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The Kansas Bill of Rights As Interpreted By The State Supreme Court, 1861-1940

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THE KANSAS BILL OF RIGHTS AS INTERPRETED
BY THE STATE SUPREME COURT
1861-1940

being

A thesis presented to the Graduate Faculty
of Fort Hays Kansas State College
in partial fulfillment of the
requirements for the
Degree of Master
of Science

by

Thomas C. King, A.B.
Fort Hays Kansas State College

Approved

Major Professor

Date July 23, 1941

Chr. Graduate Council
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CHAPTER I

THE PROBLEM AND THE PROCEDURE

Civil liberty connotes a freedom implying a right to protection against both governmental and private interference, but it is essentially a right of the individual against the authoritarian state. In these days of world-wide struggle between opposing political philosophies there is much thought given to human rights and civil liberties. Under totalitarian governments in much of the world, civil rights have all but vanished. In the Democracies, under stress of war, personal liberties disappear.

Democracy does not guarantee liberties to the individual, since there is constant danger that the majority will disregard the rights of the minority. To cite only one example, there has been in America a flagrant violation of the civil rights of the negro through lack of proper administration of laws intended to protect him. In the Democracies, as in the totalitarian states, the modern tendency is toward a relaxation in civil liberty and a loss of many specific rights of the individual. Increasing governmental control, necessitated
by the complexities of modern social and industrial life, results in continuous encroachments upon the rights fundamental to the older philosophy of individualism. Under guise of protecting health, morals, and safety the majority has succeeded in writing into law its views on morality, religion, and politics in such a way as frequently to interfere with the civil liberties of individuals.

America contributed to the idea of protecting civil liberties by writing guarantees of such liberties into constitutions which could not be easily changed, and then uniquely provided for review of such guarantees by the courts. This places in the hands of the courts the final decision as to the scope of civil liberties in America. The Bills of Rights as they stand today in our federal and state constitutions are little more than collections of glittering generalities until applied to specific cases by decisions of the courts.

The Problem

The people of Kansas are guaranteed certain rights and liberties in the twenty sections of the Bill Of Rights in the Kansas constitution, but there is room for much difference of opinion as to just what these guarantees include. The right to "life, liberty, and pursuit
of happiness" as provided in Section I is so general as to be open to dozens of interpretations and can have little real meaning until applied to specific cases.

It is the purpose of this thesis to show the meaning of the Kansas Bill of Rights as determined by the Kansas Supreme Court in the many cases which have involved these rights. The thesis can show to the reader only what the court has determined in the past and the meaning of the Bill of Rights only as it applies to those situations which have been brought before the court. There are vast, potential meanings which will be brought to light only in the future as the court is asked to decide in other cases the meaning of the constitution and the law.

Since there is so much concern at the present time over the preservation of personal liberties, and since the general constitutional guarantees mean so little without court interpretation, and since the layman is not familiar with past interpretations--it seems important to present in this thesis the meaning of the Kansas Bill of Rights as determined by the Court. So far as the writer is able to determine there has been no research on this particular phase of the Kansas Constitution and the matter has been one of concern only
for judges and lawyers.

The Procedure

In determining the meaning of the Kansas Bill of Rights, Supreme Court cases from 1861 to and including 1940 were studies. Shepard's Citations, Hatcher's Digest, Constitutional Annotations, and Court Report indexes were consulted in an attempt to locate each and every case which pertained in any way to any section of the Bill of Rights. Many of the cases studied failed to show any definite grounds for violation of the Bill of Rights and are not included herein. Each case was studied to determine the point of law and the principles established by the decision. It is these court determined principles that are offered as the established meaning of the Kansas Bill of Rights.

The Organization

In the chapters that follow, there will be presented a brief review of the history of civil liberties from ancient times through the Medieval and modern periods; the English background of American liberties; and the development of individual rights in the American colonies and in the young United States. A special chapter will be devoted to the immediate historical background of the Kansas Bill of Rights, showing how it was transplanted
from earlier Ohio constitutions; and then in five chapters there will be set forth the principles of personal liberties as they have been determined by the Kansas Supreme Court in specific cases.
CHAPTER II

HISTORICAL BACKGROUND

Civil Liberty a Product of the Past

Civil liberty is essentially a modern concept, allied with philosophies of individualism and liberalism, but one can not fully understand this concept without realization that it is a product of the past. Some of the guarantees which are written into present day constitutions were won centuries ago as a result of long struggle against authoritarian states. Through the years these personal liberties were successively attained and lost as they gradually won lasting footholds which today are firmly embedded in American constitutions to be given meaning by American courts.

Personal Liberty in Ancient Times

Civil liberty was unknown to the ancient world. In the early days of civilization there was only one philosophy of sovereignty. The individual belonged to the state body and soul and the despotisms of this early age had no room for the concept of individual rights. Even under the Greek democracy there was little real civil liberty since the philosophy of Plato and Aristotle
suborinated the individual to the state. Individual rights that did exist in the Greek democracy could at any time be swept away by the majority without restriction. Similarly, the Romans guaranteed no lasting personal liberties.

**Personal Liberty in Medieval Times**

The first germs of civil liberty appeared in the Stoic Philosophy of justice to the individual and were later developed in the doctrine of Christianity. This doctrine alleged to the individual himself duties and obligations higher than those imposed by temporal rulers and thus created a philosophy which could regard resistance to constituted authority in certain cases as an act of piety rather than of heresy. Such a philosophy prepared the way for the later doctrine of natural rights. The Renaissance and the Reformation furthered the idea of individual liberty and toleration. Mediaeval towns and cities held various rights and privileges which were virtual liberties of the individual. The growth of the national state with its resort to representative government emphasized the fact that the individual citizen was a thing apart from the state with interests and privileges of his own. A conception of individual liberty found little place in feudal society though the feudal technique of bargain and contract undoubtedly influenced
the methods by which civil liberty was later secured.

English Liberties

The immediate background for American civil liberties is found in England. There the struggle for civil liberties began as a phase of the struggle of the feudal lords to maintain some degree of autonomy in the face of increasing centralization of power in the hands of the king. Privileges and rights won by limited groups were gradually extended to all classes and the idea of civil liberty became embodied in doctrine and its principles preserved in written documents.

Magna Carta

The earliest of these documents was the Magna Carta which was wrung by the barons from King John in 1215. There is much disagreement as to the place of Magna Carta in the history of civil liberties. Radin\(^1\) says that this document gave the feudal property law its form and direction and secured merely as a sort of casual incident some of the political rights of free men of the time. Bruun\(^2\) says that when in the seventeenth century, the parliamentary opposition cited Magna Carta as the original guaranty of liberty, fair trial, and representative government, they were misreading what was in reality a feudal agreement. Magna Carta did incidentally state certain arbitrary acts from which the king

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was to refrain, forbade the sale of justice, and held that no man was to be deprived of property, imprisoned, or banished save by legal judgment of his peers and the law of the land.

The Petition of Rights

This meager list of rights was enlarged by the Petition of Rights which Charles I reluctantly accepted in 1628 in return for parliamentary cooperation in raising taxes. This petition, one of the cornerstones of British freedom, was a clear statement of the illegality of the exercise of absolute power to infringe certain crucial rights. It condemned the billeting of soldiers upon the people, the collection of loans or taxes not sanctioned by Parliament, and the imprisonment of any person without specific charge or orderly trial.

The Bill of Rights

The third great charter of English liberty was the Bill of Rights which emerged from the Revolution of 1688. This document provided: \(^3\) (1) That the sovereign had no power to suspend or dispense with the laws, to erect special courts of justice, maintain a standing army, or levy taxes without the consent of Parliament. (2) That Parliament should meet frequently, the members to be freely elected and allowed freedom in their debates.

3. Ibid., p. 47.
(3) That subjects were entitled to petition the monarch without fear of prosecution, that those charged with crimes could not be refused jury trial, nor could they be exposed to cruel or unusual punishments.

It is out of such specific provisions as those found in the documents above that the general doctrine of civil liberties has developed—though it should be remembered that these documents in turn have borrowed from principles of Common Law and from fundamentals of liberty which were achievements of other peoples before them.

Personal Liberty in the American Colonies

Colonization of America gave new force to the growth of civil liberties. Many colonies were protected by charters or definite contracts to which they could appeal as defense against arbitrary or oppressive measures. By refusing to vote local taxes for administration and defense the colonists could bargain for privileges which sometimes exceeded those of Englishmen at home. Thus through custom, bargain, and acquiescence the range of civil liberty was extended, though in greatly varying degrees as the thirteen colonies gave different connotations to freedom of speech, press, assembly, and religion. Later when England sought to squelch these growing liberties in the American colonies, Revolution burst forth and the struggle for individual liberty was tied to a struggle for national autonomy. This struggle
was backed by a philosophy of freedom set forth in the Declaration of Independence.

The Declaration of Independence

The American Declaration of Independence is a restatement of the philosophy of natural rights which was elaborated by John Locke at the time of the English Revolution of 1688. This document held that certain rights, among them the right of life, liberty, and pursuit of happiness, are natural and inalienable and are forever reserved to the individual. The Declaration asserted the doctrine that government is the agent of its people, and it implied rights much broader than those expressed in previous English charters. It possessed flexibility which made possible addition of new rights or immunities as they came to be deemed fundamental, and it announced a political philosophy which later was incorporated into the Constitution of the United States.

The Constitution of the U. S.

The United States Constitution originally contained no statement of civil liberties beyond protection against bills of attainder, ex post facto laws, punishment for constructive treason, obligation of contracts, and denial of habeas corpus and trial by jury in criminal cases.
North Carolina refused to ratify the Constitution because it contained no Bill of Rights, and several other states ratified with the understanding that immediate opportunity would be given for amendment. Out of almost eighty amendments proposed, ten were adopted, and the Constitution had a Bill of Rights which guaranteed civil liberties to its people. The provisions were for the most part copied from existing state constitutions which were in turn expressions of the civil rights of Englishmen of the day. The Constitution did not create civil liberty—it expressed traditions which had existed for centuries in Anglo-Saxon life. This American Bill of Rights denies to Congress the power of making laws interfering with religious freedom, or abridging the freedom of the press or the right of petition; it guarantees the citizen against arbitrary arrest and against unreasonable search and seizure; it asserts in positive terms the right of trial by jury; it forbids excessive bail, excessive fines, and excessive imprisonments; it declares that all powers that lie outside those enumerated in the Constitution as belonging to the Federal Government are reserved to the people and to the states.
CHAPTER III

HISTORY OF THE KANSAS BILL OF RIGHTS

Territorial Constitutions

From the turmoil created in the territory of Kansas by the struggle between anti-slavery and pro-slavery factions, there emerged in less than four years four separate state constitutions, each one framed by a convention, submitted to popular vote, and by its own partisans declared adopted. These four constitutions in order were: (1) Topeka free-state constitution of November 11, 1855 (2) Lecompton constitution of November 7, 1857 (3) Leavenworth constitution of April 3, 1858 and the (4) Wyandotte constitution of July 29, 1859. The Lecompton constitution was drawn up by the pro-slavery group and the other constitutions by the free-state people. All four documents were submitted to Congress, but only the Wyandotte received the necessary approval, and that only after a number of southern members had left the Senate in the secession movement.

Bills of Rights were prominent parts of each of these territorial constitutions.¹ Article I of the Topeka constitution set forth a Bill of Rights of Twenty-two sections

which contained substantially the same guarantees as were later incorporated into the Wyandotte constitution. The Lecompton constitution concluded with a Bill of Rights which varied little from the Topeka constitution except for section 23 which read, "Free negroes shall not be permitted to live in this state under any circumstances". The Bill of Rights in the Leavenworth constitution was largely a repetition of that of the Topeka constitution.

Ohio Constitution as Source for Kansas Bill of Rights

The Wyandotte constitution was modeled after the Ohio Constitution of 1851. Twelve of the fifty-two members at the Wyandotte convention in 1859 were from the state of Ohio and they naturally favored the use of their native state document as a pattern for their work\(^2\). The Ohio Bill of Rights in the constitution of 1851 was copied from the earlier Ohio constitution of 1802 and this in turn was patterned after the provisions in constitutions of Kentucky and New York. Bills of Rights in these early constitutions and charters which in turn patterned after civil liberties as provided in English documents and Common Law. Thus, our own present day Bill of Rights can be traced back to the early rights of Englishmen.

Study of the Bills of Rights in the Kansas and the Ohio constitutions shows that much was taken verbatim from the Ohio document. Out of the twenty sections in our Bill

of rights, four sections are copied verbatim from Ohio; five sections are altered by only two or three words; and nine other sections are similar. Ohio has a section forbidding suspension of laws which Kansas did not adopt, and Kansas has added a section defining treason and a section giving aliens the same property rights as citizens. (In 1888 the latter Kansas section was amended)

The Kansas Bill of Rights

The Bill of Rights in our present state constitution consists of the following twenty sections:

BILL OF RIGHTS

1. Equal rights. All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.

2. Political power; privileges. All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.

3. Petition, etc. The people have the right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government, or any department thereof, for the redress of grievances.

4. Bear Arms; armies. The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power.

5. Trial by jury. The right of trial by jury shall be inviolate.

6. Slavery prohibited. There shall be no slavery in this state; and no involuntary servitude, except for the punishment of crime, whereof the party shall have been duly convicted.

7. Religious liberty. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election, nor shall any person be incompetent to testify on account of religious belief.

8. Habeas corpus. The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion.

9. Bail. All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

10. Trial; defense of accused. In all prosecutions, the accused shall be allowed to appear and defend in person, or by counsel; to demand the nature and cause of the accusation against him; to meet the witness face to face, and to have compulsory process to compel the attendance of witnesses in his behalf, and a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed.
No person shall be a witness against himself, or be twice put in jeopardy for the same offense.

11. The Press; libel. The liberty of the press shall be inviolate; and all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such right; and in all civil or criminal actions for libel, the truth may be given in evidence to the jury, and if it shall appear that the alleged libelous matter was published for justifiable ends, the accused party shall be acquitted.

12. No person transported, etc. No person shall be transported from the state for any offense committed within the same, and no conviction within the state shall work a corruption of blood or a forfeiture of estate.

13. Treason. Treason shall consist only of levying war against the state, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the overt act, or confession in open court.

14. Soldiers. No soldier shall, in time of peace, be quartered in any house without the consent of the occupant, nor in time of war, except as prescribed by law.

15. Search and seizure. The right of the people to be secure in their persons and property against unreasonable searches and seizures shall be inviolate; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons or property to be seized.

16. Imprisonment for debt. No person shall be imprisoned for debt, except in cases of fraud.

17. Property rights of citizens and aliens. No distinction shall ever be made between citizens of the state of Kansas and the citizens of other states and territories of the United States in reference to the purchases, enjoyment or descent of property. The rights of aliens in reference to the purchase, enjoyment or descent of property may be regulated by law. (Note--this section was submitted to and adopted by the people at the election held in 1888. The original section 17
was as follows: "No distinction shall ever be made between citizens and aliens in reference to the purchase, enjoyment or descent of property".

18. Justice without delay. All persons, for injuries suffered in person, reputation, or property, shall have remedy by due course of law, and justice administered without delay.

19. Emoluments, etc. No hereditary emoluments, honors, or privileges shall ever be granted or conferred by this state.

20. Powers not delegated. This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people.
CHAPTER IV

PETITION; ARMS; WORSHIP; PRESS; EMOLUMENTS

This chapter includes sections 3, 4, 7, 11, and 19 of the Bill of Rights. Section 19, prohibiting the conferring of hereditary emoluments by the state, has never been involved in any case before the Supreme Court. Section 4, dealing with the right to bear arms, has been directly involved on only one occasion, that in 1905. In two clear cases section 3, granting the right to assembly and petition, has been before the Court. Sections 7 and 11, providing freedom of worship and freedom of speech and press, have been involved in numerous cases, several of which have been rather recently before the court.

Section 3. of the Bill of Rights:

The people have the right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government, or any department thereof, for the redress of grievances.

In the case of Flynn v. Brotherhood of Railroad Trainmen 111K. 415. (1922), the defendant was dropped from a trainmen's beneficiary organization because he had violated one of its by-laws in petitioning directly
to the district superintendent rather than through the organization. Later, after Flynn's death, his widow sued for benefits from the organization on the grounds that for them to drop Flynn from membership for his act was a violation of his right to petition as provided in the Bill of Rights. The Court held that there was no violation of constitutional rights, that Flynn could elect to belong to the organization, and that after such free choice he was bound to abide by the regulations of the organization or resign.

In the case of *State v. Board of Education* 122K. 701 (1927), a city school district after a long struggle succeeded in getting a statute passed by the legislature which enabled the district to annex outlying districts upon favorable vote of a majority of the residents therein. The minority in such outlying districts charged that the city school district conspired in influencing the legislature. The court held that the city school board or any group has the right to assemble and to petition and might legally seek relief by using such measures to influence legislature.

Section 4. of the Bill of Rights:

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power.
In the case of City of Salina v. Blaksley 72K. 230 (1905), the Court held that this section is a limitation on the legislative power to enact laws prohibiting the bearing of arms in the militia or any other military organization provided by law, but is not a limitation on the legislative power to enact laws prohibiting and punishing the promiscuous carrying of arms or other deadly weapons? The section is held to deal exclusively with the military; individual rights are not considered.

Section 7. of the Bill of Rights:

The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control or interference with the rights of conscience be permitted, nor any preference given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election, nor shall any person be incompetent to testify on account of religious belief.

