

Kansas Bankruptcy Court – Territorial Times to 1978

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1. The Early Years.

The Territory of Kansas was created on May 30, 1854 by the Kansas-Nebraska Act.¹ The new territory encompassed the present State of Kansas and additional real estate bounded on the north by the 40th parallel and extending west to the continental divide.

Federal and territorial officials were appointed. They generally were based in the territorial capital of Lecompton. The first territorial legislature, immortalized as the “Bogus Legislature” due to ballot-box stuffing by proslavery sympathizers who came over from Missouri for the day, met at the Shawnee Methodist Mission a short distance west of the Missouri state line. It authorized execution upon and sale of property of debtors and listed those forms of property exempt from execution.² As with most provisions in the first territorial statute book, this was lifted from the Missouri statutes of the time.³

Kansas was admitted to the Union on January 29, 1861.⁴ Boundaries of the new state included the former territorial boundaries of the western border of Missouri on the east and the 37th and 40th parallels on the south and north, respectively. A new western boundary was fixed at the 25th meridian. A large expanse between the 25th meridian and the continental divide was excluded from the new state. This area included Pike’s Peak and the new town of Denver, named after an appointed governor of Kansas Territory.⁵

In addition to diminished territory, Kansas entered the Union with a liberal homestead provision⁶ adopted at the Wyandotte Convention in 1859. This provision soon became the subject of litigation between creditors and debtors, with doubtful points being resolved by the three-judge Supreme Court of the new state in favor of giving effect to the exemption.⁷ Kansas also entered the Union with a constitutional provision prohibiting imprisonment for debt.⁸ The legislature of the new state soon enacted an array of liberal statutory exemptions.⁹

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¹ Act of May 30, 1854, Ch. 59, 10 Stat. 277.

² Kansas Territory *Session Laws* (1855), Ch. 69, Sections 10, 11, 12, 13.

³ Compare with MO. REV. STAT. (1845), Ch. 61.

⁴ Act of January 29, 1861, Ch. 20, 12 Stat. 126.

⁵ A century and one-half later, the six most populous counties in this once-remote and sparsely populated area “deaccessioned” when Kansas entered the Union had a 2010 Census population of 3,056,035. This compared to a 2010 Census population of 2,853,118 for those parts of Kansas which entered the Union in 1861. This part of the State of Colorado which had been part of Kansas Territory, 1854-1861, also includes all or part of around twenty less populous counties, west to the summit of the Rockies and east to the Kansas line.

⁶ KAN. CONST., Art. 15, Section 9.

⁷ *Cusic v. Douglas*, 3 Kan. 123 (1865).

⁸ KAN. CONST., Bill of Rights, Section 16.

⁹ Kansas *Session Laws* (1862), Ch. 97.

During the territorial and early statehood periods, Kansas did not record any bankruptcy filings or litigation. Bankruptcy laws were authorized by the U.S. Constitution, and required to be uniform.¹⁰ Prior to 1898, Congress passed bankruptcy legislation in response to economic crises and repealed this legislation after a few years. The first example was the Bankruptcy Act of 1800, repealed in 1803.¹¹ In the aftermath of the Panic of 1837, the Bankruptcy Act of 1841¹² was enacted, but this statute was repealed in 1843¹³, a few months after it became effective, and over a decade before the creation of Kansas Territory.

a. Bankruptcy Act of 1867 and Court Personnel in Kansas.

This situation changed with the adoption of the Bankruptcy Act of 1867.¹⁴ The timing was appropriate, in that the Civil War had ended, Kansas and other western states and territories were filling up with settlers, railroads were replacing legendary trails, and towns and even a few cities were springing up on the Great Plains.

Key actors in the bankruptcy process in Kansas under the 1867 Act included Circuit Judge John F. Dillon, District Judge Mark W. Delahay, and Registers Hiram B. Griswold, Cyrus O. French, Frederick Scoville, J. Jay Buck and William S. Tough.¹⁵

Judge Dillon, of Davenport, Iowa, was a remarkable figure in 19th Century jurisprudence. He first had studied medicine. Then he changed careers, being admitted to the bar in 1852 and elected to the Iowa Supreme Court in 1862, when he was in his early thirties. He was Chief Justice when President Grant appointed him Circuit Judge of the Eighth Circuit in 1869.¹⁶

¹⁰ U.S. CONST., Art. I, Section 8, cl. 4.

¹¹ Act of April 14, 1800, 2 Stat. 19 (repealed December 19, 1803). The 1800 Act was administered by commissioners appointed on a case-by-case basis. Countryman, A History of American Bankruptcy Law, 81 COMMERCIAL L. J. 226, 228 (June-July 1976) [hereinafter "Countryman"]. A recent biography of John Quincy Adams reports that Adams served as a commissioner. J. TRAUB, JOHN QUINCY ADAMS: MILITANT SPIRIT 116 (New York: Basic Books, 2016). After his return from serving as American minister to a succession of European nations in September 1801, Adams practiced law in Boston and served as a Massachusetts state legislator before his election as United States Senator from Massachusetts in February 1803.

The most notable debtor under the 1800 Act was Robert Morris of Philadelphia, who had signed the Declaration of Independence and the Constitution, and served as United States Senator from Pennsylvania, and was reputed to have been the "Financier of the Revolution." Countryman, at 228; C. RAPPLEYE, ROBERT MORRIS: FINANCIER OF THE AMERICAN REVOLUTION (New York: Simon & Schuster, 2010).

¹² Act of August 19, 1841, Ch. 9, 5 Stat. 440 (repealed March 3, 1843); Countryman, at 229. A recent book by an author who also has experience in the political arena contains an interesting discussion of the causation of the Panic of 1837. Credit was extended on a large scale, with land and slaves as collateral. Then, overproduction of cotton and collapse of its market price resulted in a severe contraction. S. BLUMENTHAL, A SELF-MADE MAN: THE POLITICAL LIFE OF ABRAHAM LINCOLN, 1809-1849 157-160 and authorities cited at 479 (New York: Simon & Schuster, 2016).

¹³ Act of March 3, 1843, Ch. 82, 5 Stat. 614; Countryman, at 229.

¹⁴ Act of March 2, 1867, Ch. 176, 14 Stat. 517 (repealed June 7, 1878); Countryman, at 229-230.

¹⁵ Registers, and later Referees, were listed in an "Official Kansas Roster" published in various volumes of the COLLECTIONS OF THE KANSAS STATE HISTORICAL SOCIETY ("COLLECTIONS") and updated on a cumulative basis. Some of the information is accurate; with respect to Referees, there are numerous inaccuracies, as to duty station and dates of service. See, e.g. 16 COLLECTIONS 658, 711 (1925), wherein the first two Referees in Salina are listed as being in Kansas City, and the third Referee in Kansas City is listed as being in Wichita; there are also inaccuracies as to dates.

An alternative source of information, as to Registers, is the prefatory material in Volumes 6 through 26 of the Reports of the Kansas Supreme Court.

¹⁶ "John Forrest Dillon," 5 A. JOHNSON & D. MALONE, Eds., DICTIONARY OF AMERICAN BIOGRAPHY 311 (1930). Judge Dillon's wife was the daughter of Hiram Price, who served as U.S. Representative from the Iowa district including Davenport, 1863-1869 and 1877-1881. BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, 1774-2005, (Washington, D.C., Government Printing Office, 2005) (hereinafter "BIOGRAPHICAL DIRECTORY (CONGRESS)"). Their son, Hiram Price Dillon, became a

Judge Dillon probably was best known as the leading exponent of “Dillon’s Rule,” a doctrine of narrow construction of powers conferred upon units of local government by state legislatures.¹⁷ He resigned as Circuit Judge in 1879, and moved to New York City. He lectured at law schools, argued numerous cases in the Supreme Court, wrote treatises and contributed to journals, and served as President of the American Bar Association in 1891-1892.¹⁸

Judge Delahay, of Leavenworth, was appointed to the District Court bench by President Abraham Lincoln in 1863. Delahay was a lawyer, editor, landowner and part owner of a steamboat. He was an avid seeker of political reward, and had been a political associate of Lincoln in Illinois prior to locating in Kansas.¹⁹

Register Griswold had practiced law in Canton and Cleveland, Ohio before relocating to Leavenworth in 1863, when he was in his mid-fifties. Griswold had offered his services in the defense of John Brown in 1859, after the raid on Harper’s Ferry. It is reported that, when the 1867 Bankruptcy Act was passed, Chief Justice Chase sent a letter to Mrs. Griswold, enclosing her husband’s commission as Register.

Chase and Griswold had been professional colleagues in Ohio, and perhaps political allies and social friends as well. Service as Register must have been a lucrative calling. Griswold was reported to have suffered financial reverses in Ohio, including the loss of his house on Euclid Avenue in Cleveland. At the time of his death in 1881, he was reported to be quite prosperous.²⁰

Register French received his commission in 1871. He was a resident of Fort Scott and handled cases from the southern part of the state. After serving as referee, French was a state trial court judge for a district including Fort Scott from 1882 to 1889. After his departure from the bench, French moved to Sandusky, Ohio, and later to Chicago. Around the turn of the 20th Century, French moved to Kansas City, Missouri and experienced success in the van and storage business. French died in Kansas City in 1912 at the age of 66.²¹

Register Scoville seems to have succeeded Register French in the mid-1870s. Born in New York in 1838, he served as an officer in the 8th New York Cavalry during the Civil War. After the war, he took up the

prominent lawyer, based in Topeka, with an extensive regional practice. Judge Dillon lived until 1914, and he may have visited Topeka. Hiram Price Dillon built a showplace home across the street west of the State Capitol grounds. This house was recently restored by Pioneer Group, Inc., a redeveloper of historic properties, to serve as its corporate headquarters.

¹⁷ One example is *Merriam v. Moody’s Executors*, 25 Iowa 163 (1868). Dillon’s Rule was followed in the Kansas courts and federal courts hearing appeals from Kansas. See, e.g. *Atkin v. Kansas*, 191 U.S. 207, 220-221 (1903); *City of Fort Scott v. W. G. Eads Brokerage Co.*, 117 Fed. 51 (8th Cir.), cert. denied 187 U.S. 647 (1902). Among other things, this doctrine enabled courts to rescue municipalities from improvident commitments made by local officials. In 1962, Kansas adopted a “home rule” amendment which had the effect of overruling the Dillon’s Rule line of cases, as to cities. KAN. CONST., Art. 12, Section 5. Even after decades of “home rule,” the Kansas appellate courts occasionally find it convenient to rely on concepts of limited statutory powers to dispose of claims against local governments. See, e.g. *Ramcharan-Maharajh v. Gilliland*, 48 Kan.App.2d 137, 286 P.3d 2016 (2012) [county officials]; *Wiggins v. Housing Authority of Kansas City*, 22 Kan.App.2d 367, 916 P.2d 718 (1996) [city housing agency].

¹⁸ “John Forrest Dillon,” *supra* note 16.

¹⁹ Templar, *The Federal Judiciary of Kansas*, 37 KAN. HIST. Q. 1, at 3-4 (Spring 1971) [hereinafter “Templar, *Federal Judiciary*”]; John G. Clark, *Mark W. Delahay: Peripatetic Politician*, 25 KAN. HIST. Q. 301-312 (Autumn 1959); BIOGRAPHICAL DIRECTORY (JUDICIARY), 463-464.

²⁰ KANSAS STATE HISTORICAL SOCIETY, KANSAS SCRAP-BOOK BIOGRAPHY, Vol. 57, pp. 289A-292.

²¹ “Official Roster of Kansas, 1854-1925,” 16 COLLECTIONS 658, 667 (1925); “Judge French Died Suddenly,” *Fort Scott Semi-Weekly Tribune Monitor*, March 5, 1912, p. 6; “Death of Judge French,” *Kansas City, Kansas Gazette Globe*, March 6, 1912, p. 3.

practice of law in Richmond, Missouri and served four years in the Missouri legislature. He came to Fort Scott in 1872. After service as Register, he served several terms as probate judge of Bourbon County and as police judge and city council member of Fort Scott. Scoville died in 1905.²²

Register Buck appeared on the Kansas bankruptcy scene about the same time as Register Scoville. He may have been appointed to handle cases from the rapidly growing interior of Kansas. Buck also was a native of New York, born in 1835. The following year, his family moved to Michigan. Buck graduated from Hillsdale College in Michigan in 1856, studied in a law office, and engaged in teaching in Michigan. By 1862, he had moved to Wisconsin. He enlisted in the 32nd Wisconsin Infantry and saw action in the southeastern United States. He also was an officer of the 101st U.S. Colored Troops, a regiment of African Americans raised in Tennessee during the final year of the war.²³

After the war, Buck practiced law in Clarksville, Tennessee and was appointed as Register for the area. In 1869 or 1870, Buck relocated to Emporia. In addition to serving as Register in Kansas, he was City Attorney of Emporia in the mid-1870s. An autobiographical sketch of Register Buck indicates that register positions were allocated on the basis of one per Congressional district. Kansas gained a third district in the 1870s. After service as Register, Buck was a member of the Kansas House of Representatives in 1885 and 1886, and later in 1909 and 1910. Buck died in 1917.²⁴

Captain William Sloan Tough was one of the more colorful figures in the history of the bankruptcy process in Kansas. He was commissioned Register in 1874, some years after his service as a Union Army scout during the Civil War. His wartime adventures included a number of narrow escapes and the shooting of several Missouri bushwhackers.²⁵

After the war, Captain Tough settled in Leavenworth and started a family. He operated a livery stable in Leavenworth for several years. In 1873, he served in the Kansas House of Representatives from a Leavenworth area district. One task of the 1873 Legislature was the election of John James Ingalls of Atchison as United States Senator to replace two-term Senator Samuel C. Pomeroy, who had been implicated in a bribery scandal.²⁶

Senator Ingalls arranged Captain Tough's appointment as United States Marshal in March 1873. In 1874, the duties of Register were added. His functions as Register may have included persuading recalcitrant debtors to surrender property for administration in bankruptcy. He no doubt was very persuasive.²⁷

Captain Tough resigned as United States Marshal in 1876. After his return to private life, he was called back to assist law enforcement in dealing with a strike of railroad construction workers near Holton in Jackson County in October 1877. He led a posse to the area from Leavenworth to arrest the leader of

²² *Fort Scott Tribune and Monitor*, July 5, 1905.

²³ III F. BLACKMAR, KANSAS: A CYCLOPEDIA OF STATE HISTORY (Chicago, Standard Publishing Co., 1912), 784-785; A. ANDREAS, HISTORY OF THE STATE OF KANSAS (Chicago, A.T. Andreas, 1883), 852.

²⁴ *Id.*

²⁵ Wellman, "A Paladin of the Kansas Border," *Wichita Eagle*, November 27, 1932; "Incidents in the Life of Captain William Sloan Tough Recorded by Robert McE. Schauffler in 1948," Typescript, Kansas State Historical Society.

²⁶ C. HARRIS, CAPTAIN TOUGH: CHIEF OF SCOUTS 90-91 (Wyandotte, Okla., Gregath Co., Inc., 2005); Kansas *Session Laws* (1873), p. 16; Kansas *House Journal* (1873), 4, 240-245.

²⁷ *Id.*, 91-98.

the strikers. Upon being confronted by Captain Tough, the strike leader rode away, firing a pistol at Tough. Captain Tough raised his rifle and shot the man from his horse. After the strike leader died from his wounds, Captain Tough was charged with murder in Jackson County. After their leader was shot, the remaining strikers decided to seek a reasonable resolution of their grievances. The case against Tough was transferred to Shawnee County and, after a trial, he was acquitted by a jury there.²⁸

In his later years, Captain Tough operated a horse and mule market in the Stockyards area of Kansas City. He enjoyed an excellent reputation for the honesty of his dealings. Captain Tough died in Kansas City in 1904.²⁹

b. Kansas Decisions under the 1867 Act.

