

KANSAS JUDICIAL COUNCIL BULLETIN

APRIL, 1945

PART 1.—NINETEENTH ANNUAL REPORT

IMPORTANT LAWS ENACTED
by
LEGISLATURE OF 1945



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NEW MEMBERS OF THE COUNCIL



JOHN ETLING



CHARLES VANCE

The Judicial Council has two new members, Senator John Etling of Kinsley, Chairman of the Judiciary Committee of the State Senate, and Mr. Charles Vance of Liberal, Chairman of the Judiciary Committee of the House of Representatives. Respectively they succeed Senator Walter Jones and Mr. I. M. Platt. Each of the new members has had a wide legislative experience which will be of value to the Council.

Senator Etling is a native of Barton county, Kansas. He graduated from the Law School of Kansas University in 1921 and was admitted to the Bar in June of that year. He served two terms as county attorney of Edwards county, and also served as city attorney of Kinsley, Kansas, and as a member of the Board of Education. He was first elected to the State Senate in 1940 and is now serving his second term.

Mr. Vance is also a native Kansan, having been born in Labette county. He attended school and Junior College in Garden City, also at Kansas State College in Manhattan and graduated from the Law School of Washburn University in 1928 and was admitted to the Bar in January, 1929. While a student and for a short time thereafter Mr. Vance worked in the Supreme Court Reporter's office and also assisted in the preparation of Hatcher's Kansas Digest. Mr. Vance never was a candidate for political office until he first ran for the House of Representatives in 1940. He has been twice reelected.

REVIEW OF STATUTES ENACTED BY THE 1945 LEGISLATURE

In its 1945 regular session, the Legislature enacted a considerable number of statutes affecting judicial procedure and other matters of interest to the bar. We are printing some of these new laws which are of particular interest, but call attention to the fact that some of them will not become effective until their publication in the statute book.

The following is a summary of the statutes enacted, following which certain of these statutes are printed in full, as indicated in the summary.

PROBATE PROCEDURE

Senate bill No. 286 (printed herein) carries into effect the amendment to the constitution which was adopted in November, 1944, and provides a complete procedure for the execution of mortgages and mineral leases upon the homestead of an insane person or a person having an insane spouse. This statute was originally drafted by Mr. Samuel E. Bartlett, and was sponsored by the Judicial Council. It was redrafted to include some proposed amendments and enacted. It has already gone into effect upon its publication in the official state paper and its provisions are self-explanatory.

House bill No. 122 (printed herein) provides for the certification from the probate court to the district court, upon request of any interested party, of controverted questions arising in the probate court. It covers many of the important issues which frequently arise in the probate court in which there is likely to be an appeal to the district court. This statute was designed to avoid duplicate trials upon matters which would eventually have to be determined in the district court on appeal. It is very desirable that members of the bar familiarize themselves with the provisions of this statute before it takes effect upon its publication in the statute book.

Senate bill No. 12 (printed herein) simplifies the procedure for the adoption of an adult. It takes effect on publication in the statute book.

Senate bill No. 84 (printed herein) amends G. S. Supp. 59-1105 with reference to the duties of trustees of charitable trusts. It has taken effect on publication in the official state paper.

Senate bill No. 176 (printed herein) amends G. S. Supp. 59-2002, 59-2260 and 59-2271, relating to the commitment and care of insane persons. This statute took effect upon its publication in the official state paper.

REAL ESTATE TITLES

A number of statutes were enacted which affect real estate titles and will be of particular interest to title examiners.

House bill No. 172 (printed herein) provides a conclusive presumption of validity of title to real estate included in a plat of any original town or addition, after twenty-five years. This statute becomes effective after its publication in the statute book, but the presumption will not be applied in any action brought within one year thereafter.

Senate bill No. 133 (printed herein) provides that any mortgage recorded before January 1, 1914, shall be void after July 1, 1946, unless a renewal affi-

davit is filed before that date; excepting only railroad mortgages recorded after January 1, 1890. This statute becomes effective on July 1, 1946.