In the case of State v. Blair 130K. 863. (1930), Blair was convicted of violation of the Sunday Labor law by operating a theatre on Sunday. Blair charged that he was being deprived of his right to religious freedom by being compelled to accept Sunday as a day of rest. The Court held that his rights were not violated and his religion was not interfered with.
In State v. Haining 131K. 853 (1930), the same theatre was operated on Sunday by a bona fide Seventh Day Adventist. Upon arrest, the defendant charged that his religious rights were violated since Sunday was not the Sabbath Day for him. The court held that refusing him the right to operate the theatre on Sunday had nothing to do with his religion and that such prohibition was a proper exercise of police power to protect the morals of the general public.

In Feizel v. First German Soc. M. E. Church 9K. 592 (1872), the trustees, to meet stipulations of a trust, closed the church to a certain minister not acceptable as provided in the trust. The Court held that it would sit in equity to see that stipulations of the trust were carried out, and that if such stipulations were objectionable to the members of the congregation, they were free to go elsewhere to worship. Since the members were not compelled to worship in the church established by the trust, their rights were not infringed. The Courts will not interfere with worship beyond carrying out the trust.

In Hackney v. Vawter 39K. 615 (1888), the Court held that an injunction may be granted to restrain the minority from infringing upon the rights and beliefs of the majority within a given church. In this case the new minister and a minority of the church officers sought
to force music upon the congregation in the form of an organ and group singing. Such music and form of worship was against the established principles of the church and violated the rights of the majority.

In Anderson v. City of Wellington 40K. 173 (1888), the Court held that a city ordinance requiring the authority of the mayor for street demonstrations was void and that any religious group may parade streets or draw crowds together so long as such actions do not threaten the public peace or good order of the community.

In Billard v. Board of Education 69K. 53 (1904), the Court held that a public school teacher who, for the purpose of quieting the pupils and preparing them for the regular studies, repeats the Lord's Prayer and the Twenty-third Psalm as a morning exercise, without comment or remark, in which all pupils are not required to participate, (but were required to remain quiet and orderly) is not conducting a form of religious worship or teaching sectarian doctrine.

In Denton v. Jones 107K. 729 (1920), two grandmothers, one a Roman Catholic and the other a Protestant, were disputing over the custody of a granddaughter. The Court held that aside from teachings subversive of morality and decency, and some others equally obnoxious, the courts have no authority over that part of a child's
training which consists of religious discipline, and in a dispute relating to custody, religious views afford no ground for depriving a parent of custody who is otherwise qualified.

In State v. Monahan 72K.492 (1905), the Court held that provisions of the Kansas Bill of Rights that no property qualification shall be required for any office of public trust or for any vote at any election, applies only to those offices and elections contemplated by the constitution, and does not prevent the legislature from authorizing the creation of drainage districts, the powers of which are to be exercised by directors who are required to be freeholders elected by the resident taxpayers. A drainage district is wholly the creation of the legislature which has discretion in providing for its officers.

Section II. of the Bill of Rights:

The liberty of the press shall be inviolate; and all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such right; and in all civil or criminal actions for libel, the truth may be given in evidence to the jury, and if it shall appear that the alleged libelous matter was published for justifiable ends, the accused party shall be acquitted.

In Castle v. Houston 19K. 417.(1877), a distinction is made between the defense in criminal and in civil libel.
The Court held that in all criminal prosecutions for libel, the truth of the matter charged as libelous is not a full and complete defense unless it appears that the matter charged was published for public benefit; or in other words, that the alleged libelous matter was published for justifiable works; but in all such proceedings, the jury, after having received the direction of the court, shall have the right to determine, at their discretion, the law and the fact. In all civil actions for libel, brought by the party claiming to have been defamed, where the defendant alleges and establishes the truth of the matter charged as defamatory, such defendant is justified in law and exempt from civil responsibility. In such cases the jury must receive and accept the direction of the court as the law. The court justified such distinction on grounds that where a publication is made solely to disturb the harmony and happiness of society or to maliciously annoy and injure others or to create misery—the interests of the public requires some preventative notwithstanding the truth of the publication.

In Hetherington v. Sterry 28K. 173 (1882), the Court held that it is not necessarily a defense to an action of libel that every act charged in the alleged libelous article might be done without the violation
of any law. It is enough if the acts charged are such as are calculated to render the party in the judgment of his fellows infamous, odious, or ridiculous. Here an article exposing a lawyer as one who deserts his client in the midst of a case is proper grounds for libel.

In *Mundy v. Wight* 26K. 173 (1881), the Court held that the truth is a full defense in any civil action for slander, as well as for libel.

In *State v. Mayberry* 33K. 441 (1885), the Court held that in order that an article published in a newspaper should be held to be libelous as to a particular person, it is necessary that the language of the article should be such that any persons seeing it should, in the light of surrounding circumstances, be able to understand that it referred to such person.

In *Railway Co. v. Brown* 80K. 312 (1909), the Court held that a statute which requires an employer of labor, upon request of a discharged employee, to furnish in writing the true cause or reason for such discharge is not a police regulation and is an interference with the personal liberty guaranteed in the Bill of Rights. An employer may discharge his employee for any or for no reason, so long as no contract agreements are violated.

In *Lewis v. Publishing Co.* 111K.257 (1922), during war with Germany (1918), the defendant published in
his newspaper an article mentioning the plaintiff's future effort to procure deferred classification and stated how the plaintiff had with the help of a friend gotten off the train enroute to a military training camp and then later made contradictory statements to the local draft board in explaining the incident. The Court held that there was proper grounds for an action in libel since such publication did defame the plaintiff and cause his friends to refer to him as a slacker.

In State v. Fiske 117K. 69 (1924), the defendant charged with securing members for an organization, The Industrial Workers of the World, advocating class war between labor and capital. The defendant was convicted of felony, according to statute, and he charged violation of his constitutional rights. The Court held that constitutional guarantees of freedom of speech are not violated by a statute penalizing the advocacy of violence in bringing about governmental change.

In State v. Freeman 143K. 315 (1936), the statute prohibiting anonymous publication criticizing political candidates was held valid. The defendant was brought to court because of a poster which charged his opponent for county commissioner with fraud and bore the signature "friends of R. E. Freeman." The defendant declared that his rights were infringed and the Bill of Rights
violated by the statute under which he was arrested. The Court held that there is nothing in the statute which prevents in the slightest degree any person from exercising all his constitutional rights to write or print information concerning a candidate. The statute simply requires that responsibility for such information be indicated. The statute does not deny liberty—it requires only assumption of the responsibility of liberty.

In Eckert v. Van Pelt 69K. 357 (1904), the Court held that written words are actionable per se (of themselves) if they tend to render him of whom they are written contemptible or didiculous. A newspaper publication stating that a man is a "eunuch" is actionable per se, and the libeled person's name need not be mentioned where it is evident that the statement refers to him.

In State v. Herry 36K. 416 (1887), the Court held that a statute placing upon the defendant in a prosecution for libel the burden of showing the the publication of the alleged libel was made with good motives before there can be an acquittal violates the Bill of Rights which calls for only justiciable ends. Good motives are not a prerequisite to justification and acquittal.
In *Cooper v. Seaverns* 81K. 267 (1909), the Court held that the rule of the Common Law, that spoken words imputing unchastity to a female are not actionable without allegation and proof of special damages, is not a part of the law of this state and is not in keeping with the spirit of the law at the time. Words that blacken a woman's reputation are actionable *per se*.

In *Coleman v. MacLennan* 78K. 711 (1908), the publisher of a newspaper circulated throughout the state published an article reciting facts and making comments relating to the official conduct and character of a state officer, who was a candidate for election. The Court held that where such action is for the sole purpose of enabling the voters to cast their ballots more intelligently, and the whole thing is done in good faith, the publication is privileged, although the matters contained in the article are false and are derogatory to the character of the candidate. In this case the editor had in mind the common good rather than malice to the candidate and was "justified" in making such publication.

In *Knapp v. Green* 123K. 550 (1927), the Court held that an article published in a newspaper concerning a person named or described therein which tends to provoke him to wrath, or expose him to public hatred,
contempt or ridicule, or to deprive him of the benefits of public confidence and social intercourse is actionable per se if the article is false. In this case the article charged a postmaster and Republican boss of stopping at nothing to maintain control by their machine.

In *Depew v. Wichita Association of Credit Men* 142K. 403 (1935), where a group of credit men who are not licensed lawyers were giving legal advice to clients, and the court held that to prohibit such practice was not to deprive the credit men of their freedom of speech. Such regulation was proper use of the police power for protection of the general public.

**Section 19.** of the Bill of Rights:

No hereditary, emoluments, honors, or privileges shall ever be granted or conferred by the state.

This section has never been directly involved in any case before the Court. There have been many cases in which charges of discrimination and special privileges have been made, but these cases come under sections 1 and 2 of the Bill of Rights and are listed in Chapter V.

**SUMMARY**

In summary of the foregoing cases it may be stated that the Supreme Court of the state of Kansas has held its citizens to the following principles:
1. If one is a member of an organization, he must abide by the rules of that organization, even though such rules prohibit certain rights of petition. (111K. 415)

2. One has a right to assemble and to petition the legislature for desired legislation, though such legislation be bitterly opposed by others. (122K. 701)

3. The state has a right to enact laws prohibiting and punishing the promiscuous carrying of arms. (72K. 230)

4. One may be restrained from operating a theatre on Sunday and his religious freedom is not violated. (130K. 863)

5. Property left in trust for religious purposes must be used as stipulated in the trust. (9K. 592)

6. An injunction may be properly granted to restrain a minority from infringing upon the beliefs of the majority within a given church. (39K. 615)

7. One may demonstrate and parade in public without authority from city officials, so long as the public peace and good order are threatened. (40K. 173)

8. A teacher may read to here pupils the Lord's Prayer and the Twenty-third Psalm without comment or remark. (69K. 53)
9. The courts have no authority over that part of a child's training which consists of religious discipline. (107K. 720)

10. Property qualifications may be required for directors and for electors in drainage districts. (72K. 492)

11. The truth of the matter charged as libelous is a full and complete defense in civil libel but not in criminal libel. (19K. 417)

12. That every act charged in an alleged libelous article might be done without violation of any law, is not necessarily a defense to an action in libel. (28K. 174)

14. The truth is a full defense in any civil action for slander. (26K. 173)

15. For an article to be held libelous is a particular person, it must be clear that the article refers to him. (33K. 441)

16. To require an employer to give in writing, upon request of a discharged employee, the reason for the discharge is a violation of the employer's rights. (80K. 312)

17. Making remarks which would cause a person to be called, in time of war, a slacker, is grounds for libel. (111K. 257)
CHAPTER V

EQUAL RIGHTS; POLITICAL POWER; POWERS RETAINED BY THE PEOPLE

This chapter includes sections 1, 2, and 20 of the Bill of Rights. Sections 1 and 2, providing for equal rights and prohibiting discrimination, have been subjects for much litigation before the Supreme Court. These two sections are so closely related that many single cases have been carried to the Court on the grounds that both sections are violated. That these sections provide a lasting basis for litigation is evident in that eighteen cases, directly involving either or both sections, have been before the Supreme Court since 1930. Section 20, reserving to the people all powers not delegated, has been directly involved in five clear-cut cases and has been mentioned in numerous others.

Section 1. of the Bill of Rights:

"all men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness."

In Atchison Street Railway Co. v. Mo. Pac. Railway Co. 31K. 660 (1884), the Court held that the city of Atchison did not violate the Bill of rights in granting special privilege to a street railway company to permit
such company to occupy the streets with its tracks. The legislature has power to authorize municipal corporations to issue franchises granting privileges.

In Atchison, Topeka, and Santa Fe v. Mathews 58K. 447(1897), the Court held that a statute providing that a plaintiff might collect attorney's fees, in addition to fire damages, from a railroad company, was in the nature of a police regulation designed to enforce care on the part of the railroad and was not intended to place a burden on railroad corporations that private persons are not required to bear.

In Atchison, Topeka, and Santa Fe v. Clark 60K. 826 (1899), the Court held that a special fire tax levied on railroad property for the exclusive benefit of other property was discrimination against one taxpayer in favor of another and was a denial of equal protection of the law.

In City of Topeka v. Raynor 61K.10 (1900), the Court held that an ordinance providing, "All places where persons are permitted to resort for the purpose of drinking intoxicating liquors as a beverage are common nuisances" is not repugnant to the constitutional provision that all men are possessed of equal and inalienable rights, among which are life, liberty, and the pursuit of happiness.
In *City of Leavenworth v. Water Co.* 62K.643 (1901), a water company complained that a statute forcing it to file itemized statements of income and expense accounts with the city clerk was an unjustifiable scrutiny of private affairs. The Court held that the corporation was formed for public service and might be controlled by the state in the interest of the public which it agreed to serve. The company had no vested right to withhold from the public information as to its operations under the very franchise which the public had conferred upon it.

In *State v. Wilcox* 64K. 789 (1902), the defendant was convicted of practicing medicine without a license, and he answered with the charge that such action operated to exclude some persons from following their chosen professions and was arbitrary discrimination. The court held that such law was proper to protect the people from ignorance and incapacity, as well as from deception and fraud, and was proper use of police power of the state.

In *Brick Co. v. Perry* 69K.297(1904), the court held that a statute forbidding discharge of an employee for joining a labor union was unconstitutional as a violation of the protection of life, liberty, and property. One citizen can not be compelled to employ another anymore than one can be compelled to work for another against his will.
In Ratcliff v. Stockyards Co. 74K.1(1906), the stockyards company charged that a statute regulating their handling rates deprived them of their right to make contracts as they chose and amounted to taking of their property. Court held that rates fixed by statute were reasonable and that legislature has power to fix such rates for a public-service corporation so long as such rates are not so unreasonable as to destroy the value of the property.

In Schaake v. Dolley 85K.598 (1911), the State Charter Board, acting under statute, refused to charter a fifth bank for the city of Abilene and the plaintiff charged violation of equal rights. The Court held that while the choosing of an occupation is considered an inalienable right, it is not absolute, and it is proper for the sovereign power to interfere if that right becomes detrimental to the common good. Banking is a business intimately related to the public welfare and properly comes under the police power. In this case the State Charter Board felt that there was not business to justify a fifth bank in the city and such bank would have weakened all.

In State v. Coppage 87K. 752 (1912), the Court reversed its philosophy as expounded eight years earlier in 69K.297, and held that an employer has no right to dominate life or interfere with the liberty of the employee
in matters that do not lessen or deteriorate such employee's service. A man might be fired for drinking but not for religion or for labor union membership. (This decision was reversed in 236 U. S. 1)

In *State v. Cline* 91K.416 (1914), the state inheritance tax was challenged as a violation of equal protection and benefit of the people. The Court held that the inheritance tax was a tax on the succession rather than on the property and that the right to take property by devise or descent is the creature of the law, and not a natural right. The authority that confers the privilege of inheritance may impose conditions and may discriminate between relatives.

In *State v. Reaser* 93K.628 (1915), the superintendent of a coal mining company was convicted of failure to provide proper bathing facilities for employees, as required by law. Defendant charged discrimination since other mines (zinc, salt, lead, etc.) did not have to meet the regulations. The Court held that the law applied to all mines of a designated class and was not a violation of the Bill of Rights because not applicable to other classes of mines.

In *Drainage District v. Mo. Pac. Railroad* 99K.188 (1916), a drainage district ordered a railroad bridge destroyed as a flood hazard. The Court held that such an order was constitutional so long as it was reasonable,
and that here it was done to protect the lives and homes of the people. The grant of power to the board was never interpreted as a privilege to injure the public.

In State v. Wilson 101K.789.(1917), the Court held that under its police power the state may place a prohibitory tax on an occupation which is deemed injurious or offensive to the public, and the use of trading stamps is deceptive and objectional enough to be prohibited by heavy tax.

In In re Josie Dunkerton 104K.481.(1919), the petitioner charged that a statute providing that the board of Administration might parole women aged 18 to 25, but that older ones must serve the minimum term in the State Industrial Farm, denied equal protection of the law to women over 25 years of age. The Court held that statute was constitutional; that even though the Board of Administration could not parole older women, the district court still might do so; and that the legislature had a right to make a difference in the treatment of different classes of criminals.

In Chamberlain v. Mo. Pac. Railroad 107K.341(1920), action was brought to compel a railroad company to construct, at its own expense, a private crossing on property through which it had years before bought and paid for a
right-of-way. The Court held that such compulsion was discrimination against the railroad and deprived it of its property without compensation. The railroad company could have been compelled to construct a public but not a private one.

In *City of Wichita v. Walkow* 110K.127 (1921), the Court held that for the sake of enforcement of criminal law and protection of the public in general, it was proper, under the police power, for a city to pass an ordinance requiring pawndealers to keep records, signatures, and fingerprints of those selling articles to them. Such ordinance did not deny equal protection of the law.

In *Railroad and Light Co. v. Court of Industrial Relations* 113K.217 (1923), the Court held that the state may intrude with police power to abrogate existing contracts. Contracts concerning rates for electric energy to be supplied by an electric power company to a street railroad are subject to impairment or nullification under an order of the public utilities commission when the performance of those contracts at the agreed schedules of rates so materially diminish or adversely affect the revenues of the power company that the other customers of the power company have to bear some portion of the burden resulting from such contracts, or are otherwise
discriminated against on account of such contracts.