Judges Dillon and Delahay decided at least two cases involving the bankruptcy of a private banking concern in Paola, Kansas.³⁰ In another decision, an unnamed register found and concluded that a debtor and his family could claim a brewery building in Wyandotte (present central Kansas City, Kansas) occupied by them as their homestead. Judge Dillon approved this ruling but reversed a decision of the District Court that only part of the building could be exempted from forced sale.³¹

A decision by Judge Delahay illustrates the process by which Register Griswold overruled an objection to his permitting a bank holding a mortgage upon a debtor's homestead to participate in the election of an assignee in bankruptcy, and then certified his decision to Judge Delahay for review.³²

Judge Delahay resigned in 1874, after a committee of Congress investigated and found that he had been in a state of inebriation while on the bench.³³ After the departure of Judge Delahay, Judge Dillon decided cases involving recovery of interest paid by a debtor in a usurious transaction, with penalty thereon, and application of a limitation of actions provision contained in the 1867 Act.³⁴

Judge Delahay's successor as District Judge was Cassius Gaius Foster of Atchison.³⁵ In one case, a creditor attempted to place a Leavenworth bank in bankruptcy. Judge Foster ruled that requirements of the 1867 Act, as amended in 1874, as to proportion of creditors (at least one-fourth) and indebtedness held by them (at least one-third) sufficient to commence an involuntary case, applied to corporations as well as individuals, and sustained a motion to dismiss.³⁶ In a shorter decision discussing policy reasons for making it relatively difficult to commence involuntary cases, Judge Dillon affirmed.³⁷

No other reported bankruptcy decisions of Judge Foster have been found. The 1867 Act was repealed in 1878³⁸, relatively early in Judge Foster's quarter of a century of service on the federal bench.

²⁸ *Id.*, 100-104.

²⁹ *Id.*, 106-117.

³⁰ *Hobson v. Markson*, 12 Fed. Cas. 269 (C.C. D. Kan. 1871); *Markson v. Hobson*, 16 Fed. Cas. 714 (C.C. D. Kan. 1871).

³¹ *In re Tertelling*, 23 Fed. Cas. 861 (C.C. D. Kan. 1872).

³² *In re Stillwell*, 23 Fed. Cas. 91 (D. Kan. 1873).

³³ *Templar, Federal Judiciary*, at 4.

³⁴ *Crocker v. First Nat. Bank of Chetopa*, 6 Fed. Cas. 827 (C.C. D. Kan. 1876); *Payson v. Coffin*, 19 Fed. Cas. 19 (C.C. D. Kan. 1878).

³⁵ *Templar, Federal Judiciary*, at 4-5; BIOGRAPHICAL DIRECTORY (JUDICIARY) 500-501.

³⁶ *In re Leavenworth Sav. Bank*, 15 Fed. Cas. 118 (D. Kan. 1876).

³⁷ *In re Leavenworth Sav. Bank*, 15 Fed. Cas. 117 (C.C. D. Kan. 1876).

³⁸ Act of June 7, 1878, Ch. 160, 20 Stat. 99; *Countryman*, at 230.

In the interregnum between the repeal of the 1867 Act and the enactment of new bankruptcy legislation two decades later, attempts were made to pass bankruptcy legislation, and significant changes were made in the structure of the federal courts. A bankruptcy bill was considered by Congress in 1890, and Congressman Bishop W. Perkins of Oswego spoke in support of it, along with ten other Members of Congress, including two others from the Eighth Circuit.³⁹ The Judiciary Act of 1891⁴⁰, also known as the Evarts Act and the Circuit Court of Appeals Act, created circuit courts of appeals within the existing judicial circuits.

Kansas continued to be part of the Eighth Circuit, composed of older states on the west bank of the Mississippi River (Missouri, Arkansas, Iowa and Minnesota) and newer states (Kansas, Nebraska, Colorado, North Dakota, South Dakota and Wyoming) and territories (Utah, Oklahoma, the Indian Territory and New Mexico) more recently removed from the frontier. Of this latter group of states and territories, Kansas had the longest history of state legislation and jurisprudence, dating back to 1861.

Around the time of the enactment of the Bankruptcy Act of 1898, Justice David J. Brewer, a former Circuit Judge from Kansas, told a meeting of the Colorado Bar Association that the Eighth Circuit was “an empire in itself.”⁴¹ The circuit was larger than other circuits in terms of the number of states and territories and also an area stretching from Canada to Mexico and from the Mississippi River to Yellowstone National Park and beyond the Great Salt Lake. Appeals from this vast region were heard by a relative handful of judges.

2. The Bankruptcy Act of 1898 and the Early 20th Century.

This was the state of affairs when, later in the decade, Congress passed the Bankruptcy Act of 1898.⁴² Again, the timing was appropriate. The frontier had closed, and the nation was on the eve of a new century which would see vast changes in many aspects of life wrought by advances in technology. The United States would emerge as a world power and as a creditor of the nations of Europe. Extensive changes would take place in the financing of commercial and consumer transactions. In Kansas and other rural states, technology would increase productivity of farm operations, resulting in fewer and larger farms and a declining population of farmers. All of these developments would result in vast changes in law and government.

The constitutionality of the 1898 Act was considered by the Supreme Court in 1902 in *Hanover Nat. Bank v. Moyses*.⁴³ In a decision by Chief Justice Fuller, the Court held, first, that authorization for persons other than traders to be adjudged, and for cases to be initiated by voluntary petition, did not contravene the Bankruptcy Clause of the Constitution. Further, the adoption of state exemption provisions did not run afoul of the uniformity requirement of the Bankruptcy Clause, or constitute an unlawful delegation of legislative power; parties contract with regard to existing law, and possible changes, and debtors are required to surrender property creditors would be entitled to in state-law

³⁹ “Speech of Hon. Bishop W. Perkins, of Kansas, July 23, 1890,” in *A Uniform System of Bankruptcy: Speeches Delivered in the House of Representatives* 33-36 (n.p., n.d.).

⁴⁰ Act of March 3, 1891, Ch. 517, 26 Stat. 826.

⁴¹ M. BRODHEAD, DAVID J. BREWER: THE LIFE OF A SUPREME COURT JUSTICE, 1837-1910, 53 (Carbondale, Ill., Southern Illinois University Press, 1994).

⁴² Act of July 1, 1898, Ch. 541, 30 Stat. 544 (repealed 1979); Countryman, at 230-233.

⁴³ 186 U.S. 181 (1902).

collection proceedings. Finally, notice provisions provided for in the 1898 Act were held to be sufficient to comply with requirements of due process.⁴⁴

a. Changes in Court Personnel.

The details of bankruptcy administration under the 1898 Act were overseen by referees in bankruptcy. The first referees appointed in the District of Kansas included Charles Estabrook Cory, Fort Scott; Zarah C. (Z.C.) Milliken, Salina; J. G. Slonecker, Topeka; Thomas B. Wall, Wichita; and Thomas J. White, Kansas City.

Referee Cory was born in Canada West (now Ontario) in 1852. In 1871, he moved to Michigan, where his brother was foreman of a lumber operation. In 1874, he moved to Kansas, where his sister lived on a farm near St. Paul in Neosho County. He farmed and taught in rural schools. He was the first principal of schools in Pittsburg, Kansas in the 1879-1880 school year. From 1880 to 1882, he was principal at Monmouth, Kansas, and at Cherokee, Kansas, 1882-1883. In 1883, he moved to Fort Scott and studied law in the office of lawyer and author Eugene Fitch (“Ironquill”) Ware. Cory was admitted to the bar in 1885. He was a member of the Board of Education of Fort Scott, 1885-1887. Prior to his appointment as referee, Cory served as County Attorney of Bourbon County.⁴⁵

Referee Milliken was a Salina attorney, born in Oil City in northwest Pennsylvania in 1864. An older brother moved west to Kansas, settling near Mentor in Saline County. Z. C. Milliken followed in 1884. He taught school around Bridgeport, also in southern Saline County, for two years. In 1886, he moved to Salina to study in the law office of Salina attorney Jeremiah Mohler. He was admitted to the bar in 1888. Before his appointment as referee, Milliken served as City Attorney of Salina.⁴⁶

Referee Slonecker was a prominent Topeka lawyer. Born in a log cabin in Ashland County, Ohio around 1850, he attended rural schools and then graduated from Monmouth College in Illinois in 1870. He arrived in Topeka in 1872, studied law in a law office, and was admitted to the bar in 1873. He apparently came to the attention of Cyrus K. Holliday, one of the founders of Topeka and of the Atchison, Topeka & Santa Fe Railroad. When Holliday was president of the Board of Trade or a business start-up, Slonecker often would be recording secretary. Slonecker mentored Robert Stone, a future founder of Washburn Law School and a prominent Topeka law firm, and Speaker of the Kansas House in its 1915 Session. After his appointment as referee, Slonecker was a contender, supported by Congressman (later Senator and Vice President) Charles Curtis, for the U.S. District Court appointment which went to Judge Pollock in 1903.⁴⁷

Referee Wall had arrived in Wichita from his native Illinois in 1878, associating himself with William E. Stanley, then the County Attorney but later Governor of Kansas, 1899-1903. While Wichita eventually became at least a small metropolis, during its first decade it was a small town (population of 689 in 1870 when it was incorporated, and 4,911 in 1880), and the early lawyers were a small and closely-knit group. In 1885, Thomas Wall was to succeed his future law partner, H. C. Sluss, as state trial court judge. Stanley had succeeded Sluss as prosecutor, and the two served in the Legislature at the same time, Sluss

⁴⁴ *Id.*

⁴⁵ 3 W. CONNELLY, STANDARD HISTORY OF KANSAS AND KANSANS 1368 (Chicago, Lewis Pub. Co., 1918).

⁴⁶ MARTINDALE’S AMERICAN LAW DIRECTORY 323 (1929); “Long Career Ends,” *Salina Journal*, June 1, 1942, p. 5.

⁴⁷ *Topeka Mall and Breeze Historical Ed.*, May 22, 1896.

in the Senate and Stanley in the House. Sluss and Stanley were later in a partnership before the latter's election as Governor in 1898.⁴⁸

Referee White learned business skills and practices as an employee of the Union Pacific, Central Branch, in Atchison. In 1881, he became confidential secretary to Senator John J. Ingalls, and also clerk of the Senate Committee on the District of Columbia. While in Washington, D.C., he attended Georgetown University Law School and earned two degrees. After returning to Kansas, he went into private practice in Kansas City, Kansas in 1889.⁴⁹

For bankruptcy purposes, the District of Kansas was divided into five sub-districts, each served by a referee. The smallest district included Kansas City, in the early 20th Century the most populous city in Kansas, in Wyandotte County, and seven other counties, mostly along the borders of Kansas with Missouri and Nebraska. The Topeka district included Shawnee County and twelve other counties around Topeka. The Fort Scott district included Bourbon County and twelve other counties in the southeastern corner of Kansas.⁵⁰

The districts with the most counties were those including parts of western Kansas. The Salina District included Saline County and twenty-eight other counties, around Salina, stretching to the northwest corner of the state. The Wichita district included Sedgwick County and thirty-eight other counties, around Wichita, stretching to the southwest corner of Kansas. In this era in which automobiles were a very new development, the districts probably were laid out after consideration of railway passenger service from outlying areas to the towns where the referees were based.⁵¹

Referee White resigned in 1904. He served on the Kansas City, Kansas Board of Education from 1905 to 1908, an eventful period in the history of the Kansas City schools. His successor was Lee Owen Carter. Referee Carter had been born on a farm near Smithville in Platte County, Missouri in 1874. After attending the public schools and a normal school in Chillicothe, Missouri, Carter taught in local schools. He moved to Kansas City, Kansas in 1895. He studied law in a law office and at the University of Kansas. He was admitted to the bar in 1898, and completed his law degree in 1899.⁵²

⁴⁸ 4 W. CONNELLY, *supra* note 45, 1817-1818; H. SOCOLOFSKY, KANSAS GOVERNORS 130-132 (Lawrence: University Press of Kansas, 1990).

⁴⁹ *Id.*, 2083-2084 and portrait.

⁵⁰ Counties are listed in S. EASTMAN, BANKRUPTCY ANNOTATED 521 (Chicago, T.H. Flood & Co., 1903).

⁵¹ *Id.*

⁵² P. MORGAN, Ed., HISTORY OF WYANDOTTE COUNTY, KANSAS AND ITS PEOPLE (Chicago, Lewis Publishing Co., 1911), 923-925. Racial tensions in Kansas City, Kansas were exacerbated by an incident in April 1904 in which a white high school student was shot and killed by a young African American man. Peavler, *Drawing the Color Line in Kansas City: The Creation of Sumner High School*, 27 KANSAS HISTORY 188-201 (Autumn 2005). Members of the white community demanded that separate high schools be established. The Kansas school segregation statute, enacted in 1879, was limited in scope. It authorized separate elementary schools only in cities of the first class. Legislators from Kansas City introduced a bill in the 1905 Session authorizing separate high schools in Kansas City only. This bill was passed by both houses and reluctantly signed by the governor. Kansas *Session Laws* (1905), Ch. 414. An action was filed, invoking the original jurisdiction of the Supreme Court of Kansas, to challenge the constitutionality of this legislation. Early in 1906, the court ruled in favor of the Board of Education. *Richardson v. Board of Education of Kansas City, Kansas*, 72 Kan. 629, 84 Pac. 538 (1906). Former Referee White, in addition to serving on the Board of Education, was on the briefs filed with the Supreme Court. *Id.*, at 631. Bonds were issued, and Sumner High School was built and opened. The Kansas school segregation statute, enacted in 1879 and amended in 1905, was held to contravene the 14th Amendment in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

Referee Wall also resigned in 1904. He died early in 1906. His successor was Charles V. (C. V.) Ferguson. Born in Covington in west-central Indiana in 1860, Ferguson arrived in Wichita in 1887. For some years, Ferguson and his partner Fred Bentley represented the Atchison, Topeka & Santa Fe railroad.⁵³

Later in the decade, Referee Milliken of Salina resigned in 1908. Milliken continued to be active in his profession in Salina for many years, eventually being joined by his son. Milliken died in 1942. Milliken's successor was George F. Beatty of Salina. Beatty had worked for the Department of Agriculture in Washington, D.C. while attending law schools there.⁵⁴

Referee Carter of Kansas City resigned in 1910. His successor was E. R. Adams. Adams was born in 1881, and after college at the University of Kansas he probably studied in a law office before his admission to the bar in 1904.⁵⁵

b. Mount Carmel Coal and Related Bankruptcies.

Charles J. Devlin was a self-made man of the type admired in any era, but especially in the late 19th Century. Born in St. Louis of Irish-American parents in the early 1850s, he went to work at an early age. He demonstrated talent as well as hard work. While still quite young, Devlin took a job as a clerk at a coal mine. Two years later, he was managing the mine.⁵⁶

Devlin learned all facets of the coal business and acquired properties in northern Illinois. In 1889, he became head of the coal department of the Atchison, Topeka & Santa Fe Railway Company [hereinafter "Santa Fe"]. Coal burned hotter and was less bulky than wood, and the steam locomotives in use at the time had a voracious appetite for the black fuel. Availability of coal was so important to railroads that the Santa Fe had changed the route of its line out of Topeka to go through the coal fields in Osage County, Kansas.⁵⁷

In 1896, Devlin's relationship with the Santa Fe changed. He became party to a tripartite agreement in which he leased coal properties from affiliates of the Santa Fe and agreed with the Santa Fe to supply its coal requirements for its operations in Kansas and other areas. Devlin assigned his rights under this contract to Mount Carmel Coal Company, his principal operating company in Kansas.⁵⁸

The 1896 agreement was renewed several times. The properties involved in this agreement were in Osage County and in Crawford County in southeastern Kansas. Devlin also conducted coal mining operations at Marceline, Missouri, a Santa Fe division point. Devlin owned "mercantile establishments,"

⁵³ HUBBELL'S LEGAL DIRECTORY FOR LAWYERS AND BUSINESSMEN 67 (1891); Judge Ferguson Pioneer Lawyer of Wichita Dies," *Wichita Daily Eagle*, October 14, 1918, p. 5 "Resolution, on Lawyer's Death," *id.*, October 20, 1918, p. 1.