House bill No. 123 (printed herein) provides that quiet title suits may be based upon tax deeds recorded less than five years prior to the filing of suit, and repeals G. S. 60-1804. It becomes effective on publication in the statute book.

House bill No. 102 (printed herein) amends G. S. 60-3405, relating to dormant judgments, and provides for their release by the clerk. It also clarifies this section by including court costs and fees. This statute takes effect upon publication in the statute book.

House bill No. 304 amends G. S. Supp. 79-2004a and 79-2101, relating to collection of personal property taxes. It specifically provides that judgments upon personal property tax warrants shall not be liens against any homestead, and that such judgments shall become dormant the same as any other judgment in the district court. This statute should settle some controverted questions about the lien of personal tax warrants.

House bill No. 145 validates all deeds in Elk county, executed by sheriffs and fiduciaries before October 24, 1906, at which time the records of the probate and district courts were destroyed by fire. It takes effect after publication in the statute book.

House bill No. 316 relates to the duties, obligation and bond of abstracters, amending G. S. Supp. 67-802. It provides that it shall be unnecessary for abstracters to show mortgages and other encumbrances upon rights of way or easements created either by grant or condemnation.

Senate bill No. 282 (printed herein) provides for the recording of certain bankruptcy proceedings in any county where land is located which is affected by such proceedings. It will become effective after its publication in the statute book.

Senate bill No. 67 provides for the filing of a copy of judgments affecting title to real estate, in the office of the county clerk for entry upon the transfer records. It becomes effective on July 1, 1945.

House bill No. 340 relates to tax foreclosures, and amends G. S. Supp. 79-2801, 79-2802, 79-2803, 79-2804, 79-2804b, 79-2804d, 79-2804f, 79-2805 and 79-2808. This statute is not printed herein because of its length, but should be examined in connection with all tax foreclosures after April 1, 1945, when it became effective.

JUDICIAL SALARIES

The salaries of justices of the Supreme Court were increased to \$7,000 per year by Senate bill No. 75, and the salaries of district court judges were increased to \$5,000 per year by House bill No. 333, but these increases do not affect the salary of any judge during his present term of office.

TIME FOR DECISION—DISTRICT COURTS

Senate bill No. 195 (printed herein) provides that the judge of any district court must decide all matters submitted to him, with minor exceptions, within six months of the time of submission, or the payment of his salary will be suspended. This bill takes effect after publication in the statute book.

GARNISHMENT OF MONEYS IN CUSTODIA LEGIS

Senate bill No. 216 (printed herein) provides for the garnishment of moneys in the hands of fiduciaries or in *custodia legis*, including contingent and undetermined interests. This statute takes effect upon publication in the statute book.

PROCEDURE—JUSTICE COURTS

Senate bill No. 214 (printed herein) amends G. S. 61-505, relating to publication service in certain actions in justice courts. This statute took effect upon publication in the official state paper.

Senate bill No. 284 (printed herein) amends G. S. 61-1005, and provides that appeals from justice courts may be tried at any time after ten days from the filing of transcript in the district court. This statute will take effect upon publication in the statute book.

OATHS AND ACKNOWLEDGMENTS IN MILITARY SERVICE

Senate bill No. 81 (printed herein) validates oaths and acknowledgments before any commissioned officer in the armed forces, repealing G. S. 1943 Supp. 67-216a and 67-216b. This act took effect upon publication in the official state paper.

SUITS AGAINST STATE

Senate bill No. 300 amends G. S. 1943 Supp. 75-417 to provide that, in a suit against the state to extinguish some interest or lien of the state, the petition shall state the nature of the lien or interest claimed by the state. This statute takes effect upon its publication in the statute book.

CITY COURTS

Senate bills Nos. 112 and 98 relate to the judges and officers of city courts in counties having over 115,000 population.

Senate bill No. 114 relates to the officers and salaries in the court of Topeka.

House bill No. 176 provides for the officers and salaries in the city courts of Atchison and Leavenworth.

Each of these bills will be of local interest.

