

# KANSAS JUDICIAL COUNCIL BULLETIN

APRIL, 1949

PART I.—TWENTY-THIRD ANNUAL REPORT



HONORABLE EDWARD L. FISCHER

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## FOREWORD

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Edward L. Fischer, whose portrait appears on the cover of this issue, has served as Judge of the District Court of Wyandotte County (Division No. 1) for nearly half a century. He was first elected in 1899 and served until 1904, and was reelected in 1908 and has served continuously since then until the present time. Judge Fischer was one of the first members of the Judicial Council and served from 1927 to 1943, a period of sixteen years, a term of service which has been equaled by only one other member of the Council, the late Robert C. Foulston. Judge Fischer brought to the Judicial Council the solid views of an experienced trial judge, which were invaluable in its early work of establishing rules and motion days for district courts, and in considering the numerous procedural questions which arose later. His term of service also extended through the period of the preparation, enactment and interpretation of the Probate Code, in which he took his full part.

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Since our last BULLETIN, the state of Kansas sustained a great loss in the death of Justice Homer Hoch of the Supreme Court, on January 30, 1949. Justice Hoch's portrait appeared on the cover of our July, 1944, BULLETIN, which also contained an article written by him. Justice Hoch was succeeded by the Honorable Edward F. Arn, then attorney general, who was appointed by the governor for the unexpired term, and took office on February 21, 1949.

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During the annual meeting of the Bar Association of the state of Kansas to be held in Topeka on May 27 and 28, 1949, a ceremony will be held in the Supreme Court room, at which the Bar Association will present to the Supreme Court a plaque in honor of those members of the Bar who served in the armed forces of the United States during World War II.

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The Judicial Council has a new member, Richard L. Becker, of Coffeyville, who succeeded Dale M. Bryant as chairman of the Judiciary Committee of the House of Representatives, and thus became a member of the Council, ex officio. Mr. Bryant was elevated to the position of Speaker of the House.

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This issue is devoted to a review of statutes enacted by the 1949 legislature which have some relation to the work of the Judicial Council, and of the courts and lawyers generally. The more important of these new statutes are printed in full.

We have been gratified by the increasing interest in the BULLETIN as shown by requests to be put on the mailing list and for back issues. Copies of three of our past BULLETINS have now been exhausted. These are: July, 1933, containing Synopsis of Supreme Court decisions relating to Eminent Domain, by Franklin Corrick; July, 1935, containing article on the Kansas Law of Homestead, by James W. Taylor (now practicing in Kansas City, Mo.); and April, 1946, containing article on Joint and Mutual Wills, by Justice William A. Smith of the Supreme Court, and also certain probate forms assembled under the heading of "In Re: John Doe and Richard Roe, deceased." The Council will consider the revision and reprinting any of the articles from these BULLETINS if there is sufficient demand from our readers.

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The annual meeting of the Northwest Kansas Bar Association will be held held in Osborne, on June 11, 1949.

## REVIEW OF STATUTES ENACTED BY THE LEGISLATURE OF 1949

This BULLETIN has been delayed in order to await the adjournment of the 1949 legislature and to secure copies of the new statutes which are of special interest to courts and lawyers. In the following review of these new laws we will comment briefly on those we have examined, followed by the complete text of those of immediate importance.

### PROBATE CODE

House bill No. 310 (printed herein) amends section 59-2249 to make it the duty of the probate court to transmit a certified copy of a final decree to the county clerk who shall enter the same on the transfer record.

House bill No. 364 (printed herein) amends section 59-1402 of the probate code relating to the continuance of the business of a decedent or ward. The principal change appears to be the clarification of the clause "for such periods of time not exceeding six months" by adding the words "for any one period," so that the court may authorize such continuance of business for an unlimited number of six months' periods.

Senate bill No. 20 (printed herein) amends section 59-1804 of the probate code, by enlarging the investments permitted to guardians, including, among other things, real estate mortgages and fee simple title to real estate, under certain conditions. (See, also, House bill No. 61, below.)

House bill No. 61 (printed herein) establishes the "prudent-man" rule for investments of fiduciaries, but the last proviso of section 1 is: "*Provided*, This act shall not apply to guardians." This is slightly in conflict with Senate bill No. 20 above, amending 59-1804, which authorizes guardians to invest funds: "in (A) such securities as are proper for the investment of trust funds," etc. The prudent-man rule is new in Kansas and may lead to some interesting litigation.