In *Mayfield v. Board of Education of Salina* 118K. 138 (1925), the defendants charged that the erection of a school house next to their property would depreciate the value thereof because of the added noise, trespasses, etc., and that they would thus be injured without any compensation and would be denied equal protection of the law. The Court held that acts done on proper exercise of governmental powers, not directly encroaching upon private property, although their consequences may impair its use, do not constitute a taking of property and do not entitle the owner to compensation under the Bill of Rights.

In *In re Casebier* 129K.853.(1930), the petitioner charged that a statute providing for the disbursement of lawyers convicted of felony or misdemeanor involving moral turpitude was discriminating since the law brings upon an attorney consequences which apply to no other citizen, not even to other professional men. Court held that the right to practice law was not a property right, but a privilege conferred by the state and that the statute simply took away this privilege which other individuals did not even possess and did not violate equal protection of the law.

In *Capital Gas and Electric Co. v. Boynton* 137K.717(1933)
the Court held that the statute prohibiting public utilities companies from selling appliances was unconstitutional. With no feature of public welfare actually involved, the deprivation of the utilities companies of an implied power and privilege incidental to their general business was unreasonable, arbitrary, and oppressive, and deprived this particular class of equal protection of the law.

In *Smith v. Steinrauf* 140K.407(1934), the Court held that the interest of an owner in cats kept in his residence for pleasure is a property interest, not base nor imperfect nor qualified, but a complete and absolute property interest, and that an ordinance limiting the number of cats which an owner may keep in his residence to five, without regard to distinctiveness of character of the animals, to purpose, or to manner and consequences of keeping, is void. A person may enjoy private property so long as it doesn't detract from the general welfare.

In *State v. Wyandotte Co. Commissioners* 140K.744 (1934), the Court held that the Kansas statute, applicable only to Wyandotte County, authorizing the calling of an annual grand jury with special costs taxed against persons convicted on indictments found by such grand jury, violates the equal protection clause of the constitution. Such act discriminated against those convicted of crimes in Wyandotte county.
In *Ash v. Gibson* 145K.825.(1937), the defendant protested that his right to equal protection of the law was violated by a city ordinance forbidding oil transport trucks of over 600 gallon capacity to use certain streets. The Court held that such oil trucks had no inherent right to use the streets, that such transports could use other streets of the city, and that because of the potential danger of fire from collision the regulation was proper under police power.

In *Brown v. City of Topeka* 146K.974.(1938), a group of Topeka property owners protested against changing the name of a street, claiming that they had a vested property right in the name of the street, of which the ordinance giving power to change deprived them without due process and compensation. The Court held that the name of a street is not a property right and that there was no deprivation.

In *Johnson v. Reno Co. Commissioners* 147K.211(1938), the Court held that denial by the township board of a license for sale of 3.2 beer does not violate the Bill of Rights. Such denial of a license is not a denial of life, liberty, or pursuit of happiness. Application for a license is a request for a privilege under a regulatory police measure and is not a right.
In Hushaw v. Kansas Farmers Union Royalty Co. 149K.64(1939), the Court held that a statute, providing that instruments conveying mineral rights are void unless recorded within ninety days after execution and if not listed for taxation, did not violate the Bill of Rights. This was not the forfeiture of a vested title, but a condition precedent to the vesting of title in the transferee.

In Kern v. Newton City Commissioners 147K.471(1938), the Court held that the plaintiff a colored citizen and tax-payer of Newton, has the individual right to initiate proceedings in mandamus to compel the governing officials of the city to admit him to privileges of the city's swimming pool constructed by the municipality at public expense. The legislature alone can provide for segregation of races.

In Carolene Products v. Mohler 152K.4.(1940) the Carolene Products company charged that they were being discriminated against by the Kansas "filled-milk" statute which prohibited the sale of milk products containing any added element other than milk fat. They pointed out that every ingredient in their product was sold in other forms in the state. Facts in the case showed that "Carolene" was being bought by the public as genuine evaporated milk, and the Court held that this afforded grounds for prohibiting the product in the interests of the public.
In Railroad Co. v. Public Utilities Commission 115K.417(1934), the Court held that a statute which subjected to taxation lands dedicated to public use as a cemetery where the ownership of the land is held by a corporation, while all other cemetery lands, the title to which is held by an individual, are exempted from taxation, violates the provisions of the state constitution which guarantee equal protection of the law.

In Hair v. City of Humbolt 133K.67 (1931), the plaintiff, who manufactured bakery products at Iola and sold them to the merchants in Humbolt, objected to a Humbolt city ordinance which provided for a license of $1 per day or $10 per year for persons operating bakeries within the city and selling the products, and $1.50 per day or $120 per year for persons selling bakery products therein and not owning or operating a bakery and having no bona fide place of business within the city. The court held that such ordinance violated both the federal and the state constitution.

In Swope v. State 145K.928(1937), the Court held that the refusal of an expert witness to testify in court without extra compensation is proper grounds for contempt of court and may be punished as such. A physician may not refuse to testify on grounds that his rights are being violated.
In Osborn v. Russell 64K.507(1902), the Court held that a board of education, at a time when the disease of smallpox does not exist in or near the city, has no authority to deny a child of school age, resident therein, admission into the public schools because such child has not been vaccinated.

In State, ex rel., v. Jackson 139K.744(1934), the Court held that a sheriff is properly removed from office for beating and mistreating prisoners in violation of their constitutional guarantees.

In State v. Sherow 87K. 235 (1912), the Court held that a statute authorizing township boards to grant licenses for billiard halls, pool halls, and bowling alleys at their discretion is valid exercise of police power.

In In re Skinner 136K.879 (1933), the petitioner charged that judges were discriminating in discovering past convictions and thus bringing defendants under the Kansas habitual criminal law. It was contended that in some cases judges made little if any attempt to discover past convictions and that defendants thereby escaped the penalties of the law. The Court held that the law was constitutional and that so long as judges were not willfully, arbitrarily, deliberately, and intentionally depriving defendants of equal protection of the law it was within the Bill of Rights.
In *Claflin v. Wyandotte Co.* 81K. 57 (1909), it was held that a statute providing that certain public officers shall not be entitled to witness fees in certain cases, does not deprive the officers of equal protection of the law. Such condition is a part of the privilege accepted with the public office and such condition may be swept away by resignation from office.

In *Reynolds v. Board of Education* 66K. 672 (1903), it was held that a statute providing that boards of education shall have power to organize and maintain separate schools for the education of white and colored children does not deny equal protection of law.

In *In re Gardner* 84K. 264 (1911), the Court held that the statute providing that officers and men of the Kansas National Guard shall, when in performance of military service, be transported on all railroads of the state at reduced rates denies to railroad companies the equal protection of the law. In time of extreme emergency and peril, the railroads could even be seized by the state, but the act in question does not specifically refer to such occasions.

In *Winters v. Myers* 92K. 414 (1914), it was held that the title to islands formed in navigable streams since the admission of Kansas into the Union is held by the state for the benefit of all the people. For the legislature to relinquish title to such islands to owners of shore lands
without compensation, where no public benefit will result, is unconstitutional. It is like compelling a contribution from all for the benefit of the few and here the equal rights clause is called on to protect the many from the few instead of the usual vice versa.

In *State v. Heitman* 105K.139 (1919), the defendant charged violation of equal protection of the law in the statute providing that a woman convicted of a misdemeanor be sentenced to the state farm for women for an undetermined period, with a maximum limit, while a man convicted of the same misdemeanor is sentenced, under the general law, to the county jail for a definite period within the same maximum limit. The Court held that there is room for difference in treatment of different classes of criminals and that equal protection is secured if the law operates in the same way on all who belong to the same class.

In *Ware v. City of Wichita* 113K.153 (1923), the Court held that laws authorizing cities to establish districts or zones within their corporate limits and to regulate the use of property and the construction of buildings therein, are not unconstitutional, but are proper use of police power in the interest of the general public.

In *Goodrich v. Mitchell* 68K.765 (1904), the Court
held that a statute giving preference to those who have served in the army and navy in appointment to office is constitutional and not unjust discrimination. The Court argued that these men because of experience and army training may be considered better fitted for public service than the general public.

In State v. Creditor 44K.565(1890), the Court held that a statute requiring regulation and licensing of dentistry was constitutional and proper use of police for the common good.

In City of Cherokee v. Fox 34K.16(1885), the Court held that an ordinance providing license for professional peddlers was not void for reason that is was class legislation or discrimination. The peddler could have sold goods as a merchant of the city without paying such license fee.

In State v. Mohler 98K.465(1916), it was held that a law requiring all commission merchants who sell farm produce for resale to hold a license issued by the State Board of Agriculture and to give bond to insure fair dealing with their consignors, is constitutional and is not discriminatory. It is proper use of police power to protect a large number of consignors and the classification is reasonable and broad.

In Balch v. Glenn 85K.735 (1911), the Court held
that a statute authorizing the destruction of trees in an attempt to exterminate San Jose scale and other orchard pests and charging of expense of such destruction against the property is valid use of police power for protection of the public welfare.

**Section 2. of the Bill of Rights:**

"All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency."

In *Water Co. v. City of Columbus* 48K.99 (1892), the Court held that authorities of a city could bind their successors by contracting for 21 years with a water company, and that such contract could be terminated or changed only under the police power of the state.

In *State v. City of Hutchinson* 93K.405 (1914), the Court held that the initiative and referendum law granted no special privileges or immunities to those circulating and agitating petition. Any citizen has an equal right and opportunity to do the same.

In *O'Neal v. Harrison* 96K.339 (1915), it was held that a city may grant an exclusive right to the highest bidder to remove all garbage without violation of the Bill of Rights. The last clause of section 2 was
interpreted to refer solely to political privileges and not to privileges relating to property rights. Also the control of garbage removal is proper exercise of police power.

In State v. City of Wichita 100 K. 399 (1917), the Court held that an act authorizing a city to adopt a city manager plan is not a violation of section 2 of the Bill of Rights in that it is a delegation of legislative powers.

In Rohr v. City of Leavenworth 101 K. 222 (1917), the Court held that a statute giving to cities the power to assess abutting property for repair of streets as well as for paving of streets is not a violation of the Bill of Rights.

In Jamison v. Flanner 116 K. 116 (1924), a sheriff refused to release a prisoner, pardoned by the Governor, on the grounds that the Governor had failed to comply with the law by notifying the county attorney and the district judge and by publishing notice of such pardon 30 days in advance. The Court held that the pardoning power is not inherent in the executive, though it has a long history; it is proper for the legislature to pass laws regulating this power, and unless the governor meets these legislative requirements the pardon or commutation is illegal.
In Farmers Co-op G. and S. Co. v. Chicago, R. I. and P. Railroad Co. 139K.677 (1934), the Court held that a lease in effect between a railroad company and an elevator company in which the elevator company complains it is being charged higher rental than other similar elevator companies cannot be changed by the Public Service Commission acting for the state, unless such contract is prejudicial to and discriminating against the public or otherwise obstructs the state's authority to make laws and regulations reasonably necessary for the general welfare.

In Depew v. Wichita Association of Credit Men 142K.403 (1935), the Association was helping clients in collection of debts and was offering what amounted to legal advise and aid, though its members were not qualified or licensed lawyers. The Court held that denial of such privilege to the Association was not violation of the Bill of Rights.

In Lemons v Noller 144K.813 (1936), statutes providing for absentee voting were charged to be discriminatory in that they made it possible for physically disabled persons to vote who could not vote were they within the state. Were these disabled voters within the state it would be necessary for them to be present at the polls in order to vote. The Court held that voting
is a privilege rather than a right and that the legislature is nowhere in the constitution prohibited from classifying voters and that no one was herein deprived of his political rights.

In Winckler Oil Co. v. Anderson 104K.1 (1919), the court held that a statute making it unlawful to drill or operate oil or gas wells within 100 feet of the right of way of steam or electric railway lines does not contravene provisions of the Bill of Rights and is proper exercise of police power.

In Produce Co. v. City of Wichita 112K.28 (1922), it was held that a city ordinance levying a license tax on all trades, businesses, and occupations in the city, in which or incident to which delivery Wagons or Trucks are employed, is not necessary void for arbitrariness of classification or unlawful discrimination. Trucks are nearly universal accessories to city trades, and the above classification is broad. No tax or license can be entirely equal and perfect.

In State v. Topeka 36K.76 (1886), the Court held that labor is property, but is not taken without compensation where a citizen is required to work on the streets. Good roads and streets are sufficient compensation, and labor required in this case may be considered as an assessment tax.
Section 20. of the Bill of Rights:

"This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people."

In *Lemons v. Noller* 144K.813 (1936), in which the statutes providing for absentee voting were challenged as being unconstitutional, the Court stated that all powers not delegated remain with the people and since the people act through the legislature, the legislature may do whatever is not directly or implicitly denied in the constitution.

In *Coleman v. Newby* 7K.82 (1871), the plaintiff appealed from a justice of the peace court to the district court in the regular manner, except for a rule adopted by the Supreme Court that notice in writing must be given of the appeal. This rule was not an act of the legislature nor a rule of the district court but it was a rule of the Supreme Court, adopted by the Supreme Court for the government of the district courts. The plaintiff charged that the Supreme Court had no power to make such a rule. The Court held in this case that the legislature can not delegate legislative power to the judiciary as was done here. The legislature can enact general provisions for the district courts and allow the district courts to use their discretion in filling up details; but they can not enact general
provisions for the district courts and authorize the Supreme Court, or any other body or person, except the district courts to fill in the details.

In Wright v. Noell 16K. 601 (1876), the plaintiff charged that a woman was ineligible to the office of county superintendent in the state of Kansas. The Court held that powers of the people are limited only by absolute justice and the constitution, and that in this case election of a woman to the above office violated neither. As the people, with respect to certain offices, have seen fit by express constitutional provisions to restrict their freedom of choice, it is a fair inference that, where the constitution is silent, they intended no restriction.

In Ratcliff v. Stockyards 74K l (1906, the Court held that an act of the legislature regulating stockyards does not conflict with the constitution in that the power to pass the act is not expressly delegated to the legislature. The legislature represents the people of the state, and there are no limits upon the power which the people may exercise, except such as may be found in the constitution itself, or in the federal constitution.

In Johnson v. Reno County Commissioners 147K. 211 (1938), previously cited, the Court held that a statute
leaving to the discretion of the township board
the issuance of beer licenses within the township
is not in violation of section 20 of the Bill of
Rights. The legislature is not restricted by the
constitution in regulation of alcoholic beverages,
and no individual has any enforceable right to a
permit to sell liquor.

**SUMMARY**

In summary of the foregoing cases it may be
stated that the Supreme Court of the State of Kansas
has held its citizens to the following principles:

1. Equal rights of citizens are not violated
   when a city extends a franchise granting
   special privileges. (31K. 660)

2. As a police regulation railroads may be
   required to pay attorney's fees of those
   bringing suit against them. (58K. 447)

3. A special fire tax may not be levied on
   railroads for the exclusive benefit of others.
   (60K. 826)

4. All places where persons resort to drink may
   properly be considered common nuisances. (61K. 10)

5. Public corporations can not withhold their
   accounts and records from public officials.
   (62K. 643)
6. It is proper police regulation to require that physicians shall be licensed. (64K. 789)
7. In 1904 the Court held that an employee could be discharged for joining a labor union, but in 1912 reversed itself and held to the contrary. (69K. 297 and 87K. 752)
8. The state may fix rates for a stockyards company. (74K. 1)
9. The state may refuse to charter an additional bank in a city. (85K. 598)
10. The state may discriminate between relatives in imposing an inheritance tax. (91K. 416)
11. The state may place regulations on coal mines from which other kinds of mines are exempt. (93K. 628)
12. A drainage district board may order a railroad bridge destroyed and replaced by a larger one. (99K. 188)
13. The state may place a prohibitory tax on the use of trading stamps. (101K. 789)
14. The legislature may differentiate in the treatment required for different types of criminals. (104K. 481)
15. A railroad company cannot be compelled to construct a private crossing at its own expense. (107K. 341)
16. Under police power a pawndealer may be required to keep records and fingerprints. (110K. 127)

17. The state may abrogate contracts between utility companies. (113K. 217)

18. A person cannot collect damages for indirect impairment of property as a consequence of public construction. (118K. 138)

19. The right to practice law is a privilege which the state may give or take away. (129 K. 853)

20. Public utility companies may not be prohibited from selling appliances. (137K. 717)

21. An owner may keep as many cats as he likes so long as he keeps them at home. (140K. 407)

22. One county of the state may not impose penalties for crime which other counties do not impose. (140K. 744)

23. A city may forbid the use of its streets to oil trucks exclusively. (145K. 825)

24. A city may change the name of a street against the protests of certain property owners. (146K. 974)

25. License for the sale of beer is privilege to be granted by the state and not an individual right. (147K. 211)

26. The state may void property titles unless
certain conditions of transfer are met. (149K. 64)

27. A negro has a legal right to privileges of a swimming pool at public expense. (147K. 471)

28. Food products, even though they contain wholesome ingredients, may be prohibited in interests of the public. (152K. 4)

29. Railroads may be compelled to maintain cattle guards at farm crossings. (115K. 545)

30. Corporate owned cemeteries may not be taxed while all other cemeteries are tax free. (139K. 417)

31. A baker from within a city but selling products through the city merchants cannot be taxed heavier than bakers of the city. (133K. 67)