⁵⁴ 5 W. CONNELLY, *supra* n. 45, 2531; "Long Career Ends," *Salina Journal*, June 1, 1942, P. 5; "Rites for Attorney," *id.*, June 3, 1942, p. 4.

⁵⁵ MARTINDALE'S AMERICAN LAW DIRECTORY 323 (1929).

⁵⁶ Devlin obituaries in the *True Republican* (Sycamore, Illinois), November 4, 1905; *The Black Diamond*, November 4, 1905, p. 39.

⁵⁷ D. Lane Hartsock, *The Impact of Railroads on Coal Mining in Osage County, 1869-1910*, 37 KAN. HIST. Q. 429-440 (Winter 1971). Coal consumption by the Santa Fe in 1890 was 1,303,265 tons. *Id.*, Table 1 at 434. The Santa Fe was only one of several lines with extensive trackage in Kansas. W. ZORNOW, KANSAS: A HISTORY OF THE JAYHAWK STATE 137-143 (Norman, University of Oklahoma Press, 1957).

⁵⁸ *Atchison, T. & S.F. Ry. Co. v. Hurley*, *infra* note 69. Mount Carmel is a landform in the northern part of present Israel. It is mentioned in the Old Testament, in the Book of Amos and also the Book of Kings. It was considered to be a place of refuge. Mount Carmel, Pennsylvania is a community in the coal-mining region of that commonwealth.

which probably was a euphemism for company stores serving a captive market of miners and their families in the coal camps near his mines.⁵⁹

With William E. Thomas, Devlin formed the Kansas City Coal & Coke Company as a Kansas corporation. Devlin and Thomas acquired substantial real property in Kansas City, Missouri, and on this property their company operated a coal yard. Devlin also became a director and major shareholder of the First National Bank in Topeka. In an age of less stringent regulation of financial institutions, Devlin also was a major borrower from this bank.⁶⁰

By 1905, Devlin owned 26 mining enterprises and mercantile establishments in several states and was reputed to be one of the wealthiest men in Kansas. He also was a philanthropist. He persuaded the hierarchy of the Catholic Church to establish a hospital in Pittsburg, Kansas, the largest town in the coal fields. Devlin donated real estate and money to support the effort. The hospital was named Mount Carmel in recognition of his contributions.⁶¹

Then, in the summer of 1905, it all fell apart. Devlin suffered a paralytic stroke. Before Devlin and his advisors could make arrangements for the management of his holdings while he was recovering, the First National Bank failed, and Mount Carmel Coal Company was placed in bankruptcy. Devlin, William E. Thomas and the Kansas City Coal & Coke Company soon were under protection of the Kansas bankruptcy court as well. Reportedly, a Kansas City bank also failed as part of the fallout.

Receivers, and then trustees, for Mt. Carmel Coal were appointed by the Kansas federal bench to keep the mines operating and the Santa Fe's trains running. A special referee, N. H. Loomis, a former Kansas lawyer with experience in railroad management, was appointed, probably by Judge Pollock, to oversee the cases. Charles J. Devlin went to Europe with his family in an attempt to recover his health. In Chicago after his return to the United States, before he could return to Kansas, he suffered a second stroke and died on November 1, 1905.⁶²

Charles J. Devlin was dead and buried, but the bankruptcy cases and appeals continued to grind on, in Jarndycian fashion, for the remainder of the first decade of the 20th Century. This presented an opportunity for Judge Pollock, and Judge Hook and his colleagues on the Eighth Circuit, to apply the 1898 Bankruptcy Act to a complex situation.⁶³

The trustee for Devlin's bankruptcy estate commenced an action against Devlin's widow for recovery of an alleged fraudulent transfer. Through her lawyers, Mrs. Devlin challenged the court's jurisdiction over her person. Judge Pollock considered the 1898 Act, and amendments thereto enacted in 1903⁶⁴, and concluded that the court did indeed have jurisdiction over the subject matter and the parties.⁶⁵

⁵⁹ *Id.* The southeast Kansas coalfields are described in William E. Powell, *Former Mining Communities of the Cherokee-Crawford Coal Field*, 38 KAN. HIST. Q. 187-199 (Summer 1972). Devlin's operations in this area were in Frontenac and Chicopee, both in Crawford County.

⁶⁰ *Thomas v. Woods*, *infra* note 75 [Kansas City Coal & Coke Company]; *Board of Com'rs of Shawnee County v. Hurley* and *In re Devlin*, both *infra* note 72 [First National Bank]. This First National Bank, which was founded around 1883 and failed in 1905, is not to be confused with the First National Bank of Topeka, as the National Bank of Topeka was renamed in 1957. After a series of mergers, the former First National Bank of Topeka is now the Topeka branch of the Bank of America.

⁶¹ Founded by the Sisters of St. Joseph in 1903, Mount Carmel Hospital of Pittsburg is now part of the Via Christi Health System.

⁶² Obituaries, *supra* note 56.

⁶³ *Id.*

⁶⁴ Act of February 5, 1903, Ch. 487, 32 Stat. 800.

⁶⁵ *Hurley v. Devlin*, 149 Fed. 268 (D. Kan. 1906).

Mrs. Devlin also commenced actions in state courts in Illinois and Missouri, requesting decrees determining and allowing her dower rights in her late husband's properties in those states. The trustees filed their own action in the U.S. District Court in Kansas, requesting a restraining order against further proceedings in the state courts. Such an order was issued.⁶⁶

On Mrs. Devlin's motion to vacate the restraining order, Judge Pollock determined that his court had exclusive jurisdiction and power to adjudicate her rights in property which came into the possession of the court through its receivers and trustees before the death of the bankruptcy debtor. In his opinion, Judge Pollock cited and quoted an Eighth Circuit opinion of Judge Hook.⁶⁷ The motion to vacate was overruled.⁶⁸

In the Mount Carmel Coal Company bankruptcy, the Santa Fe claimed a preference against the assets of the Mount Carmel Coal Company based on an advance in the amount of \$57,364.16 made by the Santa Fe to the bankrupt before the bankruptcy filings. The Santa Fe asserted an equitable lien based on its contention that it was not in the business of lending money, and that the advance had been extended to enable Mount Carmel to meet its payroll and continue producing coal to fuel the Santa Fe locomotives.⁶⁹ The need for this advance may illustrate the underlying problem which resulted in several bankruptcies and bank failures: Devlin's operations, while extensive, were highly leveraged, short on working capital, and subject to a squeeze between the fixed price per ton of coal specified in the requirements contract and the increasing cost of production as the more accessible coal deposits were mined out.

The trustees responded that the advance was a transaction separate from the tripartite agreement pursuant to which the bankrupt Mt. Carmel Coal Company was to meet the Santa Fe's coal requirements in effect at the time of the bankruptcy. The referee upheld this contention, and the District Court (almost certainly Judge Pollock) concurred. On appeal, the Eighth Circuit reserved, holding that an equitable charge against the bankrupt's assets was created by the parties before the bankruptcy of the coal company, and that the Santa Fe was entitled either to return of its money or delivery of equivalent value in coal. Judge Hook dissented without opinion.⁷⁰

On further appeal, the U.S. Supreme Court affirmed the decision of the Eighth Circuit. In an opinion written by Justice Brewer of Kansas, the Court held that equity looks at substance and not at form. An advance payment for coal yet to be mined may be a pledge on the coal and, in that event, the trustee in bankruptcy takes the mine subject to the obligation to deliver the coal as mined to the extent of the advancement.⁷¹

After its failure in July 1905, the First National Bank was liquidated under the supervision of the banking regulators outside of the bankruptcy process. Governmental entities, including the State of Kansas and Shawnee County, Kansas, had deposited large sums of money in the bank. As a condition of doing so, these entities required that directors or other individuals connected with the bank obligate themselves

⁶⁶ *Hurley v. Devlin*, 151 Fed. 919 (D. Kan. 1907).

⁶⁷ *In re Schermerhorn*, 145 Fed. 241 (8th Cir. 1906).

⁶⁸ *Hurley v. Devlin*, *supra* note 66.

⁶⁹ *Atchison, T. & S.F. Ry. Co. v. Hurley*, 153 Fed. 503 (8th Cir. 1907), *aff'd* *Hurley v. Atchison, T. & S.F. Ry. Co.*, 213 U.S. 126 (1909).

⁷⁰ *Id.*

⁷¹ *Hurley v. Atchison, T. & S.F. Ry. Co.*, *supra* note 69. This decision is not listed among Justice Brewer's important cases in his biography published in the late 20th Century. M. BRODHEAD, *supra* note 41 at 191, 200.

as sureties for repayment on demand of the funds deposited. One of these sureties was Charles J. Devlin.⁷²

At the time of the filing of Devlin's bankruptcy petition, the bank was indebted to Shawnee County in the amount of \$32,731.05 on deposit on that date. The County filed a claim for that amount. The trustee allowed the claim, but in the lesser amount of \$5,891.59. This reduction was based on \$26,839.46 the county had received in dividends from liquidation of the property of the bank. This was confirmed by the District Court.

The County appealed, and the Eighth Circuit reversed, holding that the filing of a petition in bankruptcy vests in each creditor of the debtor an equitable estate in such a proportion of the debtor's property as the creditor's claim bears to the entire amount of the provable claims. Even though the obligation to the County had been partially satisfied from the bank liquidation, it was entitled to have its share of the dividends in the Devlin bankruptcy based on the full amount of its claim against Devlin on the petition date.⁷³

The State of Kansas asserted that it was entitled to priority of its claims based on bonds or obligations entered into by the First National Bank as principal and Charles J. Devlin and others as sureties. Judge Pollock rejected this contention, and held that priorities were established by Congress in the applicable provisions of the 1898 Act, not by state legislation or common law.⁷⁴

Finally, in the Kansas City Coal & Coke Company bankruptcy, the trustee for that company filed an action asserting that the company was the owner of the Kansas City coal yard property, that the company had paid the full consideration for the property, and further that the individuals Charles J. Devlin and William E. Thomas held the property in trust for the bankrupt Kansas City Coal & Coke Company. The bankruptcy trustee further requested a decree establishing title in the trustee, adjudging that the other parties had no right, title or interest in the property, and directing sale the property free and clear of all liens and claims.⁷⁵

The bankruptcy trustees of Devlin and Thomas claimed ownership of the property. Mrs. Devlin asserted her dower rights. It was further alleged that Mrs. Thomas had filed an action in state court in Missouri to have her dower rights established, thereby clouding title to the property and impairing its value as an asset of the Kansas City Coal & Coke Company bankruptcy estate. The Kansas City Coal & Coke Company bankruptcy trustee requested that a restraining order and injunction be entered against prosecution of this action. The District Court granted the relief requested and further determined that Mrs. Thomas had no right to an inchoate dower interest. Mrs. Thomas appealed.⁷⁶

The Eighth Circuit reversed, holding that it was error for the District Court to conclude that the wife of a resident of Kansas was not entitled to an estate of dower in real property situated in Missouri. But, if the averments that Mr. Thomas held the property in trust for the corporation were to be accepted, Mrs. Thomas would not be entitled to dower rights therein. The case was remanded for further

⁷² *Board of Com'rs of Shawnee County v. Hurley*, 169 Fed. 92 (8th Cir. 1909); *In re Devlin*, 180 Fed. 170 (D. Kan. 1910).

⁷³ *Board of Com'rs of Shawnee County v. Hurley*, *supra*.

⁷⁴ *In re Devlin*, *supra* note 66.

⁷⁵ *Thomas v. Woods*, 173 Fed. 585 (8th Cir. 1909), *vacated* 178 Fed. 1005, note 78 *infra*.

⁷⁶ *Id.*

proceedings.⁷⁷ A settlement apparently was arrived at. Several months later, the decree of reversal was vacated and set aside, and the appeal dismissed, per stipulation.⁷⁸

c. Other Early Kansas Decisions under the 1898 Act.

A number of early twentieth century Kansas bankruptcy cases will demonstrate that much of the substantive law of the current Bankruptcy Code of 1978 was drawn from the Bankruptcy Act of 1898.

In the early years of the 1898 Act, a petition against a merchant was dismissed. The creditors appealed, and in a decision by Judge Hook, the Eighth Circuit reversed. Referring to an agreed statement of facts, the court determined that the debtors, when hopelessly insolvent and within four months of the bankruptcy filing, had made preferential payments to creditors, and that the case should be remanded with directions to adjudge the debtors as bankrupt.⁷⁹

Several decisions in the first two decades of the 20th Century illustrate the variety of situations which can give rise to an allegedly voidable preference. In 1906, a panel of the Eighth Circuit, including Judge Hook, affirmed a ruling of “the learned trial judge” (probably Judge Pollock) that a chattel mortgage, granted by a merchant to a supplier, was not voidable. The chattel mortgage was preferential, but the fact record showed that the creditor did not have reasonable cause at the time to believe that the debtor was insolvent.⁸⁰

In 1908, the Eighth Circuit considered the appeal of a directed verdict in favor of the recipient of a settlement of its claim for conversion of a carload of eggs. This party was not aware that, contemporaneously with the settlement, the debtor made a general transfer of assets for the benefit of its creditors. The appeals court reversed, holding that the trustee’s evidence could have supported a jury’s determination that the transfer in question was voidable. The case was remanded.⁸¹

In another situation, a jeweler was in financial distress. His bank found a buyer for his stock of goods and extended a loan to finance the purchase. When the seller deposited the check received from the buyer, the bank exercised its banker’s lien or right of setoff. After the jeweler went into bankruptcy, the trustee filed an action for recovery of a preference. In a 2-1 decision, a panel of the Eighth Circuit reversed a judgment in favor of the trustee, holding that the check was received in the usual course of business. A dissenting opinion argued that the facts showed that the transaction was not in the usual course of business.⁸²

In two separate decisions in the bankruptcy of a corporation, Judge Pollock approved the trustee’s denial of claims of an insider. In one situation, the insider had structured his contributions to the debtor’s capital such that, if the business succeeded, he would be a shareholder, but if it failed, he would be a creditor. In another situation, the corporation had paid off a note guaranteed by the same insider and another, within four months of bankruptcy, and this was held to be a preference.⁸³

⁷⁷ *Id.*

⁷⁸ *Thomas v. Woods*, 178 Fed. 1005 (8th Cir. 1910) (Mem.).

⁷⁹ *Rex Buggy Co. v. Hearick*, 132 Fed. 310 (1904).

⁸⁰ *Hussey v. Richardson-Roberts Dry Goods Co.*, 148 Fed. 598 (8th Cir. 1906).

⁸¹ *Clingman v. Miller*, 160 Fed. 326 (8th Cir. 1908).

⁸² *German-American State Bank v. Larimer*, 235 Fed. 501 (8th Cir. 1916).

⁸³ *In re W. A. Silvernail Co.*, 218 Fed. 977, 979 (D. Kan. 1914).

In a departure from the 1867 Act and earlier legislation, the 1898 Act treated partnerships as entities separate from the partners who compose them. Two cases from Kansas decided by the Eighth Circuit in the early 1900s dealt with the question of remedies against partners available to partnership creditors.⁸⁴ In one of these cases, Judge Hook dissented from the conclusions of the panel majority.⁸⁵

The 1898 Act provided for the filing of petitions in involuntary bankruptcy. Two published decisions, one by Judge Hook for a unanimous panel of the Eighth Circuit, and the other by Judge Pollock at the District Court level, dealt with involuntary proceedings.⁸⁶

In 1915, a panel of the Eighth Circuit approved a decision by Judge Pollock giving a liberal interpretation to the Kansas homestead exemption found in the Kansas Constitution. A debtor filed for protection from his creditors and claimed a farm and improvements thereon as his homestead. The trustee objected, asserting that the debtor's interest in the property was insufficient to constitute a homestead. For some years, the debtor had been a town dweller and the proprietor of a hardware business. Two decades before the bankruptcy filing he had been granted the farm upon the death of his father, subject to a life estate in favor of his widowed mother. The mother had moved to a distant state shortly after the death of her husband. The mother leased the farm to the son on a year-to-year basis, and the son in turn subleased the farm to various tenants, sometimes for cash, sometimes for a share of the crops. At the time of the bankruptcy filing, the mother was eighty years old. After the hardware business failed, and before the bankruptcy filing, the debtor sold his house in town, and moved with his family to a house on the farm.

