended, bill drafted	14	April	1935
Attorneys, foreign, recognition of, rule proposed	28	April	1936
Books and records of courts of record, bill drafted	24	Dec.	1929
Books and records of courts of record, bill drafted	188	Dec.	1931
Books and records of courts of record, bill drafted	140–141	Dec.	1932
Books and records of courts of record, bill drafted	52	Oct.	1934
Civil code, amendment relating to new trials and appeals, bill drafted	142	Dec.	1932
Civil code, amendments to	141	Dec.	1932
Clerks of court, compensation for reports to Judicial Council, new act, bill drafted	194	Dec.	1936
Conspiracy, act defining (Senate bill No. 128), bill drafted	187	Dec.	1931
Conspiracy, defined, bill drafted	22	Dec.	1929
Courts, inferior to district courts, bill drafted, act creating (Senate bill No. 153)	191	Dec.	1931
Courts, inferior to district courts, bill drafted	50	Oct.	1934
Courts, inferior to district courts, amendment relating to	138	Dec.	1932
Courts, inferior to district courts, creation of, bill drafted	26	April	1935
Courts, inferior to district courts, creation of, bill drafted	183	Dec.	1936
Courts, miscellaneous	17	Dec.	1928
Criminal cases, procedure in, suggested	28	Dec.	1931
Criminal procedure, defendant's testimony, bill drafted	70	Dec.	1934
Criminal procedure, joint trial of defendants, amendment, bill drafted	24	April	1936
Criminal procedure, joint trial of defendants, amendment, bill drafted	188	Dec.	1936

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Criminals, apprehension, pursuit, coöperation of state, act suggested to Judicial Council	39	April	1936
Death penalty, first-degree murder, bill drafted, statute amended	13	April	1937
Decedents' estates, administration of real property, amendment, act recommended	75	Dec.	1934
Decedents' estates, administration of real property, act recommended	20	April	1935
Decedents' estates, administration of real property, new act, bill drafted	191	Dec.	1936
Decedents' estates, administration without known heir or will, bill drafted	72	Dec.	1934
Decedents' estates, allowance and payment of claims, bill drafted, statute amended	11	April	1937
Decedents' estates, control of property and payment of debts, bill drafted, statute enacted	9	April	1937
Decedents' estates, management of property chargeable with debts, act recommended	75	Dec.	1934
Decedents' estates, management of property chargeable with debts, act recommended, bill drafted	18	April	1935
Decedents' estates, management of property chargeable with debts, amendment, bill drafted	192	Dec.	1936
Depositions for state, criminal cases, bill drafted	66	Dec.	1934
Depositions in criminal actions, amendment, bill drafted	16	April	1935
Depositions in criminal actions, amendment, bill drafted	25	April	1936
Depositions in criminal actions, amendment recommended, bill drafted	189	Dec.	1936
District courts, concerning	13	Dec.	1928
Divorce and alimony, pleadings in actions for	54	Oct.	1934
Divorce actions, pleadings in	190	Dec.	1931
Divorce, foreign judgments of, amendment, bill drafted	54	Oct.	1934
Divorce, pleadings in, amendment, bill drafted	23	Dec.	1929
Divorce, pleadings, amendment, bill drafted	145	Dec.	1932
Eminent domain, procedure, bill drafted	155	Dec.	1932
Extradition, interstate, act concerning suggested to Judicial Council, bill drafted	31	April	1936
Garnishment, bond in	27	Dec.	1931
Joint trials of defendants, criminal actions amendment, bill drafted	15	April	1935
Judges and clerks, payment for making reports, bill drafted, statute amended	12	April	1937
Judges pro tem, appointment of by chief justice, bill drafted,	65	Dec.	1934
Judicial article, concurrent resolution drafted, revision	14	Dec.	1930
Judicial article, second concurrent resolution, revision	185	Dec.	1931
Judicial article, third concurrent resolution, revision	35	July	1932
Judicial article, fourth concurrent resolution, revision	63	Oct.	1932
Judicial article, fifth concurrent resolution, revision	133	Dec.	1932
Judicial article, sixth concurrent resolution, revision	48	Oct.	1934
Judicial article, seventh concurrent resolution, revision	29	April	1935
Judicial article, eighth concurrent resolution, revision	195	Dec.	1936
Judicial system, improvements in	9	Dec.	1928
Jurors and witnesses, amendment proposed, criminal code, bill drafted	144	Dec.	1932
Jurors and witnesses, challenge to, competency of, criminal procedure, amendment	21	Dec.	1929
Jurors and witnesses, challenge to, competency of, criminal procedure (Senate bill No. 169), bill drafted	195	Dec.	1931
Jurors and witnesses, challenge to, competency of, criminal procedure	54	Oct.	1934