32. An expert witness can be compelled to testify at the ordinary rate of compensation. (145K. 928)

33. In time of no epidemic, a child cannot be expelled from school because of refusal to be vaccinated. (64K. 507)

34. A sheriff may be removed from office for mistreating prisoners. (139K. 744)

35. State may authorize township boards to license billard halls at their discretion. (87K. 235)

36. Under the habitual criminal law, it is up to the judge to discover past convictions of the
defendant. (136K. 879)

37. Certain public officers may be deprived of regular witness fees. (81K. 57)

38. Separate schools may be maintained for white and colored children without violating equal rights. (66K. 672)

39. Railroads cannot be required to give reduced rates to national guardsmen except in times of emergency. (84K. 264)

40. Islands formed in navigable streams are public property and cannot be given to individuals. (92K. 414)

41. Women may be given a different sentence than men for the same criminal offense. (106K. 139)

42. A city can regulate the use of private property through zoning ordinances. (113K. 153)

43. Army and navy men may be given preference in appointment to public office. (68K. 765)

44. Dentists may be licensed and regulated. (44K 565)

45. A city may require a special license for professional peddlers. (34K. 16)

46. Farm produce commission merchants may be required to have a special license. (98K. 465)

47. To control orchard disease, one's trees may be
destroyed and the expense of such act charged to the property. (85K. 735)

48. City authorities may bind their successors with long time franchises to utility companies. (48K. 99)

49. The initiative and referendum laws grant no privileges or immunities. (93K. 405)

50. A city may grant an exclusive right to the high bidder to remove city garbage. (96K. 339)

51. A city manager form of government is not a delegation of legislative powers. (100K. 399)

52. The power of pardon is not inherent in the executive and may be regulated by the people through the legislature. (116K. 116)

53. A contract between an elevator company and a railroad company cannot be abrogated unless it adversely affects the general welfare. (139K. 677)

54. Non-lawyers may be denied the right to give legal counsel. (142K. 402)

55. Voting is a privilege rather than a right and may be regulated by the legislature even to classifying voters. (144K. 813)

56. State may prohibit oil wells near railroad lines. (104K. 1)
57. Taxing all trades in which delivery trucks are used is not unlawful discrimination. (112K. 28)

58. Citizen is not deprived of property without compensation by being required to labor on the streets. (36K. 76)

59. Since the people act through the legislature, that body may do whatever is not prohibited by the constitution. (144K. 813)

60. The legislature cannot delegate legislative powers to the judiciary. (7K. 82)

61. Neither absolute justice nor the constitution render a woman ineligible for the office of county superintendent. (16K. 601)

62. Acts of the legislature are limited only by the state and federal constitutions. (74K. 1)

63. The legislature acting for the people is not restricted by the constitution from regulation of beer. (147K. 211)
CHAPTER VI

TRANSPORTATION AND CORRUPTION OF BLOOD; TREASON; SOLDIERS; SEARCH AND SEIZURES; IMPRISONMENT FOR DEBT; PROPERTY RIGHTS

This chapter includes sections 12, 13, 14, 15, 16, and 17 of the Bill of Rights. Section 12, prohibiting corruption of blood and forfeiture of estate, has twice been clearly involved in cases before the Supreme Court. Sections 13 and 14, dealing with treason and with the quartering of soldiers, are of such nature as not likely to be involved in litigation in a state that has for the most part remained at peace. Neither of these two sections has ever been before the Court. Section 15, dealing with search and seizure, plays a part in every arrest and has on a number of occasions been brought before the Supreme Court. Section 16, permitting imprisonment for debt only in case of fraud, has been directly involved in nine cases, none of them in recent years. Section 17, originally providing that in property rights there should be no distinction between aliens and citizens, was amended by the people at the election of 1888 to permit distinction between citizens
and aliens, but to forbid it between citizens of Kansas and citizens of other states. This section has been involved in a number of cases before the Court.

Section 12. of the Bill of Rights:

"No person shall be transported from the state for any offense committed within the same, and no conviction within the state shall work a corruption of blood or a forfeiture of estate."

In State v. Snyder 34K. 425 (1885), the Court held that the section of the prohibitory liquor law which provides that the judgment for fine and costs for violation of that law shall be a lien upon the premises where the intoxicating liquors were sold (even where such premises are the property of others and are merely leased to the violator), does not violate the Bill of Rights by inflicting forfeiture of estate. The liability created by the statute is not in the nature of a forfeiture, and the fine and costs are not imposed upon the owner of the premises, but are imposed upon the person who violated the law; and the owner of the premises is simply made a surety for their payment.

In Hamblin v. Merchant 103K. 508 (1918), the Court held that a statute providing that the property of a deceased owner shall not go to the person who took the owner's life does not violate the Bill of Rights by
inflicting forfeiture of estate. The legislature has entire control of the matter of devolution of property on the death of the owner. When the fact is ascertained in a criminal prosecution that the descendant has murdered the property owner, the property is not then taken from the person who would inherit, but it is then determined that the person has not inherited and has not acquired any interest in the property. No property is taken from the convicted person and there is no forfeiture. (previous to the enactment of the statute questioned in this case, it was held in McAllester v. Fair 72K. 533 (1906) that a husband who murdered his wife for the purpose of acquiring her property could not be restrained from such inheritance)

Section 13 of the Bill of Rights:

"Treason shall consist only of levying war against the state, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the overt act, or confession open court."

This section of the Bill of Rights has never been involved in any case before the Supreme Court of the state.
Section 14. of the Bill of Rights:

"No soldier shall, in time of peace, be quartered in any house without the consent of the occupant, nor in time of war, except as prescribed by law."

This section of the Bill of Rights has never been involved in any case before the Supreme Court of the state.

Section 15. of the Bill of Rights:

"The right of the people to be secure in their persons and property against unreasonable searches and seizures shall be inviolate; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the places to be searched and the persons or property to be seized."

In State v. Gleason 32K. 245 (1884), the Court held that a complaint filed in the district court charging a defendant with a misdemeanor and verified on nothing but hearsay and belief, is not sufficient to authorize the issuance of a warrant for the arrest of the party therein charged, when no previous preliminary examination, have been had. "Oath or Affirmation" as called for in the Bill of Rights must be positive with a sound base.

In State v. Blackman 32K. 615 (1884), the Court held that where a defendant in a prosecution, without objection, pleads to the merits of an action and goes
to trial, he waives all irregularities in the verification of the information, and cannot afterward be heard to question the regularity or validity of any proceeding in the case, if he urges no other objection to the proceeding than that such verification is insufficient. Here a verification for arrest on the mere belief of the county attorney was insufficient, but the defendant submitted to such faulty arrest and could not now challenge it.

In *State v. Brooks* 33K. 708 (1885), the Court held that where an information for arrest and prosecution is sworn to positively by some person, it is not necessary for the county attorney to also verify the information by his own oath.

In *In re Kellam* 55K. 700 (1895), the Court held as unconstitutional a statute conferring authority upon the police officers of a city to make arrests for misdemeanors without warrant upon "reasonable suspicion". If a warrant for arrest cannot be issued based on hearsay (*State v. Gleason*, 32K. 245), certainly an arrest based on mere suspicion would not hold.

In *In re Davis* 68K. 791 (1904), the Court held that section 15 of the Bill of Rights was not violated in compelling a banker to reveal a depositor's account.
To obtain information from a witness of the amount and location of another's money or property cannot come within the constitutional inhibition against unreasonable searches and seizures as no property is herein seized.

In *State v. King* 71K. 287 (1905), the Court held that where a complaint is properly filed and verified, a "John Doe" warrant may issue. To make it necessary to name criminals would give them a wide chance to go free. In this case where the person making the verification could name only two of four criminals, he nevertheless, had four definite persons in mind.

In *re Patterson* 94K. 439 (1915), Patterson was paroled by the district court and later his parole was revoked and he was sent back to prison. Patterson charged that there was not proper information to verify his violation of parole since there was no person to swear or affirm such. The Court held that failure of the convict to observe conditions of his parole is not a new offense and that revocation of parole and return of the convict to prison is not an added punishment, but rather a disciplinary regulation of prison management in carrying out the sentence already imposed. The district court as parole court can set its own conditions of parole.
In State v. Smithmeyer 110K. 172 (1921), the Court held that a prosecuting attorney through subpoena duces tecum (thou shalt bring with thee) may compel the production of certain papers and records, but he cannot take the custody of those papers from the person producing them. The attorney is not authorized to retain possession of documents after the examination of the witness has been completed. Securing documents duces tecum is not search and seizure.

In State v. Railway Co. 115K. 3 (1924), the Court held that the inspection of books, accounts, etc. of a railway company by the Public Utilities Commission does not violate the Bill of Rights. To hold that the state cannot inspect and examine the books, accounts, and records of domestic corporations, would be to say that the state which creates corporations has not the reserved power to control them.

Section 16. of the Bill of Rights:

"No person shall be imprisoned for debt, except in cases of fraud."

In In re Ebenhack 17K. 618 (1877), the Court held that the legislature has power to provide that, when upon the trial of a misdemeanor the jury shall find the defendant not guilty, and shall also find that the prosecution was instituted from malice or without probable cause, the
justice may adjudge the costs against the prosecuting witness, and, if he fail to pay or give security for their payment, may commit him to the county jail until they are paid. Such imprisonment is not in conflict with section 16 of the Bill of Rights. These costs are cast upon the accusor as a penalty, and they do not constitute strictly and simply a debt, in the technical sense of the word, any more than the fine imposed upon a party convicted of assault and battery, is a debt.

In Tennent, Walker and Co. v. Weymouth (25K. 21 1881), the Court held that proof of fraud must be clearly shown to sustain imprisonment for debt. In this case it was stated that the defendants had made deeds of their farms to their wives but it was not shown that the wives were not bona fide creditors, or that there was any real fraud in the act. Fraud was presumed but not actually proved. In order to justify the issue of an order of arrest, facts proving, and not merely facts consistent with fraud should be stated in the affidavit.

In Hauss v. Kohler 25K. 640 (1881), the Court held that the creditor in charging fraud is expected to make out a plain case and state definite ground for his action. Where an affidavit does not state any one of the grounds required by the statute under which the charge is being
brought, all proceedings afterward had under it, or by virtue thereof, are void.

In In re Wheeler 34K. 96 (1885), the Court held that provisions of section 16 of the Bill of Rights applies only to liabilities arising upon contract. A father may be imprisoned for failure to pay a judgment rendered in bastardy for the support of an illegitimate child since such judgment is not a debt within the meaning of the Bill of Rights.

In In re Boyd 34K. 570 (1886), the Court held that imprisonment for failure to pay costs of trial is not imprisonment for debt. Judgment for costs is not a part of the punishment, and even where a prisoner has been pardoned by the Governor he is not released from his liability to pay the costs, or to be imprisoned in case they are not paid. The rights of the court officials to compensation for conducting trial are vested rights which cannot be disturbed or lessened by any pardon from the governor.

In In re Dassler 35K. 678 (1886), the Court restated that provisions of section 16 of the Bill of Rights apply only to liabilities arising upon contract, and that imprisonment for failure to pay road tax does not violate the section.

In State v. Weiss 84K. 165 (1911), the Court held
that section 16 of the Bill of Rights permits the legislature to imprison for fraudulent debt but does not compel the legislature to imprison in such cases. Imprisonment in cases of fraud is optional, but there can be no imprisonment for debt other than fraudulent.

In *Burnett v. Trimmell* 103 K. 130 (1918), the "Bulk Sales" law was questioned. This law provided that sale of goods shall be void as against the creditors of the seller unless the purchaser receives from the seller a list of names and addresses of the creditors and the purchaser at least seven days before taking possession or paying therefor notify every creditor whose name is listed. Any seller knowingly omitting the name of any creditor is subject to fine and imprisonment. The Court held that there was no violation of the Bill of Rights since imprisonment as provided in the statute was not for failure to pay debts, but for failure to do the thing expressly enjoined by the statute in reference to preparing a list of creditors. Such regulation was valid use of the police power.

In *Board of Education v. Scoville* 13 K. 17 (1874), the Court held that a garnishee may not be indefinitely imprisoned for failure to pay a debt to a judgment-debtor. If such were the case, the garnishee could be imprisoned
forever, since there is no provision for his discharge before he pays the debt. The Court could give a definite imprisonment term as a punishment for contempt.

Section 17. of the Bill of Rights:

"No distinction shall ever be made between citizens of the state of Kansas and citizens of other states and territories of the United States with reference to the purchase, enjoyment or descent of property. The rights of aliens in reference to the purchase, enjoyment of descent of property may be regulated by law."

(This section was submitted to and adopted by the people at the election of 1888. The original section 17 read, "No distinction shall ever be made between citizens and aliens in reference to the purchase, enjoyment of descent of property".)

In Manley v. Mayer 68K. 377(1904), the Court held as constitutional a statute providing for enforcement of the contract obligation of a non-resident by attachment and sale of his Kansas real estate in an action brought against the non-resident executor. The contention that it was an unlawful discrimination to allow an attachment to issue against a non-resident and not against a resident executor was met by the fact that the proceeding was a mere device for obtaining jurisdiction of the property for the purpose of applying it to the payment of debts, there being no other way by which personal jurisdiction of the non-resident could be obtained since the court can not compel out-of-state residents to appear.
In *Sparks v. Bodensick* 72K. 7 (1905), the plaintiff sought to withhold title to one-half of an estate from alien descendants on the ground that at the time of the landholder's death (1873) the rule of the common law, that aliens cannot inherit real estate, was in force in Kansas. The Court held that the original section 17 of the Bill of Rights was such as to cause statutes determining the course of descent of property to apply equally to aliens and citizens.

In *State v. Ellis* 72K. 287 (1905), the Court held that the common law did not apply and that resident citizen half-sisters of the resident citizen who died in estate, leaving neither widow nor children, and whose parents both had died before him while non-resident aliens, can inherit immediately and directly the lands of the deceased and such lands shall not escheat to the state. Under the common law half bloods could not inherit.

In *Cramer v. McCann* 83K. 719 (1911), the Court held that under the amended section 17 of the Bill of Rights, the legislature has full power to enact laws regulating the right of aliens to hold real estate. An act, providing that resident citizens of the United States can not inherit lands in this state through the operation of the statute of descents and distributions when they must trace their descent through a cousin of the parent, who
was an alien at the time of his death, is constitutional.

In Johnson v. Olson 92K. 819 (1914), the Court held that in the absence of a governing treaty, and under section 17 of the Bill of Rights as adopted in 1888, where there is not statute regulating the inheritance of property by aliens, the common law rule that an alien cannot inherit from a deceased citizen prevails.

In Botello v. Tharp 121K. 229 (1926), the Court restated the rule that in the absence of a federal treaty or a non-controlling statute, an alien can neither take land by descent nor transmit it to another. Under common law citizen children can not inherit from an alien father.

In Rieman v. Rieman 123K. 718 (1927), the appellant was adopted by a brother of the deceased intestate pursuant to an Illinois statute which declared that "to all other persons (than the adoptive parents) the adopted child shall stand related as if no such act of adoption had been taken". The Court held that such limited status of adoption bars her rights to share in the estate of the brother of her adoptive father, and that such ruling does not violate the constitution. The appellant was not denied the right of inheritance.
because she was a citizen of Illinois, but because of the limited status of adoption conferred upon her.

In **Riemann v. Riemann** 124 Kan. 539 (1927), the Court reversed its former ruling and held that the devolution of intestate personal property is governed by the law of the domicile of the descendant, and the devolution of intestate real property is governed by the law of the state where it is situated. A child adopted in a foreign state has inheritable capacity to lands situated in this state in conformity with our laws governing the distribution of intestate estates, notwithstanding the laws of the foreign state where the adoption proceedings were effected imposed upon the child a disqualification to inherit from the collateral kindred of her adoptive parent.

In **Fergus v. Tomlinson** 126 Kan. 427 (1928), the Court held that the common law is in force in this state unless abrogated by statute. Under the common law alienage is not an obstacle to the acquisition of title to personal property by one next of kin. The husband, in this case a British subject, may inherit his wife's personal property.

