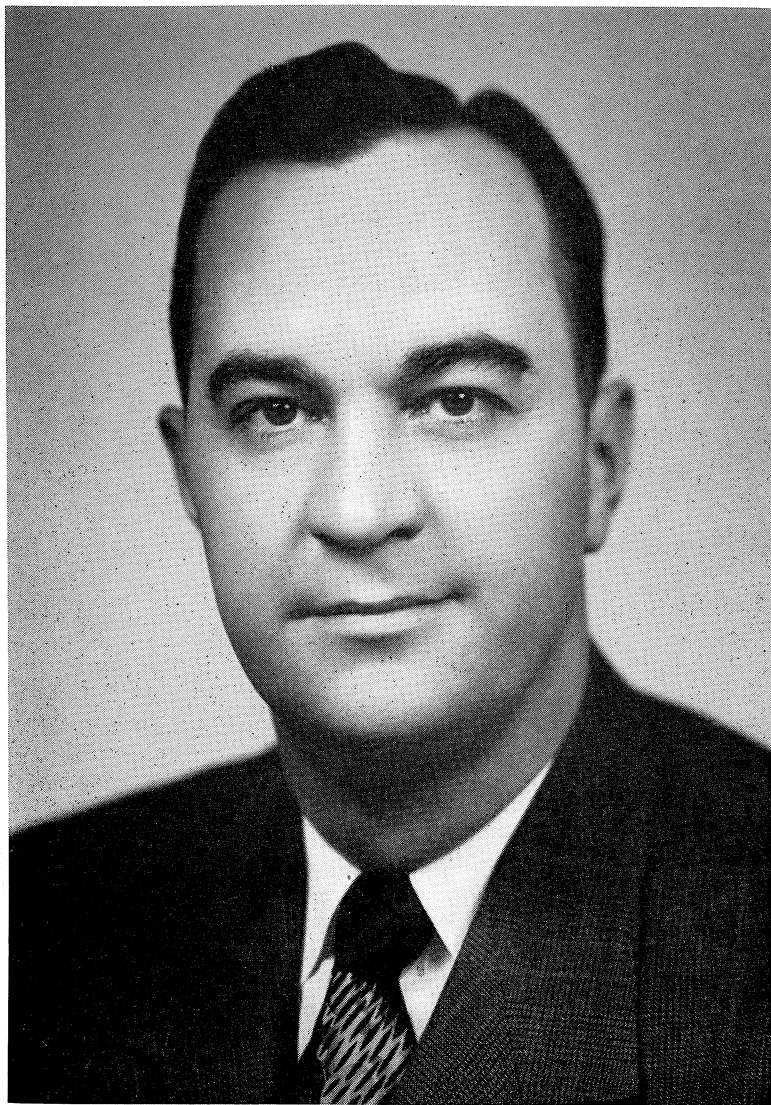


MOTION DAYS, 1952

KANSAS JUDICIAL COUNCIL BULLETIN

DECEMBER, 1951

PART 4—TWENTY-FIFTH ANNUAL REPORT



HONORABLE EDWARD F. ARN

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FOREWORD

We are glad to print in this issue an article by the Honorable Edward F. Arn, whose picture appears on the cover, who served as Justice of the Supreme Court of Kansas from February, 1949, to March, 1950. Since his retirement from the bench, Justice Arn has been elected to the office of governor, which he now holds. We are grateful to Governor Arn for taking time from the pressing duties of his present office to write this article for our publication.

In this issue, we also follow our custom of printing in each December BULLETIN a list of the motion days in the district courts for the following year.

Our attention has been called to the fact that in our October BULLETIN, in the roster of judicial officials on page 94, we failed to include the name of Judge Clayton Brenner, Judge of the Second Division of the District Court of Johnson County, Tenth Judicial District. This division was created by chapter 246 of the Session Laws of 1951, which took effect upon its publication in the official state paper on March 28, 1951. Judge Brenner was appointed immediately thereafter, and his name should have appeared in the roster of judicial officials as of July 1, 1951.

We also note that the Magistrate Court of Johnson County (Lyndus A. Henry, Judge) is listed erroneously as the City Court of Olathe on page 108 of our October BULLETIN. Since this is the only magistrate court in the state, it was classified among the city courts for comparison, but it should have been listed under its correct name.

We also print in this issue an article by Randal C. Harvey, entitled "Quieting Down the Title," illustrating the examination of an abstract and proceedings in the resulting suit to quiet title.

Probate Court Statistics. We are glad to complete our statistical tables for this year (JUDICIAL COUNCIL BULLETIN, October, 1951) by printing in this issue Table C-1 showing business handled by the Probate Courts during the year ended June 30, 1951. We are grateful to Judge Pfuetze of Riley County for completing his report under great difficulties after his records were damaged by the 1951 flood which inundated his office in the court house at Manhattan; and this has enabled us to publish statistics covering the probate courts in all counties of the state. Due to reduction in our printing allowance, it has been necessary to omit the publication of tables C-2 and C-3 showing detailed information in estates and guardianships, but these tables are on file in our office and may be examined by all parties interested.

"Here and There Under the Capitol Dome"

By EDWARD F. ARN

I consider it a great honor to be invited to write an article for the Judicial Council BULLETIN, because in my observation the BULLETIN is one of the most unique and at the same time one of the most influential publications in the state. It has no editorial staff, no subscription list, no advertising; and, I might add, no politics insofar as that term applies to partisanship. Certain issues of J. C. B. have been adopted as a supplemental text in law schools, and well-thumbed copies are to be found in the office of almost every practicing lawyer where they are used as a daily guide in many matters pertaining to Kansas practice. The nine members of the Judicial Council draw no salary, not even a per diem, yet no lawyer or judge has ever declined an appointment to this body. Under the chairmanship of Chief Justice W. W. Harvey and Justice Walter G. Thiele, it has sponsored many important improvements in the administration of justice and court procedure in this state, including the probate code, the frequent motion days in the district courts which have materially shortened the time for litigation, and many other changes through the years. An invitation to write an article for the Judicial Council BULLETIN is almost a command performance to us lawyers.

When Justice Thiele recently invited me to write an article for the Judicial Council BULLETIN, he suggested a subject such as I have selected, saying that it must be some kind of a record to serve as Attorney General, Supreme Court Justice and Governor within a two-year period. I replied that I wasn't up on those statistics, but that one of my newspaper friends had put it this way—"the guy can't keep a job."

One must admit that from the Attorney General's office on the marble-decked second floor of the Capitol Building to the comparatively quiet Chambers of Position No. 5 of the Supreme Court on the fourth, the court room sessions on the third, and the Governor's office back on the second floor, comprises a fair coverage of the area under the copper-clad dome.

I entered the Attorney General's office in January, 1947, during the post-war period of readjustment when many new problems were confronting our state government. It is sometimes said that when the law creates an office, or when a statute prescribes duties to be discharged by a public officer the fewer the words expressed, the broader is their intendment. For example, the constitution creates the office of Attorney General but says not a word about his duties. Along comes the Supreme Court and declares that whenever the constitution creates an office known to the common law, that is, the English law brought by the first settlers to Jamestown and Plymouth, the duties of the office, unless specifically negatived, include all the duties which attached to the office in by-gone centuries. The legislature may impose and has imposed duties on the Attorney General but most of them were inherent in the office at common law. The Attorney General must of course prosecute and defend actions in which the state is a party or otherwise interested, and must give advice to and counsel with the state officers and county attorneys in the performance of their duties. Suffice to say, the Attorney General's office was a

very busy place even with a corps of able assistants. In any law office—and it's doubly true of the Attorney General's office—that overweight volume of the General Statutes is the bible. (It should now be two volumes, for any lawyer whose volume is still intact hasn't used it enough.)

I had been a practicing lawyer for a number of years and thought I knew the statutes as well as the average, but I had never been a county attorney or held any other elective office, so my experience in interpreting and enforcing them had its limitations. Of course, every citizen is bound to know the laws of his own state, and certainly every lawyer is presumed to know them, but I found I had a lot to learn. I did learn a lot, and I am grateful to many distinguished Kansas lawyers who contributed to my education from across the counsel table.

An important part of the duties of the office is to defend these statutes when their validity is challenged in court; and during my administration as Attorney General, there arose a great many cases of this nature. The challenger was usually represented by competent and often eminent counsel, who could be depended upon to present their side of the case against the validity of the statute with force and ability. Consequently, it was not the responsibility and duty of the Attorney General's office to find reasons why the law might be invalid, but to exert our best efforts toward sustaining its validity, whether or not we completely approved of it as proper legislation.

While there is no time for private practice, the office of Attorney General is not wanting for clients. The state now has some seventy-five official boards and agencies to attend to its multifarious concerns, most of which have been created within the last twenty-five years. This may strike the casual reader as a surprising fact (there are too many and it has become a subject of discussion at Governors' Conferences), but the careful reader who will leaf through the pages of the official state directory would be hard put to decide which of them could be abolished without some possible loss of governmental efficiency. And of course many such departments are regulatory bodies, the abolishment of which would bring much weeping and wailing from the groups which braved the Legislative Halls to lobby through their regulatory measures.

As long as Kansas continues to grow in population, in diversified commercial, industrial and other activities, the state's governmental activities will be bound to grow. And most of the problems incident to such governmental expansion will find their way to the Attorney General's department for study and solution. Usually that officer's considered ruling or advice is accepted and followed. For more complex and difficult problems the courts are open for their determination.

Paraphrasing a bit—there used to be an old saying in Kansas that "Attorneys General never die, they go to the Supreme Court." This is something of an exaggeration, but it is true that some of our greatest justices have come to the Supreme Court from the office of Attorney General, such as Chief Justice William A. Johnston, Chief Justice John S. Dawson, and Justices Smith and Parker. I wish I could place myself in the category of these eminent jurists, but the fact is that I have only one thing in common with them—I did go from the office of Attorney General to the Supreme Court.

Justice Hugo T. Wedell and Justice Robert T. Price have already written of the experiences of a new and green justice when he becomes a member of

our highest court, in their articles in the July, 1942, and the April, 1950, issues of this BULLETIN. I can only say that both have well-reported the feeling of helplessness which I had when I first took this office. There was a difference, however, in that Justice Bob came in the hard way, through a contested election, and had years of experience behind him as a district judge, while I had never been a judge. I had neither his background as a judge nor time to get instructions on how to conduct myself. After my appointment, it took every available minute before taking office to clean up my work in the Attorney General's office in order for my successor to take over. Also, I had the handicap of taking the place of one of the ablest, best-loved and most respected justices who ever honored the bench in Kansas, Justice Homer Hoch. My feelings might be compared with those of Thomas Jefferson when he was sent as ambassador to the court of France, to take the place of Benjamin Franklin who had endeared himself to the hearts of the French people during our Revolutionary War. Some distinguished Frenchman said to Jefferson, "I understand you have come to replace Doctor Franklin." Jefferson replied, "I come to succeed him—no one can ever replace him." That is the way I felt about Justice Hoch.

Upon taking over the fourth floor office theretofore occupied by Justice Hoch (the rotation system of moving to a certain office in accordance with seniority on the court had just been abandoned), I witnessed the same experience related by Justice Wedell in his July, 1942, article (J. C. B.) with respect to furniture and furnishings in both my office and that of my secretary. My colleagues, in accordance with a custom of long-standing, and prior to my elevation from the second floor, had helped themselves until the spacious rooms were nearly bare. It was the gracious and sympathetic Chief Justice W. W. Harvey (whose friendship I will always cherish and whom I still like to call "Chief") who came to my rescue with the suggestion that the appropriations committee of the 1949 House of Representatives would surely not want a Justice of the Supreme Court to do his research work and write opinions while sitting in his furniture-less office Indian fashion on a worn-out carpet. My other colleagues on the court helped too, and the Legislative Appropriations Committee responded, so that I emerged with a pretty fancy office after all.