APPOINTEES OF DISTRICT COURTS

House bill No. 185 provides that when the judges of any judicial district fail to make an appointment within ten days after a vacancy occurs, the appointment shall be made by the governor. This act took effect upon publication in the official state paper.

House bill No. 191 relates to court reporters, and amends G. S. 1943 Supp. 20-906. It provides that any judge of the district court who is unable to employ a regular court reporter may employ a court reporter residing in some other district who shall receive \$10 per day and expenses while serving in addition to his regular compensation. This statute took effect upon publication in the official state paper.

Senate bill No. 110 provides for the appointment of bailiffs in counties having more than 115,000 population, and provides certain duties for the bailiff in connection with paroled prisoners. This bill took effect upon publication in the official state paper.

BILLS NOT ENACTED

Among the bills presented to the Legislature, which were not enacted, are the following:

The uniform act relating to simultaneous deaths, previously recommended by the Judicial Council (July, 1942, Bulletin, page 54).

Bill providing for the termination of permanent alimony upon death or remarriage of the wife, previously recommended by the Judicial Council (April, 1943, Bulletin, page 26).

Bill for judicial reapportionment, reducing number of district judges and judicial districts, recommended by the Legislative Council.

Bill to restore jurisdiction of district courts in probate matters, recommended by the Legislative Council.

Bill to cure old defects in titles, sponsored by the Topeka Bar Association and approved in principle by the Judicial Council.

TEXT OF CERTAIN BILLS ENACTED

The following is the text of certain of the bills above referred to, and in the order above noted, which were enacted by the 1945 Legislature:

SENATE BILL No. 286

AN ACT providing for the execution of mortgages and oil, gas, and other mineral leases on the homestead and supplementing the probate code.

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

SECTION 1. When a husband or wife, while occupying a homestead, is adjudged to be insane, the duly appointed guardian of the estate of the insane spouse may be authorized, by the probate court having jurisdiction, to join with the sane spouse in executing a mortgage upon the homestead, renewing or refinancing an encumbrance thereon which is likely to cause loss, or in executing a lease thereon authorizing the lessee, his heirs and assigns, to explore and produce therefrom oil, gas, coal, lead, zinc, or other minerals as herein provided.

SEC. 2. For the purposes set out in section 1 of this act, the sane spouse and the guardian of the estate of the insane spouse may jointly file a petition in the probate court of the county in which such homestead is situated praying for the execution of a mortgage upon the homestead or for the execution of an oil, gas or other mineral lease thereon.

SEC. 3. In the case of a proceeding hereunder for the execution of oil, gas or other mineral lease, a copy of the proposed lease shall be attached to the petition. The petition shall be heard upon notice as directed by the probate court and determined as in other cases: *Provided*, That such petition shall not be heard in less than ten days after a guardian *ad litem* shall have been appointed as in this act provided and notice of such appointment shall have been given to such guardian *ad litem*.

SEC. 4. In every proceeding brought under this act and immediately upon the filing of a petition as provided in section 2 of this act, a guardian *ad litem* shall be appointed for the insane spouse, who shall make an independent investigation of the facts and representations made in the petition, and shall, on or before the date fixed for the hearing on said petition, file in said probate court a verified report setting forth the results of his investigation, together with his recommendations respecting the relief prayed for in the petition. And the court shall consider such report together with all evidence that may be offered in support of such petition or report in determining what relief, if any, should be granted in the proceeding.

Sec. 5. In case of a proceeding to mortgage, the renewed or refinanced mortgage may include all sums of money necessary to discharge all liens on the homestead including interest, taxes, cost of all necessary proceedings, with a reasonable attorney fee, and the cost of abstract of title, or other title papers, when the necessity therefor or advantage to the owner of the homestead or to the insane spouse shall clearly appear.

Sec. 6. The proceeds from the execution of any such lease, whether denominated bonus, rental, royalty, or otherwise, shall be wholly exempt from liability for payment or satisfaction of any debts or other obligations of either spouse, except taxes, encumbrances and liens on the homestead, the necessary cost of the proceeding for the execution of such lease, and the support, maintenance and education of the ward, his spouse, and children.