The referee, almost certainly Referee Cory, sustained the trustee's objection. On review, Judge Pollock overruled the referee, and the Eighth Circuit affirmed, holding that the debtor was entitled a homestead to the extent of his interest in the property, including his remainder interest, leasehold interest, and possession and occupancy.⁸⁷

The trustee in the bankruptcy of a physician who had owned a sanitarium in Arkansas City, Kansas brought an action to set aside a transfer of real property on the ground that it was made for the purpose of hindering, delaying, and defrauding creditors. Judge Pollock entered a decree in favor of the trustee. Appeal was taken, and the Eighth Circuit, with Judge Hook on the panel, affirmed. The opinion commented that the case was "made dark and confusing" by the large number of dummy participants in transactions, and that the testimony of the recipient of the purported transfer was "sinuous and evasive."⁸⁸

There were some changes in the ranks of Kansas referees in bankruptcy in the second decade of the 20th Century. In Wichita, referee Ferguson resigned in 1914. He continued to be active in private practice in Wichita, until he died unexpectedly in late 1918. Ferguson's successor was Henry Clay ("H. C.") Sluss. Born in Tuscola, Illinois in 1842, Sluss was over seventy years old and near the end of his career in 1914. In July 1861, shortly after attaining age nineteen, Sluss enlisted in Company E of the 12th Illinois Volunteer Infantry. This regiment was organized at Cairo, at the southern tip of Illinois, and was involved in operations in the lower Tennessee Valley including the occupation of Paducah, Kentucky, the

⁸⁴ *Armstrong v. Fisher*, 224 Fed. 97 (8th Cir. 1915); *In re Bertenshaw*, 157 Fed. 363 (8th Cir. 1907).

⁸⁵ *Bertenshaw*, *supra* 157 Fed. At 375-380.

⁸⁶ *Badders Clothing Co. v. Burnham-Munger-Root Dry Goods Co.*, 228 Fed. 470 (8th Cir. 1915), *cert. denied* 241 U.S. 678 (1916)); *In re Heleker Bros. Merc. Co.*, 216 Fed. 705 (D. Kan. 1914).

⁸⁷ *Grattan v. Trego*, 225 Fed. 705 (8th Cir. 1915).

⁸⁸ *French v. Cunningham*, 261 Fed. 909 (8th Cir. 1919).

occupation of the uncompleted Fort Heiman, across the Tennessee River from Fort Henry, Tennessee, the nearby battle of Fort Donelson, and the battles of Pittsburg Landing (Shiloh), Tennessee and Corinth, Mississippi. After these engagements, the regiment spent the middle years of the war guarding railroads and in similar duties. Private Sluss and many of his comrades in the 12th Illinois were mustered out of the service in September 1864, missing out on Sherman's March to the Sea and other operations during the final months of the war.⁸⁹

After his return to Tuscola, H. C. Sluss studied law in the office of Joseph Gurney Cannon. Cannon had studied law in the office of John Palmer Usher of Terre Haute, Indiana, as well as taking one semester of law school at the University of Cincinnati in Ohio. Sluss was soon admitted to the Illinois bar and became Cannon's partner. Although he was well regarded by Cannon, and his prospects in Illinois were favorable, Sluss decided in 1870 to heed the advice of Horace Greeley and go west, in his case to the new town of Wichita, on the east bank of the Arkansas River and near the Chisholm Trail. Wichita was incorporated on July 21, 1870, and was listed in the 1870 Census as having 689 inhabitants. Wichita at the time of Sluss's arrival was later described as "not more than a disordered pile of yellow lumber on a yellow prairie."⁹⁰

In later years, Sluss would recount his experiences in early Wichita. He told of sleeping on the floor of the Munger House, an early hotel, and of waiting tables to earn his board. Sluss was one of the first lawyers to arrive in Wichita, and one of the first county attorneys. In 1872, a branch line was completed between Wichita and the Atchison, Topeka & Santa Fe line at Newton, Kansas, and Wichita experienced several years as a major cattle town. During this era, the tough district was Delano, on the west side of the Arkansas River outside the city limits and connected to Wichita by a toll bridge. "Rowdy Joe" Lowe

⁸⁹ I REPORT OF THE ADJUTANT GENERAL OF THE STATE OF ILLINOIS 365-371 (Springfield: Baker, Bailhache & Co., 1867).

⁹⁰ Soon after Sluss relocated to Wichita, his mentor, Joseph G. Cannon, ran for the U.S. House of Representatives from the district in east-central Illinois including Tuscola and was elected. His career in the Congress spanned half a century. He became known as "Uncle Joe," and served as Speaker from 1903 to 1910. He did not run for reelection in 1922, and he died in late 1926. The Cannon House Office Building on Capital Hill was named after him, and his portrait graced the inaugural issue of *TIME* magazine. BIOGRAPHICAL DIRECTORY (CONGRESS), p. 781.

Cannon's mentor, John Palmer Usher (1816-1889), left Terre Haute for service in President Lincoln's cabinet during the Civil War. He served as Assistant Secretary of the Interior (1861-1863) and as the seventh Secretary of the Interior (1863-1865). At the close of the war, Usher went, not back to Indiana, but to the new state of Kansas, where he pursued the remainder of his professional career. He was general attorney of the Union Pacific, Eastern Division (later Kansas Pacific) and served as Mayor of Lawrence, 1879-1881. In railroad cases, Usher on occasion was co-counsel with former Circuit Judge John F. Dillon. See, e.g. *Union Pac. Ry. Co. v. McAlpine*, 129 U.S. 305 (1889). For Dillon's life and career, see text accompanying notes 16 through 18, *supra*.

Reminders of Usher's years in Kansas include a number of Union Pacific cases in the United States and Kansas appellate reports. *Union Pac. Ry. Co. v. McAlpine*, *supra*; *Union Pac. Ry. Co. v. Dunmeyer*, 113 U.S. 629 (1885); *Union Pac. Ry. Co. v. Atchison, T. & S.F. Rid. Co.*, 112 U.S. 414 (1884); *Union Pac. Ry. Co. v. Harwood*, 31 Kan. 388, 2 Pac. 605 (1884); *Union Pac. Ry. Co. v. Pillsbury*, 29 Kan. 652 (1882); *Union Pac. Ry. Co. v. Nichols*, 8 Kan. 505 (1872); and many others. Reminders in the built environment include his home on Tennessee Street in Lawrence, which has been the chapter house of the Beta Theta Pi fraternity at the University of Kansas since 1912, and his country place in western Franklin County, Kansas, on land purchased from the Sauk & Fox Indian Tribe when it was relocated to the Indian Territory (present Oklahoma). E. RICHARDSON & A. FARLEY, JOHN PALMER USHER: LINCOLN'S SECRETARY OF INTERIOR 86-120 (Lawrence: University Press of Kansas, 1960); Ferris, *The Sauks and Foxes in Franklin and Osage Counties, Kansas*, 11 collections 333-366 (1910), at 366.

and E. T. "Red" Beard operated rival dance halls, in close proximity to one another, in Delano. In late October 1873, Beard fired a pistol and inflicted a minor wound on Lowe's neck. Lowe fired a shotgun at Beard and wounded him in the arm and hip. Beard died of his wounds several days later. Lowe was charged with murder, and Sluss conducted the prosecution at Lowe's trial in December 1873. Newspaper reports of the trial were reproduced in a modern work on Kansas gunfighters. Sluss was in the unenviable position of calling an array of witnesses who were "in full sympathy with the accused." The jury came back with a verdict of "not guilty."⁹¹

Rowdy Joe and his companion, "Rowdy Kate," moved on to other venues. Railroads were built west across Kansas, and Dodge City and other towns supplanted Wichita as the northern terminus of the cattle trails from Texas. H. C. Sluss stayed in Wichita, as the community grew in population, and churches and schools came to outnumber saloons and dance halls. He built up a private practice, served in other positions of public trust, was active in the Kansas and Wichita Bar Associations, and eventually became dean of the Wichita bar. He served as U.S. Commissioner, in the late 1870s and early 1880s in the State Senate, in the mid-1880s as a state trial court judge, and in the 1890s as a judge of the Federal Court of Federal Land Claims created to resolve title disputes arising from asserted Spanish land grants in what became the Territory of New Mexico.

In private practice, Sluss was in partnership with William E. Stanley, another early Wichita lawyer, prosecutor, and state legislator, until Stanley was elected Governor of Kansas in 1898. In 1902, Sluss and Referee Wall formed a partnership. This association continued until the death of Wall in 1906. Early in 1907, it was announced that Sluss had been named as solicitor for the St. Louis and San Francisco Railroad in Kansas, in charge of all of the company's litigation in Kansas other than in three counties near Kansas City. Also in 1907, Sluss represented the Board of Education of Wichita in the defense on appeal of a trial court decision authorizing racially segregated elementary schools in Wichita. The Supreme Court of Kansas reversed, holding that a special act, enacted in 1889, governing Wichita schools, prevailed over the general Kansas school segregation statute, applicable to cities of the first class (over 15,000 population), enacted in 1879. References to Sluss clients in this paragraph are illustrative, rather than exhaustive.⁹²

In 1918, Referee Sluss resigned. By this time, Sluss was in his mid-seventies and his health had started to fail. During his career, Wichita had grown from a newly-incorporated frontier town with 689 inhabitants to a city of 52,450 in 1910 before his appointment as referee, and 72,217 in 1920 after his resignation and before his retirement. Sluss retired in 1922, and died in August 1926. After his death, Sluss was remembered as a highly skilled writer and orator who was reserved and reticent when it came to writing for publication or making political speeches, a Civil War veteran who "never talked of his war experiences," a lifelong friend of "Uncle Joe" Cannon (who, although several years older, survived Sluss by several months), and a bar leader who was "never too busy to lend counsel to a young lawyer."⁹³

⁹¹ N. MILLER & J. SNELL, WHY THE WEST WAS WILD 240, 255-272 (Topeka, Kansas State Historical Society, 1963).

⁹² "New Frisco Solicitor," *Topeka State Journal*, January 19, 1907, n.p.; *Rowles v. Board of Education of City of Wichita*, 76 Kan. 361, 91 Pac. 88 (1907). The 1889 statute was repealed in 1909, bonds were issued, and Wichita implemented segregated elementary schools in 1912. Segregation was officially discontinued in Wichita in 1952, but desegregation was not implemented extensively until well after the *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), decision.

⁹³ "Henry C. Sluss, Dean of the Sedgwick County Bar, is Dead," *Wichita Daily Eagle*, August 4, 1926, pp. 1, 2; "Henry C. Sluss Attorney, Dies at Age of 84," *Wichita Beacon*, August 4, 1926, p. 3.

Henry Clay Sluss's successor as referee was Paul J. Wall, Wichita lawyer and son of former Referee Thomas B. Wall. Paul Wall was born in 1885, the year his father was appointed to succeed Sluss as state trial court judge. When young Wall graduated from law school at the University of Kansas in 1908, Sluss took him in as a partner and mentored him during the first three years of his career. Also in 1918, it was announced that Referee George F. Beatty would be retiring and that cases from the Salina sub-district would be handled in Topeka. Beatty passed on in 1921.⁹⁴

d. The 1920s and Further Changes in Court Personnel.

The number of reported bankruptcy decisions declined precipitously after the beginning of World War I. Wartime demands resulted in higher industrial production and higher prices for agricultural commodities. After a brief recession early in the decade, the 1920s were relatively prosperous. It should be noted, however, that the agricultural sector, important in Kansas, did not fully share in this prosperity, and that there were a significant number of bank failures in Kansas, especially with reference to smaller rural banks.⁹⁵

Judge Hook died in 1921. As there were more states in the Eighth Circuit than positions on the Court of Appeals, a successor from Kansas was not appointed.⁹⁶

In 1923, Referee Slonecker at Topeka became ill and resigned. He died a few days later. His successor was Judge Silas W. Porter. Judge Porter was a native of Monmouth, Illinois, and the son of a lawyer there. After graduating from Monmouth College in 1879 and admission to the Illinois bar in 1881, probably after studying in his father's office, he practiced in Illinois for several years, then moved to Kansas in 1886. He engaged in practice first in Ness City, and then in Kansas City, Kansas. He served as president of the Kansas Bar Association in 1901, and was appointed to the Supreme Court of Kansas in 1905. He was elected to a four-year unexpired term in 1906 and to full six-year terms in 1910 and 1916. He retired from the Court shortly before his appointment as referee.⁹⁷

⁹⁴ *Salina Evening Journal*, July 11, 1918. In an interview near the end of his service as referee, Referee Paul Wall discussed the Salina situation and other aspects of the bankruptcy system and referees and staff in Wichita. "Referee Explains Bankruptcy Law," *Wichita Beacon Sunday Magazine*, October 1, 1922, p. 6.

⁹⁵ *E.g. Kreipe v. Commercial Nat. Bank*, 114 Kan. 910, 220 Pac. 1061 (1924), *subsequent appeal*, 118 Kan. 566, 235 Pac. 1044 (1925) [Halls Summit State Bank]; *Brogan v. Kreipe*, 116 Kan. 506, 227 Pac. 261, 37 A.L.R. 126 (1924) [Peoples State Bank of Coffeyville]; *Docking v. Holley*, 120 Kan. 344, 243 Pac. 286 (1926) [Oswego State Bank]; *Docking v. National Sur. Co.*, 122 Kan. 235, 252 Pac. 201 (1927) [Central State Bank of Kansas City]; *Hooper v. Docking*, 122 Kan. 803, 253 Pac. 210 (1927), *appeal after remand*, 123 Kan. 94, 254 Pac. 329 [Belvue State Bank]; *Docking v. Turkington*, 123 Kan. 606, 256 Pac. 994 (1927) [Farmers State Bank of McCune]; *Colorado & S. Ry. Co. v. Docking*, 124 Kan. 48, 257 Pac. 743 (1927) [American State Bank, Wichita]; *Vincent Grain Co. v. Docking*, 124 Kan. 391, 260 Pac. 610 (1927), *motion denied*, 125 Kan. 383, 265 Pac. 38 (1928) [Farmers and Merchants State Bank of Tonganoxie]; *Guarantee Title and Trust Co. v. Docking*, 124 Kan. 776, 262 Pac. 1037 (1928) [Viola State Bank]; *Casten v. Kreipe*, 125 Kan. 182, 264 Pac. 55 (1928) [Farmers State Bank of Quenemo]; *Docking v. Rife*, 129 Kan. 812, 284 Pac. 391 (1929) [Farmers State Bank of Esbon]; and *Docking v. Sharp*, 130 Kan. 392, 286 Pac. 197 (1930) [Kansas State Bank of El Dorado]. William Docking, state banking commissioner and ex officio receiver in a majority of the above cases, was the father of George Docking, Lawrence banker and Governor of Kansas, 1957-1961, and the grandfather of Robert B. Docking, Arkansas City, Kansas banker and Governor, 1967-1975. H. SOCOLOFSKY, *supra* note 45, at 206-208, 215-218.

⁹⁶ Lee, William C. Hook, 3 KAN. HIST. Q 69-85 (Feb. 1934).

⁹⁷ "In Memoriam" (Silas Wright Porter), 147 Kan. iii-vii (1938). Another native of Monmouth, Illinois who sought opportunity on the Kansas frontier and attained fame in popular culture, was Wyatt Berry Stapp Earp, born in Monmouth in 1847. N. MILLER & J. SNELL, *supra* note 91, at 144-161. It also is of interest that both of the first two referees appointed to the Topeka docket, J. G. Slonecker and Silas Wright Porter, were graduates of Monmouth College, in the classes of 1870 and 1879, respectively.