Immediately I found that writing opinions is a great deal different from writing a brief in favor of your client, presenting the case fairly but forcibly to secure the desired results, searching out and emphasizing the authorities and arguments in your favor, and letting the other fellow look after himself. On the contrary, the court must weigh these questions from an impartial angle, examine and discuss both sides of the case, and express the decision in logical terms. And while briefs are usually discarded into oblivion as soon as the case is over, the opinions of the Supreme Court are preserved to posterity in the Kansas Reports; and a flagrant display of ignorance or prejudice in an opinion might haunt the writer for the rest of his life. Of course I am speaking personally, and not of the other justices of the court, because I am conscious only of the mistakes I probably made myself; but it is a great responsibility to know that whatever you say may be used for or against some unknown litigant twenty-five or fifty years hence. This forces careful expression of the decision of the court, coupled with the impartiality which is a fundamental

characteristic of our judges. I hasten to say that had it not been for the kindly help of my associates in my early days on the bench, I would have been as bewildered as the traditional Justice of the Peace who wanted to decide every case both ways.

It is not adverse criticism to say that the methods of conducting judicial business are conservative and are slow to change. While the courts should never fall into incompetent hands, and their procedure and practice should always have one paramount goal—the administration of even-handed justice between litigants, yet there is an attitude, particularly among lawyers, to rely on the rules of *stare decisis* for the protection of their client's interests rather than of primary concern with the inherent justice of the rules themselves.

The field of statutory law is not open to improvement by the courts—and, as has been said so many times: “Courts—don’t—make—law. They are bound to interpret it as found.”

Statutory law cannot be soft-peddled or reduced to insignificance. It must be applied and upheld by the courts and when its impracticability or injustice is shown, it is the exclusive prerogative of the legislature to change it.

But there is a large area of jurisprudence, sometimes called “judge-made law,” in which the courts have full responsibility for modifying or abrogating rules which time and change have made obsolete. There is also the important field of judicial administration—what has been called the “art of the judges’ craft,” where enlightened and progressive judges can and do bring about advancement of judicial processes, so that the courts may more efficiently achieve the purpose of their existence—“to render to every man his due.” Our Kansas Supreme Court is achieving that purpose.

There is no period in my life which I have enjoyed so much as the year or so which I spent upon the Supreme Court of Kansas. This is not the place to discuss my reasons for resigning from the court to become a candidate for Governor, but I do want to say that there was no question in my mind that when I decided to be a candidate for another office, I must immediately resign from the court. That would perhaps be unnecessary for anyone other than a member of the judiciary, but in my view as a lawyer and a citizen, it would be unthinkable for a justice of the Supreme Court to become a candidate for Governor and conduct his campaign from his judicial office.

It must be admitted that when the time actually came for my departure from the court, I felt a bit sad and heavy of heart. I was leaving six fine associates and six good friends. I relinquished my robe to my successor, Justice William J. Wertz, knowing that with his experience as a district judge he would strengthen the court from the very beginning of his service.

Upon assuming the duties of Governor on January 8, 1951, I found of course that the relation of the chief executive to the state's governmental affairs must be broadened beyond the field of judicial processes.

Throughout the ninety years of Kansas history it will not be questioned that the lawyer-governors of this state have contributed much to its public service. That, of course, is also true of many lay-governors who have been called from various public and private activities to serve as chief executive since statehood began in 1861.

It would be impossible in this article to make even the briefest epitome of the distinctive contributions which governors have made to the advancement

of the judicial processes, but the contribution of our first lawyer-governor cannot be overlooked whenever the legal history of the state is under review.

From 1854, when the Kansas territorial organization was created by Congress, down to the close of the Civil War, the alternating dominance of proslavery and antislavery partisans resulted in such a tangled skein of inharmonious, incongruous and confusing statutes that neither layman nor lawyer could be certain of the legality of his business undertakings. Not until after the close of the Civil War was it possible to set about the task of bringing order out of this statutory chaos. But in 1867 Governor Crawford, our first lawyer-governor, with the sanction of the legislature, appointed a Commission to revise and codify the statutes. Three of the foremost lawyers of the time, Samuel A. Riggs of Lawrence, John M. Price of Atchison, and James McCahon of Leavenworth constituted the Commission. When the Legislature of 1868 convened the commission's work was submitted for its scrutiny and approval, accompanied by the governor's recommendation. Thus was born the General Statutes of 1868 which set the pattern of Kansas statutory law for half a century, and even the next official revision which constituted the Revised Statutes of 1923, retained much of the substance and form of the Statutes of 1868. Indeed that pattern is still reflected in our latest official compilation, the General Statutes of 1949. It is an old saying that any constructive achievement of lasting worth in statecraft is but "the lengthened shadow of a single man." The lengthened shadow of Kansas' first lawyer-governor still dominates the pattern of Kansas legislation.

Nowadays, we do have a better system for keeping the statutory law up-to-date. The legislature has created the permanent position of Revisor of the Statutes. It is his duty to make a continuous revision of the general statutes to keep them in accord with the changes, amendments and supplementary enactments of succeeding legislatures.

Of equal importance to a Kansas governor is his concern with the administrative processes of governmental affairs; and this is a task that is never done. Day and night, the year 'round, the governor consults with public officials, public bodies and private citizens about their affairs which are affected by statute—or perhaps by want of a statute. The governor is expected to be the sponsor of progressive ideas and ideals in civic affairs, and although most of us may fall short of that standard, we are never permitted by the public to forget it.

But the governor's responsibility to contribute to the advancement of the state's judicial processes is not confined to the improvement of statutory law and to the encouragement of wholesome conduct of public affairs. Perhaps his one most important gubernatorial prerogative is the appointment of judges to fill vacancies in the district courts or the supreme court. Governors serve two or four years and are gone—but the judges they appoint, if their selections are wisely made, are likely to serve for a generation, to the permanent benefit of the state. In this manner, certainly, the governor contributes materially to the advancement of the state's judicial processes.

And in another aspect the governor has an important part in the advancement of the state's judicial processes—seeing to it that the state's penal institutions are conducted and maintained at a high standard and as efficiently as the funds provided by the legislature will permit. The judicial processes of

the state in criminal law are designed to protect the accused who are innocent, and to see that the guilty are brought to justice.

This is not the time for me to dwell at length upon my work as governor, but I have learned to value my experience as Attorney General and as a member of the Supreme Court, and to understand the wisdom of our forefathers in separating the functions of our government, national and state, into three branches—legislative, judicial and executive. Surely our nation will survive as long as we keep each of these strong and independent.

MOTION DAYS IN DISTRICT COURTS—1952—CONTINUED

Please see notes on page 123

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Cheyenne.....	St. Francis.....	Robert W. Hemphill.....	Charles N. Roberts.....	17	26	16	7	7	26	11	13	3	5	1 13
Clark.....	Ashland.....	Karl Miller.....	Hope Grimes.....	31	10a	7a	6a	3a	8a	5a	4a	9a	6a	4a
Clay.....	Clay Center.....	Lewis L. McLaughlin.....	Hazel K. Chestnut.....	21	9	6	8	9	7	2	4	8	8	3
Cloud.....	Concordia.....	W. D. Vance.....	Mrs. Hazel Champlin.....	12	7	6	5	7	6	4	22	21	18	16
Coffey.....	Burlington.....	Jay Sullivan.....	Mrs. Ruth H. Johnson.....	5	28	25	31	28	26	30	29	27	24	29
Comanche.....	Coldwater.....	Karl Miller.....	Mrs. Mabel Chamness.....	31	9d	6d	5d	2d	7d	4d	3d	8d	5d	3d
Cowley.....	Winfield.....	Albert Faulconer.....	Sallie K. Smith.....	19	4 18	1 15	7 21	4 18	2 16	6 20	5 19	8 17	7 21	5 19
Crawford.....	Girard.....	Perry Owsley.....	Mrs. Grace Webb.....	38	7	8	7	7	2	6	5	6	7	5
Girard Div. Pittsburg Div.					21	18	17	21	19	16	15	20	17	15
Decatur.....	Oberlin.....	Robert W. Hemphill.....	Mrs. Alice J. Vernon.....	17	24	14 25	5	15	12	4	11	1	6	11
Dickinson.....	Abilene.....	James P. Coleman.....	Seth Barter, Jr.....	8	7	7	5	2	19	4	8	1	3	3
Doniphan.....	Troy.....	John L. Gernon.....	Virgil W. Begasse.....	22	23	20	19	23	21	4	17	22	19	17
Douglas.....	Lawrence.....	Hugh Means.....	Mrs. Mary Ellen Simmons,	4	5	4	1	5	5	28	6	3	3	13
Edwards.....	Kinsley.....	Lorin Peters.....	John Stoner.....	33	8e	11 5e	4e	8e	5	.....	.....	27	.....	.....
Elk.....	Howard.....	Carl Ackerman W. N. Calkins	Frank A. Force.....	13	7	7	11	4	5	6	15	3	6	4
Elk Div. No. 1 Div. No. 2														
Ellis.....	Hays.....	C. A. Spencer.....	J. T. Stroemel.....	23	14	4	10	15	19	9	10	20	12	10

MOTION DAYS IN DISTRICT COURTS—1952—CONTINUED

Please see notes on page 123

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Ellsworth.....	Ellsworth.....	A. R. Buzick.....	James M. Wilson.....	30	21	13	6	21	16	2	3	13	7	10
Finney.....	Garden City.....	Ray H. Calihan.....	G. Mae Purdy.....	32	14	6a	6a	4a	12	6a	22	3a	6a	5a
Ford (See note 10).....	Dodge City.....	Karl Miller.....	Elta J. Riley.....	31	11a 18a 25a	1a 8a 15a 22a	7a 14a 21a 28a	4a 11a 18a 25a	..... 9a 16a 30a	6a 20a 27a	5a 12a 19a 26a	..... 10a 24a 31a	7a 14a 21a 28a	5a 12a 19a
Franklin.....	Ottawa.....	Hugh Means.....	Christina Woke.....	4	7	2	7	7	2	27	8	2	7	12
Gearry.....	Junction City.....	James P. Coleman.....	C. W. Marston.....	8	8	5	3	1	6	2	9	3	10	2
Gove.....	Gove.....	C. A. Spencer.....	Mrs. Louise Brown.....	23	16	13	17	18	12	16	8	13	17	8
Graham.....	Hill City.....	W. K. Skinner.....	Cora A. Roberts.....	34	7	4	13	17	12	3	15	2	14	3
Grant.....	Ulysses.....	L. L. Morgan.....	Mrs. Juanita Barber.....	39	8d	5d	4a	14a	6d	3d	6a	2d	4d	1a
Gray.....	Cimarron.....	Karl Miller.....	Mrs. Tressie Johnson.....	31	8d	5d	4d	1d	6d	3d	2d	7d	4d	2d
Greeley.....	Tribune.....	Ray H. Calihan.....	Laura M. Holmes.....	32	3a	11	4a	1a	1a	3a	15a	20	4a	2a
Greenwood.....	Eureka.....	Carl Ackerman W. N. Calkins	Alma Long.....	13	21	8	4	3	19	12	11	13	7	12
Hamilton.....	Syracuse.....	Ray H. Calihan.....	Amelia J. Minor.....	32	8a	25	4d	1d	6a	5a	17a	27	4d	2d
Harper.....	Anthony.....	Clark A. Wallace.....	Helen Pearl.....	24	14	7	6	14	8	16	4	13	5	3
Harvey.....	Newton.....	George L. Allison.....	Mrs. Mabel A. McMullen.....	9	24	11	27	24	12	19	18	23	10	18
Haskell.....	Sublette.....	L. L. Morgan.....	Mrs. Evelyn Yount.....	39	8a	5a	10a	1a	6a	3a	15a	2a	4a	9a