Jurors, number of, civil cases, amendment, bill drafted	190	Dec.	1936
Jurors, number of, criminal actions, amendment, bill drafted,	190	Dec.	1936

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Jurors, selection of by board of jury commissioners, bill drafted	18	Dec.	1929
Jurors, selection of by jury commissioners, bill drafted (Senate bill No. 141)	188	Dec.	1931
Jurors, selection of by board of jury commissioners recommended, bill drafted	146	Dec.	1932
Jurors, selection of by jury commissioners, amendment, bill drafted	55	Oct.	1934
Jury trials, civil actions, number of jurors, amendment, bill drafted	17	April	1935
Jury trials, criminal cases to court or six jurors, bill drafted,	148	Dec.	1932
Jury trials, criminal cases to court or six jurors, bill drafted,	56	Oct.	1934
Jury trials, criminal actions, number of jurors, amendment, bill drafted	18	April	1935
Jury trials, less than twelve jurors, amendment, bill drafted,	148	Dec.	1932
Jury trials, number of jurors, amendment	56	Oct.	1934
New trials and appeals, amendment relating to, bill drafted	53	Oct.	1934
New trials and appeals, bill drafted	19	Dec.	1929
New trials and appeals, bill drafted (Senate bill No. 166)	193	Dec.	1931
New trials and appeals, criminal actions, amendment, bill drafted	71	Dec.	1934
New trials and appeals, criminal actions, bill drafted	12	April	1935
New trials and appeals, criminal actions, amendment, bill drafted	22	April	1936
New trials and appeals, criminal actions, amendment, bill drafted	185	Dec.	1936
Paroles, coöperation of state, act recommended to Judicial Council, bill drafted	37	April	1936
Probate, county and magistrate courts, bill drafted, creating,	26	Dec.	1929
Probate, county and magistrate courts, creation of, bill drafted,	138	Dec.	1932
Probate courts, concerning	15	Dec.	1928
Probate courts, procedure	27	Dec.	1931
Probate procedure, code of, bill drafted	160	Dec.	1932
Redemption of real property, amendment, bill drafted	149	Dec.	1932
Rule concerning nonresident attorneys promulgated, effective 9-1-36	50	July	1936
Rule requiring statement district court whether evidence considered	9	Dec.	1931
Rules, district courts, amendment adopted	7	Dec.	1931
Rules, filing of papers, promulgated, effective 9-1-36	50	July	1936
Rules, supreme court, amendment adopted	5	Dec.	1931
State crime bureau, creation of recommended to Judicial Council, bill drafted	26	April	1936
Supreme court, amendment of rules 6 and 8	6	Dec.	1930
Supreme court; concerning	11	Dec.	1928
Supreme court, employees, bill drafted	25	Dec.	1929
Supreme court employees, relating to, bill drafted (Senate bill No. 147)	190	Dec.	1931
Voluntary appearances, rule concerning	6	Dec.	1930
Witnesses from other states in criminal cases, act relating to recommended to Judicial Council, bill drafted	29	April	1935
REDEMPTION:			
Article, "The Redemption of Real Property sold on Execution or Orders of Sale" (bill proposed), by George Austin Brown	66	Oct.	1932
Article, "The Redemption Period in Foreclosures," by George Austin Brown	21	April	1932
Extension of periods of, Act 1933, article by Schuyler C. Bloss	6	April	1933
Real property, amendment recommended, bill drafted	149	Dec.	1932

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Concerning Northwestern Kansas Bar Association	7	April	1932
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Concerning Southwestern Kansas Bar Association	7	April	1932
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Fees of judges and clerks for making, bill drafted, statute amended	12	April	1937
Of Judicial Council to Kansas State Bar Association, by W. W. Harvey	89	July	1937
Report of Judicial Council to Bar Association	9	Dec.	1927
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Judicial article, first concurrent resolution, revision recommended	14	Dec.	1930
Judicial article, second concurrent resolution, revision recommended	185	Dec.	1931
Judicial article, third concurrent resolution, revision recommended	35	July	1932
Judicial article, fourth concurrent resolution, revision recommended	63	Oct.	1932
Judicial article, fifth concurrent resolution, revision recommended	133	Dec.	1932
Judicial article, sixth concurrent resolution, revision recommended	48	Oct.	1934
Judicial article, seventh concurrent resolution, revision recommended	29	April	1935
Judicial article, eighth concurrent resolution, revision recommended	195	Dec.	1936
Judicial districts, redistricting of, House resolution No. 35	4	April	1937
RULES:			
Attorneys, nonresident concerning, promulgated, effective 9-1-36,	50	July	1936