Sec. 7. In its order authorizing the guardian of the insane spouse to join with the sane spouse in executing an oil, gas or other mineral lease as provided in this act, the court may, in any proper case, authorize such guardian to join the sane spouse in the execution and delivery of an assignment of the proceeds of such lease to the owner and holder of any mortgage lien upon the homestead, as additional security for the payment of such mortgage lien, and for the application of such proceeds to the payment of the mortgage debt.

Sec. 8. The probate court authorizing any such lease by order shall direct the division of the net proceeds of such lease between the sane spouse and the guardian of the insane spouse in such proportions as may be proper, equitable and just, having due regard for the time and manner of acquiring the homestead. Any unpaid or undistributed proceeds at the death of either spouse shall be considered as property of the owner of the homestead and payable to him. Within the limits above prescribed such order for payment or distribution may for good cause shown, upon due notice and hearing, be revoked or modified from time to time as justice and interest of the parties may require.

Sec. 9. The mortgage or lease executed pursuant to this section shall be received in all courts as presumptive evidence that the guardian in all respects observed the directions and complied with the requisites of law, and shall vest title to the interest granted in the party receiving the same in like manner as if the mortgage or lease was executed by the ward and the ward was of full age and sound mind.

(Effective on publication in official state paper.)

HOUSE BILL No. 122

AN ACT relating to courts, prescribing certain powers, duties, procedures and jurisdiction, amending sections 59-2404 and 59-2408 of the General Statutes Supplement of 1943, and repealing said original sections.

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

SECTION 1. When a petition, except a petition for the allowance of a demand for less than five hundred dollars, or for the admission to probate of a last will and testament, or to grant or revoke letters testamentary, or of administration, or to direct and to control the official acts of executors and administrators, to settle their accounts, and to order the distribution of estates, or to determine the heirs, devisees and legatees of decedents, or to appoint and remove guardians for minors and incompetent persons, or to direct and control the official acts of such guardians, or to settle their accounts, or to hear and determine cases of habeas corpus shall be filed in the probate court, any interested party may request the transfer of such matter to the district court. When a request for such transfer is filed less than three days prior to the commencement of the hearing, the court shall assess the costs occasioned by the subpoena and attendance of witnesses against the party seeking the transfer. Such request may be included in any petition, answer, or other pleading, or may be filed as a separate petition, and shall include an allegation that a bona fide controversy exists and that the transfer is not sought for the purpose of vexa-

tion or delay. Notice of such request shall be given as ordered by the probate court.

SEC. 2. Upon the filing of such request the probate court shall deliver to the district court the file in the matter, or so much thereof as may be necessary for a determination of the issues raised. Such issues shall thereupon be heard and determined in the district court as on appeal as provided by section 59-2408 of the General Statutes Supplement of 1943 as amended. A transcript of the proceedings and judgment of the district court shall be certified to the probate court as in other appeals, and the probate court shall proceed in accordance therewith. No further appeal upon such issues shall be had in the district court.

SEC. 3. Appeal to the supreme court from judgments and orders of the district court made pursuant to this act may be taken as appeals in other cases.

SEC. 4. Section 59-2404 of the General Statutes Supplement of 1943 is hereby amended to read as follows: Sec. 59-2404. Such appeal may be taken by any person aggrieved within thirty days after the making of such order, judgment, decree, or decision: *Provided*, That an appeal may be taken within nine months from an order admitting, or refusing to admit, a will to probate. The right of appeal shall not be denied nor abridged for failure of the party appealing to present his defenses in the probate court or to appear therein.

SEC. 5. Section 59-2408 of the General Statutes Supplement of 1943 is hereby amended to read as follows: Sec. 59-2408. Upon the filing of the transcript the district court, without unnecessary delay, shall proceed to hear and determine the appeal, and in doing so shall have and exercise the same general jurisdiction and power as though the controversy had been commenced by action or proceeding in such court and as though such court would have had original jurisdiction of the matter. The district court shall allow and may require pleadings to be filed or amended. The right to file new pleadings shall not be abridged or restricted by the pleadings filed, or by failure to file pleadings, in the probate court; nor shall the trial in, or the issues to be considered by, the district court be abridged or restricted by any failure to appear or by the evidence introduced, or the absence or insufficiency thereof, in the probate court. All appeals other than those from the allowance or disallowance of a demand, adjudging or refusing to adjudge a person incompetent, and committing or refusing to commit a person to a state hospital, shall be tried by the court without a jury, but the court may call a jury in an advisory capacity or in a proper case may refer the matter or part thereof to a referee.