**SUMMARY**

In summary of the foregoing cases it may be stated that the Supreme Court of the State of Kansas has held
its citizens to the following principles:

1. Property used as selling place for liquor is lien for fine and costs regardless of ownership. (34K. 425)

2. The legislature has entire control of the devolution of property on death of the owner. (103K. 508)

3. A warrant for arrest cannot be issued only on hearsay and belief. (32K. 245)

4. If an objection to faulty arrest is to stand, it must be made before the defendant goes to trial. (32K. 615)

5. Oath of county attorney is not essential to verify an information for arrest. (33K. 708)

6. Arrests cannot be made upon suspicion alone. (55K. 700)

7. Search and seizure is not violated in compelling a banker to reveal a depositor's account. (66K. 791)

8. It is not necessary to name the criminals in issuing warrant for their arrest. (71K. 287)

9. A prisoner may be seized for violation of parole at the discretion of the parole court. (94K. 439)

10. Prosecuting attorney can't retain possession of documents which he has forced into court through duces tecum. (11K. 172)
11. A railroad company's records may be examined by the state. (115K. 3)

12. An accuser who brings prosecution from malice and without probable cause may be imprisoned for failure to pay costs in the case which he has instigated. (17K. 618)

13. Proof of fraud must be clearly shown to sustain imprisonment for debt. (25K. 21)

14. A creditor charging fraud must make out a plain case and state definite grounds for his action (25K. 640)

15. "Debt" as used in section 16 of the Bill of Rights applies only to liabilities arising upon contract. (34K. 96)

16. Imprisonment for failure to pay costs of trial is not imprisonment for "debt". (34K. 570)

17. Imprisonment for failure to pay road tax is not imprisonment for "debt". (35K. 678)

18. Imprisonment for fraudulent debt is optional and not compulsory. (84K. 165)

19. Title to property may be voided if conditions of transfer are not met. (103K. 130)

20. A garnishee may not be indefinitely imprisoned until he shall pay a debt to a judgment-debtor. (13K. 17)
21. Discrimination is legal which permits attachment to issue against a non-resident and not against a resident executor. (68K. 377)

22. Under the original section 17 of the Bill of Rights, statutes applied equally to aliens and citizens. (72K. 7)

23. Common law rule that half-bloods cannot inherit does not apply in Kansas. (72K. 287)

24. The legislature has full power to enact laws regulating the right of aliens to hold real estate. (83K. 719)

25. In absence of statutory regulation, the common-law rule that an alien cannot inherit from a deceased citizen prevails. (92K. 819)

26. Devolution of intestate real property is governed by the law of the state where it is situated. (124K. 539) This reversed (123K. 712)

27. Common law is in force in this state unless abrogated by Statute. (126K. 427)
CHAPTER VII

SLAVERY; BAIL; JUSTICE WITHOUT DELAY

This chapter includes sections 6, 9, and 18 of the Bill of Rights. Section 6, prohibiting slavery or involuntary servitude except for punishment of crime, has been before the Supreme Court in only four clear-cut cases, none of which have been in recent years. Section 9, concerning bail and punishments, has been nine times directly involved in Supreme Court cases. Section 18, guaranteeing remedy by due course of law, has furnished grounds for much litigation. The increasing importance of this section is evidenced by the fact that nearly half the cases have come before the Court since 1930.

Section 6 of the Bill of Rights:

There shall be no slavery in this state; and no involuntary servitude, except for the punishment of crime, whereof the party shall have been duly convicted.

In In re Dassler 35K. 678 (1886), the court held that an act requiring work on the roads to pay poll tax is valid. Performance of work upon an assessment or levy payable in labor for the repair of roads or
streets, is not that kind of involuntary servitude intended to be embraced within section 6 of the Bill of Rights. Military service is also compulsory, but it is not held in conflict with the Bill of Rights. There are certain services which may be commanded for the good of society through the police power.

In City of Topeka v. Boutwell 53K. 20 (1894), an ordinance permitting employment of city prisoners on the streets was held valid. The defendants were jailed for failure to pay their fines and were put to work at $1 per day credit on their fines. The Court argued that the labor was not mentioned in the sentence and could hardly be considered as a valid part of the punishment. Street labor was held as a proper means of collecting the fines and as discipline for the prisoners.

In In re Wheeler 34K. 96 (1885), previously cited, the Court held that imprisonment for failure to pay a judgment under the bastardy act for the maintenance and education of an illegitimate child was proper and constitutional.

In In re Boyd 34K. 570 (1886), previously cited, the Court held that imprisonment for non-payment of the costs is no part of the punishment and is a proper means of enforcing payment.
Section 9 of the Bill of Rights:

All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

In State v. White 44K. 514 (1890), a nineteen year old boy was convicted for rape of a sixteen year old girl of questionable character and was sentenced 5 to 21 years at hard labor. In reviewing the sentence, the Court held that although the punishment may be considered severe, yet it is not unconstitutional. Imprisonment at hard labor is not of itself a cruel or unusual punishment within the meaning of the Bill of Rights.

In In re Ellis 76K. 368 (1907), the Court held that the refusal of the county commissioners to discharge a convicted person who has been found to be unable to pay the fine or costs will not make his imprisonment cruel or unusual.

In In re Schneck 78K. 207 (1908), the Court held that penalty is incurred when the act of crime is committed. A person charged with the crime of murder in the first degree, at a time when the statute prescribed the penalty of death for the offense, is not, where the proof is evident or the presumption great,
entitled to bail, although the prosecution for the offense may have been commenced after the repeal of that penalty and the enactment of an amendment imposing the penalty of imprisonment for life. Murder in the first degree was a capital offense at the time it was here committed, and therefore the defendant was not entitled to bail.

In *State v. Gillmore* 88K. 836 (1913), the Court held that hard labor in the penitentiary not exceeding two years was not unusual or cruel punishment for failure to obey orders of support in a case of desertion and non-support of wife or family.

In *Tatlow v. Bacon* 101K. 27 (1917), the Court held that statutory provision that an execution may issue against the person of a debtor for certain fraudulent acts is not violative of limitation against cruel and unusual punishments. A prison sentence is proper for fraud in inducing the plaintiff to exchange land for a worthless deed.

In *State v. Coletti* 102K. 523 (1918), the Court held as not violative of "excessive bail" a statute providing that in appeals from convictions in misdemeanors, the defendant is to give a bond conditioned upon the payment of the fine and costs within thirty days after affirmation of the judgment by the appellate
court, and also to give a bond conditioned that he will not violate, pending the appeal, the law under which the conviction was obtained.

In *In re Ball* 106K. 536 (1920), the Court held that a statute of 1911, providing no bail for persons charged with murder in the first degree where proof is evident or presumption great, violates the Bill of Rights. Murder in the first degree was not in 1920 punishable capitally, and persons charged with that offense could not be denied bail.

In *Davison v. Davison* 125K. 807 (1928), the Court held that jailing a partner in a divorce suit for contempt of court because she cannot deliver to the husband an automobile, which has fallen into the hands of the sheriff, or money which has already been spent, amounts to life imprisonment and is voided by section 9 of the Bill of Rights as "cruel and unusual". It is proper for the court to jail for contempt where it is implied that the court's orders can be obeyed, but here it was impossible to obey them.

In *In re MacLean* 147K. 146 (1938), the Court held that judgment imposing consecutive periods of penal servitude in accordance with the verdict of guilty on specific counts charged in the information did not violate section 9 of the Bill of Rights forbidding cruel and unusual punishments.
Section 18 of the Bill of Rights:

All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.

In K. P. Railway Co. v. Yanz 16K. 573 (1876), the Court held that section 18 of the Bill of Rights is not violated by a statute giving the owner of livestock the right to recover attorney-fees and denying that right to the railway company, where the railway company has killed livestock for the plaintiff. This is considered proper use of police power to protect the general well-being. Attorney’s fees in these cases might be more than the price of the lost livestock.

In In re Davis 58K. 368 (1897), a legislative committee sitting after the legislature had adjourned sine die sought to hold Davis for contempt on his refusal to produce certain records. The Court held that the committee had no power to imprison the witness. The House itself could have imprisoned for contempt, but such power could not be perpetuated in a committee.

In Atchison, Topeka and Santa Fe R. R. v. Matthews 58K. 447 (1897), previously cited, the Court held that collection of attorney’s fees from a railroad along with damages for fire caused by a locomotive was
in the nature of a police regulation, designed to enforce care on the part of the railway company and was not intended to place a burden on such companies that private persons are not required to bear.

In *Buckwalter v. School District* 65K. 603 (1902), the plaintiff charged that she should have been notified, before hand that she was in the process of obtaining from the state could be taken for a school house site. The Court held that under eminent domain the plaintiff has a right to his day in court on the question of compensation, but he has no right to a day in court on the question of appropriation by the state unless some statute requires it. The state’s right to take land exists independently of notice.

In *Hanson v. Krehbiel* 68K. 670 (1904), the Court ruled that a statute, providing that in cases of libel where the writer publicly retracts his statements, the injured is entitled only to what actual financial loss he can show resulted, is void as not allowing due course of law to show injury through disgrace, ridicule, and humiliation, which could only be determined by a trial considering the circumstances. Remedy by due course of law as used in the Bill of Rights, means the reparation for injury, ordered by a tribunal having jurisdiction, in due course of procedure and after a fair hearing.
In Cooper v. Searverns 81K. 267 (1909), previously cited, the Court held that the common law rule, that spoken words imputing unchastity to a female are not actionable without allegation and proof of special damages, deprives women of due process as her reputation is one of her most valuable assets.

In Shade v. Cement Co. 93K. 257 (1914), the Court held that an employee has no constitutional grounds to object to provisions of the workmen's compensation law since its operation rests upon the free consent of employer and employee. Without consent to come under the compensation law, the employee may retain his remedies under common and statutory law.

In Oil and Gas Co. v. Strauss 110K. 611 (1923), the defendant argued that the district court was prejudiced against the defendant's case and reached a conclusion without due process. It was pointed out that after motion for a new trial and the motion for additional findings of fact were filed, but before they were heard, the judge took copies of the motions, considered them together with the pleadings and evidence, and wrote down a conclusion concerning what should be done on the motions. Afterward the motions were heard and the court rendered judgment in accordance with the previous written conclusion. The Court held that here was no violation of due process, that both parties
were heard, and that the judge could have changed his former conclusion if the oral arguments warranted such change.

In Railroad and Light Co. v. Court of Industrial Relations 113K. 217 (1923), previously cited, the Court held that there was no violation of due process and that the police power was properly used where the Public Utilities Commission nullified contracts concerning rates for electricity to be supplied by an electric power company to a street railway, when performance of those contracts at the agreed schedules of rates so materially diminished the revenues of the power company as to cause other customers of the power company to have to bear a portion of the burden resulting from such contracts.

In Glenn v. Callahan 125K. 44 (1928), the Court held as not violative of section 18 of the Bill of Rights, a statute declaring that all transfers of property by a stockholder, after the closing of a bank and before the payment of the double liability, as provided in the statute, shall be void as against said double liability. The Court argued that banking was a business in which the public has a vital interest and for that reason it is subject to control by the state under its police power.
In *Wichita Council v. Security Benefit Ass'n* 138K. 841 (1934), the Court held that a benefit society organized and operating under the laws of this state is not authorized to enact a by-law giving its national executive committee authority to suspend a subordinate council and dissolve its charter without charges having been filed, notice given thereon, and a hearing thereof. It was argued that such proceeding was a taking away of property rights even though provision had been made for transfer of the members to other councils and insurance was kept intact. Such transfer meant expense for the members.

In *Trimble v. City of Topeka* 147K. 111 (1938), the plaintiff challenged a city ordinance regulating barbering where such ordinance denied rights granted by the state and granted rights denied by the state. The Court held that the city ordinance was void, and that if a barber met the state regulations it was enough. Such an ordinance would properly come under the police power, but in this case it added nothing to the general welfare not already provided for by statute.

In *Kansas City Life Insurance Co. v. Anthony* 142K. 671 (1935), the Court held that where a judgment has been rendered by a competent court against
the defendant, ordering a sheriff's sale of real property encumbered by mortgage and fixing the proper period of redemption under the law then existing, such judgment is res adjudicata when no appeal is taken therefrom, and cannot be annulled or set aside by subsequent act of the legislature. In this case the petition in foreclosure was filed in 1932 before the mortgage moratorium laws were passed, and the defendant was not denied due process by being refused the benefit of such laws.

In Schuler v. Rehberg 145 K. 174 (1937), a district court, against the wishes of the judgment creditor, refused to confirm a sale in foreclosure where the sale would pay only a part of the debt. The Court held that where there is no irregularity in the proceedings, and no substantial disparity between the actual value of the property and the selling price at the sale in foreclosure, the judgment creditor has an absolute right to have the sale confirmed, and to deny such right violates even handed justice to all litigants.

In Leigh v. City of Wichita 148 K. 614 (1938), the Court held that city zoning ordinances come under the police power and do not violate the Bill of Rights by taking property without due process of law.

In Loomis v. City of Augusta 151 K. 343 (1940), the plaintiff contended that construction of a dike
along the river would so change the flow of flood waters as to inundate his land where before it was safe from flood. He sought compensation for loss in value of his land since he could not now sell it for residential plots. The Court held that since there was no actual appropriation of any property the owner was not entitled to claim damages for merely incidental, indirect and consequential injuries which his property might sustain by reason of a public work or construction. However, such a decision will not stop the plaintiff from bringing a subsequent action if actual damage does occur.

In Callen v. Junction City 43K. 627 (1890), the plaintiff charged that incorporation of his property into the city was a violation of the Bill of Rights in that it took private property for public use without just compensation. The Court held that the mere change of the use of land from agricultural to city purposes is not taking of private property for public use.

In State v. McManus 65K. 720 (1902), the State condemned and publicly destroyed liquor, containers, and bar. The defendant charged discrimination against them and their property and that property could not
be thus destroyed. The Court held that the defendant had been given notice and opportunity to defend his property and that as public nuisance the property could legally be destroyed. Property so kept and used is tried in rem, regardless of whether there has been an arrest or conviction of the person charged with maintaining the place.

In Chamberlain v. Mo. Pac. R.R. Co. 107K. 341 (1920), previously cited, the Court held that compulsion of a railroad company to construct a private crossing on land through which they had obtained a right-of-way, deprived the railroad of property without just compensation and violated the Bill of Rights.

In Edmonds v. Federal Securities Co. 131K. 11 (1930), the defendant charged that a statute authorizing the trial court to render judgment against a litigant who refuses to answer questions or to produce books, papers and documents pertinent to the issues of fact, is violative of the Bill of Rights in that it deprives the defendant of property without due process. The Court held that it is proper for the legislature to facilitate litigation, and that in this case the defendant is not deprived of property without due process.
He is entitled to his day in court if he will abide by the code of procedure which the legislature has adopted for the guidance of the courts.

In *Hushaw v. Kansas Farmers Union Royalty Co.* 149K. 64 (1939), previously cited, the Court held that a statute providing that instruments conveying mineral rights are void unless recorded within 90 days after execution and if not listed for taxation, was not void as calling for forfeiture of property without due process. Requirements set down in the statute are to be considered a condition precedent to the vesting of title in the transferee and not a forfeiture of a vested title.

**SUMMARY**

In summary of the cases in this chapter it may be stated that the Supreme Court of the state of Kansas has held its citizens to the following principles:

1. Work on the roads to pay poll tax is not involuntary servitude. (35K. 678)

2. Prisoners in the city jail may be required to work on the streets. (53K. 20)

3. Imprisonment is legal for failure to support an illegitimate child. (34K. 96)
5. Sentence of 5 to 21 years at hard labor for committing rape is not cruel or unusual punishment. (44K. 514)

6. Penalty is incurred when the act of crime is committed and comes under statutes then in force. (78K. 207)

7. Two years at hard labor is not a cruel or unusual punishment for non-support of wife. (88K. 836)

8. Prison sentence for a debtor convicted of fraudulent acts is not cruel and unusual punishment. (101K. 27)

9. Requirement of a double bond, one for fine and costs, and one for lawful behavior does not violate "excessive bail". (102K. 523)

10. Bail can be refused only in capital offense. (106K. 536)

11. Person may not be imprisoned for contempt where it is impossible to obey the court's orders. (125K. 807)

12. There is no limit to the length of a total sentence which may be imposed by consecutive sentences on specific counts. (147K. 146)

13. In certain suits for damages, railroads may be held to pay attorney's fees for the
plaintiff. (16K. 573)

14. A legislative committee sitting after the legislature has adjourned *sine die* can't hold a witness for contempt. (58K. 368)

15. Under eminent domain, the state may appropriate one's land without even giving notice of such intentions. (65K. 603)

16. Mere payment of what actual financial loss can be shown does not cancel a libel charge. (68K. 670)

17. Anything that detracts from a woman's character is actionable in court. (81K. 267)

18. An employee has no grounds to object to conditions which he voluntarily elects for himself. (93K. 257)

19. A judge may write down a decision against a litigant before hearing his completed case. (110K. 611)

20. Through the state, contracts between utility companies may be obligated. (113K. 217)

21. Property obtained from a stockholder of a closed bank is subject to liabilities of the former owner. (125K. 44)

22. National officials of an organization cannot dissolve a local branch without notice and
hearing. (138K. 841)

23. A barber need not meet city regulations where they conflict with state regulations. (148K. 111)

24. State moratorium laws do not apply to cases where proceedings were begun before 1933. (142K. 671)

25. The court may not refuse to confirm a foreclosure sale where there are no irregularities and the price is reasonable. (145K. 174)

26. One has no remedy against a city that subtracts from the value of one's property by zoning ordinances. (148K. 614)

27. A public construction may indirectly reduce the value of one's property and there is no immediate remedy. (151K. 343)

28. One's property may be incorporated into a city and brought under its jurisdiction and one is entitled to no compensation. (43K. 627)

29. Liquor property may be destroyed whether or not there has been any arrest of the proprietor. (65K. 720)

30. A railroad company may not be compelled to construct a private crossing at its own expense. (107K. 341)
31. The court may render judgment against a litigant who refuses to produce papers and documents. (131K. 11)

32. The legislature may set up conditions of transfer of property which must be met or the property must later be forfeited. (149K. 64)
CHAPTER VIII

TRIAL BY JURY; HABEAS CORPUS; TRIAL PROCEDURE

This chapter includes sections 5, 8, and 10 of the Bill of Rights. Section 8, guaranteeing the right to the writ of habeas corpus, has been indirectly involved in many cases, but on no occasion has direct violation of this section been charged. Sections 5 and 10, dealing with trial by jury and trial procedure, have been involved in cases before the Supreme Court more often than any other sections of the Bill of Rights. In more than one hundred fifty cases has violation of one or both of these sections been contended. These cases are fairly evenly distributed through the years, and in almost every term since its beginning, the state Supreme Court has been called upon to determine the meaning of these sections.