Authority of supreme court to make concerning books and records, bill drafted	24	Dec.	1929
Authority recommended to make rules concerning books and records, bill drafted	140–141	Dec.	1932
Authority recommended to make rules concerning books and records, bill drafted	188	Dec.	1931
By supreme court for courts inferior to district courts, bill drafted	26	April	1935
By supreme court for courts inferior to district courts, bill drafted	50	Oct.	1934
Concerning district courts promulgated by supreme court, effective September 1, 1929	5	Dec.	1929
Concerning statement district court whether evidence considered proposed	9	Dec.	1931
Filing of papers concerning promulgated, effective 9-1-36	50	July	1936
For attorneys, recognition of, proposed rule	21	April	1936
For district courts amended	7	Dec.	1931
For district courts amended	110	Dec.	1932
For district courts suggested	14	Dec.	1927
"Improve the Administration of Justice Through the Rule-making Power of Courts," article by Albert Faulconer	6	April	1936
Of supreme court amended	5	Dec.	1931
Of supreme court amendment to rules 6 and 8, recommended,	6	Dec.	1930
Power of supreme court to make	20	Dec.	1927
Procedure inferior courts, recommendations supreme court made, bill drafted	138	Dec.	1932
Recommended concerning voluntary appearance	6	Dec.	1930
Recommendations to make by supreme court of courts inferior to district courts, bill drafted	26	Dec.	1929

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Rules proposed for district courts	5	Dec.	1928
Supreme court to make concerning inferior courts, amendment recommended, bill drafted	183	Dec.	1936
SCOPE OF WORK OF JUDICIAL COUNCIL	5	Dec.	1928
SMALL DEBTORS' COURTS:			
Recommendations concerning	17	Dec.	1928
Summary of work to 7-1-28	66	Dec.	1928
STATUTES (See, also, Bills Drafted, this index):			
Appeals from probate courts, statute amended	14	April	1937
Appointment parole officer, Sedgwick county	14	April	1937
Continuance of criminal trials, statute enacted	14	April	1937
Criminal procedure, fresh pursuit, statute enacted	20	April	1937
Eminent domain, notice to lienholders, statute amended	14	April	1937
Exemptions, statute amended	14	April	1937
Garnishment, persons dropped from relief work	13	April	1937
Injunction or quo warranto, unlawful practice of medicine and surgery	14	April	1937
Injunction, vacation of, statute amended	14	April	1937
Interstate extradition, statute enacted	15	April	1937
Liens in favor of state, actions against state, statute enacted,	14	April	1937
Recommended changes commented upon	22	Dec.	1931
Relating to Eminent Domain and Condemnation, Synopsis of, by Franklin Corrick	36	July	1933
Seal of district court omitted, instruments validated	13	April	1937
Terms of court, certain counties, statute amended	14	April	1937
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District courts, work of, by tabulations, to 7-1-27	155	Dec.	1927
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District courts, work of, for state as a whole, to 7-1-30	69	Dec.	1930
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Probate courts, work of, to 7-1-34	86	Dec.	1934
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Supreme court, work of, to 7-1-28	19	Dec.	1928
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Appeals to, civil actions, bill drafted, statute amended	8	April	1937
Appeals to, criminal actions, bill drafted, statute amended	6	April	1937
Appeals to, stay of execution supersedes bond, law amended, chap. 217, Laws 1933, sec. 1; sec. 60-3322, G. S. 1935	13	April	1933
Authority recommended to make rules concerning books and records, bill drafted	24	Dec.	1929
Authority recommended to make rules concerning books and records, bill drafted (Senate bill No. 133)	188	Dec.	1931
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Recommendation to make rules, courts inferior to district courts, bill drafted	26	Dec.	1929
Rules by of courts inferior to district courts	50	Oct.	1934
Rules by of courts inferior to district courts	26	April	1935
Rule-making power similar to Wisconsin suggested by Bar Association	17	Dec.	1929
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Rules, to make concerning inferior courts, amendment recommended, bill drafted	183	Dec.	1936
"The Law's Delay in the Supreme Court," article by Hon. R. A. Burch	73	Oct.	1936
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Defendant's Testimony in a Criminal Action, article by Hon. W. W. Harvey, chairman	69	Dec.	1934
Depositions of for state in criminal cases, bill drafted	66	Dec.	1934
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