Referee Cory resigned in 1924. His successor was Harry W. Fisher of Fort Scott. Cory was over 70 years old at the time. He contributed articles to publications of the Kansas State Historical Society prior to his death in 1933. Referee Fisher was younger, born in 1887 in Linn County north of Fort Scott. After completing his legal education at the University of Kansas and admission to the bar in 1913, Fisher started his career in Linn County, and later moved to Fort Scott.⁹⁸

As the Bankruptcy Act of 1898 passed the quarter-century mark, several of the early referees faded from the scene. In addition to Referee Sloecker in 1923, others included George F. Beatty in 1921, Thomas J. White and Lee Owen Carter, both in 1924, and H.C. Sluss in 1926.

Also in 1924, Referee Wall of Wichita resigned. Four referees had handled the Wichita docket between 1898 and the end of 1924. The first and fourth referees were a father-son combination. The third referee had been a law partner of the first referee and later, his successor as fourth referee. The second referee also was a veteran Wichita lawyer.

Paul Wall's successor was Richard Ely Bird, who had been elected to Congress in 1922, but defeated for reelection in 1924. Born in Cincinnati, Ohio in 1878, Bird had moved to Wichita with his parents in 1887. He graduated from Wichita High School in 1898 and was admitted to the bar in 1901. Before his election to Congress, Bird had served as a state trial court Judge in Sedgwick County, 1916-1921.

Referee Bird's service was brief, from 1925 to 1927. Bird moved to California in 1937, and died there in 1955. Bird was succeeded by Arnold C. Todd. Todd was a Wichita lawyer, born in 1891 and admitted to the bar in 1916 after receiving a law degree from the University of Kansas. He served as referee until 1931. The following year, he was elected as a Democrat to the Kansas Senate from the Sedgwick County district. Todd served two terms during the Depression years. He died in 1951..⁹⁹

In the mid-1920s, Judge Pollock decided a case, holding that a referee has jurisdiction to determine in a summary proceeding a claim to property in possession of the court, that a plenary action by the trustee is not necessary, and that the trustee correctly allowed the claim under discussion. The Eighth Circuit affirmed.¹⁰⁰

Near the end of the decade, there were several developments affecting the federal judiciary in Kansas. Judge Pollock took senior status in 1927. George T. McDermott was nominated to become an additional judge in the District of Kansas. McDermott was a 1909 graduate of the University of Chicago Law School and a veteran of World War I. Although his private practice experience had been in Topeka, McDermott's early life had been spent in Winfield. He and Judge Pollock were on cordial terms. McDermott was confirmed by the Senate, and he began a short but distinguished career as a trial judge.¹⁰¹

3. Creation of the Tenth Circuit.

During the 1920s, reconfiguration of the judicial circuits had been under discussion. After a proposed comprehensive realignment of states failed to win favor in Congress, Chief Justice William Howard Taft

⁹⁸ MARTINDALE-HUBBELL LAW DIRECTORY 308 (1944).

⁹⁹ BIOGRAPHICAL DIRECTORY (CONGRESS) 658; MARTINDALE'S AMERICAN LAW DIRECTORY 330 (1929).

¹⁰⁰ *Logan v. Haynes*, 11 F.2d 369 (8th Cir. 1926).

¹⁰¹ Templar, *Federal Judiciary*, at 9; BIOGRAPHICAL DIRECTORY (JUDICIARY) 650.

suggested division of the Eighth Circuit as a limited, but more viable proposal. Division of the Eighth Circuit along the north lines of Utah, Colorado, Kansas and Missouri was proposed.¹⁰²

This proposal was rejected in favor of one which created a Tenth Circuit composed of Kansas, Colorado, Oklahoma, Wyoming, Utah and New Mexico, and a “new,” smaller Eighth Circuit containing the remaining states of the former Eighth Circuit: Missouri, Arkansas, Iowa, Minnesota, Nebraska, South Dakota and North Dakota. This effected a division related to the respective economic bases and differences in the prevailing types of litigation in the two circuits: agricultural and industrial in the diminished Eighth Circuit, and public lands, irrigation and water rights, and mines and minerals in the Tenth.¹⁰³

a. Changes in Court Personnel.

The elevation of Judge McDermott to the new Tenth Circuit opened a position on the District Court. The filling of this vacancy was attended by considerable political maneuvering. One leading candidate was Richard J. Hopkins, who had served as a justice of the Kansas Supreme Court since 1923. Hopkins had arrived in southwest Kansas in 1879, when frontier conditions still prevailed. His father was the first County Attorney of Finney County. Hopkins graduated from Garden City High School, and after teaching school for a year, attended the University of Kansas for prelaw studies. Then he left Kansas for the Chicago area, received his law degree from Northwestern University, and practiced law in Chicago for five years.¹⁰⁴

Two years after returning to Kansas, Hopkins was elected to the Kansas House of Representatives from the Finney County district. He served as Speaker pro tem in the 1909 Session. In 1910, Hopkins ran for and was elected Lieutenant Governor. In the 1911 Session, he served as ex officio presiding officer of the other chamber of the legislature. In 1912, Hopkins narrowly lost a bid for the nomination for Congress from the southwest Kansas district. He practiced law in Garden City and served as City Attorney there.¹⁰⁵ Hopkins returned to elective politics in 1918, with a successful bid for Attorney General of Kansas. After reelection to that office in 1920, he ran for the Kansas Supreme Court in 1922, once again emerging victorious.¹⁰⁶

Supporters of Hopkins for a Federal District Court judgeship included major elected officials, including senior Senator Arthur Capper, Governor Clyde M. Reed, and junior Senator and former Governor Henry J. Allen, who had been appointed by Reed to complete the term of Charles Curtis, who had resigned from the Senate to become Hoover’s Vice President. Other Hopkins supporters included Alfred M. Landon, William Allen White, many Kansas trial court judges, and members of the prohibition forces in Kansas.¹⁰⁷

Hopkins also had opposition. Those arrayed against his nomination included former Senator and American Bar Association President Chester I. Long, lawyers who supported the appointment of W. F.

¹⁰² Stanley and Russell, *The Political and Administrative History of the United States Court of Appeals for the Tenth Circuit*, 60 DENVER L.J. 119, 124-126 (1983).

¹⁰³ *Id.*, at 126-127.

¹⁰⁴ Templar, *Federal Judiciary*, at 10-12; BIOGRAPHICAL DIRECTORY (JUDICIARY) 562.

¹⁰⁵ *Id.*, at 10-11.

¹⁰⁶ “Proceedings in Memory of Justice Richard J. Hopkins,” 160 Kan. iii, viii (1946).

¹⁰⁷ *Id.*

Lilleston, a respected Wichita lawyer, and U.S. Attorney General William D. Mitchell, who was holding out for a “non-political” candidate. Hopkins was the antithesis of Mitchell’s ideal candidate.¹⁰⁸

Finally, in October 1929, the impasse was broken, and the politicians prevailed over the pillars of the bar association. President Hoover sent Hopkins’ name to the Senate for confirmation. Some resistance continued until Senator George Norris of Nebraska, Chairman of the Committee on the Judiciary, and Senator William E. Borah of Idaho, a veteran legislator who had spent part of his younger years in Kansas, attended college at the University of Kansas, and practiced law in Lyons, Kansas for a few years, announced their support for Hopkins.¹⁰⁹

On December 27, 1929, Hopkins resigned from the Kansas Supreme Court and was sworn in as District Judge. His unwavering support of prohibition was in contrast to the attitude of Judge Pollock, who asserted that cases under the Volstead Act (implementation of prohibition), Mann Act (transportation of women across state lines for immoral purposes), and Dyer Act (transportation of stolen motor vehicles in interstate commerce) tended to turn the federal courts into a “national police court.”¹¹⁰

Before Judge Hopkins took office, the stock market crashed in October, 1929, and the country began to slide into an economic depression of unprecedented proportions. In Kansas and adjoining states, this disaster was compounded by development of a “dust bowl,” with southwest Kansas as its epicenter, resulting from extreme weather conditions and years of ill-considered farming practices.¹¹¹

Shortly after taking office, Judge Hopkins was asked to review a decision of a referee (not named, but probably Arnold C. Todd) that a pre-petition assignee of a debtor’s assets should not be appointed as trustee in bankruptcy. Judge Hopkins affirmed the referee and was himself affirmed by a panel of the new Tenth Circuit including Judge McDermott.¹¹²

After Judge Hopkins took office, several new referees were appointed for all five of the sub-districts in Kansas. After a 12-year hiatus, Salina and northwest Kansas had their own referee with the appointment of Frank Baker Bristow. Born in the mid-1880s, Bristow had graduated from Baker University in 1907. In 1909, Bristow’s father, Joseph L. Bristow, was elected to the United States Senate from Kansas. Frank Bristow worked as a reporter and business manager of the family newspaper, the *Salina Evening Journal*. He also tried his hand at raising poultry. In 1910, Frank Bristow became a Rhodes Scholar. After studying for three years at Oxford, he returned to Kansas and was admitted to the bar in 1914.¹¹³

A second appointment in 1930 was Louis R. Gates of Kansas City, Kansas. Referee Gates was born in 1886 in the then-independent town of Rosedale in southeastern Wyandotte County. After graduating from Rosedale High School, Baker University and the University of Michigan Law School, Gates was

¹⁰⁸ *Id.*, at x.

¹⁰⁹ Templar, *Federal Judiciary*, at 12.

¹¹⁰ *Id.*, at 5, 9; see also Lee, *Judge John C. Pollock*, 9 J.BAR ASS’N OF KANSAS 219, at 229-230. In the late 19th Century, District Judge Foster was such a determined opponent of the Kansas prohibitory law that he engaged in a lengthy public feud with Major J. K. Hudson, publisher of the *Topeka Daily Capital*, who was an unrelenting advocate of prohibition. Templar, *Federal Judiciary*, at 5.

¹¹¹ T. EGAN, *THE WORST HARD TIME: THE UNTOLD STORY OF THOSE WHO SURVIVED THE GREAT AMERICAN DUST BOWL* (New York, Houghton Mifflin, 2006).

¹¹² *Garrison v. Pilliod Cabinet Co.*, 50 F.2d 299 (10th Cir. 1931).

¹¹³ A. BOWER SAGESER, *JOSEPH L. BRISTOW: KANSAS PROGRESSIVE* (Lawrence, University of Kansas Press, 1968), 71, 80, 91, 97, 103.

admitted to the bar in 1910. He opened a practice in Rosedale and served as City Attorney. He supported the merger of Rosedale with its more populous neighbor, Kansas City, Kansas. This was accomplished in 1922. He served one term in the Kansas House of Representatives, and in the 1923 Session helped obtain authorization for the Seventh Street Bridge to provide a direct connection between the Rosedale area and the parts of Kansas City, Kansas north of the Kansas River. Other projects in which Gates took an interest included the Rosedale Arch, a World War I memorial. Near the end of his service as referee, Gates contributed an article on handling of Chapter XIII cases to the Journal of the National Association of Referees in Bankruptcy. He also served as President of the Wyandotte County Bar in 1937.¹¹⁴

The following year, William Dennis ("W. D.") Jochems was appointed referee for the Wichita docket. He was a native of Topeka, a graduate of the University of Kansas City Law School in Missouri, and the founder of a prominent law firm in Wichita which still bears his name. Before his selection as referee in 1931, he had served as a Justice of the Kansas Supreme Court during most of the year 1930, having been appointed to succeed Justice Hopkins, after the latter's resignation to accept appointment as District Judge in the federal system.¹¹⁵

In 1932, Payne H. Ratner of Parsons was appointed referee for the Fort Scott docket. Born in Illinois in 1896, Ratner completed law school at Washington University in St. Louis. In 1920, he was admitted to the bar and moved to Parsons. In 1932, Ratner was completing a term in the Kansas Senate. His predecessor, Harry Fisher, was making a successful bid for the Kansas House in 1932. Fisher's legislative service coincided with the gubernatorial terms of Alfred M. Landon and his successor, Walter A. Huxman. Fisher was credited with drafting the Kansas Cash-Basis Law. KAN. STAT. ANN. 10-1101, *et seq.* Fisher later became a state trial court judge early in 1941 and served two decades. He died at age 106 in 1993.¹¹⁶

Also in 1932, Earl Hilton Hatcher was appointed referee for the Topeka docket. While still a law student, Hatcher had assisted the committee chaired by former Senator Chester I. Long with the compilation of the Kansas Revised Statutes of 1923. After graduation from Washburn Law School and admission to the bar in 1923, Hatcher served as Assistant Reporter and then Reporter of the Kansas Supreme Court. While working on the staff of the Supreme Court, he began compiling a digest of Kansas decisions.¹¹⁷

Hatcher served as special counsel to the Kansas Corporation Commission in utility rate cases and in the defense of the constitutionality of the Kansas Motor Carrier Act. When a utility executive advised Hatcher that a proper investigation of the rate base would be costly to the State, Hatcher drafted a statute assessing costs to the utilities and persuaded the Legislature to enact it. Before his appointment as referee, Hatcher and Referee Louis R. Gates had been co-counsel in a utility regulation case which went to the United States Supreme Court.¹¹⁸

Later in his long career, and after his service as referee, Hatcher served as staff member to the Judicial Council Committee which formulated the Kansas Code of Civil Procedure, adopted in 1963. From 1963 to 1971, he served as Commissioner of the Kansas Supreme Court, helping deal with the heavy caseload

¹¹⁴ Gates, *My Practice in Chapter 13 Proceedings*, 17 J. NAT. ASS'N REF'S IN BANKR. 95-97 (April 1943); "Judge Louis Gates House, 1922-23," www.wycokck.org/assets/5D790D89-BE05-4A44-A8D662EFA93BAFA9.pdf

¹¹⁵ "Proceedings in Memory of Justice William D. Jochems," 187 Kan. lli, xxvi-xxix and portrait at viii (1967).

¹¹⁶ H. SOCOLOFSKY, *supra* note 45, at 183-185.

¹¹⁷ "Proceedings in Memory of Hon. Earl Hilton Hatcher," 240 Kan. v-xiv (1987).

¹¹⁸ *State Corporation Commission of Kansas v. Wichita Gas Co.*, 290 U.S. 561 (1934).

which prevailed before creation of the Kansas Court of Appeals. His last service to that court was as its first Disciplinary Administrator, 1973-1976.¹¹⁹

Referee Jochems resigned in 1933. His successor was Howard T. Fleeson. As with his predecessor, Fleeson was founder of a prominent Wichita law firm which still bears his name. Fleeson was a native of Sterling, Kansas. He was awarded the Distinguished Service Cross for his service as a combat aviator in World War I before attending Yale Law School and graduating in 1922.¹²⁰

Referee Ratner resigned in 1936. He made a successful bid for a second, non-consecutive term in the Kansas Senate. In 1938, Ratner prevailed in the Republican gubernatorial primary and went on to defeat incumbent Governor Walter A. Huxman. Re-elected by a narrower margin in 1940, Governor Ratner led the state during the early years of World War II. After leaving office in 1943, Ratner established his law practice in Wichita, emphasizing representation of personal injury claimants. He served as president of Kansas and national associations of personal injury lawyers.

Ratner's successor was Austin McCreary ("A. M.") Keene of Fort Scott. Born in Middletown, Ohio in 1865, Keene was older than the other referees appointed by Judge Hopkins. After graduating from law school at the University of Michigan in 1887, Keene moved to Kansas, locating in Fort Scott. He served in the Kansas House of Representatives, 1911-1918. During the Session of 1915, Keene was Republican floor leader under Speaker Robert Stone of Topeka. In 1917, Keene himself was elected Speaker. In 1918, Keene moved up to the Kansas Senate. He also served for many years on the Board of Bar Examiners.¹²¹

Referees Bristow, Gates, Hatcher, Fleeson and Keene all served until after the death of Judge Hopkins in 1943. In selecting these referees Judge Hopkins may have taken into account those who had supported his appointment to the District Court in 1929. Almost all of his appointees were relatively young, well-educated lawyers who had demonstrated promise and went on to distinguished careers in private practice, public service, or a combination of both.