Senate bill No. 155 amends section 59-1207 by raising the pay of appraisers from \$2 to \$5 a day.

Senate bill No. 297 (printed herein) amends section 59-508 of the probate code, relating to descent of property where the decedent leaves no surviving spouse, child, issue or parents, and is designed to prevent the partial escheat in an estate where there are eligible heirs on one side of the parental line but not on the other.

### CIVIL PROCEDURE

House bill No. 134 (printed herein) provides for appeal from orders appointing receivers, with stay of proceedings upon furnishing bond in the same amount as required of the receiver.

House bill No. 220 (printed herein) provides for the assignment of district judges to other districts by the Supreme Court, under certain conditions specified in the act.

Senate bill No. 42 (printed herein) provides for pretrial procedure, to be exercised in the discretion of the district court. Lawyers might well famil-

iarize themselves with the provisions of this statute and with pretrial procedure in other jurisdictions, since it is probable that many of the district courts will make use of this act.

Senate bill No. 156 raises the pay of appraisers in the district court to \$5 a day, amending G. S. 28-135.

Senate bill No. 205 amends G. S. 43-116 providing exemptions from jury service, by adding officers and attendants of the state industrial reformatory to those who are exempt. No specific mention is made of the officers and attendants of other penal institutions, or hospitals for the insane, etc.

House bill No. 71 provides for the microfilming and destruction of certain old records, and for the introduction in evidence of microphotographs, etc., the same as the original records.

Senate bill No. 51 increases the fees of jurors to \$5 per day, amending G. S. 28-122.

#### TAX FORECLOSURE

House bill No. 70 amends section 79-2801 of the G. S. Supplement, relating to tax foreclosures. This amendment became effective on April 15, 1949, and should be followed in tax foreclosure proceedings commenced after that date.

Senate bill No. 319 (printed herein) provides for opening judgments in tax foreclosures within twelve months under certain conditions, amending section 79-2804b.

#### CRIMINAL PROCEDURE

Senate bill No. 182 (printed herein) amends G. S. 62-2203 and provides for suspension of sentences and paroles by the district courts under certain conditions set out in the bill.

Senate bill No. 93 (printed herein) amends G. S. 62-1420, relating principally to the competency of husband and wife to testify in criminal cases. The amendment seems to be principally a clarification of the language of this section.

Senate bill No. 94 (printed herein) amends G. S. 62-1412 relating to the impaneling of jurors in criminal cases.

#### OTHER PROCEDURAL CHANGES

House bill No. 81 amends section 76-17a01, and includes some procedural provisions for juvenile courts.

Senate bill No. 21 (printed herein) adds certified shorthand reporters to the officers authorized to take depositions, amending 60-2823.

Senate bill No. 39 provides for the examination of a petitioner seeking habeas corpus, when he is restrained of his liberty on account of alleged communicable disease, by at least two physicians appointed by the court, and providing for petitioner's discharge if the report is negative.

House bill No. 327, relating to insane persons, amends G. S. 62-1531 and 76-2461, and G. S. Supp. 62-1532 and 76-2460, which include some procedural matters. Since this bill is somewhat lengthy and will not take effect until its publication in the statute book, we have not printed it in this BULLETIN.

House bill No. 374 amends section 44-570 of the workmen's compensation law, but takes effect only after its publication in the statute book.

The well-known liquor control bill (substitute for Senate bill No. 9) contains numerous procedural provisions, particularly with reference to appeals

from revocation of licenses, etc., but this bill has been well-circulated throughout the state and is quite lengthy, and is not quoted here.

#### LEGAL PUBLICATIONS

Senate bill No. 178 (printed herein) amends G. S. Supp. 64-102 to provide for legal publications on any day of the week, instead of the days previously specified, with the proviso that the later publications must be on the same day of the week as the first publication. This will relieve the congestion of legal notices in daily papers on certain days of the week.

#### LAWS AFFECTING SUBSTANTIVE RIGHTS

Senate bill No. 213 provides for the assignment of accounts receivable and the creation of liens thereon. This statute is somewhat lengthy and will not take effect until its publication in the statute book and is therefore not printed in this BULLETIN, but the same will be of great interest to those engaged in commercial practice.

Senate bill No. 216 (printed herein) limits the liability for defamation by radio.

Senate bill No. 313 provides for suits against insurers not authorized to transact business in Kansas on policies illegally issued in the state, and the service of process in such suits. Because of its length, and the fact that it will not take effect until its publication in the statute book, it is not printed in this BULLETIN.