MOTION DAYS IN DISTRICT COURTS—1952—CONTINUED

Please see notes on page 123

County	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Hodgeman.....	Jetmore.....	Lorin T. Peters.....	F. S. Haun.....	33	8d	25 5d	4d	8d	19 2d	3d	4d	7d	10 4d	2d
Jackson.....	Holton.....	Robert H. Kaul.....	Chelcia Shelby.....	36	14	6	5	2	5	4	3	6	5	3
Jefferson.....	Oskaloosa.....	Robert H. Kaul.....	Mrs. Myrtle Kimmel.....	36	18	8	3	4	9	2	5	10	3	5
Jewell.....	Mankato.....	Donald J. Magaw.....	Bernice Howard.....	15	10	7	3	17	8	2	18	23	10	3
Johnson.....	Olathe.....	John L. Kirkpatrick Clayton Brenner	Mrs. Gertrude S. Hedberg,	10	7	11	3	7	5	9	2	20	10	1
Kearny.....	Lakin.....	Ray H. Calhan.....	Bertha Adams.....	32	8d	1d	10	3a	6d	5d	17d	1d	10	4a
Kingman.....	Kingman.....	Clark A. Wallace.....	Mrs. Nell H. Walter.....	24	12	9	24	12	10	2	22	10	7	8
Kiowa.....	Greensburg.....	Karl L. Miller.....	James L. Estlack.....	31	9a	6a	5a	2a	7a	4a	3a	8a	5a	3a
Labette.....	Oswego.....	Hal Hylar.....	Quincy B. Greer.....	16	25 14	29 11	28 24	25 23	16 26	20 16	26 13	24 27	14 17	19 13
Osborne.....	Parson Div.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lane.....	Dighton.....	Ray H. Calhan.....	Mrs. Eva Cramer.....	32	4a	5a	24	2a	2a	4a	16a	2a	24	3a
Leavenworth.....	Leavenworth.....	Joseph J. Dawes.....	Dorothy Harrison.....	1	4	1	7	4	2	6	5	3	7	5
Lincoln.....	Lincoln.....	A. R. Buzick.....	William Powers.....	30	5	18	3	5	19	6	4	6	10	19
Linn (See note 3).....	Mound City.....	Harry W. Fisher.....	Will H. Bayless.....	6	10 24	7 21	13 27	7 24	8 22	5 19	4 18	9 23	13 27	1 18
Logan.....	Russell Springs.....	C. A. Spencer.....	Mrs. Ada F. Rogge.....	23	17	14	13	7	2	12	1	11	10	1
Lyon.....	Emporia.....	Jay Sullivan.....	Mrs. Roe G. Collins.....	5	30	27	26	30	28	25	24	29	26	31

MOTION DAYS IN DISTRICT COURTS—1952—CONTINUED

Please see notes on page 123

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Marion.....	Marion.....	James P. Coleman.....	Virgil M. Wiebe.....	8	10	4	6	4	5	6	11	6	6	4
Marshall.....	Marysville.....	Lewis L. McLaughlin.....	W. J. Koppes.....	21	11	4	7	11	5	6	5	6	7	5
McPherson.....	McPherson.....	Geo. L. Allison.....	Donald S. Clark.....	9	14 25	15	28	7 25	23	27	19	6 24	23	19
Meade.....	Meade.....	Karl Miller.....	Ethel R. Copenhaver.....	31	10d	7d	6d	3d	8d	5d	4d	9d	6d	4d
Miami (See note 3).....	Paola.....	Harry W. Fisher.....	Ethel J. Hunt.....	6	8 22	4 19	11 25	8 22	13 27	2 17	2 16	6 21	11 25	2 16
Mitchell.....	Beloit.....	Donald J. Magaw.....	Ida B. Jamison.....	15	14	8	6	21	9	5	22	24	13	4
Montgomery.....	Independence.....	Warren B. Grant.....	M. D. Smith.....	14	5	2	1	5	3	7	6	4	1	6
Independence Div. Coffeyville Div.....	Independence.....	Independence Div. Coffeyville Div.....	Independence Div. Coffeyville Div.....	4	4	1	7	4	2	6	5	3	7	5
Morris.....	Council Grove.....	James P. Coleman.....	Mrs. Inez Featherston.....	8	11	8	7	7	8	16	12	2	5	1
Morton.....	Richfield.....	L. L. Morgan.....	Irene Kuder.....	39	9d	11a	5a	2a	7d	4d	2a	3d	5d	10a
Nemaha.....	Seneca.....	John L. Gernon.....	Ruth Shaffer.....	22	21	18	17	21	19	2	15	20	17	15
Neosho.....	Erie.....	B. M. Dunham.....	Merle Estes.....	7	9	13	12	9	14	11	10	8	12	10
Ness.....	Ness City.....	Lorin T. Peters.....	Gladys K. Bondurant.....	33	9e	6e	10e	9e	3e	4e	8e	8e	5e	8e
Norton.....	Norton.....	Robert W. Hemphill.....	Arthur V. Poage.....	17	7 14 23	13	8	21	16	5	1 10	6	7	10
Ossage.....	Lyndon.....	A. K. Stavely.....	Edith Lindsay.....	35	4	1	11	4	2	10	5	3	11	5
Osborne.....	Osborne.....	Donald J. Magaw.....	Elma McCall.....	15	11	4	7	18	12	6	19	20	14	5

MOTION DAYS IN DISTRICT COURTS—1952—CONTINUED

Please see notes on page 123

County	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Ottawa.....	Minneapolis.....	A. R. Buzick.....	A. H. Finley.....	30	7	5	4	7	10	5	6	27	28	20
Pawnee.....	Larned.....	Lorin T. Peters.....	Rose Wood.....	33	28 7d	4d	3d	14 7d	1d	2d	3d	13 6d	3d	1d
Phillips.....	Phillipsburg.....	Robert W. Hemphill.....	Gene Britt.....	17	22	4	4	18	5	3	9	4	8	9
Pottawatomie.....	Westmoreland.....	Robert H. Kaul.....	Lloyd W. Hope.....	36	17	7	6	1	8	5	2	9	6	2
Pratt.....	Pratt.....	Clark A. Wallace.....	Verna J. Barber.....	24	11	8	10	11	19	6	8	9	10	5
Rawlins.....	Atwood.....	Robert W. Hemphill.....	Mrs. Louise Portschy.....	17	25	15	6 17	16	19	10	12	2	4	12
Reno.....	Hutchinson.....	Franklin B. Hettinger.....	G. R. Williams.....	40	4	1	1	4	2	6	5	3	7	5
				11	11	8	8	11	9	13	12	10	14	12
				18	15	15	15	18	16	20	19	19	21	19
				25	22	22	22	25	23	27	26	24	28	26
Republic.....	Belleville.....	W. D. Vance.....	Warren A. Scott.....	12	9	4	4	9	5	3	24	20	19	17
Rice.....	Lyons.....	Roy J. McMullen.....	Laura Saut.....	20	1	6	6	1	7	5	2	1	6	2
Riley (See note 6).....	Manhattan.....	Lewis L. McLaughlin.....	Joseph F. Musil.....	21	7	8	5	7	9	4	2	10	5	1
Rooks.....	Stockton.....	W. K. Skinner.....	Geo. F. Crane.....	34	14	14	12	16	5	2	1	1	13	2
Rush.....	La Crosse.....	Lorin T. Peters.....	Estia Manahan.....	33	14e 7e	4e	24e 3e	7e	1e	2e	22e 3e	6e	3e	1e
Russell.....	Russell.....	C. A. Spencer.....	George W. Brandt.....	23	7	12	11	16	5	10	11	6	13	11
Saline.....	Salina.....	A. R. Buzick.....	Robert H. Lively.....	30	3	6	10	16	9	4	8	8	5	1
Scott.....	Scott City.....	Ray H. Cullihan.....	Nellie Scheuerman.....	32	4d	5d	5d	14	2d	4d	16d	2d	5d	8

MOTION DAYS IN DISTRICT COURTS—1952—CONTINUED

Please see notes on page 123

County	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Sedgewick Div. No. 1 Div. No. 2 Div. No. 3 Div. No. 4 (See note 10)	Wichita	Ross McCormick Howard C. Kline Clair E. Robb George Austin Brown	L. D. Leland	18										
Seward	Liberal	L. L. Morgan	Mrs. Mary Lindley	39	14a	16a	15a	21a	17a	21a	20a	13a	15a	20a
Shawnee Div. No. 1 Div. No. 2 Div. No. 3 (See note 7)	Topeka	Beryl R. Johnson Paul H. Heinz Dean McElheny	Mrs. Lucile M. Carter	3	4 25 11 18	15 1 22 8 29	7 14 28 21	20 16 27 13	9 30 16 2	20 26 6 2	5 26 12 19	17 3 24 10 31	7 28 14 21	19 5 26 12
Sheridan	Hoxie	W. K. Skinner	Mrs. Marjorie M. Hilburn	34	8	25	14	4	19	4	11	6	15	4
Sherman	Goodland	W. K. Skinner	Sylvia Riley	34	10	16	15	7	10	9	13	4	17	6
Smith	Smith Center	Donald J. Magaw	Mrs. Lucille Figg	15	9	6	24	16	7	16	17	22	12	1
Stafford	St. John	Roy J. McMullen	Mrs. Wanda Tucker	20	2	5	5	2	6	4	3	7	5	3
Stanton	Johnson	L. L. Morgan	Marjorie Harmon	39	9a	25a	4d	1d	7a	4a	8a	3a	5a	9d
Stevens	Hugoton	L. L. Morgan	John F. Fulkerson	39	28a	19a	24a	2d	8a	5a	6d	27a	14a	10d
Sumner	Wellington	Wendell Ready	Laura McCormick	25	1	5	4	1	6	3	9	7	4	2
Thomas	Colby	W. K. Skinner	Winifred G. Van Horn	34	9	15	17	19	26	10	12	3	3	5
Trego	Wakeeney	C. A. Spencer	Mrs. Albert H. Acre	23	15	11	3	14	13	2	9	14	3	9
Wabaunsee	Alma	A. K. Stavelly	Mrs. Eva Dorman	35	2	5	4	1	6	3	2	7	3	2

Please see notes below

County	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Wallace.....	Sharon Springs...	C. A. Spencer.....	Mrs. Ida Ward.....	23	18	15	14	21	3	13	15	27	14	15
Washington.....	Washington.....	W. D. Vance.....	Mrs. Alta Hennon.....	12	8	5	3	8	7	2	23	22	17	15
Wichita.....	Leoti.....	Ray H. Calhoun.....	Daisy Dickey.....	32	3d	1a	5a	23	1d	3d	15d	1a	5a	15
Wilson.....	Fredonia.....	B. M. Dunham.....	A. G. Green.....	7	1	7	6	1	1	5	2	2	6	4
Woodson (See note 9)...	Yates Center.....	Spencer A. Gard.....	Mrs. Maude Beckett.....	37	15 29	19	4 25	22	13	2 24	9 30	14 25	4 25	16
Wyandotte (See note 2)	Kansas City.....	E. L. Fischer..... Willard M. Benton..... Harvey J. Emerson..... William H. McHale.....	Richard D. Shannon.....	29	5	2	1	5	3	7	6	4	1	6
Div. No. 1.....					12	9	8	12	10	13	11	11	8	13
Div. No. 2.....					19	16	13	14	17	21	20	18	15	20
Div. No. 3.....					26	23	22	26	24	28	27	23	22	27
Div. No. 4.....														

e—9:00 a. m. a—10:00 a. m. c—1:30 p. m. d—2:00 p. m. b—1:00 p. m.

NOTE 1.—Italicized dates indicate the first day of a regular term of court.