SEC. 6. Section 59-2404 and 59-2408 of the General Statutes Supplement of 1943 are hereby repealed.

(Effective on publication in statute book.)

SENATE BILL No. 12

AN ACT relating to adoptions, prescribing procedure in proceedings for the adoption of an adult.

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

SECTION 1. That upon the filing of a petition for the adoption of an adult person, the probate court shall by order fix a time and place for a hearing thereon. The hearing may be with or without notice, as the court shall direct, and the court may, in its discretion, hear the petition forthwith. If upon the hearing the court finds that the petition should be allowed, it may make a final order of adoption.

(Effective on publication in statute book.)

SENATE BILL No. 84

AN ACT relating to the Kansas probate code, amending section 59-1105 of the General Statutes Supplement of 1943, and repealing said original section.

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

SECTION 1. Section 59-1105 of the General Statutes Supplement of 1943 is hereby amended to read as follows: Sec. 59-1105. No bond shall be required from any public, religious, charitable, or educational corporation or society, or any nonprofit Kansas corporation trustee where the purpose of the trust shall be financial aid to any Kansas educational institution or for research or for the financing of scholarships or fellowships at, or for the aid either through loans, grants or otherwise to the students of such institution, unless the will provides otherwise, where devises or legacies are given to such corporation or society in trust for any of the purposes of such corporation or society nor shall such trustee be required to file inventory or make reports as required in article 16 of this code unless the same shall be necessary under the terms of the instrument establishing the trust under which it operates or unless the probate court having jurisdiction shall, on petition and after due notice and hearing, finds that such bond, inventory or reports are necessary for the purpose of compelling the faithful performance of the trust by the trustee named.

SEC. 2. Section 59-1105 of the General Statutes Supplement of 1943 is hereby repealed.

(Effective on publication in official state paper.)

SENATE BILL No. 176

AN ACT relating to the probate code, and to facilitate the examination, care and treatment of insane persons, amending sections 59-2002, 59-2260 and 59-2271 of the General Statutes Supplement of 1943, and repealing said original sections.

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

SECTION 1. Section 59-2002 of the General Statutes Supplement of 1943 is hereby amended to read as follows: Sec. 59-2002. No person who has not been adjudged insane shall by reason of his insanity be restrained of his liberty; but he may be temporarily detained for a reasonable time, not exceeding thirty days, pending medical examination and a proceeding commenced for judicial determination of his mental condition.

SEC. 2. Section 59-2260 of the General Statutes Supplement of 1943 is hereby amended to read as follows: Sec. 59-2260. Prior to a hearing, and as a part thereof before a jury or by a commission it shall be lawful for the probate judge, in his discretion, to refer the person suspected of insanity or mental incompetency to the psychiatric receiving ward of the school of medicine of the university of Kansas or to the Larned state hospital, the Topeka state hospital, Osawatimie state hospital or to a physician learned in psychiatric medicine and the necessary professional staff thereof for a complete physical and mental examination. Upon completion of such examination it shall be the duty of the staff officers of such medical school hospital or psychiatric physician to make a report to the probate judge who referred the patient for examination giving findings, conclusions and recommendations. Such report shall be made available to, and considered by the jury or commission, as the case may be. At the hearing of a petition for the commitment of an insane person and the appointment of a guardian of such person or his estate, or for the appointment of a guardian of an incompetent person or his estate, such person shall have the right to be present and shall be represented by counsel. If none is selected in his behalf, the court shall appoint suitable counsel to represent him. The court shall determine whether the presence of such person at the hearing is required, but the hearing shall not proceed until the person is represented by counsel. If such person has been duly adjudged insane or incompetent by any court of competent jurisdiction, in this state or elsewhere, a duly authenticated copy of said adjudication shall be prima facie evidence of his insanity or in-

competency, and, where such adjudication is relied upon for the appointment of a guardian in this state, the court may hear and determine the cause without a trial by jury or a hearing by commission.