Section 5 of the Bill of Rights:

The right of trial by jury shall be inviolate.

In Kimball v. Connor 34. 410 (1866), the Court held that section 5 of the Bill of Rights does not require every trial to be by jury. Trial by jury is
guaranteed only in those cases triable at common law. In statutory and chancery proceedings the legislature is competent to dispense with the jury. An action to contest a will is an equitable proceeding and may be tried without a jury.

In State v. Allen 5K. 213 (1869), the Court held that in all original proceedings, the Supreme Court has power to send issues of fact to a jury for trial, whether, as a matter of strict right, either party is entitled to a jury trial or not.

In City of Emporia v. Volmer 12K. 622 (1874), the Court held that where a statute authorizes a trial before a municipal court, without a jury, for a violation of a city ordinance, and at the same time secures to the defendant an appeal therefrom, clogged by no unreasonable restrictions, to an appellate court in which he has a right to a trial by a jury, such summary proceeding is not in conflict with the constitutional provision that the "right of trial by jury shall be inviolate".

In Board of Education v. Scoville 13K. 17 (1874), the Court held that in proceedings for the recovery of money a man's rights can be determined against his will only by a jury, and in such cases an order made by the court is not sufficient.
In *Ross v. Commissioners of Crawford County* 16K. 411 (1876), the plaintiff sought a jury trial in proceedings to correct assessments. The Court held that one is entitled to a jury only in those cases and proceedings as prior to the constitution gave the right to a jury. As to all other matters which prior to the constitution were disposed of by summary proceedings, the legislature may make similar provision today. As to proceedings in assessment, not enforcing in any way a penalty, either by fine or by double or triple tax, no right to jury existed prior to the constitution.

In *Hixson v. George* 18K. 253 (1877), the Court held that the question of whether creditors of the husband could look to the family residence in the wife's name for settlement of their claims is an action in the nature of a suit in equity, and that the court may in its discretion decide the case or send all or any part of it to a jury. If the court sends all the issues to a jury, it may do so by a general order, without even mentioning any particular issue; and the jury may then find a general verdict on all issues of both fact and law, unless otherwise order by the court.
In Carpenter v. Carpenter 30K. 712 (1883), the Court held that a trial court is not in error in refusing to submit a divorce case to a jury for trial. Such cases are properly tried by the court, which may or may not order any issue or issues in such case to be tried by a jury.

In In re Rolfs 30K. 758 (1883), the petitioner was fined by a police judge for keeping a nuisance and was refused an appeal to the district court. The Court held that in this case section 5 of the Bill of Rights was violated. If the prosecution involved nothing of a criminal nature, as one charged with auctioneering without a license, then the constitutional guarantee might not be applicable; but where the charge is criminal at common law, criminal in its nature, trial by jury must be preserved.

In In re Burrows 38K. 675 (1888), the Court held that a judgment debtor is not entitled to trial by jury to determine whether he unjustly refuses to apply money in his possession toward satisfaction of the judgment under which proceedings are had.

In State v. City of Topeka 36K. 76 (1886), the Court held that persons violating city ordinances requiring work on the streets are not entitled to trial by jury because such right did not exist prior
to the adoption of the constitution. The constitution preserves the right to trial by jury only as it existed in 1859.

In *Callen v. Junction City* 43K. 627 (1890), previously cited, the Court held that extension of the limits of a city is a purely legislative power and such a power is not exercised by means of a jury trial. A landowner has no right to a jury trial to determine whether his land may be incorporated into a city adjoining.

In *In re John* 55K. 694 (1895), the petitioner was fined in police court for selling liquor, and according to a statute of 1889 he could not appeal to the district court until he offered surety both for his appearance at the district court and for his payment of the fine and costs should the case go against him in the district court. The Court held that the statute of 1889 was unconstitutional as an unreasonable restriction on appeal and jury trial. The charge here was of criminal nature and the defendant was entitled to a jury trial which could be obtained by an unrestricted appeal to the district court.

In *State v. Simins* 61K. 752 (1900), the Court
held that the assent of a defendant upon trial on a charge of felony to the discharge of one of the jurors, with an agreement to submit to a verdict by the remaining number, is ineffectual to bind him, and in such case, in the event of an adverse verdict, he is entitled to a retrial, not withstanding his agreement. Common law requires a jury of twelve for trial of issues of fact in common law cases in courts of record. When section 5 of the Bill of Rights says "inviolate", it means as established, and a twelve man jury was established at the time of the adoption of the constitution. Trial by jury in felonies involving public welfare are not properly waived by the defendant since it is to the interest of the state to accord a jury trial.

In Swartz v. Kamala 63K. 633 (1901), the plaintiff acquiesced in the location of a boundary line, and then later repudiated such action and asked for a jury trial to determine the boundary. The Court held that a dispute regarding a boundary does not in a proper sense involve title to real property and is not in the class of controversies where a jury can be demanded as a matter of right. The establishment of boundary lines by a county surveyor is a statutory
proceeding and was not triable by jury at common law. Furthermore, if the defendant had any right to a jury trial, he waived it by his previous acquiescence.

In *In re Effie Kinsel* 64 K. 1 (1902), in denying a jury to the petitioner, who was convicted of violating a city ordinance by keeping a bawdy house, the Court held that prior to the adoption of the constitution juries were not allowed in local police courts in prosecutions for infraction of ordinances and local regulations passed under police power. The Court argued that the defendant had been given a reasonable opportunity to appeal to the district court and a jury trial, and that the refusal of the police court to accept an appeal bond for eighty dollars signed only by the defendant was not an unreasonable restraint to appeal.

In *Wheeler v. Caldwell* 68 K. 776 (1904), a dispute over an election count caused the plaintiff to ask for a jury in *quo warranto* proceedings. The Court held that a jury trial is not demandable as a matter of right in a proceeding in *quo warranto*. The first Kansas territorial legislature adopted common law of England and all statutes and acts of Parliament made prior to the fourth year of James First which
were of a general nature and were not in conflict with the constitution of the United States or with the provisions of the Kansas-Nebraska act. Thus the common law as it existed in England in 1607 became the common law of Kansas. Since it was not until 1730 that by act of Parliament a jury was awarded in quo warranto proceedings, such right is not preserved in the constitution of Kansas.

In State v. Wells 69K. 792 (1904), the court held that in the prosecution of a misdemeanor the defendant, with consent of the prosecuting attorney and the court, may waive a trial by a full jury and consent to be tried by 11 men. At common law selling liquor was triable without a jury and so the case might now be tried with less than the common law twelve-man jury. Since consequences of conviction for misdemeanor are less serious than for felony, the action or duty of society to hold a jury trial may in this case be relaxed and the will of the individual allowed.

In Stahl v. Lee 71K. 511 (1905), the Court held that property seized by the police under order of the police court as used for liquor may be destroyed in police court without any trial by jury so long as
the defendant has a right to appeal to the district court and a jury trial, even though such appeal must be within 10 days after the seizure.

In Mills v. Hartz 77K. 218 (1908), the court held that a suit to cancel a lease is equitable in its nature and one in which a jury may not be demanded as a matter of right.

In Atkinson v. Crowe 80K. 161 (1909), the plaintiff sought an injunction to permit entry onto the defendant's land for the purpose of mining coal which the plaintiff claimed was rightfully his, and which right the defendant denied. The Court held that the question to be settled was the ownership of the coal, and that the plaintiff was attempting to try out a question of title to the coal without a jury, and then take possession of the coal under the protection of an injunction which would prevent the opposition of the defendant. In an action commenced for the purpose of settling disputed questions of title to real estate, and to recover the possession thereof, either party is entitled to a jury as a matter of right, regardless of the form in which action may be brought.

In Gordon v. Munn 83K. 242 (1910), the Court
held that in an action of partition where the issues disclose the real controversy to be as to the title and possession of the real estate in controversy, that question must be tried before a jury if either party so desires. This case involved a question of partition of real estate among heirs.

In *State v. Linderholm* 84K. 603 (1911), the court held that a statute providing for a jury, in lunacy inquests, of four persons, one of whom must be a physician does not violate the right to a trial by jury as guaranteed in the constitution. On appeal from the probate court to the district court the nature of a lunacy proceeding is not changed and the jury provisions of the civil and criminal codes are not applicable. A lunacy hearing is not a constitutional trial, but is merely an inquest for the benefit of the person in question and bears no resemblance to an action either civil or criminal. It is not a case in which the client is judged at fault or in default and for which there is a forfeiture of constitutional liberty.

In *Balch v. Glenn* 85K. 735 (1911), previously cited, the court held that under the police power a person's orchard may be destroyed as a measure to control San Jose scale, and that no previous notice
or jury trial is necessary. Such delay would impair the general welfare.

In *Cole v. Drum* 109K. 148 (1921), the court held that an action to contest a will is one in which the parties are not as a matter of right entitled to a jury. Such action is a statutory proceeding in which the legislature is fully competent to dispense with a jury.

In *In re Clancy* 112K. 247 (1922), the petitioner, on charge of vagrancy, was tried by a Justice of the Peace where he waived his right of trial by jury by not demanding one as he might have done according to statute. Later the petitioner charged that he was denied a trial by jury. The Court held that vagrancy was not a felony and that trial by jury could properly be waived. Petitioner had waived his right by failure to ask for such a trial at the proper time.

In *State v. Lee* 113K. 462 (1923), the defendant charged that his automobile could not be confiscated for transporting liquor without a jury trial. The Court held that a jury is not required in suits in equity, brought to abate a public nuisance. The summary abatement of nuisances without judicial process or proceeding was well known to the common law long
prior to the adoption of the state constitution. Under police power the state is justified in the destruction or abatement of public nuisances.

In *Spensa v. Goffe* 119 Kan. 831 (1925), the Wakeeney Telephone Company was disorganized by mutual consent, and the plaintiff contended that the proceeds were unfairly divided among stockholders by the corporation officials. After trial before the district court, the plaintiff appealed on the ground that property was involved and that he was entitled to a jury trial. The Court held that a suit by a stockholder of a dissolved corporation against former directors as trustees to determine who are stockholders entitled to share in the distribution of net corporate assets, and how such shares shall be computed, and the amount that the plaintiff is entitled to, is a suit in equity and parties are not entitled to a jury as a matter of right.

In *Estey v. Holdren* 126 Kan. 385 (1928), the plaintiff brought suit against a corporation that had contracted to buy a specified per cent of the gas produced by her wells and then had failed to do so. The defendant succeeded in getting the case assigned for trial before a referee, charging that a jury trial
would be long and tedious and would involve presentation of complicated and technical facts as matters of evidence. After objecting to the referee to no avail, the plaintiff by mandamus invoked the Supreme Court to require the respondent to grant a jury trial. The Court held that the issues raised by the pleadings determine the nature of the action, and that here the plaintiff knew exactly what was her due under her contract and there was nothing in the case in the nature of equity. The fact that the trial would be long and tedious has no weight. The case must go to a jury.

In State v. Board of Education 137K. 451 (1933), the matter to be determined by the court was the amount of the valid existing indebtedness of the school district on a certain date. The Court held that such a proceeding is equitable in its nature and may properly be heard by the district court without a jury.

In Kagey v. Fox West Coast Theatres 139K. 301 (1934), the Court held that the question as to whether issues of fact in an action for the recovery of money are such as must, under our Bill of Rights, be submitted to a jury for trial or can be referred, is to be determined from the pleadings in the case rather
than from the evidence. Where the trial of an issue of fact shall require the examination of mutual accounts, or when the account is long and on one side only, statute provides that it may be referred. Such cases require long and technical consideration of accounts beyond the capacity of the ordinary juror.

**Section 8 of the Bill of Rights:**

The right to the writ of habeas corpus shall not be suspended, unless the public safety requires it in case of invasion or rebellion.

The writ of habeas corpus is in common use in our judicial system and it has figured in many cases to bring the petitioner with his contentions before the court, but there are on record no cases charging direct violation of this section of the Bill of Rights.

**Section 10 of the Bill of Rights:**

In all prosecutions, the accused shall be allowed to appear and defend in person, or by counsel; to demand the nature and cause of the accusation against him; to meet the witness face to face, and to have compulsory process to compel the attendance of witnesses in his behalf, and a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed. No person shall be a witness against himself, or be twice put in jeopardy for the same offense.

In *State v. McCord* 8K. 161 (1871), the defendant
was convicted of third degree murder in his first trial and in a second trial, brought on his motion, he was convicted of second degree murder. The defendant them charged that he had been once cleared of second degree murder and was being retried for third degree murder only. The Court held that a new trial granted on the motion of the defendant in a criminal case, places the party accused in the same position as if no trial had occurred, and in no wise places him twice in jeopardy for the same offense.

In State v. Cassady 12K. 550 (1874), a party was charged as a principal in a burglary act, but was convicted as an accessory. The defendant contended that a party charged as a principal under an information cannot be convicted of being an accessory before the fact. The Court held that an accessory before the fact may be charged, tried, and convicted as though he were a principal. The defendant knew the nature of the accusation against him and being charged as principal he was prepared to defend himself against conviction as an accessory.

In City of Olathe v. Adams 15K. 391 (1875), the defendant violated a city ordinance by keeping his shop open on a holiday. He was found guilty before a Police Judge, but upon appeal to the district court,
he was declared innocent by the court. The city appealed to the Supreme Court, and the Court held that in a criminal case where the district court had declared the defendant innocent, even though fact showed such finding erroneous, he could not be tried a second time against his will. Such action would be putting the defendant "twice in jeopardy".

In *State v. Potter* 16K. 80 (1876), the Court held that the constitutional right of a defendant in a criminal action to be tried "by an impartial jury of the county or district in which the offense is alleged to have been committed", is a mere personal privilege which the defendant may waive or insist upon at his option. It is not a right conferred upon him from considerations of public policy; and public interests would not be likely to suffer by a waiver thereof.

In *State v. Jones* 16K. 608 (1876), the Court held that a mere preliminary examination does not put the accused in jeopardy within the meaning of the constitution. One preliminary examination for a criminal offense is no bar to another preliminary examination for the same offense; nor is it any bar to a full prosecution for such offense, although the defendant
may have been discharged on the first preliminary examination.

In *State v. Behee* 17K. 402 (1877), the defendant was charged with burglary in the night-time (second degree), but the jury returned a verdict of third degree burglary (day-time). The information had expressly stated that whatever the defendant did, was done in the night-time. Time here was an indispensable ingredient in the offense, and to convict the defendant of third degree burglary on such information, authorize introduction of evidence to proved different facts than those stated. The Court held that the defendant was not informed of the nature of the accusation against him and that upon an information or an indictment for an offense consisting of different degrees, the jury can only find the defendant guilty of a degree inferior to the one charged when the facts constituting the offense stated include the lesser offense.

In *State v. Adams* 20K. 311 (1878), the Court held that it was not error for the jury to inspect premises without the defendant accompanying them. Here the defendant did not apply for leave to accompany the jury, or make any objection to their going, or present such action of the court as grounds for new
trial. There was here no violation of the clause 
"the accused shall be allowed to appear and defend 
in person or by counsel, to meet the witness fact to 
face". This is a grant of privilege which the ac-
cused may waive, and in this case the accused waived 
by failing to object to the procedure at the time.

In In re Scrafford 21K. 735 (1879), the Court 
held that where, after the impaneling of the jury in 
a criminal case, the trial is terminated without a 
verdict through any unavoidable casualty, such as the 
death of a juror or the judge, the defendant has not 
been put in jeopardy, and may be again brought to 
trial upon the same charge. Also, when a trial is 
not finished in one term of court and is carried over 
into a new term, the defendant is not twice in jeop-
ardy.

In State v. Hoark 23K. 147 (1879), the Court 
held that a defendant in a criminal prosecution is 
entitled, under the constitution, to compulsory pro-
cess to compel the attendance of witnesses within 
the jurisdiction of the court in his behalf. Where 
material and necessary witnesses are duly subpoenaed 
in behalf of an accused in a criminal case, and such 
witnesses are within the jurisdiction of the court, 
it is an error to force said accused to trial, and
to conclude the trial, against his protest, before the return of the compulsory process issued to bring the disobedient witness into court, in the absence of any reason for it not being executed and returned.

In *State v. Wells* 28K. 321 (1882), a juror on his voir dire stated that he had formed an opinion that the defendant had committed murder. The district court overruled the defendant's challenge of the juror. The court in review of the case held that the juror was competent and impartial in this case because the prosecution for the defendant admitted to the jury that he had committed murder, but was making a case that it was in self-defense that he had committed the act. The juror had formed no opinion on the issue of self-defense.

In *State v. Miller* 29K. 43 (1882), the Court held that a juror who in his voir dire states that he has formed an opinion as to the guilt or innocence of the defendant, but that such opinion is founded on rumor and that he has no bias or prejudice against the defendant and feels he could try the case impartially, is not a competent juror. Men are seldom conscious of being biased or prejudiced.

In *In re Donnelly* 30K. 191 (1883), the defendants
were charged with selling liquor without a license and asked for a trial before the Justice of the Peace. The county attorney asked for merely a preliminary examination and a committal to the district court. The defendants were put in the county jail, in default of bail, to await the next term of district court. The Court held that defendants were deprived of their right to a speedy public trial as could have been legally provided by the Justice of the Peace, who in this case had concurrent jurisdiction with the district court.