House bill No. 60, amending section 33-101 of the statute of frauds, is printed herein. This bill permits so-called "living trusts" for the benefit of the grantor, except as against past and future creditors.

House bills Nos. 103 and 104 amend sections 52-1105 and 52-1106 by giving the drawee twenty-four hours to accept a bill of exchange, and giving a bank twenty-four hours to cancel the credit of a bill or check drawn upon such bank.

#### JUDICIAL SALARIES

House bill No. 16 increases the salaries of district judges to \$6,000 per year and Senate bill No. 343 increases the salaries of Justices of the Supreme Court to \$10,000 per year. Both of these increases will take effect in January, 1951.

#### LOCAL BILLS

We mention only a few of the local bills which affect the courts and court procedure.

Senate bill No. 131 amends G. S. 20-501 and increases the population bracket for counties entitled to four divisions of the district court from 110,000 to 118,000. This bill is noteworthy because it was enacted at the request of the bar of Shawnee county, Kansas, which now has three district judges and which was approaching 110,000 population. The bar felt that an additional judge would not be needed unless the population continued to increase to at least 118,000.

Senate bill No. 90 repeals G. S. 20-605 relating to cases docketed by rotation in the district court in certain counties having over 110,000 population.

House bill No. 292 changes the boundaries of the sixth and tenth judicial districts, by detaching Miami county from the tenth judicial district and putting it in the sixth district. This will leave Johnson county as the only

county in the tenth district, and the sixth district will consist of Bourbon, Linn, and Miami counties.

#### GENERAL STATUTES OF 1949

Last but not least, Senate bill No. 329 provides for the publication of the General Statutes of 1949, which will be in one volume and will cost \$20 per copy.

#### HOUSE BILL No. 60

AN ACT relating to the statute of frauds, amending section 33-101 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 33-101 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 33-101. All gifts and conveyances of goods and chattels, made in trust to the use of the person or persons making the same shall, to the full extent of both the corpus and income made in trust to such use, be void and of no effect, regardless of motive, as to all past, present or future creditors; but otherwise shall be valid and effective.

SEC. 2. Section 33-101 of the General Statutes of 1935 is hereby repealed.

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

#### HOUSE BILL No. 61

AN ACT prescribing standards for investments by fiduciaries.

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

SECTION 1. In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, a fiduciary may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase: *Provided*, This act shall not apply to guardians.

SEC. 2. Nothing contained in this act shall be construed as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of section 1 hereof.

SEC. 3. Nothing contained in this act shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

SEC. 4. The provisions of this act shall govern fiduciaries acting under wills, agreements, court orders and other instruments now existing or hereafter made.

SEC. 5. This act shall take effect and be in force from and after its publication in the statute book.

## HOUSE BILL No. 134

AN ACT relating to the appointment of receivers; and providing appeal procedures.

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

SECTION 1. In all cases before any court of record, in which a receiver may be appointed, or refused, the party aggrieved may, within thirty (30) days thereafter, appeal from the order of the court, or a judge thereof, appointing or refusing to appoint, a receiver, to the supreme court, without awaiting the final determination of such cause, and in cases where a receiver shall be, or has been, appointed, upon the appellant filing an appeal bond, with sufficient surety, in such sum as may have been required of such receiver by a court or the judge thereof, conditioned for the due prosecution of such appeal and the payment of all costs or damages that may accrue to the state, or any officer or person by reason thereof, the authority of such receiver shall be suspended until the final determination of such appeal, and if such receiver shall have taken possession of any property, real or personal, the same shall be returned and surrendered over to the appellant upon the filing and approval of said bonds. The right of appeal herein provided for shall obtain in and be applicable to any and all actions now pending or which may hereafter be instituted pursuant to any statutory provisions, general or special.

SEC. 2. This act shall take effect and be in force from and after its publication in the statute book.

## HOUSE BILL No. 220

AN ACT providing for the assignment of judges of district courts to districts other than the regular districts by the supreme court.

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

SECTION 1. When it is made to appear to the supreme court that the proceedings in any district court are retarded or unduly delayed by reason of the illness or absence of the district judge or because of an extraordinarily heavy docket, the supreme court may direct any district judge in the state to attend and sit as a judge of such court at any regular, special, or adjourned term, and such assigned district judge shall have all powers connected with the judicial affairs of such court as the duly elected judge thereof, which powers shall only be exercised as an alternate for, or concurrently with, the duly elected judge of such district.