SEC. 3. Section 59-2271 of the General Statutes Supplement of 1943 is hereby amended to read as follows: Sec. 59-2271. Any reputable citizen may file in the probate court of the county of the patient's residence or presence a petition for the commitment of the person as an insane patient to the state hospital. The petition shall state the name, residence, and address of the patient and of his nearest relatives, the reasons for the application and the names of two witnesses by whom the truth of the petition may be proved. The court may have the patient examined by a duly licensed doctor of medicine or psychiatrist or by the staff of the psychiatric receiving ward of the school of medicine of the university of Kansas, a member of the staff of the Larned state hospital, the Topeka state hospital or the Osawatomie state hospital.

SEC. 4. The official in charge of each of the institutions named in section 3 of this act may refer any public patient confined in such institution to the psychiatric receiving ward of the school of medicine of the university of Kansas for a complete physical and mental examination and upon completion of such examination it shall be the duty of the person in charge of such psychiatric receiving board to make a report to the official in charge of the institution from which said patient was referred for examination, giving his findings, conclusions and recommendations.

SEC. 5. Sections 59-2002, 59-2260 and 59-2271 of the General Statutes Supplement of 1943 are hereby repealed.

(Effective on publication in official state paper.)

HOUSE BILL No. 172

AN ACT relating to titles to real estate included in a plat of any original town or addition and providing for certain presumptions of ownerships in connection therewith.

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

SECTION 1. In all cases where a plat of any original town or addition thereto has been of record more than twenty-five years and deeds executed by the person or corporation platting the same and conveying lots or blocks in said original town or addition have been of record more than twenty-five years prior to the taking effect of this act, such deeds shall be conclusively presumed to have conveyed perfect title notwithstanding any defect in the title of the grantor therein or the failure of the grantor's spouse to join therein: *Provided always*, Such presumption shall not be applied in any action brought within one year from the date this act takes effect.

In all cases where more than one such plat has been filed on the same lands and conveyances covering lots or blocks therein and executed by the maker of one of said plats have been of record more than twenty-five years and no conveyance executed by the maker of the other plat is of record at the time of the taking effect of this act, the said conveyance of record shall be conclusively presumed to have conveyed a perfect title: *Provided always*, Such presumption shall not be applied in any action brought within one year from the date this act takes effect.

(Effective on publication in statute book.)

SENATE BILL No. 133

AN ACT relating to titles of real estate having rights under certain mortgages.

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

SECTION 1. Every mortgage or deed of trust securing a debt on real property in this state which mortgage or deed of trust was placed of record before January 1, 1914, shall, from and after July 1, 1946, be void as against the creditors of the person making the same or against subsequent purchasers or mort-

gagees unless the owner and holder thereof shall, prior to such date, cause to be filed in the office of the register of deeds of the county in which the property is located, an affidavit setting forth the name and address of the owner and holder thereof, the nature of the claim, the amount due thereon, the date of the last payment thereon and a description of the property included therein: *Provided*, That this act shall not apply to or affect (1) mortgages, deeds of trust, or liens upon property of railroad corporations recorded after January 1, 1890, or (2) the indebtedness thereby secured: *Provided further*, That infancy, incompetency or nonresidence shall not affect the operation of this act.

(Effective on publication in statute book and after July 1, 1946.)

HOUSE BILL No. 123

AN ACT relating to certain quiet title suits based on tax deeds and validating the same, and repealing section 60-1804 of the General Statutes of 1935.