NOTE 2.—Wyandotte county—The division having law and equity cases has a motion day on Thursday of each week of term, in addition to above mentioned days. Wyandotte county has a regular motion day in four divisions during July as follows:

Division No. 1.—Judge E. L. Fischer: July 5.

Division No. 2.—Judge Willard M. Benton: July 5.

NOTE 3.—Regular motion days shall run through July as follows: Bourbon, July 11-18-25; Miami, July 3-14-31.

NOTE 4.—Cherokee county motion days shall run through July and August as follows: Columbus Division, July 1 and August 5; Galena Division, July 3 and August 7.

NOTE 5.—In Norton county August 25th is motion day.

NOTE 6.—Opening day in Riley delayed one day on account of Labor Day.

NOTE 7.—In Shawnee county the schedule continues through July and August as follows:

Div. No. 1.—Judge Beryl L. Johnson: July 25 and August 15.

Div. No. 2.—Judge Paul H. Heinz: July 11 and August 1 and 22.

NOTE 8.—In Allen county, July 28 is motion day.

NOTE 9.—In Woodson county, July 29, is motion day.

NOTE 10.—Beginning January 14, 1952, and thereafter all motions filed in the District Court of the 18th Judicial District, Sedgwick county, consisting of four divisions, will be disposed of as follows: Motions for additional time to plead are to be accompanied with an order, which order is to be presented to the judge of the division to which the case is assigned and is to be ruled on by him immediately. In other words all motions for additional time to plead are to be ruled on simultaneously with the filing of the motion.

All other motions other than a motion for additional time to plead shall be ruled on on the 7th day after said motion is filed. For instance if a motion is filed on Monday it shall be ruled on the following Monday. In the event said 7th day falls on a holiday the said motion shall be ruled on the following day. In other words every day shall be motion day.

If the Judge of the division to which the case has been assigned is unavailable then said orders for additional time to plead will be presented to the Preliminary Judge, and if the Preliminary Judge is unavailable then to one of the other Judges who is available.

Likewise all emergency matters will be presented to the Preliminary Judge. In the event that the Judge to which the case has been regularly assigned is not available and if said Preliminary Judge is unavailable, then to one of the other Judges who is available.

Motions up to January 14, 1952, will be disposed of as follows:

Division 1, the first Saturday of the month.

Division 2, the second Saturday of the month.

Division 3, the third Saturday of the month.

Division 4, the fourth Saturday of the month.

"Quieting Down the Title"

Introduction by RANDAL C. HARVEY

More actions have been filed in the district courts of Kansas to quiet title to real estate than any other type of civil suits, excepting only divorce cases. (See Kansas Judicial Council BULLETIN, October, 1951, page 103.) Most lawyers keep a set of the forms they have prepared and used in previous cases for reference. This year some of these old forms will have to be revised because of the new statute to simplify constructive service (Chapter 349, Session Laws of 1951, amending G. S. 60-2525, 60-2526 and 60-2527). It is therefore considered that this is an appropriate time to publish the following compilation of the proceedings in a mythical (but typical) suit to quiet title.

The bar of Kansas has devoted a great deal of attention to title matters in the last twenty years, and much progress has been made. Lawyers themselves have questioned their tendency to be supercritical in the examination of abstracts and to make unnecessary and unreasonable requirements. This has led to the establishment by the state bar association of a committee on title standards which has labored for many years and has promulgated a set of standards which has been generally accepted by the bar (see Kansas Judicial Council BULLETIN, July, 1949, page 24), and this work has been continued up to the present time (see Kansas Judicial Council BULLETIN, July, 1951, page 70). There have also been several useful curative statutes enacted by the legislature. Other long-mooted questions about merchantable titles have been settled by the Supreme Court, and special credit is due to the lawyers who volunteered to bring these cases before the court. The bar associations as well as the Legislative Council and the Judicial Council have also devoted their efforts to secure a general curative statute covering title defects more than twenty-five years old, but this has not yet come to pass.

So we still must quiet some titles in Kansas, not so many as before, but more than two thousand a year (Kansas Judicial Council BULLETIN, October, 1951, page 103).

Such actions really originate with the abstract, and the defects found upon examination by an attorney. If the defects cannot be otherwise cured, this usually leads to a suit to quiet title. This article is therefore divided into three parts:

- I. The Abstract (somewhat abbreviated);
- II. The Attorneys' Opinion;
- III. The Suit to Quiet Title.

Upon the subject of examination of the abstract, nothing need be added to the excellent article by Margaret McGurnaghan, "Land Titles and Abstract Examination," printed in the Kansas Judicial Council BULLETIN, April, 1942, page 14.

As to the case itself, only a few matters need any special explanation. The general rules of pleading apply. If any defendants can be served personally, this must be done. The clerk's office should be checked for individual process agents designated under G. S. 60-2533 to 60-2538, inclusive. If the case is contested—and it could be—it will be tried like any other case, but this is beyond the scope of this article.

The new amendment of the statute for constructive service (Chapter 349, Session Laws of 1951, amending G. S. 60-2525, 60-2526 and 60-2527) should be carefully studied. Credit should be given to Senator L. H. Ruppenthal, of McPherson, and his associates in procuring the enactment of this useful statute which simplifies service by publication and takes much of the weary repetition out of the affidavit and notice. (See "Amendments to Statutes for Constructive Service," by L. H. Ruppenthal, Kansas Judicial Council BULLETIN, July, 1951, page 79.) However, an examination of a score of cases filed since July 1, 1951, and numerous publication notices in current newspapers, shows that the bar has not yet become thoroughly familiar with this statute, and some questions have arisen as to the exact form in which notice should be given by publication. It is not the purpose of this article to settle these questions but only to present a set of forms which, however awkwardly drawn, might be safely used in the given case at the present time.

One thing is certain—the amended sections must be followed. No one can "operate under the old law," because the old sections (G. S. 60-2525, 60-2526 and 60-2527) have been repealed. The statutory form of affidavit and notice (Chapter 349, Session Laws of 1951) must be substantially followed—and the safest way is to use the statutory language as nearly as possible and not depend too much on the word "substantially."

In the forms used in this article, an attempt has been made to present an affidavit and a notice which will satisfy all constitutional and jurisdictional requirements without altering the statutory forms. The statutory affidavit is unchanged except to add a verification of the parts of the petition which relate to the defendants and the plaintiff's knowledge of their status, and to make the affidavit cover the knowledge of the plaintiff, as well as the affiant, when the affidavit is made by the attorney instead of the plaintiff himself. It is not suggested that these additions are necessary to the sufficiency of the statutory affidavit, but they do place the entire foundation for constructive service under oath, and negative any idea that the plaintiff might have some knowledge beyond that of the affiant.

The form here used for the "notice of suit" is appropriate only in cases where all defendants are to be served by publication. Where some of the defendants can be served personally, the form of notice should be varied to exclude the names of these defendants. There are a number of ways in which the notice can be worded, all within the limits of the statutory form, and each lawyer should decide for himself how to write the notice in any particular case. Special care should be taken to advise the defendants "and all other persons who are or may be concerned," in comprehensive terms, of the exact judgment which will be rendered if they fail to appear. For that reason, it is recommended that the real estate be described in full whenever practical, without taking advantage of the statutory permission to describe it by reference to the plaintiff's petition. If the description is long and involved, the notice should contain at least a statement of the approximate size and location of the land, such as "A tract of land of about 11 acres, in the North half of the Southeast Quarter of Section —," etc., "more particularly described in plaintiff's petition." It is also recommended that the notice contain the caption and number of the case, to identify the exact case in the records of the court, and for the convenience of the clerk.

A few general observations might be made upon the subject of quieting titles.

Lawyers should be reluctant to require suits to quiet title for minor defects. Most clients are anxious to close up their real estate deals, and some of them are very unhappy when they are required to wait a couple of months until the title is quieted. (Some even object to the additional expense.) Furthermore, disagreements between different lawyers on title questions have a bad effect on the confidence of the public in lawyers as a class and can offset thousands of dollars spent on public relations work.

But when it is necessary to quiet a title, the job should be done thoroughly. It should not be confined to the defects which the examiner considers fatal to the merchantability of the title, but should include all doubtful discrepancies which might otherwise be waived. When a mortgage is foreclosed or a partition suit is commenced, the abstract should be freshly examined, and title can be quieted in the same suit if any defects appear. It costs little to add a few additional defendants in any of these cases, and may save someone the future expense of another quiet title suit.

It should be remembered that a judgment on publication service can be reopened, even against an innocent purchaser, within six months after its rendition (G. S. 60-2530), and a title is little better five months after it is quieted than it was before the suit was filed. If there is any reasonable possibility that a defendant will appear and ask to reopen the case, the buyer should be warned of the danger of completing his purchase within six months after judgment. Some careful lawyers make a practice of mailing copy of publication notice by registered mail to all nonresident defendants whose addresses are known. While this is not now required by statute (except in divorce cases), it prevents such defendants from claiming that they had no notice of the suit.

This article is primarily intended to show the consecutive steps in a simple suit to quiet title, such as might be brought by an attorney in general practice, rather than to present perfect forms prepared by a title expert. Most practicing lawyers should need no warning not to depend on these forms—any forms. It is better to work out your own pleadings first, then check them if need be with a good form book (such as McCamish, Kansas Forms, 2d edition). You cannot toss a list of names and a form book at your stenographer and expect perfect results, unless she is a better lawyer than you.

PART I

THE ABSTRACT

(NOTE.—The following is a summary of the entries in an abstract of title, to illustrate the defects which require this suit to quiet title. A complete abstract would include acknowledgments, recording data, certificates, and other items which are omitted.)

Abstract of title to the following described real estate in Apache County, Kansas:

The East half of the Southeast Quarter of Section 37, Township 75 South, Range 80, West of the 15th Principal Meridian.

PATENT

Entry No. 1.

United States of America,
Andrew Johnson, President,
to

Wab-Ky-Oof.

Dated July 1, 1868.

Property conveyed: S. E. $\frac{1}{4}$ Sec. 37, T. 75 S., R. 80, W. of 15th P. M.

DEED

Entry No. 2.

George S. Wabky and Harriet B. Wabky,
his wife,

to

Katherine Bender.

Dated December 17, 1870.

Property conveyed: S. E. Quarter of Sec. 37, Twp. 75, Range 80, West of 15th P. M., Apache County, Kansas.

Deed recites that George S. Wabky is the son and heir of Wab-Ky-Oof.

TAX DEED

Entry No. 3.

P. Y. O'Nier, County Clerk of
Apache County, Kansas,
to

John W. Trader.

Dated May 14, 1877.

Property conveyed: S. E. $\frac{1}{4}$, Sec. 37, T. 75, R. 80, W. of 15th P. M.,
Apache County, Kansas.

QUITCLAIM DEED

Entry No. 4.

Orestes Trader and Helen Trader, his wife,
and Electra Trader, a spinster,

to

Benedict A. Booth.

Dated June 6, 1890.

Property conveyed: S. E. $\frac{1}{4}$ of Sec. 37, Twp. 75, R. 80, W., in
Apache Co., Kans.

AFFIDAVIT

Entry No. 5.

Cassius A. Munchausen

to

The Public.

Dated June 7, 1890.

States that affiant was personally acquainted with John W. Trader, who died December 31, 1888, leaving Orestes Trader, his son, and Electra Trader, his daughter, as his only living children.

RIGHT-OF-WAY GRANT

Entry No. 6.

B. A. Booth, a single man,

to

The Arizona, Argentina & Southern
Railway Corporation.

Dated January 7, 1891.

Property conveyed: A strip of land 100 feet in width extending from the Northwest corner of the Southeast Quarter of Section 37, Township 75, Range 80, in Apache County, Kansas, to the Southeast corner of said quarter section. Instrument further recites: "This conveyance shall be void unless the grantee shall construct and operate a line of railroad on said land."

CONTRACT

Entry No. 7.