In State v. McNaught 36K. 624 (1887), the Court held that a verdict of guilty on one count in a criminal complaint, saying nothing as to other counts, is equivalent to a verdict of not guilty as to such other counts, and where such a verdict has been rendered, and the defendant procures a new trial, he can be tried at the new trial only for the offense charged in the count upon which he was found guilty at the former trial.

In State v. Tilney 38K. 714 (1888), the Court held that an information for larceny, where the only description of the stolen property is "national bank notes, U. S. treasury notes, and U. S. silver certif-
icates, money of the amount and value of one thousand dollars without allegation of the inability of the prosecutor to give more specific description, is insufficient, and will be held bad on an objection seasonably good. Such an information violates the requirement that the accused shall know the nature of the accusation against him.

In In re McMicken 39K. 406 (1888), the court held that where a person under indictment for crime, and committed to prison, is not brought to trial before the end of the second term of the court having jurisdiction after such indictment is filed, the person is entitled to be discharged, unless such delay happens upon his application, is occasioned by want of time to try the case at such second term, or is for the purpose of enabling the state to procure material evidence.

In State v. Knapp 40K. 148 (1888), the Court held that the trial of a defendant charged with a criminal offense cannot, upon the motion of the prosecutor or state, and against the objection and without the consent of the defendant, be removed out of the county and district where the offense is alleged to have been committed. Changes of venue are
to be to a county designated by the defendant.

In In re Nickell 47K. 734 (1892), the defendant in a liquor trial induced witnesses to absent themselves from court, and the trial judge charged the accused with contempt and placed him upon the witness stand to prove the contempt charged. In review of the case the Court held that the petitioner was charged with a statutory crime of inducing witnesses to absent themselves from the court and that such petitioner could not be compelled to criminate himself by testifying from the witness stand.

In State v. Calhoun 50K. 523 (1893), the court held that a plea of guilty under threat of mob violence is not binding. Where the accused pleads guilty under such threat and even after he has served a number of years in prison, he has a right to relief from such sentence and plea by an action or proceeding in the same court in the nature of a writ of error coram nobis.

In State v. Price 55K. 606 (1895), the Court held that prosecution may be in either county where property is stolen in one county and taken to another. Such provision does not deny the accused a trial in the district or county in which the offense is alleged to have been committed. The theory is that a thief is stealing property from the time he takes it up until
he lays it down, although several counties may intervene between these points. Each asportation from one county to another is a fresh theft, and constitutes crime in each county.

In *State v. Fouk* 57K. 255 (1896), the Court held that in all prosecutions the accused is entitled to be confronted with the witnesses against him and to meet them face to face, and testimony of a witness given upon a former trial, and which was written down by the court stenographer, cannot be read in evidence against the defendant except with his consent.

In *State v. Tomblin* 57K. 841 (1896), the Court held that a defendant on trial, charged with a felony, has the right guaranteed to him by the constitution to meet the witnesses produced by the state, face to face, and it is error to admit over his objection, the deposition of a witness, taken out of the state when he was not personally present, containing important testimony, notwithstanding the fact that the deposition was taken on the application of the defendant, on interrogatories prepared by his counsel and cross-interrogatories prepared by both his counsel and by the state.

In *State v. Moore* 61K. 732 (1900), the defendant was required to plead in the absence of his counsel, who were non-residents of the county in which he was
tried, and who, in answer to a telegram, had been notified by the county attorney that the case would not be set for trial until a later date. In reviewing the case the Court held that the proceedings were in error, that the accused is entitled to assistance of counsel at every stage of prosecution, and that the district court should have appointed counsel or waited on counsel already arranged for.

In *State v. Alexander* 66K. 726 (1903), the Court held that where a jury is brought into open court and indicate that there is no reasonable probability of their being able to agree upon a verdict and are discharged from further consideration of the case, the defendant may be retried and he is not twice put in jeopardy.

In *State v. Nelson* 68K. 566 (1904), the Court seems to reverse the decision reached in 57K. 255 and holds that the fact that a witness against the defendant in a criminal case is outside the state at the time of the trial, and therefore beyond reach of process, authorizes the introduction in evidence of the testimony given by the witness at a former trial of the same case. The requirements of the Bill of Rights that the accused shall be allowed to meet the
witness at a former trial of the same case. The requirements of the Bill of Rights that the accused shall be allowed to meet the witness face to face is complied with in that he has already at the former trial been confronted by the absent witness, and at the later trial meets the witness who gives evidence of what such former testimony was.

In State v. Harmon 70K. 476 (1905), the Court held that where, in the trial of a criminal case, a witness who had given testimony at the preliminary hearing was shown to be absent from the state and beyond the jurisdiction of the court, it is competent for one who heard the testimony of the absent witness, and remembers it in substance, to testify to his recollection of the same. Requirements of the Bill of Rights are met in that the accused has faced the witness at the preliminary hearing.

In State v. Inman 70K. 294 (1905), the Court held that the contention that admission in evidence of statements made out of court by a party on trial are incompetent, on the theory that they tend to make him a witness against himself, is without substance. This is not a violation of self incrimination so long as such statements were made voluntarily by the defendant.
In *State v. White* 71K. 356 (1906), the Court held that if a person about to be placed in second jeopardy does not, in some legal form, insist upon his constitutional privilege before entering upon trial, the privilege is waived. An accused may, if he so desires take a chance on a second jeopardy, but he must make his election known when about to be placed in second jeopardy. He cannot hazard a trial and when defeated revert to a matter which would have prevented the trial.

In *State v. Campbell* 73K. 694 (1906), the Court held that even though three terms of the district court intervenes after indictment, so long as appeal by the state is pending defendant is not held in violation of "speedy public trial". The state must be given its right of appeal the same as defendant, and so long as such move is under way it is legal.

In *State v. Hansford* 76K. 678 (1907), testimony in a criminal trial refreshed in the mind of a juror an event in his own past which caused him to become prejudiced, and upon his request, the court excused him and another jury was impaneled to hear the case. In reviewing the case, the Court held that under the circumstances this was a mistrial, and that the defendant was not twice put in jeopardy.
In *State v. Tawney* 81K. 162 (1909), the Court held that it is not proper for a judge in instructing the jury to call special attention to an isolated fact, and by making it prominent suggest to the jury that it is of greater significance and weight than other unmentioned facts in the case which are of no less importance. The judge should abstain from indicating his opinion upon a material fact which it is the province of the jury to determine. Such conduct deprives the defendant of an impartial trial.

In *State v. Turner* 82K. 793 (1910), a revolver which the defendant dug up through fear when the sheriff called on him was later used against the defendant in trial. In reviewing the case, the Court held that a document or article stealthily taken from a defendant's pocket or desk, or that was surrendered under threat of personal violence or taken by force, because of its wrongful procurement creates no estoppel, and the story it tells is its own and not that of the defendant. If the defendant should produce such evidence in obedience to an order of the court it is incompetent, because under such circumstances his act is performed in the capacity of a witness. In short, the defendant cannot be compelled to testify, but
prosecution may use at the trial information obtained from him under duress.

In *State v. Harmon* 84K. 137 (1911), the Court upheld the defendant in his contention that a jury having tried a similar case with the same witnesses is not an impartial jury. In this case five of the jurors who sat on a trial and convicted a traveling man of rape on one of two girls, later sat on trial of the defendant for rape of the other girl. The Court held that the jurors had reason to form opinions as to the guilt of the defendant from evidence given in the first case.

In *State v. Herbert* 96K. 490 (1915), previously cited, the Court held that a defendant in bastardy proceedings is not entitled to a jury, and that the phrase "all prosecutions" in section 10 of the Bill of Rights applies only to cases as prior to the adoption of the constitution and to criminal cases.

In *In re Mote* 98K. 804 (1916), the defendant pleaded guilty in district court in Reno County to having committed the crime of *bigamy* in Finney County. The Reno court sentenced the defendant, and eighteen months later he charged that Reno county had no jurisdiction to accept his plea and render judgment. The Court held that section 10 of the Bill of Rights
grants privileges which may be waived and pleading guilty waived such privileges.

In *State v. Kurent* 105K. 353 (1919), the Court held that in a contempt proceeding for the violation of a decree enjoining the sale of intoxicating liquor and for acts done in maintaining a nuisance, although a criminal prosecution is pending against him for the same sales and acts, he is not thereby put twice in jeopardy for the same offense, since in one case he is punished for a crime and in the other for contempt of court.

In *State v. Criqui* 105K. 716 (1919), the Court held that a statute providing that if any mortal would be given, or poison administered, in one county, and death by means thereof ensues in another county, the jurisdiction is in either county, does not contravene section 10 of the Bill of Rights providing for trial by jury of the county or district in which the offense is alleged to have occurred. There is nothing in the constitution that settles the question of where the crime is committed and this is properly decided by the legislature which in this case decided that the infliction and resulting death were part of the same thing.

In *State v. Satterlee* 110K. 84 (1921), the
Court held that a statute providing penalty for "careless or negligent handling or exposing nitro-glycerin violates section 10 of the Bill of Rights for reason that the statute does not name the acts which are prohibited and thus does not inform the accused of the nature and cause of the accusation against him.

In State v. Johnson 116 K. 58 (1924), the Court held that a liquor still and apparatus taken from a dwelling house during the owner's absence, by the sheriff and county attorney, acting without semblance of lawful authority to search and seize, may be retained by the sheriff, and may be used as evidence in a criminal prosecution against the possessor for maintaining a liquor nuisance. The goods were obtained in violation of "search and seizure", but they were used as evidence not at the order of the court and thus the court was not compelling self-incrimination. The Court deprecated such proceedings, but there was no rule against admitting evidence.

In State v. Elftman 116 K. 214 (1924), the Court held that if the exact nature is not known, charging murder with a blunt instrument is sufficient and does not deprive the accused of knowing the nature of the accusation against him.
In **State v. Brick Co.** 117K. 492 (1924), the Court held that a person brought to trial before a court for an offense triable by the court alone is in jeopardy the same as he would be if his trial had been begun before a court and jury. Discontinuance of the trial without the consent of the accused or an absolute necessity bars another prosecution for the same offense.

In **State v. Allen** 59K. 753 (1898), the Court held that where a defendant has been placed on trial on a criminal charge and the jury is duly impaneled and sworn, the court cannot arbitrarily discharge the jury in such case unless on absolute necessity, and for reasons which are sufficient in law. Discharge of jury unless thus justified will operate as an acquittal and the defendant cannot again be put on trial for the same offense. Statutory grounds for discharge of jury are: sickness of a juror, or other accident or calamity, or other necessity to be found by the court, or by consent of both parties, or when it satisfactorily appears that there is no probability of their agreeing.

In **State v. Ford** 117K. 735 (1924), the Court held that a conviction upon one count for having possession of intoxicating liquor and upon another for the sale of the same liquor does not violate the constitutional
provision against double jeopardy. Keeping liquor is one kind of criminal conduct, and selling it is another and quite different kind; each is punishable.

In *State v. McLaughlin* 121K. 694 (1926), the Court held that where, according to stipulated facts, the defendant drank a quantity of liquor and got into his automobile and drove it along a public street and wrecked it against a curbing while in a drunken stupor, the defendant's conduct constituted a single criminal delinquency and not two distinct crimes carrying separate and successive punishments. The trial court should require the county attorney to elect whether he would stand on the count charging the defendant with driving an automobile in a public street while in a drunken condition, or on the count charging him with being drunk in a public place. If the defendant is cleared on one of the above counts, he cannot be held for the other.

In *State v. Ferron* 122K. 845 (1927), the Court held that an information charging unlawful sale of mortgaged personal property where the only description of the property was "an undivided half interest in 20 acres of wheat of value of over $20", is fatally defective. The defendant was entitled to have a definite description of the property in order that he
might prepare his defense and that he might not be subjected to another prosecution because of indefinite description.

In *State v. Razey* 129K. 328 (1929), the Court held that a statute which makes it a crime for a person who has caused injury to another person by the operation of a motor vehicle on a public highway to fail to stop and give his name, residence, and motor license number and give pertinent information to the injured person thereabout and to report the matter to the sheriff or nearest public officer does not violate the constitutional guaranty against self-incrimination. The right to drive an automobile is a personal privilege and acceptance of such privilege waives certain rights. Also it is proper to make such requirements as part of the police power.

In *In re Trull* 133K. (1931), the Court held that where the petitioner was arrested June 19, 1928, and bound over for trial, but where no information was filed by the county attorney until June 20, 1931, and no reason appears for the delay, the petitioner is denied a speedy trial and is entitled to discharge.

In *In re Brown* 139K. 614 (1934), the jury which had retired to deliberate upon its verdict was called into court and advised by the court that the judge
was going to absent himself and that if the jurors agree upon a verdict they shall obtain an envelope from the bailiff and seal the verdict therein and hand it to the bailiff, who shall hand it to the clerk of the court, and then jurors may disperse, and the jury thereafter agreed upon a verdict and followed the judge's orders. When court was reconvened on Monday morning one of the jurors asked to change his verdict. In reviewing the case, the Court held that the verdict reached and sealed under the above conditions could not be changed. The Court in the same case held that the defendant, tried for rape on May 18, 1932, may be rearrested and charged with rape on any other date without being put twice into jeopardy for the same offense.

In State v. Reynolds 140K. 269 (1934), the Court held that where the indictment or information is so defective in form or substance that it will not support a conviction, it cannot form the basis of proceedings which will put the defendant in jeopardy and bar another prosecution. In this case burglary was charged and stolen goods were described as "certain goods, wares and merchandise of value of more than $20". Such information was held as insufficient as a basis for a trial or for jeopardy.
In *State v. Carr* 151K. 36 (1940), the defendant charged that his constitutional rights were violated in that he was not sufficiently informed of the charge against him in a statute which provides, "any person who shall knowingly and willfully commit any irregularity or fraud whatever with the intent to hinder, prevent or defeat a fair expression of the popular will at any election shall be deemed guilty of a felony". The Court held that the information based on the statute was sufficient. A statute is not necessarily void for uncertainty because in creating the crime it does not define the offense, for if the offense is known to common law, the common law definition may be adopted. Depositing of false and fraudulent ballots and the commission of acts and conduct which interfered with freedom and purity of elections, was punishable as a crime at common law. In this case the purpose of the statute was not so much to denounce certain specific acts as to prevent a certain result.

In *State v. McCarley* 152K. 18 (1940), the Court held that testimony of a witness voluntarily given in an inquisition to determine the origin of
a fire, held by the fire marshall, under the statute relating to the protection against fire, may be used so far as relevant in a prosecution for arson subsequently brought against the witness.

In State v. Snyder 20K. 306 (1878), the Court held that the verdict of a jury was void where the bailiff, a witness against the defendant, spent the greater part of his time with the jury while they were deliberating. It is the duty of courts to enforce a rigid and vigilant observance of the provisions of the statutes designed to preserve inviolate the right of trial by jury and the purity of such trials. In this case the defendant did not have an impartial jury as was his right.

In State v. City of Topeka 36K. 76 (1886), previously cited, the Court held that "all prosecutions" as used in section 10 of the Bill of Rights was intended to mean or to include only all criminal prosecutions for violations of the laws of the state and was not intended to mean or to include prosecutions for the violation of ordinary city ordinances which have relation only to the local affairs of the city. Offenses against the public in general must be prosecuted for the public in general, and with a jury,
if the defendant demands it; while offenses against the ordinances of a city regulating only city affairs, may be prosecuted by the city without a jury. The case here involved repair of city streets which was deemed a local city affair.

In *State v. Tucker* 137 K. 84 (1933), the Court held that the defendant was not twice put in jeopardy for the same offense where a judge dismissed a jury after long deliberation without coming to a verdict and upon satisfaction that they would not reach a verdict and carried the case over to the next term of court. If the jury had been dismissed without reasonable evidence that they could not agree on a verdict, then the defendant would have been considered acquitted.

In *Levell v. Simpson* 142 K. 89 (1935), the defendant charged that in this trial and under the habitual criminal act, the nature and cause of the accusation against him was not made clear. He contended that the jury didn't know of his previous convictions and did not realize the gravity of a guilty verdict. The Court held that where commission of a second or subsequent felony merely carries increased punishment on conviction, it is neither necessary nor proper to include in the information any allegations respecting
any prior convictions of the accused.