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

SECTION 1. In all cases where judgments have been rendered in any district court quieting the title to real estate and barring, foreclosing or excluding the defendants in said action from any right, title or interest therein or lien thereon and the plaintiff's title to said real estate was based upon a tax deed recorded less than five years prior to the filing of such suit, all of the parties to said action shall be concluded by such judgment to the same extent as though the plaintiff's title had been based upon a valid tax deed of record more than five years: *Provided*, That if any person at the time of the taking effect of this act shall have or claim any right, title or interest in, or lien upon said real property from which he would be barred, foreclosed or excluded by the operation of this act, he shall have one year from the date of the taking effect of this act in which to commence proceedings to set aside said judgment: *Provided further*, That nothing in this act shall be construed to permit or require the setting aside of any such judgment in the event such judgment was valid and could not have been set aside immediately preceding the taking effect of this act.

SEC. 2. Section 60-1804 of the General Statutes of 1935 is hereby repealed.

(Effective on publication in statute book.)

HOUSE BILL No. 102

AN ACT relating to judgments and judgment liens, providing for the release of record of judgments which have become dormant, amending section 60-3405 of the General Statutes of 1935, and repealing said original section.

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

SECTION 1. Section 60-3405 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 60-3405. If execution shall not be sued out within five years from the date of any judgment, including judgments in favor of the state or any municipality in the state, that now is or may hereafter be rendered, in any court of record in this state, or within five years from the date of any order reviving such judgment, or if five years have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment including court costs and fees therein shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor. When a judgment shall become dormant as herein provided, and shall so remain for a period of two years, it shall be the duty of the clerk of the court to release said judgment of record, and the clerk shall make an entry on the appearance and judgment dockets wherein the judgment appears of record, reciting, "this judgment including all court costs and fees therewith is barred under provisions of G. S. 60-3405 and is hereby released of record."

SEC. 2. Section 60-3405 of the General Statutes of 1935 is hereby repealed.

(Effective on publication in statute book.)

SENATE BILL No. 282

AN ACT providing for the recording of certain papers filed in bankruptcy proceedings.

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

SECTION 1. The register of deeds of any county wherein is located any land in which a bankrupt or a debtor in any proceeding under the act of congress relating to bankruptcy has any interest shall receive for record and record a certified copy of any pleading, decree, order or other paper, filed in said proceeding, which any act of the congress of the United States provides may be recorded in the records of such a county. Such record shall impart notice to all persons of such bankruptcy proceeding and of the contents of said certified copy, which shall be recorded and indexed in the record of deeds in the office of said register in the name of the bankrupt or debtor as grantor and in the name of the trustee or receiver in bankruptcy or other person (if any) to whom said interest or any part thereof may pass by virtue of law or of said decree, order or other paper as grantee. Said register shall charge and collect the same fee for recording such a certified copy as is provided by law for recording a deed of the same length.

(Effective on publication in statute book.)

SENATE BILL No. 195

AN ACT relating to district courts, and requiring certain decisions of such courts to be given within six months from the time certain issues or causes are submitted to the judges of such courts.

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

SECTION 1. Upon the trial by the court of any question of fact or law, or any incidental issue arising therefrom, in any district court, the decision of the court shall be given within six months from the time such issue or cause was submitted to him.

SEC. 2. If any judge of any district court, to whom any motion, demurrer, issue, or other matter arising in any cause, shall be submitted for judgment or decision, shall fail or neglect to decide or give judgment upon the same, within the time limited by the preceding section, he shall not receive from the state treasury any salary for the month in which such failure shall occur: *Provided*, That this section shall not apply in case of the sickness or death of the judge, or in case an attorney for either party in any cause is a member of the legislature and is in attendance at a meeting of the legislature. The auditor of the state, before auditing or allowing the account of any district judge for salary, shall require such judge to certify that all motions, demurrers, issues, and other matters arising in any cause, which have been submitted to him for judgment or decision thereon, have been determined as required in section 1 of this act.

(Effective on publication in statute book.)

SENATE BILL No. 216

AN ACT relating to money and property in custodia legis, and authorizing garnishment thereof.