Starting in the mid-1930s, several other bankruptcy decisions by Judge Hopkins were considered and determined by panels of the Tenth Circuit.¹²² First, there was some unfinished business for getting the new appellate court into full operation.

b. Adoption of Eighth Circuit Precedent.

The question arose as to whether District Courts within the new Tenth Circuit should wait for development of a body of decisional law by the new Court of Appeals or follow decisions of the former Eighth Circuit prior to its division into the Eighth and Tenth. Rather than waiting for a pronouncement from on high, two District Courts sitting in Oklahoma just south of Kansas dealt with the question.

The earliest decision was in a bankruptcy case in the Western District of Oklahoma. The District Court cited Eighth Circuit precedent in holding that an unrecorded conditional sales contract was sufficient to

¹¹⁹ "Proceedings" (Hatcher), *supra* n.117.

¹²⁰ 1 MARTINDALE-HUBBELL LAW DIRECTORY 1276 (1952). Fleeson's younger sister, Doris Fleeson, was born in Sterling in 1901. After her graduation from the University of Kansas in 1923, Doris Fleeson pursued a career in journalism and was the first woman with a nationally-syndicated political column.

¹²¹ III F. BLACKMAR, *supra* n. 23, 336-37.

¹²² See notes 136, 139, 142, 144, 146-49, *infra*.

support a secured claim.¹²³ A Tenth Circuit panel, including Judge McDermott of Kansas, reversed on the merits, but did not disapprove of the trial court's reliance on Eighth Circuit precedent.¹²⁴

A few months later, in a Federal Employer' Liability Act case, the District Court for the Northern District of Oklahoma went into a more detailed analysis in support of its reliance on Eighth Circuit precedent. It noted that the panel which had decided the precedent under discussion included two judges who had "transferred" to the Tenth Circuit, and that their decision was entirely well reasoned.¹²⁵

Almost half a century later, the Court of Appeals for the newly-created Eleventh Circuit found these trial court decisions from Oklahoma to be persuasive support for its decision to adopt decisional law of the former Fifth Circuit as its body of precedent. It rejected case by case development of Eleventh Circuit law, adoption of a court rule, or having an informal understanding among judges as unsatisfactory alternatives.¹²⁶

Many changes in the law have taken place since 1929. In some areas, such as the Kansas homestead exemption and the common law of fraudulent conveyances, decisions of the old Eighth Circuit continue to be controlling authority in bankruptcy practice and jurisprudence.

4. Kansas – The Depression Years and World War II.

a. Revisions to the 1898 Bankruptcy Act.

By 1932, the number of annual bankruptcy filings nationally had risen to 70,000. As the country slid into the Depression, new approaches to bankruptcy law were considered. During the legendary "Hundred Days" following the inauguration of President Franklin D. Roosevelt in March 1933, a number of statutes intended to deal with Depression conditions were enacted. One of the less-heralded bills amended the 1898 Bankruptcy Act by adding several sections, including Section 74, making compositions and extensions available to individual debtors; Section 75, providing bankruptcy relief for farmers; and Section 77, for the reorganization of railroads.¹²⁷

The 1933 amendments to the Bankruptcy Act did not share the fate of a number of other statutes of the New Deal era. In a 1935 case¹²⁸ Justice George Sutherland of Utah expounded an expansive view of the bankruptcy clause which was supported by seven other justices. After reviewing the history of bankruptcy legislation in the United States, Sutherland noted the fundamental and radically progressive nature of extensions of legislation on the subject of bankruptcy, and that all had been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution. He stated that, taken together, they demonstrate in a very striking way the capacity of the bankruptcy clause to meet new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activity since 1800.¹²⁹

¹²³ *In re Meyers*, 1 F. Supp. 673 (W.D. Okla. 1932), *rev'd on other grounds Barbee v. Spurrier Lumber Co.*, 64 F.2d 5 (10th Cir. 1933).

¹²⁴ *Barbee*, *supra* n. 123.

¹²⁵ *Thompson v. St. Louis-San Francisco Ry. Co.*, 5 F. Supp. 785 (N.D. Okla. 1934).

¹²⁶ *Bonner v. City of Prichard* 661 F.2d 1206, 1212 (11th Cir. 1981) (en banc).

¹²⁷ Act of March 3, 1933, Ch. 204, 47 Stat. 1467; Countryman, *supra* n. 11 at 231.

¹²⁸ *Continental Ill. Nat. Bank v. Chicago, R.I. & Pac. Ry. Co.*, 292 U.S. 648 (1935).

¹²⁹ *Id.* at 668, 671.

In June 1934, Congress passed the Frazier-Lemke Farm Bankruptcy Act¹³⁰, which added subsections to Section 75 passed in 1933. The following year, the Supreme Court declared that this enactment, which permitted farmers to write down mortgages against their property to the market value of the property, contravened the takings clause of the Fifth Amendment.¹³¹ Congress responded by enacting the Farm Mortgage Moratorium Act, also referred to as the “new” or second Frazier-Lemke Act.¹³² Early in 1937, this statute was determined to be constitutional.¹³³

In 1935, Congress adopted extensive amendments to Section 77, governing railroad reorganizations.¹³⁴ In 1938, Congress again amended the bankruptcy law, enacting the Chandler Act¹³⁵, which added Chapter X (Corporate Reorganizations), Chapter XI (Arrangements), Chapter XII (Real Estate Arrangements), and Chapter XIII (Wage Earners’ Plans).

b. Kansas Decisions during the Depression Years.

The trustee of a Kansas grain business sought to recover as preferences payments made by the debtor to an affiliated bank and loan company. Judgment was entered by Judge Hopkins as to one payment in the amount of \$5,341.77. A panel of the Tenth Circuit affirmed, in an opinion authored by Judge Pollock.¹³⁶ A petition for rehearing was denied.¹³⁷

A more complex situation resulted in appeals from Judges McDermott, Pollock and Hopkins being considered and determined by the Tenth Circuit. Two affiliated corporations had first been in receiverships, with orders, including an order appointing a receiver, being entered by Judge Hopkins. Applications to stay these orders were denied by the Tenth Circuit.¹³⁸ Five creditors then filed an involuntary petition requesting reorganization of the debtor. The involuntary petition was approved by Judge Pollock. Later he appointed the former receiver as trustee. Soon after the filing of the involuntary case, the debtor filed a voluntary petition. A different person was appointed trustee in that case, and Judge Hopkins entered an order directing this trustee to take charge of the debtor’s property. Upon being served with this order, the trustee in the involuntary case refused to comply. Appeals were taken from various orders by both judges. The Tenth Circuit affirmed Judge Pollock’s order approving the involuntary petition, and cited the *Rock Island* case in its holding. The order of delivery entered by Judge Hopkins was reversed, and all other appeals were dismissed.¹³⁹ While Judge Pollock’s exercise of jurisdiction in the involuntary case was approved by the Court of Appeals, he did receive some criticism in the newspapers.¹⁴⁰ Various stakeholders were maneuvering for advantage, and it might have been

¹³⁰ Act of June 28, 1934, 48 Stat. 1289.

¹³¹ *Louisville Joint-Stock Land Bank v. Radford*, 295 U.S. 555 (1935).

¹³² Act of August 29, 1934, 49 Stat. 942.

¹³³ *Wright v. Vinton Branch, Mountain Trust Co.*, 300 U.S. 440 (1937). The decisions in both *Radford* and *Wright* were written by Justice Brandeis. At the time *Wright* was decided, there was pending in the Congress a proposal, originating in the Roosevelt White House, to expand the Supreme Court.

¹³⁴ Act of August 27, 1935, 49 Stat. 211.

¹³⁵ Act of June 22, 1938, Ch. 575, 52 Stat. 840; Countryman, *supra* n. 11.

¹³⁶ *Emporia Loan & Inv. Co. v. Rees*, 66 F.2d 225 (10th Cir. 1933).

¹³⁷ *Id.*, 66 F.2d 789.

¹³⁸ *Bankers’ Mortg. Co. of Topeka v. Rupp*, 66 F.2d 992 (10th Cir. 1933). After denial of the stay applications, the appeals on the merits were dismissed per stipulation. 71 F.2d 1009 (10th Cir. 1934) (Mem.), 72 F.2d 991 (10th Cir. 1934) (Mem).

¹³⁹ *Humphrey v. Bankers’ Mortg. Co. of Topeka*, 79 F.2d 345 (10th Cir. 1935).

¹⁴⁰ Lee, Judge John C. Pollock, 9 J. BAR ASS’N OF KANSAS 219, 239 (1941).

better practice for the trial judges to have found a means to resolve the jurisdictional conflict at the District Court level.

Finally Circuit Judge McDermott was put on the case to determine the precise condition of the assets and liabilities of the debtor and to enter orders for distribution of the assets among various classes of creditors. With some modification, his orders were approved by the Tenth Circuit.¹⁴¹

In 1935, a corporation engaged in the wholesale grocery business in Wichita filed a proceeding for reorganization as provided for in the 1933 amendments. Judge Hopkins approved the petition and denied various motions to dismiss. A panel of the Tenth Circuit, including Judge McDermott, affirmed.¹⁴²

Judge Pollock died at his home in Kansas City on January 24, 1937 at the age of 79. Only five days earlier, his friend and colleague Judge McDermott had passed on in Winfield at the young age of 50.¹⁴³

Appeals from rulings by Judge Hopkins in three bankruptcy cases were decided by panels of the Tenth Circuit in 1937. In the first case, two life insurance companies had filed foreclosure actions in state court against separate tracts of farmland owned a farmer in Sedgwick County. Each tract had gone to sheriff's sale, but the farmer filed a petition for an agricultural composition and extensions under Section 75 of the 1933 Bankruptcy Act amendments shortly before the expiration of the redemption periods. A commissioner, named in the opinion, found in favor of the creditors and concluded that the proceedings as to them should be dismissed. The debtor filed exceptions. Judge Hopkins confirmed the conclusions of the commissioner.¹⁴⁴ The debtor appealed. The Tenth Circuit remanded the case, with directions for the District Court to let the parties file pleadings to frame the issues, and to hear evidence and enter a final adjudication of the rights of the parties as provided for in a specified subsection of the lengthy and complex Section 75.¹⁴⁵

In the second case, an unnamed referee had found that a chattel mortgage held by a bank against the fixtures and equipment of a grocery and meat market in Abilene owned by the debtor in an involuntary case was invalid and that the bank's claim should be allowed as unsecured. On review, Judge Hopkins reversed, holding the chattel mortgage to be valid and ordering that the property be surrendered to the bank. The trustee appealed.¹⁴⁶ The Tenth Circuit reversed. It discussed the Kansas Bulk Sales Law, determined that the bank should have complied with it and that the chattel mortgage was invalid for failure to so comply. The District Court was directed to allow the claim as unsecured.¹⁴⁷

In the third case, a debtor had filed a voluntary petition. He was granted a discharge, but debts listed in the schedules in prior cases were expressly excepted. The debtor appealed, and the Tenth Circuit affirmed in a short opinion.¹⁴⁸ The same debtor was back before the court a year and a half later. He had filed a petition for composition and extension of his debts pursuant to Section 74 of the 1933 amendments. The referee, identified as E. H. Hatcher, conducted a first meeting of creditors, after

¹⁴¹ *In re Bankers' Mortg. Co. of Topeka*, 83 F.2d 50 (10th Cir. 1936).

¹⁴² *Union Nat. Bank v. Lehmann-Higginson Grocer Co.*, 82 F.2d 969 (10th Cir. 1936).

¹⁴³ Lee, *Pollock*, *supra* n. 140, at 200, 242; "Memorials: Hon. George T. McDermott," 11 J. NAT. ASSN. REFS IN BANKR. 117 (April 1937).

¹⁴⁴ *Wilcons v. Penn Mut. Life Ins. Co.*, 91 F.2d 417, 418 (10th Cir. 1937).

¹⁴⁵ *Id.*, at 419.

¹⁴⁶ *In re Dederick*, 91 F.2d 646, 647-648 (10th Cir. 1937).

¹⁴⁷ *Id.*, at 648-650.

¹⁴⁸ *Hill v. Railroad Indus. Fin. Co.*, 92 F.2d 973 (10th Cir. 1937).

which he made detailed findings as to the debtor's history as a bankruptcy recidivist and his lack of income and assets with which to effect a composition. On motion of a creditor, the case was dismissed by Judge Hopkins. The Tenth Circuit affirmed, and the Supreme Court denied certiorari.¹⁴⁹

After the entry of the United States into World War II, decisions of Referee Bristow in two related cases were published, a departure from the usual practice. In one case, the referee denied a claim for attorney fees filed by the attorney for persons having wage claims against a corporate debtor. The opinion recites that no review of the order was requested.¹⁵⁰ In the other case, that of individuals affiliated with the corporate debtor in the related case, the referee held that a warehouse building and cooling equipment were not "fixtures" within the scope of the Kansas Bulk Sales Law. This ruling was approved on review by Judge Hopkins.¹⁵¹

c. Changes in Court Personnel.

With the exception of Grover Cleveland (1885-1889 and 1893-1897) and Woodrow Wilson (1913-1921), Republican Presidents had occupied the White House from 1861 to 1933. During this period, Circuit Judges and District Judges in Kansas generally were Republicans.¹⁵² A similar generalization applies to referees and other subordinate officers involved in the bankruptcy process between the Civil War and World War II. Register Griswold received his commission directly from Chief Justice Chase. The referees provided for in the 1898 Act were appointees of the District Judges.

For twenty years beginning in 1933, the White House was occupied by Democrats. By the late 1930s, the Republican monopoly of federal court appointments in Kansas began to erode. In 1939, Walter A. Huxman of Hutchinson was appointed as Circuit Judge. After a distinguished career in private practice and public service, Huxman had been elected Governor of Kansas in 1936. His bid for reelection in 1938 was thwarted by the Republican nominee, former Referee Payne H. Ratner.¹⁵³

In 1943, Judge Hopkins died in his chambers during a case involving the wartime Office of Price Administration. President Roosevelt appointed Guy T. Helvering to be District Judge. Helvering's background included law practice in Marysville, Kansas; election to three terms in Congress; and, later serving as Mayor of Salina. He had been manager of the successful campaign of Harry H. Woodring for Governor of Kansas in 1930, and he and Woodring had been among the early supporters of the presidential aspirations of Franklin D. Roosevelt. After taking office, Roosevelt appointed Helvering Commissioner of Internal Revenue. Helvering served in that capacity for eleven years. President Roosevelt was quoted as saying, "after Guy was appointed I never had another headache about that department." By 1943, Helvering was ready to return to Kansas.¹⁵⁴

¹⁴⁹ *Hill v. Morris Plan Co.*, 105 F.2d 299 (10th Cir.), *cert. denied*, 308 U.S. 395 (1939).

¹⁵⁰ *In re L.E. Elliott Brokerage Co.*, 48 F.Supp. 144, 146 (D. Kan. 1942).

¹⁵¹ *In re Elliott*, 48 F.Supp. 146, 150 (D. Kan. 1942).

¹⁵² Major, *Federal Judges as Political Patronage*, 30 J. NAT. ASS'N REF'S IN BANKR. 111-113 (October 1956). The author of this address, a Judge of the Seventh Circuit, identified the problem, which still exists sixty years later, but he did not fully develop the "trickle-down" effect on selection of referees, a process subject to fewer formal checks and less public scrutiny. In the District of Kansas, the process was not completely bad. Judge Richard Hopkins, a political creature in the eyes of most observers, appointed referees who mostly were young and well educated. Judge Arthur Mellott, on the other side of the political divide, exercised supervision of the bankruptcy process in the postwar years by consolidating referee functions in the able and experienced hands of Judge Sloan.