SEC. 2. This act shall take effect and be in force from and after its publication in the statute book.

## HOUSE BILL No. 310

AN ACT relating to the probate code and to settlement and the determination of descent, amending section 59-2249 of the General Statutes Supplement of 1947, and repealing said original section.

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

SECTION 1. Section 59-2249 of the General Statutes Supplement of 1947 is hereby amended to read as follows: Sec. 59-2249. On the hearing, unless otherwise ordered, the executor or administrator shall, and other persons may, be examined relative to the account and the distribution of the estate. If all the taxes payable by the estate have been paid so far as there are funds to pay them and the account is correct, it shall be settled and allowed; if the account is incorrect, it shall be corrected and then settled and allowed. Upon such settlement and allowance the court shall determine the heirs, devisees, and legatees entitled to the estate and assign the same to them by its decree. The decree shall name the heirs, devisees, and legatees, describe the property, and state the proportion or part thereof to which each is entitled. Said decree shall be binding as to all the estate of the decedent, whether specifically described in the proceedings or not. In the estate of a testate decedent, no heirs

need be named in the decree unless they have, as such, an interest in the estate. No final decree shall be entered until after the determination and payment of inheritance taxes. When the final decree includes real estate, such decree, or a certified copy thereof, may be entered on the transfer record of the county clerk of the proper county; and when any such decree which includes real estate shall become final, it shall be the duty of the probate court to transmit a certified copy thereof to the county clerk and the county clerk shall enter the same on the transfer record in his office.

SEC. 2. Section 59-2249 of the General Statutes Supplement of 1947 is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after July 1, 1949, and its publication in the statute book.

#### HOUSE BILL No. 364

AN ACT relating to the probate code and pertaining to the management and sale of assets, providing for continuation of businesses of decedents and wards, amending section 59-1402 of the General Statutes Supplement of 1947, and repealing said original section.

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

SECTION 1. Section 59-1402 of the General Statutes Supplement of 1947 is hereby amended to read as follows: Sec. 59-1402. Upon a showing of advantage to the estate the court, with or without notice, may authorize a representative to continue and operate any business of a decedent or ward for the benefit of his estate, under such conditions, restrictions, regulations and requirements, and for such periods of time not exceeding six months for any one period as the court may determine. No debts incurred or contracts entered into shall involve the estate or the representative beyond the assets used in such business immediately prior to the death of the decedent or the appointment of a guardian for the estate of the ward.

SEC. 2. Section 59-1402 of the General Statutes Supplement of 1947 is hereby repealed.

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

#### SENATE BILL No. 20

AN ACT relating to the probate code and prescribing the duties of a guardian of a ward, amending section 59-1804 of the General Statutes Supplement of 1947, and repealing said original section.

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

SECTION 1. Section 59-1804 of the General Statutes Supplement of 1947 is hereby amended to read as follows: Sec. 59-1804. A guardian shall be subject to the control and direction of the court at all times and in all things. A guardian of the person shall have charge of the person of the ward. A guardian of the estate shall (1) prosecute and defend for his ward; (2) sell assets of the estate when the interests of the ward and his estate require the sale thereof; (3) pay the reasonable charges for the support, maintenance, and education of the ward in a manner suitable to his station in life and the value of his estate; but nothing herein contained shall release parents from obligations imposed by law as to the support, maintenance, and education of their minor children; (4) pay all just and lawful debts of the ward and the reasonable charges incurred for the support, maintenance, and education of his spouse and children; (5) possess and manage the estate, collect all debts and claims in favor of the ward, or with the approval of the court compromise the same; and (6) invest all funds, except such as may be currently needed for the debts and charges aforesaid and the management of the estate, in (A) such securities as are proper for the investment of trust funds, including securities approved by the comptroller of the currency of the United States for the investment of trust funds by national banks; (B) direct obligations of this state, any county or city or school district in this state; (C) direct