**SUMMARY**

In summary of the foregoing cases it may be stated that the Supreme Court of the State of Kansas has held its citizens to the following principles:

1. An action to contest a will may be tried without a jury. (3K. 410)
2. In all original proceedings the Supreme Court can send issues of fact to a jury. (5K. 213)
3. The right of jury trial is not violated where one can freely appeal to a jury trial. (12K. 622)
4. In recovery of money, a man's rights can be determined against his will only by a jury. (13K. 17)
5. One is not entitled to a jury in proceedings to correct assessments. (16K. 411)
6. Determination of what properties may be attached by creditors is a suit in equity not demanding a jury. (18K. 253)
7. A divorce case does not demand a jury trial. (30K. 712)
8. Where a charge is criminal at common law, trial by jury must be preserved. (30K. 758)
9. Determination of whether terms of a judgment have been met does not demand a jury trial. (38K. 675)

10. A jury trial is not demandable for violation of city ordinance requiring work on the streets. (36K. 76)

11. A landowner has no right to a jury to determine whether his land may be incorporated into a city. (43K. 627)

12. Jury trial is not demandable for violation of court injunction. (46K. 695)

13. Requirement of bond for appearance and for fine and costs before appeal can be made to a jury trial is denial of right to trial by jury. (55K. 694)

14. Trial by a twelve-man jury cannot be properly waived in cases of felony. (61K. 752)

15. Location of boundary lines is a proceeding not triable by jury. (63K. 633)

16. Jury trial is not demandable in cases involving violation of local police regulations. (64K. 1)

17. A jury trial is not a matter of right in a quo warranto proceeding. (68K. 776)

18. In misdemeanors, the defendant may waive
jury trial or consent to fewer than twelve men on a jury. (69K. 792)

19. Liquor properties may be destroyed without trial by jury so long as there is a right of appeal. (71K. 511)

20. A jury may not be demanded in a suit to cancel a lease. (77K. 213)

21. A jury is demandable in actions to recover or to settle questions of title to property. (80K. 161)

22. A jury is not a right in a lunacy inquest. (84K. 603)

23. To control orchard disease one's trees may be destroyed without previous notice or jury trial. (85K. 735)

24. In misdemeanors right to a jury is waived by failure to ask for such trial at the proper time. (112K. 247)

25. An automobile used to transport liquor may be confiscated without a trial by jury. (113K. 462)

26. Division of assets in a dissolved corporation is a case in equity and not entitled to a jury. (119K. 831)

27. Long and tedious evidence is no excuse for denial of a jury trial. (126K. 385)
28. Determination of the indebtedness of a governmental unit is a case in equity not demanding a jury. (137K. 451)

29. Jury may be denied in actions for recovery of money where mutual accounts must be examined or the account is long. (139K. 301)

30. A new trial granted on request of the defendant, places him in same position as if no trial had occurred. (8K. 161)

31. An accessory before the fact may be charged, tried, and convicted as though he were a principal. (12K. 55)

32. Where a district court declares a defendant innocent, even though fact shows such finding erroneous, he cannot be tried a second time against his will. (15K. 391)

33. Trial by an impartial jury in the county in which the offense is alleged to have been committed is a privilege which may be waived. (16K. 80)

34. A mere preliminary hearing does not put the accused in jeopardy. (16K. 608)

35. A jury cannot find a defendant guilty of crime in a different degree than charged, unless the facts constituting the offense charged include the different degree. (17K. 402)
36. The defendant waives by failing to ask for the privilege of accompanying jury to site of crime. (20K. 311)

37. Where trial is terminated by death of a juror, defendant may be retried without double jeopardy. (21K. 735)

38. Court must compel witnesses to attend in behalf of the defendant. (23K. 147)

39. Juror is disqualified only for opinion formed on the issue in the case, not for other opinions. (28K. 321)

40. Juror who has formed an opinion on the guilt of the defendant cannot be considered competent. (29K. 43)

41. Where J. P. has jurisdiction and defendant demands trial, case cannot be bound over to district court. (30K. 191)

42. A verdict of guilty on one count and silence on other counts is equivalent to acquittal on the other counts. (36K. 624)

43. An information for larceny should specifically describe the stolen property. (38K. 714)

44. Where an indictment goes by two terms of court without any apparent reason for not being brought to trial, the defendant is entitled to
be discharged. (39K. 406)

45. Changes of venue are to be to a county designated by the defendant. (40K. 148)

46. Defendant charged with a statutory crime cannot be compelled to take the witness stand. (47K. 734)

47. A plea of guilty under threat of mob violence is not binding. (50K. 523)

48. Prosecution may be in either county where property is stolen in one county and taken to another. (55K. 606)

49. Testimony from a former trial cannot be read from the court stenographer's notes without consent of the accused. (57K. 255)

50. It is error to admit deposition taken from witness outside the state where accused was not present at the taking of such deposition and to which he objects. (57K. 841)

51. The accused is entitled to assistance of counsel at every stage of prosecution. (61K. 723)

52. Where a jury in open court show that they cannot reach a verdict, defendant may be retried without double jeopardy. (66K. 726)

53. Deposition from witness who faced the accused in a former trial may be admitted against defendant's
54. A witness may testify to what another witness said against the accused in a preliminary hearing against objection of the defendant. (70K. 476)

55. Statements made voluntarily by the defendant outside of court may be admitted in evidence in court. (70K. 894)

56. A defendant cannot hazard a second trial and then when defeated object on the ground of double jeopardy. (71K. 356)

57. "Speedy public trial" is not violated so long as appeal by the state is legally pending. (73K. 694)

58. Where a juror becomes prejudiced for reason during a trial, jury may be discharged and a mistrial declared. (76K. 678)

59. For judge to indicate his opinion upon material facts, deprives the accused of impartial trial. (81K. 162)

60. Prosecution may use at a trial information obtained from a defendant under duress. (82K. 793)

61. A jury having tried a similar case with the same witnesses is not an impartial jury. (84K. 137)
62. "All prosecutions" in section 10 applies only to cases as prior to the adoption of the constitution. (96K. 490)

63. Plea of guilty in a foreign county waives right to hold trial in county of the offense. (98K. 804)

64. In sale of liquor, a defendant may be punished for the crime committed and for contempt of court at the same time without double jeopardy. (105K. 353)

65. Infliction in one county and death in another makes either county proper venue for trial. (105K. 716)

66. A statute imposing penalty for crime must clearly describe the acts prohibited. (110K. 84)

67. Liquor still taken without warrant may be used against the defendant in trial. (116K. 58)

68. Charging murder with a blunt instrument is sufficient information where exact nature not known. (116K. 214)

69. Trial before a judge is jeopardy the same as trial before a jury. (117K. 492)

70. Arbitrary discharge of jury operates as an acquittal for the accused. (59K. 758)
71. Possession of and selling of liquor constitutes two different crimes and two separate convictions is not double jeopardy. (117K. 735)

72. A defendant driving a car while drunk cannot be held on that count and on a separate count of being drunk in a public place. State must elect one count. (121K. 693)

73. Requiring hit-and-run driver to stop and give information is not self-incrimination. (129K. 328)

74. An arrest with no information filed by the county attorney until two years later with no reason for delay is denial of speedy trial and entitles accused to discharge. (133K. 165)

75. A jury verdict reached and sealed cannot be later changed. (139K. 614)

76. Electing a different date for rape in a second trial is a new offense and is not double jeopardy. (139K. 614)

77. Where information is so defective as to fail to support a conviction it cannot serve as a basis for jeopardy. (140K. 269)

78. Where an offense is known to common law and the statutory definition is not clear, the common law definition may be adopted. (151K. 36)
79. Testimony voluntarily given in an inquisition held by the fire marshall may later be used against a defendant in trial for arson. (152K. 18)

80. Jury is not impartial where bailiff, a witness against the accused, spends time with the jury during deliberation. (26K. 306)

81. "All prosecutions" in section 10 does not include those against violation of city ordinances relating only to local affairs. (36K. 76)

82. In cases where sentence will come under the habitual criminal act, information need not include allegations respecting former convictions. (142K. 892)
CHAPTER IX

SUMMARY AND CONCLUSIONS

Summary

Since most of the two hundred fifty-four cases presented in this study establish separate and distinct principles, it is a problem to make a final summary. The summaries given at the end of each chapter are complete, and a complete final summary would amount to a restatement of these chapter summaries. However, an attempt will be made in this final chapter to present some of the general principles which the Court has established.

In making a summary of personal rights guaranteed to the people by the constitution of the state, it is well to point out an important difference between the state constitution and the federal constitution. Congress can rightfully enact only such legislation as is within the powers granted by the federal constitution. In contrast to this situation, the constitution of a state limits rather than confers power, and where a statute is attacked as unconstitutional, the question is not whether its provisions are
authorized by the constitution, but whether they are prohibited by it. Since under a state constitution the people have all governmental power and exercise it through the legislative branch of government, the legislature is free to act except as it is restricted by the state constitution and by the authority of the federal government. In accord with this principle, the state legislature may regulate personal liberties except as limited by the provisions in the Bill of Rights.

Petition; Arms; Worship; Press; Emoluments

The section of the Bill of Rights granting the right of petition and assemblage is clearly stated and decisions of the Supreme Court seem not to have altered its meaning in any way.

Under the right to bear arms, the court has established a definite principle in holding that such right applies only to the bearing of arms in the militia or in other military organizations provided by law, and does not limit the legislature in regulating the promiscuous carrying of arms by an individual.

The court in a number of decisions has established the principle that one is free to worship according to the dictates of his conscience, so long as his worship does not in any way tend to create public dis-
turbance or tend to force others to worship in the same manner.

The Court has held that one is free to write or to speak the truth so long as the truth is not detrimental to the interests of the public in disturbing the harmony and happiness of society or maliciously annoying or injuring others. Much leniency has been shown in permitting abuse of the truth in political campaigns. So long as one accepts responsibility for a statement and contends that he makes such statement in the interests of the public, he may make even false assertions against a candidate.

The question of heredity emoluments and honors conferred by the state has never been before the Supreme Court.

Equal rights; Political power; Powers retained by the people

In the many cases which have charged violation of equal rights, the Court has established the principle that the welfare of the public comes before the rights of any individual, and even where those individual rights seem to be guaranteed in the constitution, they may be properly restrained under the police power of the state. The section in the Kansas Constitution dealing with special privileges differs from similar sections
in the constitutions of most states in that it does not definitely prohibit discrimination. The Court has pointed out that the wording of this section permits the granting of special privileges so long as those privileges can be altered or revoked by the legislature. The principle has been established that the clause prohibiting the granting of special privileges and immunities refers to political privileges and not to privileges relating to property rights. Special regulations may be made to apply to those holding public office, membership in professions licensed by the state, or other similar positions. Such persons have a special status granted by law, and for the state to take away from these persons privileges which other individuals do not even possess is not violation of equal protection of the law.

In summary of the principles established concerning political power and powers of the people, it may be stated that all power is inherent in the people, limited only by absolute right and the constitution. The legislature acting for the people can do whatever is not in conflict with a sense of absolute right and the constitution. The legislature cannot delegate any of its legislative power to other governmental
Transportation and corruption of blood; Treason; soldiers; Search and Seizure; Imprisonment for debt; Property Rights

In the few cases that have been before the Court concerning corruption of blood, it has been held that withholding property from an heir who murders his ancestor does not invoke corruption of blood or forfeiture of estate.

Sections dealing with treason and with the quartering of soldiers have never been before the Supreme Court.

Under search and seizure the Court has held that an individual can be arrested only on proper affirmation and not on mere hearsay or suspicion. Records and documents may be called into court, but must be returned to the owners.

The Court has established the principle that an individual is protected from imprisonment for debt only in liabilities arising upon contract and where no fraud is involved. One may be imprisoned for failure to pay costs of trial or for failure to pay road tax and the Bill of Rights is not violated.

So far as property rights of citizens and aliens are concerned, the Supreme Court has established the
principle that in those cases where statutory regulation is absent the rules of common law shall apply.

Slavery; Bail; Justice Without Delay

The Court has held that slavery and involuntary servitude are not invoked in forcing citizens to work on the roads in lieu of poll tax payment or in requiring prisoners to work on the streets.

Under the section dealing with bail and punishment for crime, the Court has established the principle that it is the nature of the punishment and not the duration that determines whether it is cruel and unusual.

In considering the section guaranteeing remedy by due course of law and justice without delay, the Court has held that remedy by due course of law means reparation for injury, ordered by a tribunal having jurisdiction, in due course of procedure and after a fair hearing. In most of the many cases which have charged violation of this section the Court has held that an individual is entitled to due course of law as herein defined, except in those cases where the greater interests of the public are menaced by granting such rights. In such cases the state may properly invoke its police power to curb the individual
in the interest of the common good.

**Trial by Jury; Habeas Corpus; Trial Procedure**

In establishing the meaning of the section providing for trial by jury, the Court has pointed out that the Constitution does not in any way extend the right of trial by jury. The Constitution does preserve that right; it is not disturbed or limited but remains inviolate as it was in common law and in territorial provisions prior to the adoption of the Constitution. Only in those cases where a jury could have been obtained in 1859 is such right guaranteed by the Constitution today. Other important principles established by the Court are that cases in equity are triable without a jury; any charge that was criminal at common law must be tried by a jury if demanded; a jury trial must be granted in questions to settle title to property; and one is not deprived of trial by jury so long as he can appeal to such a trial without undue restrictions. Under police power one's person or property may be summarily handled without jury trial where the interests and welfare of the public are threatened.

The section guaranteeing the right to the writ
of habeas corpus has never been carried to the Court for interpretation.

The section granting to the accused certain rights and protection in trial procedure has been before the Court on more occasions than any other section of the Bill of Rights. All provisions in this section have been held to be personal privileges which may be waived either by definite request on the part of the defendant or by his failure to ask that such privileges be granted to him. The Court has held that the accused is entitled to counsel at every stage of a trial unless he definitely waives such right, and for the court to proceed without counsel is error. A jury cannot find a defendant guilty of a crime not clearly covered in the information bringing him to trial, and any statute imposing penalty for crime must clearly describe the acts declared to be criminal, unless the offense has a common law definition which can be used. The court must compel witnesses to attend in behalf of the defendant. Deposition taken in the absence of the accused and where the accused has never faced the witness cannot be used in court against him. Statements made voluntarily by the accused outside the court can be used against him in trial, and documents or evidence obtained from
the accused, even under duress, may be used against him without violation of the guarantee that he shall not be compelled to witness against himself. A new trial does not constitute double jeopardy. Only in a trial where a defendant could have been convicted and punished is he subjected to jeopardy. Change of venue is to be to a county designated by the defendant. Prosecution may be in either or any of a number of counties where stolen goods are carried across county lines or fatal infliction occurs in one county and death in another. A jury is not impartial where any opinions as to the guilt of the accused have been previously formed or where a judge indicates his opinion upon material facts.

Conclusions

It is apparent that many cases find their way to the state Supreme Court on the strength of sponsoring lawyers or for reasons other than the valid need for review. More than one-third of the cases examined in this study—all of them cases which were carried to the Supreme Court at least partly for reason that they violated sections of the Bill of Rights—were found to so ineffectively challenge these constitutional
provisions that contentions were dismissed by the Court without argument. Evidently many cases are padded with charges of constitutional violations for the sole purpose of strengthening chances for appeal.

The Supreme Court justices are ordinary human beings and are subject to all the frailties of man. Many decisions have come from a closely divided Court, and decisions have been rendered when the argument offered by the Court itself was apparently as strong for the dissenting opinion as for the majority. A study of arguments of the Court through the years shows much inconsistency and even failure to make use of strong precedents. Inconsistency in Court argument and reasoning is apparent in cases 117K 735 and 121K. 693, and again in cases 110K. 84 and 151K. 36, all under section 10 of the Bill of Rights.

The Court has demonstrated its indecision and vacillation by its own record. In 1297 the Court completely reversed itself in one term on the question of the devolution of intestate pro-party. (123K. 718 and 124K. 539). Again the Court reversed itself in cases appearing in 1905 and in 1914 by excluding common law inheritance in the former case and accepting it in the latter. (72K. 287 and 92K. 819)
Much of our law is court-made. Many of the liberties or restraints which govern the actions of the individual citizen are the result of the deliberations and decisions of the small group of men who sit clothed in authority on our Supreme Court bench.

Individual liberties are limited in the interest of the common welfare. It is a maxim of democratic government that the majority shall rule, but that the individual rights of the minority must be respected. A question which our courts must decide is just how small a minority shall be protected. Certainly the individual rights of the very few cannot be upheld when those rights are detrimental or inconvenient to the general public. The Court may decide that under police power it is proper for the state to completely disregard the rights and privileges of the few in order that the greater welfare of the public may be promoted.

Finally it may be concluded that the question of personal liberties is as much of an issue for the courts today as at any time in the past. Of the two hundred fifty-four cases which have established meaning for the Bill of Rights, two were before the Court in the first decade of our state history; twenty appeared in the decade 1871-1880; thirty-five in 1881-1890;
twenty-two in 1891-1900; forty-eight in 1901-1910; forty-four in 1911-1920; forty-two in 1921-1930; and forty-one in 1931-1940. In the fact of eighty years of precedents one might expect a decrease in cases calling for interpretation of constitutional provisions; but with the increasing complexity of society and the shifting philosophy of both the people and the Court, we may expect the question of personal liberties and individual rights to continue as an important basis of litigation.
Books:


A valuable source of information for early territorial history of Kansas.


A concise, yet complete history of Europe from early times.


A detailed history of the state of Kansas. Gives detailed history of the constitutional convention of territorial days.


A textbook in American history. gives the story of early colonial liberties and of personal liberties as set up under the new American Gov't.


A valuable little book giving in brief outline the government of Kansas. Contains the Kansas Constitution.


Probably the most complete information available on the Wyandotte constitutional convention.


Volume I gives something of the history of personal liberty in ancient times and in Greek and Roman times.


An up-to-date treatment of structure and function of American government. Gives something of principles and philosophy underlying our system of government.


A rather detailed history and discussion of early and later English law. Explains the true significance of Magna Carta.

Legal Publications:


A complete digest and guide to Kansas cases by subject.
Kansas, Revisor of Statutes.
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...Published under authority of chapter 297, laws 1935. Topeka, The Kansas state Printing Plant,
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Lists all cases argued before the Supreme Court
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George B. Okey. In 2 volumes, Vol. I Columbus,

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Probably the most concise list of case avail-
able for Kansas constitution and statutes.