B. A. Booth

to

Bryan and McKinley Land Company.

Dated October 31, 1896.

First party agrees to sell S. E. $\frac{1}{4}$ of Sec. 37, Twp. 75, R. 80, to second parties for \$4,500.00 cash, to be paid on or before December 31. (Year not stated.)

WARRANTY DEED

Entry No. 8.

Ben Booth and Cassandra Booth,
his wife,

to

Grover C. McKinley.

Dated December 15, 1896.

Property conveyed: East half of S. E. $\frac{1}{4}$ of Sec. 37, Twp. 75, R. 80, W. of 15th
P. M., in Apache County, Kansas.

WARRANTY DEED

Entry No. 9.

Grover C. McKinley, a widower,

to

Jefferson D. McKinley.

Dated June 15, 1920.

Property conveyed: My home eighty in the S. E. corner of
Sec. 37-75-80.

Deed recites: "Grantee agrees to take good care of grantor
for the rest of his life."

MORTGAGE

Entry No. 10.

Jefferson D. McKinley and
Patricia McKinley, his wife,

to

The Apache Trust Company, Trustee.

Dated June 16, 1920.

Property conveyed: E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 37, Twp. 75, R. 80 W., in
Apache County, Kansas.

Secures note for \$3,000.00, due ten years after date, with
interest at 6% payable semi-annually.

Marginal release entered December 8, 1931, recites:

"The debt secured by this mortgage has been paid in full and the same is
hereby released of record.

The Apache National Bank of Metropolis, Kansas, successor to The Apache
Trust Company, by Ronald Brinkley, President."

MORTGAGE

Entry No. 11.

Jefferson D. McKinley and
Josephine McKinley, his wife,
to

S. K. Flint.

Dated July 1, 1922.

Property conveyed: East 80 acres of S. E. $\frac{1}{4}$ of Sec. 37-75-80.
Secures note for \$500.00 due 90 days after date, with interest
at 10% compounded monthly.

GENERAL WARRANTY DEED

Entry No. 12.

Jeff McKinley and Ruth McKinley,
husband and wife,
to

Ingrid Lamb.

Dated June 6, 1925.

Property conveyed: E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 37, Twp. 75, R. 80,
W. of 15th P. M., in Apache County, Kansas.
Subject to mortgage of record.

QUITCLAIM DEED

Entry No. 13.

Cornelia Ingrid Garcia,
formerly Ingrid Lamb,
to

The Apache National Bank of
Metropolis, Kansas.

Dated January 2, 1931.

Property conveyed: The East half of the Southeast Quarter of
Section 37, Township 75, Range 80, West of the 15th P. M., in
Apache County, Kansas.

CORPORATION SPECIAL WARRANTY DEED

Entry No. 14.

The Apache National Bank of
Metropolis, Kansas, a corporation,
to

Richard Roe.

Dated December 7, 1931.

Property conveyed: East half ($\frac{1}{2}$) of Southeast Quarter (S. E. $\frac{1}{4}$) of
Section 37, Township 75, Range 80, West of the 15th P. M., in
Apache County, Kansas.

Entry No. 15.

IN THE PROBATE COURT OF APACHE COUNTY, KANSAS.

In the Matter of the Estate of Richard Roe, Deceased, No. 1102.

(NOTE.—There is a wide difference in local custom among abstracters in various parts of the state as to the detail with which court proceedings are abstracted. In some abstracts almost all of the papers filed are reproduced verbatim, while in others they are abbreviated to a greater or lesser extent. The following indicates the minimum which should be accepted, including date and nature of pleadings filed, with verbatim copies of jurisdictional published notices and the substance of the court's findings and decree. For more detailed proceedings in the estate of Richard Roe, see Kansas Judicial Council BULLETIN, April, 1946, pages 60-67, and April, 1950, pages 47-52.)

January 5, 1946. Petition of Sarah Roe for determination of descent of property of Richard Roe who died intestate on January 2, 1945, filed.

January 5, 1946. Order for hearing of petition on January 31, 1946, and requiring notice to be given pursuant to G. S. 59-2209.

January 10, 1946. Order of State Commission of Revenue and Taxation, Inheritance Tax Division, finds that no inheritance tax is due in the estate of Richard Roe, deceased.

January 24, 1946. Proof of publication of notice of hearing filed. Copy of notice:

(First published in The Metropolis World, January 9, 1946)

STATE OF KANSAS, APACHE COUNTY, SS.:

IN THE PROBATE COURT OF SAID COUNTY AND STATE

In the Matter of the Estate of
Richard Roe, Deceased.

No. 1102.

NOTICE OF HEARING

The State of Kansas to all persons concerned:

You are hereby notified that a petition has been filed in said court by Sarah Roe, as widow and one of the heirs-at-law of Richard Roe, deceased, praying for the determination of the descent of the following described real estate, to wit:

East Half (E½) of Southeast Quarter (SE¼) of Section 37, Township 75, Range 80, West of the 15th P. M., in Apache County, Kansas; and all other property, real and personal, or interests therein, owned by the said Richard Roe at the time of his death; and you are hereby required to file your written defenses thereto on or before the 31st day of January, 1946, at ten o'clock, a. m., of said day, in said court, in the city of Metropolis, in Apache County, Kansas, at which time and place said cause will be heard. Should you fail therein, judgment and decree will be entered in due course upon said petition.

SARAH ROE, *Petitioner*.

W. B. PLEADER, *Attorney for Petitioner*.

Affidavit of A. M. Nelson states that he is owner and manager of the *Metropolis World*, a daily newspaper which has been continuously and uninterruptedly published in Apache County, Kansas, for one year prior to the first publication of the attached notice, and which has a general circulation in said county and state and has been admitted to the mails as second class matter in said county, and that the notice, of which the attached is a true copy, was published for three insertions in said newspaper, on the following dates: January 9, 1946, January 16, 1946, and January 23, 1946. Approved, A. L. Mann, Probate Judge.

January 31, 1946. Affidavit of mailing filed.

January 31, 1946. Affidavit of non-military service filed.

January 31, 1946. Decree of Descent. Court finds that petitioner has given notice as provided by law and order of court, and has filed proof of publication and mailing which is approved by the court. Court further finds that the allegations of petition are true; that Richard Roe, a resident of Apache County, Kansas, and a citizen of the United States, died on January 2, 1945, intestate;

that at the time of his death he was the owner of real estate in Apache County, Kansas (described below); that no will of the said Richard Roe has been admitted to probate nor administration had of his estate; that said estate is not subject to state inheritance tax or federal estate tax; that the said Richard Roe left surviving him as his sole and only heirs at law the following named persons: Sarah Roe, his wife; Woodrow W. Roe, his son; Franklin D. Roe, his son; and Eleanor Roe, his daughter. Decree continues:

It Is Therefore Ordered, Adjudged and Decreed by the Court that the title to all of the interest of Richard Roe in and to the following described real estate:

East Half (E½) of Southeast Quarter (SE¼) of Section 37, Township 75, Range 80, West of the 15th P. M., in Apache County, Kansas, and all other property owned by the said Richard Roe, descended from him on the 2d day of January, 1945, the date of his death, to his heirs at law as follows:

Sarah Roe, his wife, one-half;
Woodrow W. Roe, his son, one-sixth;
Franklin D. Roe, his son, one-sixth;
Eleanor Roe, his daughter, one-sixth;

and the title thereto is assigned to the said heirs as of said date, subject to any lawful disposition thereof heretofore made.

A. L. MANN, *Probate Judge*.

Court costs paid in full.

QUITCLAIM DEED

Entry No. 16.

Woodrow W. Roe and
Doris C. Roe, his wife,
to

Sarah Roe.

Dated February 1, 1946.

Property conveyed: An undivided one-sixth interest in the E½ of the SE¼ of Section 37, Township 75, Range 80, West of the 15th P. M., in Apache County, Kansas.

SPECIAL WARRANTY DEED

Entry No. 17.

Sarah Roe, a widow,
Franklin D. Roe and Lucille Roe, his wife,
Eleanor McArthur (formerly Eleanor Roe)
and Buck McArthur, her husband,
to

Albert K. Hall and Dinah T. Hall, husband
and wife, and the survivor of them, as
joint tenants and not as tenants in common.

Date April 15, 1950.

Property conveyed: The East half of the Southeast Quarter of Section 37, Township 75, Range 80, West of the 15th P. M., in Apache County, Kansas.

Taxes for 1950 and prior years are paid in full.

Abstracter's certificate.

PART II

THE ATTORNEYS' OPINION

SHELLEY C. BLACKSTONE
N. D. WEBSTER

Law Offices of
BLACKSTONE AND WEBSTER
Gila National Bank Building
Metropolis, Kansas
July 2, 1951.

*Mr. B. M. D'Argent,
Rhubarb, Kansas:*

DEAR MR. D'ARGENT.—We have examined the accompanying abstract of title, in one part, to the following described real estate:

The East half of the Southeast Quarter of Section 37, Township 75, Range 80, West of the 15th Principal Meridian, in Apache County, Kansas.

This abstract does not show merchantable title to the real estate above described, and the title should be quieted. The abstract shows apparent title in Albert K. Hall and Dinah T. Hall, husband and wife, as joint tenants, subject to the following:

1. There is no conveyance from Wab-Ky-Oof to whom patent was issued, shown at entry No. 1. In the deed at No. 2, there is a recitation that the grantor, George S. Wabky, is "the son and heir of Wab-Ky-Oof," but this is not a sufficient showing of heirship.

2. There is no conveyance from Katherine Bender, grantee in the deed at No. 2.

3. There is no conveyance from John W. Trader, grantee in tax deed at No. 3. The affidavit at No. 5 is insufficient to show that the grantors at No. 4 were the sole heirs of John W. Trader.

4. A strip of land is conveyed to The Arizona, Argentina & Southern Railway Corporation by the right-of-way grant at entry No. 6, with the condition that the conveyance will become void if the grantee fails to construct and operate a line of railroad on said land. There is no showing whether this line was ever built or whether it was later abandoned.

5. At entry No. 7 is shown a contract to sell the S. E. $\frac{1}{4}$ of Section 37-75-80 to Bryan and McKinley Land Company. The abstract does not show whether this is a corporation or a firm name or a partnership. The contract does not provide a definite date for completion of purchase, and the abstract does not show that the company transferred its rights to Grover C. McKinley, grantee at No. 8.

6. The deed at No. 9 contains the provision: "Grantee agrees to take good care of grantor for the rest of his life." There is no showing whether grantor is still living, or whether this agreement was performed. While this might not affect the validity of the title, we suggest that grantor be made defendant in proceeding to quiet title.

7. The description in the deed at entry No. 9 is insufficient to identify the property without further showing.

8. Mortgage at No. 11 has not been released. Since this mortgage was recorded after January 1, 1919, it is not barred by G. S. 67-332, and will not be barred by chapter 373 of the Session Laws of 1951. Mortgage at No. 10 to The Apache Trust Company, trustee, has been released by The Apache National Bank of Metropolis, Kansas. The release recites that this bank is the successor to The Apache Trust Company, but there is no independent showing to this effect. For these reasons, S. K. Flint, The Apache Trust Company, and The Apache Trust Company, Trustee, should be made defendants in suit to quiet title.

9. Marital status of grantor is not shown in the deed at No. 13. If this deed were more than forty years old, marital status could be waived under title standards No. 18, 20 and 21, following *Scott v. Kirkham*, 165 Kan. 140, but this deed was executed in 1931. The grantor and her unknown spouse should be included as defendants in quiet title suit.