obligations of the United States government, and obligations, the interest and principal of which are both unconditionally guaranteed by the United States government; (D) legally issued notes of the owner of unencumbered real property located in this state secured by first mortgage or deed of trust thereon: *Provided*, That the total debt secured by such encumbrance does not exceed fifty percent (50%) of the actual cash value of such real property at the time of such investment; (E) the entire fee simple title to real estate or an interest therein as a tenant in common as a home for the ward or for his dependent family: *Provided further*, That with the approval of the court the guardian may acquire title to real estate whenever necessary to reasonably protect the investment or interest of his ward in such property: *And provided further*, That the title to real property acquired by the guardian shall in all cases be taken in the name of the ward; (F) shares of the savings and loan associations under the supervision of this state and federal savings and loan associations under federal supervision in an amount not exceeding five thousand dollars (\$5,000) in any one association; and (G) as may be otherwise now authorized by the laws of the state of Kansas: *Provided*, That whenever and so long as the funds of the ward shall be invested as provided under (D) and (E) hereof it shall be the duty of the guardian to cause to be insured and to keep insured any and all buildings or other improvements located on such real property against loss or damage by fire, lightning, wind-storm and or hail in a reasonable amount for the benefit of his ward as his interest may appear.

SEC. 2. Section 59-1804 of the General Statutes Supplement of 1947 is hereby repealed.

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

#### SENATE BILL No.21

AN ACT authorizing the taking of depositions within the state, amending section 60-2823 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 60-2823 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 60-2823. Depositions may be taken in this state before a judge or clerk of a court of record, a certified shorthand reporter, before a county clerk, justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, or before a master commissioner, or any person empowered by a special commission; but depositions taken in this state, to be used therein, must be taken by an officer or person whose authority is derived from the state.

SEC. 2. Section 60-2823 of the General Statutes of 1935 is hereby repealed.

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

#### SENATE BILL No.42

AN ACT providing for pretrial procedure in civil actions in district courts.

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

SECTION 1. In any civil action pending in a district court, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider: (1) The simplification of the issues; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; (4) the limitation of the number of expert witnesses; (5) the advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury; (6) such other matters as may aid in the disposition of the action. The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the

agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered, controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to nonjury actions or extend it to all actions.

SEC. 2. This act shall take effect and be in force from and after its publication in the statute book.

### SENATE BILL No. 93

AN ACT relating to the competency of witnesses, amending section 62-1420 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 62-1420 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 62-1420. No person shall be rendered incompetent to testify in criminal causes by reason of his being the person injured or defrauded, or intended to be injured or defrauded, or that would be entitled to satisfaction for the injury, or is liable to pay the costs of the prosecution; or by reason of his being the person on trial or examination; or by reason of being the husband or wife of the accused; but any such facts may be shown for the purpose of affecting his or her credibility: *Provided*, That no person on trial or examination, nor wife or husband of such person, shall be required to testify except as a witness on behalf of the person on trial or examination: *And further provided*, That the neglect or refusal of the person on trial to testify; or of the husband or wife of such person on trial to testify in behalf of the person on trial, shall not raise any presumption of guilt, nor shall the circumstances that either or both such husband and wife failed or refused to testify be either commented upon or referred to by any attorney prosecuting in the case, nor shall the same be considered by the court or jury before whom the trial takes place.

SEC. 2. Section 62-1420 of the General Statutes of 1935 is hereby repealed.

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

### SENATE BILL No. 94

AN ACT relating to the impaneling of jurors upon trials for criminal offenses, amending section 62-1412 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 62-1412 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 62-1412. The proceedings prescribed by law in civil cases in respect to the impaneling of jurors, the keeping them together, and the manner of rendering their verdict, shall be had upon trials on indictments and information for criminal offenses, except in cases otherwise provided by statute: *Provided*, That in all trials of a felony, upon the request of either the state or the defendant, the court shall cause enough jurors to be called, examined, and passed for cause before any peremptory challenges are required, so that there will remain sufficient jurors, after the number of peremptory challenges allowed by law for the case on trial shall have been exhausted, to enable the court to cause twelve (12) jurors to be sworn to try the case.

SEC. 2. Section 62-1412 of the General Statutes of 1935 is hereby repealed.

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

## SENATE BILL No. 178

AN ACT relating to legal publications and notices in newspapers, amending section 64-102 of the General Statutes Supplement of 1947, and repealing said original section.

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

SECTION 1. Section 64-102 of the General Statutes Supplement of 1947 is hereby amended to read as follows: Sec. 64-102. That all legal publications and notices of whatever kind or character that may by law be required to be published a certain number of weeks or days shall be and they are hereby declared to be legally published when they have been published once each week in a newspaper which is published at least once each week, such publication to be made on any day of the week upon which the paper is published: *Provided*, That successive publications of the same notice shall be made on the same day of the week except that when there is no issue of the newspaper published on such day that it may be made on the preceding or following day: *And provided further*, That any newspaper publishing such notices or publications, as hereinbefore provided, must be otherwise qualified under existing law to publish such notices and publications.