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

SECTION 1. The interest or share of any debtor in money or property in the hands of fiduciaries or in *custodia legis* although contingent or undetermined may be garnished in like manner as other money or property: *Provided*, That no such interest or part in such money or property shall be taken from the custody of the officer of the court in whose possession it is at the time of such garnishment until the conclusion of the action or proceeding in which it is being held: *Provided further*, That moneys exempt by law, proceeds of exempt property and compensation for personal injuries shall not be subject to such garnishment.

(Effective on publication in statute book.)

SENATE BILL No. 214

AN ACT relating to civil procedure before justices of the peace, amending section 61-505 of the General Statutes of 1935, and repealing said original section.

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

SECTION 1. Section 61-505 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 61-505. The constable shall execute the writ by taking the property therein mentioned. He shall also deliver a copy of the summons to the person charged with the unlawful detention of property, or leave such a copy at his usual place of residence, if the same can be done within the county, and shall make return of the time and manner of service and any undertaking taken by him; and when any property has been taken by the constable under the writ, and it shall appear that the summons has not and cannot be served on the defendant in the county in the manner hereinbefore provided, but that such service can be made in any other county in this state, then the justice of the peace shall continue the case for thirty days and shall issue a summons to such other county for service in the manner provided by section 61-204 of the General Statutes of 1935 and any amendments thereto; but if upon the return of the summons issued in the county in which such writ is executed or upon the return of the summons issued to such other county, it shall appear by affidavit of the plaintiff that the defendant is a nonresident of this state and absent therefrom or that plaintiff has diligently inquired as to the place of residence and whereabouts of such defendant and has been unable to learn the place of residence of such defendant or his whereabouts then the justice of the peace shall continue the cause for a period of not less than thirty nor more than fifty days; whereupon the plaintiff shall proceed for three consecutive weeks to publish in some newspaper printed in the county, or, if none be printed therein, then in some newspaper of general circulation in said county, a notice stating the names of the parties, the time when, by what justice of the peace, and for what personal property said writ was issued, and the time when the cause will be heard, and due proof of such publication shall be filed with said justice; and thereupon said action shall be proceeded with the same as if said summons had been duly served.

SEC. 2. Section 61-505 of the General Statutes of 1935 is hereby repealed.

(Effective on publication in official state paper.)

SENATE BILL No. 284

AN ACT relating to the code of civil procedure before justices of the peace, amending section 61-1005 of the General Statutes of 1935, and repealing said original section.

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

SECTION 1. Section 61-1005 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 61-1005. If an appeal be taken the action may be tried at any time after ten days after the transcript of the proceedings before the justice of the peace shall have been filed in the office of the clerk of the district court. At any time after the transcript has been filed, and upon three days' notice to the adverse party, it shall be competent for the court to hear a motion to dismiss such appeal, or any other proper motion, or to try any issue of law joined in such action. If the appeal be dismissed, the cause shall be remanded to the justice of the peace, to be thereafter proceeded in as if no appeal had been taken. On receiving his fees in the case, the clerk of the court shall certify to the justice the order of dismissal, and he shall remit with such order all the papers returned by the justice on the appeal, except the transcript and undertaking; he shall also state the amount of his fees in the case, which shall be added to the costs in the case before the justice, and collected with such other costs, and paid to the party advancing the same.

SEC. 2. Section 61-1005 of the General Statutes of 1935 is hereby repealed.

(Effective on publication in statute book.)

SENATE BILL No. 81

AN ACT relating to acknowledgments and other notarial acts before commissioned officers in the armed forces of the United States, and repealing sections 67-216a and 67-216b of the General Statutes Supplement of 1943.

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

SECTION 1. In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed, before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, by any person who either (a) is a member of the armed forces of the United States, or (b) is serving as a merchant seaman outside the limits of the United States included within the forty-eight states and the District of Columbia; or (c) is outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged. Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, heretofore or hereafter made or taken, are hereby declared legal, valid and binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

SEC. 2. In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment. If the signature, rank, and branch of service or subdivision thereof, of any such commissioned officer appear upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this act.

SEC. 3. Sections 67-216a and 67-216b of the General Statutes Supplement of 1943 are hereby repealed.

(Effective on publication in official state paper.)

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