10. There is a discrepancy between the name of the grantee, Benedict A. Booth, at No. 4, and the grantor, Ben Booth, at No. 8, also the grantor, B. A. Booth at No. 6 and No. 7. There is a similar discrepancy between the name of the grantee at No. 9 and the grantor at No. 12. Since more than twenty years have elapsed, no requirement would ordinarily be made to correct these discrepancies, following title standards Nos. 1 and 6, but since title must be quieted in any event, we suggest that Benedict A. Booth, B. A. Booth and Jefferson D. McKinley be made parties defendant. There is also a discrepancy between the names of the grantee at No. 12 and the grantor in the deed at No. 13, although the latter deed recites that the grantor, Cornelia Ingrid Garcia, was formerly Ingrid Lamb. This might be accepted under title standard No. 12, but since marital status is not shown in the deed at No. 13, title should be quieted against this party under both names.

11. You should ascertain the rights of all persons in possession of said real estate and determine whether any recent improvements have been made which might be the basis of a mechanic's or a materialman's lien.

The abstract shows that taxes for 1950 and all prior years have been paid in full.

The abstract is last certified to June 30, 1951, at 1:55 P. M., by The Apache County Abstract Company, Inc.

Very truly yours,
BLACKSTONE AND WEBSTER,
By N. D. Webster.

NDW/MNX

PART III

THE SUIT TO QUIET TITLE

- (A) Petition.
- (B) Affidavit for Service by Publication.
- (C) Notice of Suit.
- (D) Proof of Publication of Notice.
- (E) Affidavit Concerning Military Service.
- (F) Application for Appointment of Attorney.
- (G) Motion for Appointment of Guardian Ad Litem.
- (H) Order Appointing Attorney and Guardian Ad Litem.
- (I) Answer of Defendants in Military Service.
- (J) Answer of Guardian Ad Litem.
- (K) Journal Entry of Judgment.

(A)

IN THE DISTRICT COURT OF APACHE COUNTY, KANSAS

Albert K. Hall and Dinah T. Hall,
his wife, *Plaintiffs*,

v.

No. 1776.

Wab-Ky-Oof, Katherine Bender, John W. Trader, Benedict A. Booth, B. A. Booth, The Arizona, Argentina & Southern Railway Corporation, Bryan and McKinley Land Company and all persons who are or were doing business under the name of Bryan and McKinley Land Company, Grover C. McKinley, Jefferson D. McKinley, The Apache Trust Company, The Apache Trust Company, Trustee, S. K. Flint, Ingrid Lamb, and Cornelia Ingrid Garcia, and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of such of the defendants as may be deceased; the unknown spouses of the defendants; the unknown officers, successors, trustees, creditors and assigns of such defendants as are existing, dissolved or dormant corporations; the unknown executors, administrators, trustees, creditors, successors and assigns of such defendants as are or were partners or in partnership; and the unknown guardians and trustees of such of the defendants as are minors or are in anywise under legal disability, *Defendants*.

PETITION

Plaintiffs, for cause of action against defendants, allege:

Plaintiffs are residents of Apache County, Kansas, and are husband and wife, and their post-office address is 7744 Puma Trail, Metropolis, Kansas.

Plaintiffs do not know the place of residence or addresses of any of the defendants above named and designated except as hereinafter stated.

Plaintiffs do not know whether the individual defendants above named and designated, or any of them, are living or deceased, and do not know the names or addresses of the heirs, executors, administrators, devisees, trustees, creditors and assigns of such of the defendants as may be deceased. Plaintiffs are informed that the defendant S. K. Flint is a resident of the state of Florida, and that his post-office address is 606 Cayman Road, Apopka, Florida, and plaintiffs allege that the said S. K. Flint, if living, is a nonresident of the state of Kansas.

Plaintiffs do not know whether the defendants The Arizona, Argentina & Southern Railway Corporation, Bryan and McKinley Land Company, The Apache Trust Company, and The Apache Trust Company, Trustee, are existing, dissolved, or dormant corporations, and do not know the names or addresses of their officers, successors, trustees, creditors and assigns. Plaintiffs do not know the names or addresses of the beneficiaries of any trust for which The Apache Trust Company is or was acting as trustee, and such beneficiaries, if any there be, are among the successors, creditors and assigns of said company who are made defendants herein.

Plaintiffs do not know whether Bryan and McKinley Land Company is or was a firm, partnership, or corporation, and do not know the names or addresses of the persons who are or were doing business under the name of Bryan and McKinley Land Company, if said defendant was not incorporated; and plaintiffs do not know the names of the executors, administrators, trustees, creditors, successors and assigns of such defendants as are or were partners or in partnership.

Plaintiffs do not know whether any of the defendants are married and do not know the names or addresses of the spouses of such of the defendants as may be married, or any of them.

Plaintiffs do not know whether any of the defendants are minors or are in anywise under legal disability, and do not know the names, residence or addresses of the guardians or trustees of such defendants or any of them.

None of the defendants herein has designated any process agent upon whom service of summons can be made within the state of Kansas, under the provisions of the statutes of Kansas relating thereto.

Plaintiffs are the owners, as joint tenants, in fee simple, and are in actual and peaceable possession of the following described real estate:

The East half of the Southeast Quarter of Section 37,
Township 75, South, Range 80, West of the 15th Principal
Meridian, in Apache County, Kansas.

Plaintiffs and plaintiffs' predecessors in interest, and their grantors, have been in the open, adverse, continuous and exclusive possession of the above described real estate for more than fifteen years last past, under claim of title.*

The defendants above named and designated, and each of them, claim some title, estate or interest in or lien upon the real estate above described, adverse to the plaintiffs, the exact nature of which claim is unknown to the plaintiffs, but none of the said defendants has any title, estate or interest in the said real estate, or lien thereon, and the claims of said defendants are a cloud upon the plaintiffs' title, and plaintiffs are entitled to judgment determining such adverse claims and quieting plaintiffs' title to the said real estate against the defendants, and barring and excluding the defendants and each of them from any estate or interest in, or lien upon, or claim against said real estate.

WHEREFORE, plaintiffs pray that they be adjudged to be the owners in fee simple of the real estate above described, that the court determine the adverse claims of each of the defendants to any estate or interest therein, and that the plaintiffs' title to the said real estate be quieted against the defendants, and

* In some cases, allegations of adverse possession are not necessary or proper, but they should be included whenever applicable.

that said defendants and all persons claiming by, through or under them be forever barred and excluded from any estate or interest in or lien upon or claim against the said real estate.

PLEADER, PLEADER & TRYOR,
Attorneys for Plaintiffs.

Filed July 3, 1951.

Helen H. Waters,

Clerk of the District Court.

REFERENCE: G. S. 60-1801 to 60-1806. McCamish, Kansas Forms, second edition, pages 336-337.

NOTE.—In the caption of this case, the named defendants are intentionally listed in the order in which they occur in the abstract, followed by all of the unknown classes. Ordinarily the order in which the defendants are named is of no importance. Some lawyers prefer to list the named defendants alphabetically, which is convenient for checking purposes when the list is long. Others prefer to group the individual defendants separately, followed by their "unknowns," and then list the partnerships and corporations, each class being followed by the language appropriate to their unknown successors, etc. This is quite proper when the attorney is sure which of the defendants are partnerships or corporations, but is cumbersome when one of the parties appears in the abstract only by a trade name, such as "Smith Brothers Company," which might be a corporation, a partnership, or an individual, and would therefore have to be listed two or three times.

(B)

IN THE DISTRICT COURT OF APACHE COUNTY, KANSAS

Albert K. Hall and Dinah T. Hall,
his wife, *Plaintiffs*,

v.

No. 1776.

Wab-Ky-Oof, et al., *Defendants*.

AFFIDAVIT FOR SERVICE BY PUBLICATION

STATE OF KANSAS, APACHE COUNTY, SS.:

V. P. Pleader, of lawful age, being first duly sworn, states:

1. That he is an attorney for the plaintiffs in the above action; *that he is familiar with the allegations of the petition filed in this case concerning the defendants named and designated therein, and that such allegations are true.**

2. That the names and residences of all defendants known to *plaintiffs* or to affiant, on whom constructive service is desired, are as follows: S. K. Flint, 606 Cayman Road, Apopka, Florida.

3. That the names of all known defendants whose residences are unknown to *plaintiffs* and affiant are as follows: Wab-Ky-Oof, Katherine Bender, John W. Trader, Benedict A. Booth, B. A. Booth, The Arizona, Argentina & Southern Railway Corporation, Bryan and McKinley Land Company and all persons who are or were doing business under the name of Bryan and McKinley Land Company, Grover C. McKinley, Jefferson D. McKinley, The Apache Trust Company, The Apache Trust Company, Trustee, Ingrid Lamb, and Cornelia Ingrid Garcia.

4. That affiant *and plaintiffs* do not know and with reasonable diligence are unable to ascertain the names or residences of any of those classes of unknown persons who are or may be concerned in the subject of this litigation, as mentioned in subdivision 6 of Section 60-2525 of the General Statutes of

* NOTE.—The words in italics have been added to the statutory form (G. S. 60-2526 as amended).

1949 as amended, but that they desire to include all such in their constructive service.

5. That the said plaintiffs are unable to procure personal service of summons on all such defendants within this state.

6. That this action is one of those mentioned in Section 60-2525 of the General Statutes of 1949 as amended.

V. P. PLEADER.

Subscribed and sworn to before me this 3d day of July, 1951.

(SEAL)

GLORIA JEANNE PINUP,
Notary Public.

My commission expires June 24, 1953.

Filed July 3, 1951.

Helen H. Waters,

Clerk of the District Court.

REFERENCE: G. S. 60-2525 as amended, and G. S. 60-2526 as amended. (Chapter 349, Session Laws of 1951.) Do not use old G. S. 60-2525 and 60-2526, which have been repealed.

(C)

(First published in The Apache Chief, July 5, 1951.)

IN THE DISTRICT COURT OF APACHE COUNTY, KANSAS

Albert K. Hall and Dinah T. Hall,
his wife, *Plaintiffs*,

v.

No. 1776.
Wab-Ky-Oof, Katherine Bender, John W. Trader, Benedict A. Booth, B. A. Booth, The Arizona, Argentina & Southern Railway Corporation, Bryan and McKinley Land Company and all persons who are or were doing business under the name of Bryan and McKinley Land Company, Grover C. McKinley, Jefferson D. McKinley, The Apache Trust Company, The Apache Trust Company, Trustee, S. K. Flint, Ingrid Lamb, and Cornelia Ingrid Garcia; and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of such of the defendants as may be deceased; the unknown spouses of the defendants; the unknown officers, successors, trustees, creditors and assigns of such defendants as are existing, dissolved or dormant corporations; the unknown executors, administrators, trustees, creditors, successors and assigns of such defendants as are or were partners or in partnership; and the unknown guardians and trustees of such of the defendants as are minors or are in anywise under legal disability, *Defendants*.

NOTICE OF SUIT

THE STATE OF KANSAS to the defendants above named and designated and all other persons who are or may be concerned:

You are hereby notified that a petition has been filed in the District Court of Apache County, Kansas, by Albert K. Hall and Dinah T. Hall, his wife, plaintiffs, praying for judgment that said plaintiffs are the owners in fee simple of the following described real estate:

The East half of the Southeast Quarter of Section 37,
Township 75, South, Range 80, West of the 15th Principal
Meridian, in Apache County, Kansas;

and praying that the court determine all adverse estates or interests which are claimed in said real property, and that plaintiffs' title thereto be quieted against you and each of you, and that you and all persons claiming by, through or

under you be forever barred and excluded from any title, estate or interest in, or lien upon, or claim against the real property above described; and you are hereby required to plead to said petition on or before August 17, 1951, in said court, at the court house in the city of Metropolis, in Apache County, Kansas. Should you fail therein, judgment and decree will be entered in due course upon said petition.

ALBERT K. HALL,

DINAH T. HALL,

Plaintiffs.

PLEADER, PLEADER & TRYOR,

Attorneys for Plaintiffs.