SEC. 2. Section 64-102 of the General Statutes Supplement of 1947 is hereby repealed.

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

## SENATE BILL No. 182

AN ACT relating to criminal procedure, and providing for suspension of sentence and paroles in certain cases; and prescribing conditions relative thereto; amending section 62-2203 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 62-2203 of the General Statutes of 1935 is hereby amended to read as follows: Sec. 62-2203. In all felony cases when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public, as well as the defendant, will be subserved thereby, the court shall have power, after conviction or after a plea of guilty for any crime or offense not punishable by death or life imprisonment, to suspend the imposition or execution of sentence and to place the defendant upon parole for such period and upon such terms and conditions as it may deem best; or the court may impose a fine and may also place the defendant upon parole in the manner aforesaid, and such court may permit said person to go and remain at large until such parole shall be terminated as hereinafter provided. The court may revoke or modify any condition of parole, or may change the period of parole. The period of parole together with any extension thereof, shall not exceed five years. While on parole the defendant may be required to pay in one or several sums a fine imposed at the time of being placed on parole and may also be required to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which conviction was had, and may also be required to provide for the support of any person or persons for whose support he is legally responsible: *Provided*, That the court shall have no power to parole any person after he has been delivered to the warden of the penitentiary or to any of the other penal institutions of this state.

SEC. 2. Section 62-2203 of the General Statutes of 1935 is hereby repealed.

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

## SENATE BILL No. 216

AN ACT relating to defamation by means of radio and limiting liability therefor.

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

SECTION 1. The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator or such agent or employee, has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

SEC. 2. This act shall take effect and be in force from and after its publication in the statute book.

## SENATE BILL No. 297

AN ACT relating to the estates of deceased persons, amending section 59-508 of the General Statutes Supplement of 1947, and repealing said original section.

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

SECTION 1. Section 59-508 of the General Statutes Supplement of 1947 is hereby amended to read as follows: Sec. 59-508. If the decedent leaves no surviving spouse, child, issue, or parents, the respective shares of his property which would have passed to the parents, had both of them been living, shall pass to the heirs of such parents respectively (excluding their respective spouses), the same as it would have passed had such parents owned it in equal shares and died intestate at the time of his death; but if either of said parents left no such heirs, then and in that event his property shall pass to the living heirs of the other parent.

SEC. 2. Section 59-508 of the General Statutes Supplement of 1947 is hereby repealed.

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

## SENATE BILL No. 319

AN ACT relating to taxation and the judicial foreclosure and sale of real estate for taxes, requiring certain actions or proceedings to open, vacate, modify or set aside any tax foreclosure judgment, order of sale, or sale to be brought within the time therein prescribed, amending section 79-2804b of the General Statutes Supplement of 1947, and repealing said original section.

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

SECTION 1. Section 79-2804b of the General Statutes Supplement of 1947 is hereby amended to read as follows: Sec. 79-2804b. Legal or equitable actions or proceedings may be brought to open, vacate, modify or set aside any judgment rendered for taxes, interest and costs or any order of sale made under the provisions of section 79-2803 of the General Statutes Supplement of 1947 or amendments thereto, or any sale made under the provisions of section 79-2804 of the General Statutes Supplement of 1947 or any amendments thereof, but every such action or proceeding, including those brought to set aside judgments on the grounds and in the manner prescribed by the code of civil procedure, must be commenced within twelve months after the date the sale of the real estate, which was affected by such judgment, order of sale or sale, was confirmed by the court. The time limitation herein fixed for the bringing of any such action or proceeding shall be construed as a condition precedent to the bringing of any such action or proceeding and shall not be construed as a statute of limitations. The petition in every such action or proceeding shall show that such action or proceeding was commenced within the time herein

limited. If any such action or proceeding is not commenced within the time herein limited, or if the petition in any such action or proceeding shall not show that such action or proceeding was so commenced, the court shall have no jurisdiction of such action or proceeding. The provisions of this section shall apply to all judgments, orders of sale, and sales whether the purchaser at the foreclosure sale be the county or an individual.

SEC. 2. Section 79-2804b of the General Statutes Supplement of 1947 is hereby repealed.

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

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