¹⁵³ H. SOCOLOFSKY, *supra* note 95, at 180-182. BIOGRAPHICAL DIRECTORY (JUDICIARY), 574.

¹⁵⁴ Templar, *Federal Judiciary*, 12-13; BIOGRAPHICAL DIRECTORY (CONGRESS), 1233.

After Judge Helvering received his commission as a Federal District Judge in October 1943, changes were made in the lineup of Kansas referees. Referee Gates was succeeded by John J. Bukaty of Kansas City, Kansas. Referee Bukaty was relatively young, born in Leavenworth in 1913. He attended Rockhurst High School and the Kansas City School of Law, and was admitted to the bar in 1939. He also served as Assistant County Attorney of Wyandotte County.¹⁵⁵

In Wichita, Referee Fleeson was succeeded by Harry C. Castor. Referee Castor was born in western Missouri in 1888. He went to college at the University of Missouri and received his law degree from the same institution in 1913. Castor was admitted to practice in Missouri in 1913 and in Kansas the following year. He located in Wichita, was on the legal staff of the Federal Land Bank, 1917-1918, and was Deputy County Attorney, 1923-1927.

By 1929, Castor was in a partnership with George S. McGill, a former County Attorney of Sedgwick County. The following year, McGill drove all over Kansas in an old Model T campaigning for the U.S. Senate, and in November he became the first and only Democrat to be Senator from Kansas after adoption of the 17th Amendment in 1913. Initially elected to the last two years of an unexpired term, McGill was elected to a full term in 1932, but defeated in 1938. McGill and Castor continued their partnership while McGill was serving in the Senate and at least until Castor was appointed referee in 1944.¹⁵⁶

In Topeka, Referee Hatcher was succeeded by Edward R. Sloan. This was probably the most significant appointment during Judge Helvering's brief tenure on the bench. Usually referred to as Judge Sloan (and as "Ted" by family and close friends), Referee Sloan was born in Seward County, Nebraska. A few months later, his parents moved to Sheridan County, Kansas and homesteaded a tract of land there. He attended law school at Washburn, and graduated in 1906 as a member of the law school's first graduating class. He returned to Sheridan County and was elected County Attorney for three terms. In 1911, he moved to Holton, where he had done part of his prelaw studies at Campbell College. He served as City Attorney of Holton, president of the Holton Board of Education, and as a member of the Kansas House of Representatives from Jackson County. He was recognized as an outstanding lawyer, and in 1931 was appointed by Governor Woodring to the Supreme Court of Kansas to fill a vacancy created by the death of Justice John Marshall. He served until January 1933, when he reentered the private practice of law with his brother and another lawyer in Topeka. He later served as a member of the Kansas Corporation Commission and as a leader of numerous organizations.¹⁵⁷

In the outlying areas, Referee Keene carried on at Fort Scott until his death in August 1947. Referee Frank Bristow of Salina resigned in 1945 after fifteen years of service. His father, Joseph L. Bristow, while serving in the United States Senate in 1914, had purchased a 600-acre farm in Fairfax County, Virginia, which included a 10-room house, built in 1732 and restored in 1912-1913. After Senator Bristow's bid for election to a second term was thwarted by former Senator Charles Curtis in the 1914 primary, and his hopes for a comeback were dashed by his defeat by Governor Arthur Capper in the 1918 Senate primary, he decided to spend his remaining years in Virginia. He raised crops, cattle and

¹⁵⁵ Obituary, *Kansas City Star*, Aug. 1, 1896, C4, C5.

¹⁵⁶ | MARTINDALE-HUBBELL LAW DIRECTORY 1272 (1952); i *Id.*, 615 (1944); i *Id.*, 537 (1938); MARTINDALE'S AMERICAN LAW DIRECTORY 323 (1929); McCoy, *Senator George McGill and the Election of 1938*, 4 KANSAS HISTORY 2-19 (Spring 1981).

¹⁵⁷ "In Memoriam" [Edward R. Sloan], 197 Kan. lx, x-xii (1967).

sheep, and acquired additional land. By the time of his death in July 1944, Senator Bristow owned 4,300 acres. His son left Kansas to look after this property. Frank Bristow died in 1968.¹⁵⁸

5. Bankruptcy in the Postwar Era.

a. Further Changes in Court Personnel.

Arthur J. Mellott of Kansas City was appointed District Judge in 1945. The appointment was to a second District Judge position created on a temporary basis. In his younger years, Mellott had served as County Attorney of Wyandotte County. During the early New Deal years, he was head of the Alcohol Tax Division under IRS Commissioner Helvering. Mellott's responsibilities included supervision of collection of taxes on alcohol. In 1935, he was appointed to the Tax Court, and served on that tribunal until his appointment to the District Court.¹⁵⁹

No bankruptcy decisions of Judge Helvering are reported. There was a relative paucity of bankruptcy litigation during the war years. Judge Helvering passed on in July 1946, after serving less than three years as District Judge.¹⁶⁰

In 1946, John I. Young was appointed to cover the Salina docket. Also in 1946, Referee Bukaty was succeeded by Harry G. Miller, Jr. It is unclear, seventy years later, whether these referees were appointed by Judge Helvering before his death, or by Judge Mellott afterward. Referee Young was born in 1908. He went to college at Kansas State Teachers College, as Emporia State University was known in the early 20th Century. He graduated from law school at the University of Kansas and was admitted to the bar in 1944.¹⁶¹

Born in 1910, Miller began his education at the University of Kansas and finished at the University of Kansas City. He was admitted to the bar in 1935.¹⁶² John J. Bukaty went on to a distinguished career as a lawyer. He served as President of the Wyandotte County Bar in 1956, and also served on the Kansas Supreme Court Nominating Commission. He died in 1996.¹⁶³

A case decided by the Tenth Circuit a few months after the end of World War II possibly illustrates a problem dealt with by Congress the following year. In the bankruptcy of a trucking company, the only substantial assets were certificates issued by regulatory agencies authorizing it to operate in interstate commerce between Kansas City and Omaha and on intrastate routes in Kansas. The trustee offered the certificates for sale. A bid of \$4,250 was accepted, and the sale was confirmed by the referee. A motion was filed to set aside this sale. The referee sustained this motion, and the trustee again offered the certificates for sale. This time, a bid of \$9,050 was made by a different bidder. The trustee accepted this offer, and the referee confirmed the sale. Circuit Judge Huxman, sitting as a District Judge, set aside the order confirming the sale to the second bidder and confirmed the sale to the first bidder. The trustee appealed. The Tenth Circuit affirmed.¹⁶⁴

¹⁵⁸ SAGESER, *supra* n. 113, at 156, 165.

¹⁵⁹ Templar, *Federal Judiciary*, 13-14; BIOGRAPHICAL DIRECTORY (JUDICIARY), 663.

¹⁶⁰ *Id.*, at 14.

¹⁶¹ 11 MARTINDALE-HUBBELL LAW DIRECTORY 1405 (1965)

¹⁶² 1 MARTINDALE-HUBBELL LAW DIRECTORY 1246 (1952).

¹⁶³ Bukaty Obituary, *Kansas City Star*, August 1, 1996, C4, C5.

¹⁶⁴ *Allen v. Union Transfer Co.*, 152 F.2d 633 (10th Cir. 1945), *cert. denied*, 327 U.S. 807 (1946).

From the inception of the Bankruptcy Act of 1898, referees were compensated on a fee basis. Fees, in turn, were calculated on the amounts distributed from bankruptcy estates. This gave rise to a perception that bankruptcy referees were inclined to rule in favor of trustees in pursuit of assets for the bankruptcy estate. This led to such problems as a lack of finality in sales by trustees, and also frequent demands for review by the District Courts and at the appellate level of questionable transactions.¹⁶⁵ The Referees' Salary Act of 1946¹⁶⁶ changed referee compensation to a salary basis.

As previously noted, Referee Keene passed on in 1947. In 1947 and 1948, Referees Castor, Miller and Young were phased out, and Referee Sloan effectively became the sole and fulltime referee for the District of Kansas. Judge Mellott supported this change and may have been the guiding force behind it. Referee Sloan encouraged debtors to utilize Chapter XIII, the Wage Earner provision of the Bankruptcy Act. He became a recognized authority on bankruptcy law, and compiled a series of lectures which were used as a textbook at Washburn Law School. He also served as President of the National Conference of Referees in Bankruptcy in 1955.

Harry G. Miller, Jr. was a candidate for the Kansas Supreme Court in 1952. He was defeated by a veteran Republican justice. In January 1954, he was appointed as a state trial court judge in Wyandotte County. He served as President of the Wyandotte County Bar in 1959. Judge Miller served until around 1980. He died in 1999. John I. Young also became a state trial court judge, in Saline and adjoining counties. He served from the late 1950s through 1966. He died early in 1967. Harry C. Castor died in 1952.¹⁶⁷

While Judge Mellott had a substantial overall caseload to deal with by himself during the postwar years, significant bankruptcy cases seem to have been few and far between. Over the objection of one creditor, holding a claim in the amount of \$120, an unnamed referee (probably Referee Sloan) granted a debtor his requested discharge. On review, Judge Mellott approved this decision. On appeal, the Tenth Circuit affirmed.¹⁶⁸

In October 1949, Judge Mellott received some help with the appointment of Delmas C. Hill to a second, permanent District Judge position created for the District of Kansas. In addition to private practice in Wamego, Kansas, Hill's background included service as County Attorney of Pottawatomie County and Assistant United States Attorney, nomination for the U.S. Congress, and service as attorney for the Kansas Tax Commission during the administration of Governor Huxman. During World War II, Hill graduated in the top ten percent of his class at the Army Judge Advocate Training Center. After the end of the war, he applied his prosecutorial experience as a member of the legal team which successfully prosecuted Japanese General Yamashita for war crimes.¹⁶⁹

¹⁶⁵ One example might be *Atchison, T. & S.F. Ry. Co. v. Hurley*, 153 Fed. 503 (8th Cir. 1907), *aff'd* *Hurley v. Atchison, T. & S.F. Ry. Co.*, 213 U.S. 126 (1909), *supra* note 69, in which the trustees were eager to appropriate a \$57,364.16 advance from the railroad to the coal company. The special referee ruled in their favor; the Eighth Circuit and the Supreme Court, neither having a financial interest, ruled to the contrary.

¹⁶⁶ Act of June 28, 1946, Ch. 512, 60 Stat. 323; Countryman, at 231.

¹⁶⁷ "In Memoriam" [Sloan], *supra* note 157, xi, xii; "Our President's Message," 29 J. NAT. ASS'N REF'S IN BANKR. 1 (January 1955); *Kansas City Times*, January 13, 1957; *Kansas Reports*, Vols. 175-227 [Miller]; "Judge Harry G. Miller, Jr.," 68 J. BAR ASS'N OF KANSAS No. 3, p. 10 (March 1999); and *Kansas Reports*, Vols. 182-197 [Young].

¹⁶⁸ *Dixon v. Lowe*, 177 F.2d 807 (10th Cir. 1949).

¹⁶⁹ Templar, *Delmas C. Hill*, 59 J. KAN. BAR ASS'N No. 1, 31-33 (January 1990); BIOGRAPHICAL DIRECTORY (JUDICIARY), 553.

b. Garden Grain & Seed Bankruptcy.

The involuntary bankruptcy early in 1952 of the Garden Grain & Seed Company, Inc., a corporation which owned and operated several grain elevators in southwestern Kansas, gave Judge Hill and Referee Sloan considerable experience in complex bankruptcy proceedings. Appeals from several of their decisions were heard and determined in the Tenth Circuit.¹⁷⁰

In the first of five decisions, the Tenth Circuit reviewed the Kansas statutory scheme for regulation of public warehouses and transactions in warehouse receipts. Much of the property in the debtor's possession was wheat and milo deposited by farmers. A person with experience in the grain business was appointed as trustee. The trustee sold this grain and deposited the proceeds in separate wheat and milo funds. The trustee also sought to recover grain, or the value thereof, delivered by the bankrupt within four months of the case filing and amounting to preferential transfers.¹⁷¹ The creditor in this first case asserted the validity of certain warehouse receipts held by it, and also theories of constructive trust, equitable lien, and priority claim. The warehouse receipts were held invalid by Referee Sloan, and he rejected the other theories as well. On review, he was sustained by Judge Hill. A panel of the Tenth Circuit affirmed, with one judge dissenting.¹⁷²

A second appeal involved a cross-appeal by the trustee from orders of Referee Sloan, sustained by Judge Hill. The referee and district judge ruled that the debtor was indebted to the Commodity Credit Corporation (CCC), a government corporation set up to administer government agricultural programs, that the debtor was entitled to an offset for certain overpayments of income tax, that payments were to be made to the CCC from the wheat fund and the milo fund, and that the remaining claim of the CCC would be paid as a fifth priority. A Tenth Circuit panel affirmed as to the cross-appeal, with the CCC's appeal to be determined at a later date.¹⁷³

Concerning the same dispute, a bank asserted a constructive trust theory. This was rejected by Referee Sloan, who was sustained by Judge Hill. A panel of the Tenth Circuit affirmed in its third decision in the case, holding that the bank had elected its remedies and was precluded from asserting a constructive trust. Judge Huxman concurred in the result.¹⁷⁴

The fourth decision involved the CCC's appeal from orders of Referee Sloan, sustained by Judge Hill, allowing its claim in part, and disallowing it in part. A five-judge panel of the Tenth Circuit, including Judge Huxman, held that where the CCC knew of a serious shortage in the debtor's grain account when it took deliveries of grain, it was entitled to only its proportionate share of the grain in storage. The case was remanded for recalculation of CCC's proportionate share based on a warehouse receipt pledged to it as collateral.¹⁷⁵

¹⁷⁰ *Central States Corp. v. Luther*, 215 F.2d 39 (10th Cir. 1954), *cert. denied*, 348 U.S. 951 (1955); *Luther v. United States*, 225 F.2d 495 (10th Cir. 1954); *First Nat. Bank in Wichita v. Luther*, 217 F.2d 262 (10th Cir. 1954); *United States v. Luther*, 225 F.2d 499 (10th Cir. 1955); *Inter-State Nat. Bank of Kansas City v. Luther*, 221 F.2d 382 (10th Cir.) (en banc), *cert. granted*, 350 U.S. 810 (1955), *cert. dismissed*, 350 U.S. 944 (1956). Outside of the bankruptcy, the case also gave rise to federal court litigation over bonds issued by insurance companies. See, e.g. *Fidelity State Bank v. Central Sur. and Ins. Corp.*, 228 F.2d 654 (10th Cir. 1955); *Central States Corp. v. Trinity Universal Ins. Co.*, 237 F.2d 875 (10th Cir. 1956).

¹⁷¹ *Central States Corp. v. Luther*, *supra* note 170.

¹⁷² *Id.*

¹⁷³ *Luther v. United States*, *supra* note 170.

¹⁷⁴ *First Nat. Bank in Wichita*, *supra* note 170.

¹⁷⁵ *United States v. Luther*, *supra* note 170.

The fifth and final decision involved an appeal by another bank from an order of Referee Sloan, sustained by Judge Hill, permitting avoidance of a preferential transfer. The majority of a five-judge panel, including Judge Huxman, affirmed. Two judges dissented, on jurisdictional grounds. The Supreme Court granted certiorari, but this contested matter was subsequently dismissed by stipulation of the parties.¹⁷⁶

c. Other Cases in the 1950s.