Attest: HELEN H. WATERS,

Clerk of the District Court. (SEAL)

REFERENCE: G. S. 60-2527 as amended by Chapter 349, Session Laws of 1951.

(D)

PROOF OF PUBLICATION

STATE OF KANSAS, APACHE COUNTY, SS.:

Dolores Cluck, of lawful age, being first duly sworn, on her oath says:

That she is business manager of the Apache *Chief*, and personally knows that it is a weekly newspaper which has been continuously and uninterruptedly published in the city of Cochise, in Apache County, Kansas, for more than one year prior to the first publication of the attached notice, and which is of general circulation in the said county and state, and has been admitted to the mails as second class matter in the said county and is authorized by law to publish legal notices; that the notice of which the attached is a true copy, was published once a week for three consecutive weeks in said newspaper, as follows: on July 5, 1951; on July 12, 1951; and on July 19, 1951.

DOLORES CLUCK.

Subscribed and sworn to before me this 20th day of July, 1951.

G. B. PARD, *Notary Public.*

(SEAL)

My commission expires July 21, 1951.

Approved: D. CORAM NOBIS, *Judge.*

Filed July 21, 1951, Helen H. Waters, Clerk of the District Court.

REFERENCE: G. S. 60-2527 as amended; G. S. 60-2528; G. S. 64-101, 64-102.

(E)

IN THE DISTRICT COURT OF APACHE COUNTY, KANSAS

Albert K. Hall and Dinah T. Hall,
his wife, *Plaintiffs,*

v.

No. 1776.

Wab-Ky-Oof, et al., *Defendants.*

AFFIDAVIT CONCERNING MILITARY SERVICE

STATE OF KANSAS, APACHE COUNTY, SS.:

V. P. Pleader, of lawful age, being first duly sworn, on his oath says that he is one of the attorneys for plaintiffs in the above entitled cause; that plain-

tiffs and affiant have made diligent effort to ascertain whether the defendants named and designated in plaintiffs' petition, or any of them, are in the military service of the United States, and that plaintiffs and affiant have been unable to determine whether or not the said defendants, or any of them, are in the military service of the United States, as defined by the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

V. P. PLEADER.

Subscribed and sworn to before me this 4th day of September, 1951.

(SEAL)

GLORIA JEANNE PINUP, *Notary Public*.

My commission expires June 24, 1953.

Filed September 4, 1951. Helen H. Waters, Clerk of the District Court.

REFERENCE: Title 50, U. S. C. A. App., Sec. 520. (Soldiers' and Sailors' Civil Relief Act of 1940 as amended.)

NOTE.—It is generally agreed among lawyers that the above act should be complied with at the present time.

(F)

IN THE DISTRICT COURT OF APACHE COUNTY, KANSAS

Albert K. Hall, et al., *Plaintiffs*,

v.

No. 1776.

Wab-Ky-Oof, et al., *Defendants*.

APPLICATION FOR APPOINTMENT OF ATTORNEY
TO REPRESENT DEFENDANTS IN MILITARY SERVICE

Come now the plaintiffs and submit to the court the affidavit of V. P. Pleader, one of the attorneys for plaintiffs, concerning the military service of the defendants named and designated in plaintiffs' petition, and apply to the court for an order appointing an attorney to represent such of said defendants as are in the military service of the United States as defined by the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, and to protect their interests in the above entitled cause.

PLEADER, PLEADER & TRYOR,
Attorneys for Plaintiffs.

Filed September 4, 1951. Helen H. Waters, Clerk of the District Court.

REFERENCE: Title 50, U. S. C. A. App., Sec. 520.

See note on Form (E).

(G)

IN THE DISTRICT COURT OF APACHE COUNTY, KANSAS

Albert K. Hall, et al., *Plaintiffs*,

v.

No. 1776.

Wab-Ky-Oof, et al., *Defendants*.

MOTION FOR APPOINTMENT OF
GUARDIAN AD LITEM

Come now the plaintiffs and show to the court that plaintiffs do not know whether any of the defendants named and designated in plaintiffs' petition are minors or are in any wise under legal disability and do not know the names, residences or addresses of the guardians and trustees of such defendants or any of them, and that no answer has been filed herein by the legal guardians

or trustees of any person under disability, and the plaintiffs move that the court appoint a guardian *ad litem* for such of the defendants as are minors or are in any wise under legal disability.

PLEADER, PLEADER & TRYOR,
Attorneys for Plaintiffs.

Filed September 4, 1951. Helen H. Waters, Clerk of the District Court.

REFERENCE: G. S. 60-408 and 60-409. McCamish, Kansas Forms (2d Ed., p. 16).

NOTE.—Because of the inclusion of the words, "the unknown guardians and trustees of such of the defendants as are minors or are in anywise under legal disability," in subdivision 6 of G. S. 60-2525 as amended by chapter 349, Session Laws of 1951, it is recommended that a guardian *ad litem* be appointed for such defendants, although this is not specifically provided by the statute. As a practical matter, in ordinary cases the same person can be appointed to represent defendants in the military service and as guardian *ad litem*.

(H)

IN THE DISTRICT COURT OF APACHE COUNTY, KANSAS

Albert K. Hall and Dinah T. Hall,
his wife, *Plaintiffs*,

v.

No. 1776.

Wab-Ky-Oof, et al., *Defendants*.

ORDER APPOINTING ATTORNEY FOR DEFENDANTS
IN MILITARY SERVICE AND GUARDIAN AD LITEM

Now on this 4th day of September, 1951, this cause comes on upon the application of plaintiffs for the appointment of an attorney to represent defendants in the military service and upon the motion of plaintiffs for the appointment of a guardian *ad litem*, the plaintiffs appearing by Perry M. Tryor, their attorney, and there being no appearance for defendants. Thereupon, after consideration of the pleadings and evidence and being fully advised in the premises, the court finds that the statements made in the said application and motion are true and that the same should be sustained.

IT IS THEREFORE BY THE COURT ORDERED that James W. Solon, a practicing lawyer of Apache County, Kansas, be and he is appointed to represent any and all of the defendants named and designated in plaintiffs' petition who are in the military service of the United States as defined by the Soldiers' and Sailors' Civil Relief Act of 1940 as amended.

IT IS BY THE COURT FURTHER ORDERED that James W. Solon be appointed as guardian *ad litem* for such of the defendants as are minors or are in anywise under legal disability.

D. CORAM NOBIS, *Judge*.

REFERENCE: Title 50, U. S. C. A. App., Sec. 520; G. S. 60-408 and 60-409. McCamish, Kansas Forms (2d Ed., p. 17).

See notes on Form (E) and Form (G).

(I)

IN THE DISTRICT COURT OF APACHE COUNTY, KANSAS

Albert K. Hall, et al., *Plaintiffs*,

v.

No. 1776.

Wab-Ky-Oof, et al., *Defendants*.

ANSWER ON BEHALF OF DEFENDANTS IN
MILITARY SERVICE

Come now the defendants named and designated in plaintiffs' petition who are in the military service of the United States, as defined by the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, by their attorney appointed by the court, and deny each, every, all and singular, the allegations of the plaintiffs' petition.

WHEREFORE said defendants pray that the plaintiffs take nothing against them and that they recover their costs herein.

JAMES W. SOLON,
*Attorney for Defendants
in Military Service.*

Filed September 4, 1951. Helen H. Waters, Clerk of the District Court.

REFERENCE: Title 50, U. S. C. A. App., Sec. 520.

See note on Form (E).

(J)

IN THE DISTRICT COURT OF APACHE COUNTY, KANSAS

Albert K. Hall, et al., *Plaintiffs*,

v.

Wab-Ky-Oof, et al., *Defendants*.

No. 1776.

ANSWER OF GUARDIAN AD LITEM

Comes now James W. Solon, guardian *ad litem* for such of the defendants named and designated in the plaintiffs' petition as are minors or are in anywise under legal disability, and on behalf of such defendants the said guardian *ad litem* denies each, every, all and singular, the allegations of plaintiffs' petition.

Wherefore said guardian *ad litem* prays that plaintiffs take nothing against such of the defendants as are minors or are in anywise under legal disability, and that such defendants recover their costs.

JAMES W. SOLON, *Guardian Ad Litem*.

Filed September 4, 1951. Helen H. Waters, Clerk of the District Court.

REFERENCE: G. S. 60-408.

See note on Form (G).

(K)

IN THE DISTRICT COURT OF APACHE COUNTY, KANSAS

Albert K. Hall and Dinah T. Hall,
his wife, *Plaintiffs*,

v.

Wab-Ky-Oof, et al., *Defendants*.

No. 1776.

JOURNAL ENTRY OF JUDGMENT

Now on this 4th day of September, 1951, being one of the regular judicial days of the September, 1951, term of said court, this cause comes on for trial. The plaintiffs appear by Perry M. Tryor, of the firm of Pleader, Pleader & Tryor, their attorneys. The defendants in the military service appear by James W. Solon, their attorney appointed by the court, and the defendants who are

minors or are in anywise under legal disability, appear by James W. Solon, their guardian *ad litem*.

Thereupon, plaintiffs show to the court, and the court finds, that all of the defendants named and designated in plaintiffs' petition have been duly and regularly served with summons by publication according to law, and the affidavit for such service, the published notice of suit and the proof of publication thereof are presented to, examined and approved by the court; and the court further finds that said defendants, and each of them, have failed to file answer or otherwise plead to plaintiffs' petition and are wholly in default, except the defendants in military service, who appear by their attorney appointed by the court, and the defendants under disability, who appear by their guardian *ad litem*, as herein set out.

The court further finds that the plaintiffs have filed an affidavit showing that they do not know and are unable to determine whether the defendants or any of them are in the military service of the United States as defined by the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and the court has heretofore appointed an attorney to represent and protect the interests of any of the defendants who are in the military service as defined by said act, and said attorney has filed answer consisting of general denial and appears for said defendants as above set out, and the court finds that the ability of the said defendants to conduct their defense is not materially affected by reason of their military service.

The court further finds that a guardian *ad litem* has heretofore been appointed for such of the defendants named and designated in plaintiffs' petition as are minors or are in anywise under legal disability, and that said guardian *ad litem* has filed answer consisting of general denial and appears for the said defendants as above set out.

Thereupon, the said cause is tried to the court and evidence is produced by plaintiffs, and the court, after consideration of the evidence and the arguments of counsel and being fully advised in the premises, finds the issues in favor of the plaintiffs, and finds that all of the allegations of plaintiffs' petition are true, and that the plaintiffs, Albert K. Hall and Dinah T. Hall, his wife, are the owners, in fee simple as joint tenants, and are in actual possession of the real estate hereinafter described, and that none of the defendants, known and unknown, named and designated in plaintiffs' petition, nor any nor all of them, have any title, estate or interest in, or lien upon, the said real estate, and that plaintiffs are entitled to judgment in accordance with the prayer of their petition.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED BY THE COURT that the plaintiffs, Albert K. Hall and Dinah T. Hall, his wife, are the owners in fee simple, as joint tenants, of the following described real estate:

The East half of the Southeast Quarter of Section 37,
Township 75, South, Range 80, West of the 15th
Principal Meridian, in Apache County, Kansas;

and the title of said plaintiffs in and to the said real estate is forever quieted against any pretended right, title, interest, estate, lien or claim of the defendants, Wab-Ky-Oof, Katherine Bender, John W. Trader, Benedict A. Booth, B. A. Booth, The Arizona, Argentina & Southern Railway Corporation, Bryan

and McKinley Land Company and all persons who are or were doing business under the name of Bryan and McKinley Land Company, Grover C. McKinley, Jefferson D. McKinley, The Apache Trust Company, The Apache Trust Company, Trustee, S. K. Flint, Ingrid Lamb, and Cornelia Ingrid Garcia, and the unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of such of the defendants as may be deceased, the unknown spouses of the defendants, the unknown officers, successors, trustees, creditors and assigns of such defendants as are existing, dissolved or dormant corporations, the unknown executors, administrators, trustees, creditors, successors and assigns of such defendants as are or were partners or in partnership, and the unknown guardians and trustees of such of the defendants as are minors or are in anywise under legal disability; and the said defendants, and each of them, and all persons claiming by, through or under them, are forever barred and excluded from asserting any title, interest or estate in, lien upon, or claim against the said real estate.

