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Source type text book
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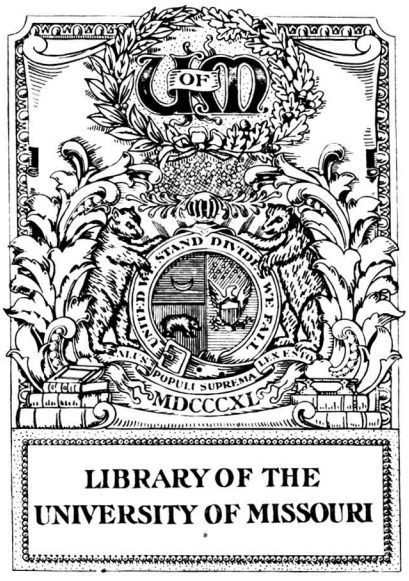
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THE ORGANIZATION OF THE COURTS OF MISSOURI.

by

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SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS

in the

GRADUATE SCHOOL

of the

UNIVERSITY OF MISSOURI.

1915

THE ORGANIZATION OF THE COURTS OF MISSOURI

BIBLIOGRAPHY

Journal of constitutional convention of 1820 -------St.Louis,1820

Missouri constitution of 1820 in Revised Statutes for 1825 pp.43-64.

Journal of constitutional convention of 1845 -------Jefferson City,1846.

Constitution of 1865 in Revised Statutes for 1865 pp. 19-46.

Constitution of 1875 in Revised Statutes for 1879 pp. Lii-xciii.

Missouri Revised Statutes:

1825----------St.Louis, 1825

1835----------" " 1835

1845----------" " 1845

1855----------Jefferson City, 1856

1865---------- " " 1866

1870 (Wagner's edition) --St.Louis, 1870

1879----------Jefferson City, 1879

1889---------- " " 1889

1899---------- " " 1899

1909---------- " " 1909

Session Acts of the Missouri Legislature:

1804-1836 ("Territorial Laws of Missouri",2vol.) --JeffersonCity,1842

1836-7 (9th General Assembly) ------St.Louis, 1841

1838-9 (10th " ") ------Jefferson City, 1841

1840-1	(11th General Assembly)	-------Jefferson City,	1841
1842-3	(12th " ")	------- " "	1843
1844-5	(13th " ")	------- " "	1845
1846-7	(14th " ")	------- " "	1847
1848-9	(15th " ")	------- " "	1849
1851	(16th " ")	------- " "	1851
1852-3	(17th " ")	------- " "	1853
1855	(18th " ")	------- " "	1856
1856-7	(19th " ")	------- " "	1857
1857	(19th adj. " ")	------- " "	1857
1858-9	(20th General Assembly)	------- " "	1859
1859-60	(20th adj. " ")	------- " "	1860
1860	(21st General Assembly)	------- " "	1861
1862-3	(22nd " ")	------- " "	1863
1863	(22nd adj. " ")	------- " "	1864
1864-5	(23rd General Assembly)	------- " "	1865
1865-6	(23rd adj. " ")	------- " "	1866
1867	(24th General Assembly)	------- " "	1867
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1869	(25th General Assembly)	------- " "	1869
1870	(25th adj. " ")	------- " "	1870
1871	(26th General Assembly)	------- " "	1871
1871-2	(26th adj. " ")	------- " "	1872
1873	(27th General Assembly)	------- " "	1873
1874	(27th adj. " ")	------- " "	1874

1875	(28th General Assembly) -------	Jefferson City,	1875
1877	(29th " ") -------	" "	1877
1879	(30th " ") -------	" "	1879
1881	(31st " ") -------	" "	1881
1883	(32nd " ") -------	" "	1883
1885	(33rd " ") -------	" "	1885
1887	(34th reg & adj ") -------	" "	1887
1889	(35th General Assembly) -------	" "	1889
1891	(36th " ") -------	" "	1891
1892-3	(extra 36th and reg 37th General Assembly) -------	" "	1892
1893	(37th General Assembly) -------	" "	1893
1895	(38th " ") -------	" "	1895
1897	(39th " ") -------	" "	1897
1899	(40th " ") -------	" "	1899
1901	(41st " ") -------	" "	1901
1903	(42nd " ") -------	" "	1903
1905	(43rd " ") -------	" "	1905
1907	(44th " ") -------	" "	1907
1909	(45th " ") -------	" "	1909
1911	(46th " ") -------	" "	1911
1913	(47th " ") -------	" "	1913

United States Statutes-at-large: (vol ii) Boston 1850
(vol iii)

Missouri Supreme Court Reports (vol. 77 ----St.Louis,1884
(vol.209 ----Columbia,1908
(vol.258 ----Columbia,1915

ABBREVIATIONS USED IN FOOT-NOTES:

T.L. for Territorial Laws.