Other Kansas bankruptcy cases finding their way into the published reports in the 1950s were less complex. In one case, a partnership engaged in the road construction business, and its four member partners, a father, mother and their two sons, all filed for bankruptcy. The referee ruled that certain real estate claimed by the sons and their wives as their respective homesteads was actually partnership property, and also rejected a claim of a daughter of the bankrupt parents that she was the owner of other property. On review, Judge Mellott held that the record supported the referee's findings.¹⁷⁷

A New Mexico corporation engaged in oil drilling and production filed in Kansas for reorganization under Chapter XI of the 1898 Act, as amended in 1938. A state bank had made a loan to the debtor and sold a 75% participation to a government corporation. This participant entity asserted various defenses against the bank. The referee determined the respective interests of the creditors, ruling in favor of the bank to facilitate the reorganization of the debtor by establishing the creditors entitled to vote. This was sustained by the District Court. A panel of the Tenth Circuit, including Judge Huxman, affirmed.¹⁷⁸

A motorist in Topeka struck two young pedestrians, killing one and injuring the other. After judgments were entered against him in state trial court, he filed for bankruptcy. The referee held that the judgment in favor of the injured youth was dischargeable, but that the judgment in favor of the father of the deceased youth was not. On review, the District Court granted a full discharge. The father of the deceased youth appealed. A panel of the Tenth Circuit reversed, holding that the debtor's plea of guilty to a charge of manslaughter in the fourth degree supported a contention that the debtor's actions constituted "willful and malicious injury" of the type excepted from discharge.¹⁷⁹

In a Chapter XIII proceeding, a creditor petitioned for delivery of a certain television set owned by the debtor, or for allowance of its claim as a secured claim. The trustee objected to the claim on the grounds that a chattel mortgage executed by the debtor had not been properly filed before the case was commenced. The referee agreed with this contention and held further that the trustee in a Chapter XIII case has the same powers as trustees in cases under other chapters. On review, Judge Mellott affirmed, quoting the referee's decision at length in his opinion.¹⁸⁰

Two debtors filed Chapter XIII cases. Both debtors lived in other states, but had formerly resided in Kansas. The referee ordered dismissal of both cases, and was sustained by Judge Mellott.¹⁸¹ On appeal, a panel of the Tenth Circuit reversed, holding that in the absence of an objection the court could retain

¹⁷⁶ *Inter-State Nat. Bank*, *supra* note 170.

¹⁷⁷ *N.C. Carroll and Sons Gravel Co.*, 95 F. Supp. 591 (1951).

¹⁷⁸ *Reconstruction Fin. Co. v. Riverview State Bank*, 217 F.2d 455 (10th Circuit 1955).

¹⁷⁹ *Den Haerynck v. Thompson*, 228 F.2d 72 (10th Cir. 1955).

¹⁸⁰ *In re Oliver*, 127 F. Supp. 842 (D. Kan. 1955).

¹⁸¹ *In re Martinez*, 140 F. Supp. 221 (D. Kan. 1956).

the cases unless it concluded that the interest of the parties would be served by transfer to some other district.¹⁸²

d. Final Pre-Bankruptcy Code Changes in Court Personnel.

Near the end of 1957, Judge Mellott died.¹⁸³ His successor, who was sworn in in July 1958, after being nominated by President Eisenhower and confirmed by the Senate, was Arthur J. Stanley, Jr. Before going to law school, Stanley had joined the Canadian Army during World War I and had been discharged for being underage. Next, he enlisted in the 7th U.S. Cavalry and served on the Mexican border. After finishing high school in 1920, Stanley enlisted in the U.S. Navy and served on the Yangtze River patrol in China.¹⁸⁴

Having “seen the world,” young Stanley settled down and attended the University of Kansas City School of Law in Missouri, graduating in 1928 and being admitted to the bar. He joined a law firm established by his father. In 1934, he was elected County Attorney of Wyandotte County. In 1940, he was elected to the State Senate from the Wyandotte County district. He served in the Session of 1941, but resigned to return to service in the military. He served as an officer in the European Theatre, attaining the rank of Lieutenant Colonel.¹⁸⁵

Also in 1958, Wesley E. Brown of Hutchinson was appointed Referee in Bankruptcy, with chambers in Wichita. Referee Brown had worked his way through college at the University of Kansas, then through the University of Kansas City Law School, graduating in 1934 and returning to his hometown of Hutchinson. He joined a law firm there and was elected and reelected County Attorney of Reno County. During World War II, he served as a naval officer in the Pacific Theatre and had attained the rank of Lieutenant when he returned to his law practice after the end of the war. In private practice, he was attorney for several major Hutchinson-based companies.¹⁸⁶

Near the end of the decade, two cases from Kansas involving shady activities of automobile dealers which led to their downfall were decided by the Tenth Circuit. In one case, an individual doing business as an automobile dealer set up a corporation and transferred the assets of his business to the corporation. The corporation then sold 11 automobiles without remitting the proceeds to a creditor that held a security interest pursuant to a floor plan agreement. The individual shot himself, but did not die of the injuries sustained until two months later. Discovering that the dealer was “out of trust,” the creditor filed actions in the state courts of Kansas and recovered assets of the corporation through attachment and garnishment. It also filed petitions in involuntary bankruptcy against the dealer and his corporation. A written agreement was entered into between the finance company, the corporation, the individual debtor, and his wife. This was reported to and eventually filed with the court. Most of the assets of the corporation were sold by a receiver, debts and expenses were paid, and the balance of the cash and certain other property were turned over to the corporation. After all this took place, the corporation challenged validity of the proceedings against it. Judge Hill ruled against this contention,

¹⁸² *In re Martinez*, 241 F.2d 345 (10th Cir. 1957).

¹⁸³ Templar, *Federal Judiciary*, at 14.

¹⁸⁴ Templar, Arthur J. Stanley, Jr., 58 J. KAN. BAR ASS’N No. 5, pp. 31-33 (May 1989); BIOGRAPHICAL DIRECTORY (JUDICIARY), 775.

¹⁸⁵ *Id.*, at 32.

¹⁸⁶ Templar, *Judge Wesley E. Brown*, 60 J. KAN. BAR ASS’N No. 1, pp. 19-21 (January 1991).

and the Tenth Circuit affirmed, holding that the corporation had waived its claims by entering into the agreement and accepting the benefits thereof.¹⁸⁷

In the other case, the referee (probably Referee Brown) denied objections to discharge and was sustained by the District Court. The trustee and the only major creditor appealed. A panel of the Tenth Circuit reversed, holding that the debtor's failure to show what became of money received for cars sold at auction constituted grounds for denial of discharge.¹⁸⁸

In the early 1960s, district judges in Kansas considered principles applicable to the confirmation of Chapter XIII plans. In one case, Judge Hill sustained an order of the referee dismissing such a case. He held that the debtor was barred from procuring confirmation of a plan within six years after a prior confirmation.¹⁸⁹ An appeal was dismissed.¹⁹⁰

A few months later, Judge Stanley reversed a referee's order dismissing a Chapter XIII case. He distinguished the earlier decision as involving confirmation by way of composition, whereas the prior confirmation in the case before him had been a confirmation by way of extension.¹⁹¹

In 1961, Congress authorized additional federal judgeships in the Tenth Circuit and the District of Kansas. Judge Hill was elevated to the Tenth Circuit. In developments directly affecting the bankruptcy process, Judge Sloan retired in March 1961, and Joseph J. Dawes of Leavenworth was appointed to succeed him in Topeka. Dawes had served as a state trial court judge from 1948 through 1960. Born in 1902, he received his law degree from Notre Dame in 1926 while the legendary Knute Rockne was football coach there. Before going on the state trial court bench, Dawes had served as County Attorney of Leavenworth County, City Attorney of Leavenworth, and, starting in 1944, as a part-time U.S. Commissioner.¹⁹²

The following year, Referee Brown was nominated and confirmed for the District Judge position vacated by Judge Hill. Robert B. Morton of Wichita, in turn, was appointed on April 27, 1962 to the referee position vacated by Brown.¹⁹³ Referee Morton graduated from the University of Kansas Law School in 1935. His long career in private practice in Wichita was interrupted by service as an officer in the Marine Corps in the Pacific during World War II and by brief service as a state trial court judge in the Sedgwick County district in 1950-1951.¹⁹⁴

During the 1950s, Morton had been involved in two projects which involved highly complex litigation and had ramifications for the long-range future of the Wichita community. First, the United States took action in 1951 to acquire the existing municipal airport in southeast Wichita for use as a training facility,

¹⁸⁷ *E. L. "Bunch" Hullet, Inc. v. Universal C.I.T. Credit Corp.*, 259 F.2d 685 (10th Cir. 1958).

¹⁸⁸ *Johnson v. Bockman*, 282 F.2d 544 (10th Cir. 1960).

¹⁸⁹ *Matter of Bingham*, 190 F. Supp. 219 (D. Kan. 1960).

¹⁹⁰ *Bingham v. Yingling Chevrolet Co.*, 310 F.2d 881 (10th Cir. 1962).

¹⁹¹ *Matter of Autry*, 204 F.Supp. 820 (D. Kan. 1962).

¹⁹² I MARTINDALE-HUBBELL LAW DIRECTORY 779 (1947); Kansas Reports, Vols. 166-187; Dawes, *What the General Practitioner Should Know about Bankruptcy*, 35 J. BAR ASS'N OF KAN. 171-172, 198-201 (Fall 1966).

¹⁹³ Templar, *Brown*, *supra* note 186 at 20. Judge Brown served on the District Court for almost half a century. He died on January 23, 2012 at age 104. He continued to hear cases until his death and held the record for oldest U.S. District Judge in active service.

¹⁹⁴ "Judge Robert Morton Collection – Biography," Wichita State University collections specialcollections.Wichita.edu/collection/ms/97-01-01A.html.

later named McConnell Air Force Base. Judge Morton was part of a legal team which negotiated a \$9.4 million financial settlement with the Department of Defense and also fended off third-party claimants.¹⁹⁵ A replacement airport was urgently needed, and Judge Morton was on the legal team to acquire 1,923 acres southwest of Wichita for a new airport. Thirty landowners were paid a total of \$1,182,922.44. The new airport was completed in three and one-half years and dedicated in 1954. This modern airport was deemed worthy of a community with a unique aviation heritage, and it enabled Wichita to avoid building an airport some distance from the city center, as has been found necessary in other regional centers such as Kansas City and Denver.¹⁹⁶

The other major project in which Robert Morton played an important role was expansion of the Wichita water system to meet the needs of a large and growing population and existing and anticipated future industry. Morton served as special water counsel to the City of Wichita. His tasks included handling extensive litigation over Wichita's rights to pump water from wells in the Equus Beds, an aquifer north of Wichita, and a bond issue, approved by Wichita voters in 1956 by a vote of 63-37%, to acquire storage capacity in Cheney Reservoir, a Bureau of Reclamation project on the North Fork of the Ninnescah River, west of Wichita.¹⁹⁷

In other judicial developments in Kansas in the early 1960s, Arkansas City lawyer Frank G. Theis reportedly was considered for the newly-created District Judge position. He had mounted a spirited challenge to the reelection bid of U.S. Senator Andrew F. Schoeppel in 1960, and it became evident that Schoeppel was going to block the nomination. George Templar, also of Arkansas City, received the appointment. Although he was nominated by President Kennedy, Templar had a long record of service as a Republican elected official and appointee, including the Kansas House of Representatives, United States Attorney by appointment of President Eisenhower, and candidate for the Republican gubernatorial nomination in 1954. Schoeppel died about a year into his third term in the U.S. Senate, and Frank G. Theis was appointed to the District Court in 1967.¹⁹⁸

Two bankruptcy cases from the District of Kansas were decided by the Tenth Circuit late in 1962. Judge Hill, who had moved up to the appellate bench earlier in the year, had decided both cases while sitting as trial judge. In the bankruptcies of two affiliated corporations engaged in the manufacture of prefabricated housing, the validity of a materialman's claimed lien was challenged by the trustee. The referee ruled in favor of the trustee, but Judge Hill reversed, and his decision was affirmed by the Court of Appeals.¹⁹⁹

In the bankruptcies of a corporation and two affiliated individuals, a dispute arose between the trustee and two Mexican companies over a large quantity of twine in the possession of the corporate debtor at

¹⁹⁵ *Christman v. City of Wichita*, 209 F.2d 639 (10th Cir. 1954).

¹⁹⁶ Emory L. Cox, "The New Wichita Airport: A \$10 Million Model Facility Built from Scratch in 3½ Years," KAN. GOV'T J. (October 1954).

¹⁹⁷ *Bauman v. Smrha*, 145 F. Supp. 617 (D. Kan. 1956), *affirmed per curiam*, 352 U.S. 853; *Coffman v. City of Wichita*, 165 F. Supp. 765 (D. Kan. 1958), *affirmed*, 261 F.2d 112 (10th Cir.) (Mem.); *Collins v. City of Wichita*, 225 F.2d 132 (10th Cir. 1955), *cert. denied*, 350 U.S. 886, also 254 F.2d 837 (10th Cir. 1958); *Williams v. City of Wichita*, 230 F.2d 959 (10th Cir. 1956) (Mem.), and 279 F.2d 375 (10th Cir. 1960); *Williams v. City of Wichita*, 184 Kan. 53, 334 P.2d 353 (1959), and 190 Kan. 317, 374 P.2d 578 (1962), *appeal dismissed*, 375 U.S. 7 (1963), *rehearing denied*, 375 U.S. 936.

¹⁹⁸ Templar, *The Hon George Templar 1904-1988*, 59 J. KAN. BAR ASS'N No. 6, pp. 20-22 (July 1990); Templar, *The Honorable Frank G. Theis*, 60 J. KAN. BAR ASS'N No. 8, pp. 24-25 (October 1991); BIOGRAPHICAL DIRECTORY (JUDICIARY), 800, 801.

¹⁹⁹ *Washington v. Houston Lumber Co.*, 310 F.2d 881 (10th Cir. 1962).

the time of filing. The Mexican companies filed reclamation petitions and claimed that they had shipped the twine in the belief that the recipient was a Nebraska company registered with the Mexican twine trade association as an approved buyer, and that the debtor was not an approved buyer. They contended that they were entitled to rescind the transactions. The twine was sold pending determination of the rights to the proceeds. The referee denied the reclamation petitions, and Judge Hill reversed. His decision was affirmed by the Tenth Circuit.²⁰⁰

Joseph Dawes retired at the end of 1970 and returned to Leavenworth after serving for a decade as a bankruptcy referee. He died there in 1972. His successor was J. Milton Sullivant. Born in 1917, Sullivant graduated from the University of Kansas Law School in 1942 and was admitted to the bar. He briefly joined a law firm in Paola, Kansas, and then served in the U.S. Navy. After a few years, he moved to Kansas City, Kansas. He served as Assistant County Attorney of Wyandotte County and continued his private practice. Sullivant served as President of the Wyandotte County Bar in 1967, and at the time of his appointment as referee was senior partner of a law firm with an active practice in the field of insurance defense law.²⁰¹

Also in the early to mid-1970s, there were two additions to the U.S. District Court bench. Judge Earl O'Connor of Olathe, had been U.S. Magistrate and then on the Kansas Supreme Court.²⁰² Judge Richard D. Rogers of Manhattan had served in both houses of the Kansas Legislature, and was President of the Kansas Senate at the time of his appointment.²⁰³

²⁰⁰ *Potucek v. Cordeleria Lourdes*, 310 F.2d 527 (10th Cir. 1962), *cert. denied*, 372 U.S. 930 (1963).

²⁰¹ II MARTINDALE-HUBBELL LEGAL DIRECTORY 983 (1969); Baldwin City *Signal*, March 29, 2000. When he was in private practice, Judge Sullivant argued numerous appeals in the Eighth and Tenth Circuits and the Supreme Court of Kansas. During his service as U.S. Magistrate, Judge Sullivant received national attention when he imposed sentence on several Kansas City Royals baseball players who had been convicted of involvement in a drug conspiracy. *New York Times*, December 20, 1983, P. D23. After his retirement as U.S. Magistrate in 1985, Judge Sullivant served as trustee in the liquidation of an insolvent savings and loan association. *Resolution Trust co. v. Cruce*, 972 F.2d 1195 (10th Cir. 1992). Judge Sullivant died on March 22, 2000.

²⁰² BIOGRAPHICAL DIRECTORY (JUDICIARY), 737.

²⁰³ *Id.*, 744.