IT IS BY THE COURT FURTHER ORDERED that James W. Solon be allowed the sum of \$25.00 for his services as attorney for the defendants in military service and as guardian *ad litem*, and that the same be taxed as costs; and that the costs of this action be paid by plaintiffs.

D. CORAM NOBIS, *Judge.*

O. K.:

PLEADER, PLEADER & TRYOR,

Attorneys for Plaintiffs.

JAMES W. SOLON,

*Attorney for defendants
in military service, and
guardian ad litem.*

REFERENCE: G. S. 60-3122, 60-3827; Rules No. 49 and No. 50 for District Courts. McCamish, Kansas Forms (2d Ed.), pp. 339-340.

NOTE.—The journal entry should include the names of all parties, together with a complete description of the land, because the journal entry is recorded in the journal, where it will be available even if the files should later be lost or mislaid. For the same reason, it should include all jurisdictional recitals leading up to the judgment.

PROBATE COURTS
TABLE C-1.—SUMMARY OF BUSINESS HANDLED, YEAR ENDING JUNE 30, 1951

COUNTIES	Estates of decedents		Guardianships		Trusts under supervision	Juvenile cases	Habeas corpus hearings	Orders in absence of district judge	Adoption proceedings	Insanity hearings	Detention of descent	Miscellaneous	Foreign transcripts
	Opened during year	Closed during year	Opened during year	Closed during year									
Allen.....	44	46	11	7	5	11	0	0	11	6	30	0	10
Anderson.....	39	36	5	2	2	3	0	0	5	7	25	3	20
Atchison.....	36	41	16	1	3	8	0	0	8	1	29	10	19
Barber.....	35	29	3	5	2	2	0	0	4	3	10	0	13
Barton.....	83	91	24	19	25	10	0	6	41	7	22	8	33
Bourbon.....	38	36	9	7	2	0	0	1	9	7	27	0	9
Brown.....	37	52	11	4	13	0	0	0	0	6	31	3	2
Butler.....	69	67	28	10	16	23	0	0	32	18	48	0	59
Chase.....	5	13	1	0	1	0	0	0	6	0	8	0	13
Chautauqua.....	14	29	1	5	3	0	0	0	5	5	10	0	28
Cherokee.....	45	55	20	24	11	0	0	0	7	15	35	1	20
Cheyenne.....	11	3	3	1	2	0	0	0	1	1	14	0	11
Clark.....	13	7	4	2	3	0	0	0	3	2	7	0	12
Clay.....	42	62	1	3	16	1	0	0	2	2	20	0	2
Cloud.....	49	65	6	3	12	1	0	17	14	18	26	0	11
Coffey.....	31	43	9	3	3	0	0	0	4	2	20	0	18
Conanache.....	10	15	2	0	0	1	0	0	1	1	6	0	4
Cowley.....	77	83	24	17	23	51	0	0	14	21	41	14	26
Crawford.....	67	65	24	8	7	0	0	0	11	21	67	0	8
Decatur.....	3	12	2	2	0	0	0	0	8	1	11	4	14
Dickinson.....	72	91	8	17	31	3	0	10	12	6	26	4	19
Doniphan.....	21	40	3	2	16	9	0	0	2	5	9	3	6
Douglas.....	60	32	13	7	24	7	0	1	20	22	42	0	11
Edwards.....	20	18	1	4	1	0	0	5	1	3	6	6	8
Elk.....	24	19	13	2	1	1	0	0	2	11	18	3	16

TABLE C-1.—SUMMARY OF BUSINESS HANDLED, YEAR ENDING JUNE 30, 1951.—CONTINUED

COUNTIES	Estates of decedents		Guardianships		Trusts under supervision	Juvenile cases	Habeas corpus hearings	Orders in absence of district judge	Adoption proceedings	Insanity hearings	Determination of descent	Miscellaneous	Foreign transcripts
	Opened during year	Closed during year	Opened during year	Closed during year									
Ellis.....	45	35	18	3	0	0	0	4	5	9	15	7	26
Ellsworth.....	38	37	9	8	6	0	0	0	3	0	6	0	15
Finney.....	30	17	6	4	0	25	0	1	16	4	13	0	28
Ford.....	35	34	13	4	8	0	0	0	13	10	18	5	15
Franklin.....	62	55	14	12	22	11	0	18	5	10	26	1	16
Geary.....	41	45	8	4	5	7	0	13	31	9	17	9	7
Gove.....	7	8	3	1	0	1	0	0	3	2	12	1	26
Graham.....	19	6	3	0	2	0	0	0	0	0	16	0	18
Grant.....	5	5	3	1	1	5	0	0	7	3	5	5	23
Gray.....	10	5	4	1	2	0	0	2	1	4	10	0	19
Greeley.....	7	5	0	1	0	0	0	2	8	0	1	0	19
Greenwood.....	34	36	6	0	4	0	0	14	0	0	7	0	13
Hamilton.....	3	8	2	2	1	1	1	4	2	4	4	2	15
Harper.....	52	42	9	3	17	11	0	10	5	5	22	0	9
Harvey.....	54	40	14	4	21	28	0	19	19	12	31	0	14
Haskell.....	4	1	1	0	0	0	0	0	1	0	3	0	1
Hodgeman.....	11	9	3	4	1	0	0	0	1	0	7	0	5
Jackson.....	22	23	8	4	8	4	0	6	4	9	34	0	16
Jefferson.....	16	28	8	3	4	0	0	3	5	4	28	4	11
Jewell.....	18	18	8	0	0	4	0	0	5	0	23	0	10
Johnson.....	114	89	32	12	32	22	0	1	58	34	56	14	39
Kearny.....	8	7	0	1	2	0	0	0	1	0	5	1	24
Kingman.....	35	25	5	4	8	0	0	0	9	12	20	0	4
Kiowa.....	13	12	3	0	0	0	0	0	0	0	8	0	2
Labette.....	53	55	15	13	8	12	0	0	23	28	53	22	23
Lane.....	8	9	4	0	0	0	1	0	0	1	4	0	11
Leavenworth.....	92	94	29	10	16	41	2	0	42	30	46	15	20
Lincoln.....	29	27	0	2	0	0	0	0	0	7	17	0	17
Linn.....	10	24	11	3	4	6	0	0	4	0	20	0	11
Logan.....	13	6	1	0	0	0	0	0	2	3	7	0	16

TABLE C-1.—SUMMARY OF BUSINESS HANDLED, YEAR ENDING JUNE 30, 1951—CONTINUED

COUNTIES	Estates of decedents		Guardianships		Trusts under supervision	Juvenile cases	Habeas corpus hearings	Orders in absence of district judge	Adoption proceedings	Insanity hearings	De-nation of descent	Miscellaneous	Foreign transcripts
	Opened during year	Closed during year	Opened during year	Closed during year									
Lyon.....	51	41	12	3	10	0	0	0	15	10	57	0	13
Marion.....	40	50	8	6	21	3	0	0	6	9	32	10	20
Marshall.....	59	52	19	8	13	1	0	5	6	2	22	0	2
McPherson.....	67	80	11	18	7	2	0	0	12	3	40	0	5
Meade.....	15	12	2	2	3	0	0	2	3	1	7	0	4
Miami.....	53	46	15	16	8	0	0	19	0	6	22	0	47
Mitchell.....	47	34	11	4	1	0	0	0	5	0	10	0	11
Montgomery.....	73	73	29	8	23	18	0	0	23	36	79	15	11
Morris.....	17	11	10	3	2	0	0	0	6	0	10	0	8
Morton.....	11	8	1	1	1	1	0	0	0	2	5	0	26
Nemaha.....	39	45	5	9	6	0	0	0	0	1	22	0	0
Neosho.....	32	56	18	18	7	12	0	1	8	22	36	14	10
Ness.....	14	18	2	1	2	0	0	0	3	0	10	0	17
Norton.....	32	31	7	7	2	0	0	0	5	6	27	4	15
Osage.....	32	51	11	6	10	1	0	1	2	3	30	0	17
Osborne.....	39	41	7	5	3	1	0	0	7	5	3	4	18
Ottawa.....	40	31	4	4	4	7	0	4	9	0	17	4	11
Pawnee.....	31	29	9	2	3	0	0	0	5	58	8	1	14
Phillips.....	33	26	4	0	0	0	0	0	0	0	23	1	15
Pottawatomie.....	33	44	6	4	5	2	0	3	2	3	12	0	9
Pratt.....	44	39	13	5	4	2	0	0	21	0	9	5	8
Rawlins.....	21	17	5	5	5	3	0	1	4	3	9	0	8
Reno.....	132	133	52	28	27	33	0	0	63	31	58	32	10
Republic.....	39	46	2	8	5	3	0	0	3	1	32	3	21
Rice.....	40	36	8	5	7	5	0	0	12	3	21	3	31
Riley.....	53	56	20	15	7	5	0	0	24	24	35	9	3
Rooks.....	32	36	9	5	5	4	0	0	10	9	9	0	15
Rush.....	16	31	6	1	3	0	0	5	0	0	10	1	19
Russell.....	37	49	13	3	4	0	0	22	12	0	5	4	7
Saline.....	80	100	19	13	15	44	0	0	24	21	31	0	14

TABLE C-1.—SUMMARY OF BUSINESS HANDLED, YEAR ENDING JUNE 30, 1951—CONCLUDED

COUNTIES	Estates of decedents		Guardianships		Trusts under supervision	Juvenile cases	Habeas corpus hearings	Orders in absence of district judge	Adoption proceedings	Insanity hearings	Determination of descent	Miscellaneous	Foreign transcripts
	Opened during year	Closed during year	Opened during year	Closed during year									
Scott.....	9	11	1	3	0	0	0	0	2	0	4	0	9
Sedgwick.....	377	295	248	39	42	424	0	0	274	81	135	6	31
Seward.....	21	17	7	1	6	12	1	1	8	4	9	3	14
Shawnee.....	236	227	62	38	48	56	0	0	82	233	128	29	131
Sheridan.....	11	8	5	0	1	0	0	0	3	0	6	0	17
Sherman.....	9	21	7	0	0	2	0	0	8	2	11	0	19
Smith.....	40	48	8	3	2	0	0	0	6	0	0	0	20
Stafford.....	48	40	9	0	4	1	0	1	4	6	18	2	34
Stanton.....	0	0	2	0	0	2	0	1	0	0	0	0	22
Stevens.....	7	4	1	0	1	0	0	0	2	0	6	0	2
Sunner.....	72	77	15	20	23	4	0	1	17	10	42	6	53
Thomas.....	15	18	3	3	1	0	0	0	16	3	12	0	13
Trego.....	14	22	7	2	4	0	0	0	1	1	7	0	18
Wabunsee.....	29	25	12	1	1	1	0	0	3	3	11	0	13
Wallace.....	9	8	1	0	0	0	0	0	0	0	0	0	8
Washington.....	38	35	6	4	2	0	0	0	6	9	28	0	12
Wichita.....	3	1	0	0	0	0	0	0	0	0	0	0	0
Wilson.....	36	49	15	2	8	13	1	0	20	10	27	7	16
Woodson.....	16	11	4	2	1	0	0	0	8	2	23	0	19
Wyandotte.....	216	222	62	40	23	110	0	0	167	132	221	12	25
Totals.....	4,298	4,317	1,288	629	774	1,081	6	222	1,411	1,152	2,501	316	1,750

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