L. for Session Acts.

R.S. for Revised Statutes.

Const. for Constitution.

U.S.Stat. for United States Statutes-at-large.

THE ORGANIZATION OF THE COURTS OF MISSOURI

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THE ORGANIZATION OF THE COURTS OF MISSOURI

Chapter 1: 1803-1820.

When the Louisiana Purchase was made in 1803, the president was authorized by Congress to establish a provisional government in the district. (1) Accordingly he ordered Captain Amos Stoddard to go from New orleans to St.Louis and take charge of upper Louisiana. Captain Stoddard raised the American flag at St.Louis March 9,1804. He acted as provisional governor over the territory until Congress could make other arrangements. This was done by an act passed March 26,1804, soon after Captain Stoddard took charge.(2) This act divided the territory included in the purchase into two parts. The northern part, beginning at the thirty-third degree of north latitude, became the District of Louisiana. It was attached for government purposes to the territory of Indiana. The governor and judges of Indiana became the government of the district.

(1) U.S.Stat-at-large V.II,p.245 --Oct.1,1803.
(2) Ibid. p.283.

By the next year, after frequent requests by the inhabitants, the District was given a government of its own. (3) March 3,1805 Congress provided that a governor, a secretary, and three judges should be appointed by the president for the Territory of Louisiana. Appointments were to be confirmed by the Senate. The governor was to serve three years, the other officers, four. The governor and judges together formed the legislature. The government was modeled upon that originally established in the old north-west territory.(4)

As the territory developed, a demand for representative government arose. June 4,1812 the territory was given a more elaborate organization under the name of the "Territory of Missouri." (5) The governor was retained with unchanged executive powers. A bicameral legislature was substituted for the unicameral body consisting of governor and judges. The lower house was elected, the upper, consisting of nine members, was appointed by the president on the nomination of the lower house. The organic act of April 29,1816 made the upper house elective also. (6) It was made to

(3) Ibid. p. 331.
(4) Northwest ordinance,July 13,1787, McDonald's Source Bk., p.209
(5) U.S.Stat-at-large V.II, p.743
(6) U.S.Stat-at-large V III, p 328

consist of one member from each county, elected by the voters of the county. This is sufficient to give a general idea of the government of Missouri during the territorial period. The acts above mentioned were the only organic acts passed during the period.

The act of 1804, as has been noted, placed the government in the hands of the officials of Indiana territory. The judges of Indiana were to hold two courts annually in the District of Louisiana. Their jurisdiction was the same as in Indiana. When a separate court was provided for the Territory of Louisiana the following year, it was practically the same in form as the Indiana court. The jurisdiction of the court and the compensation of the judges were the same as in Indiana. It was called the General Court. In 1810 the territorial legislature gave the court chancery jurisdiction. (7) Previously it had had only common law jurisdiction.

The organic act of 1812 (8) changed the name of this court from the General Court to the Superior Court. The jurisdiction of the court was changed.(9) It now had jurisdiction in all criminal cases and

(7) I T.L. 240, Par.1 Oct.26,1810.
(8) Supra p. 7.
(9) I T.L. 11 Par. 10

exclusive jurisdiction in all that were capital; and original and appellate jurisdiction in all civil cases involving as much as $100. Previously its appellate jurisdiction had not been thus limited and it had not had exclusive jurisdiction in capital cases.

As the population increased it became more and more burdensome for cases to be taken to the place where the superior court met. To meet this difficulty it was provided that the superior court should go on circuit.(10) Two terms were to be held in each county annually. This was quite an improvement, but was still unsatisfactory. A person accused of a capital offense might have to remain in jail several months before coming to trial. Moreover, it was too burdensome upon the court to hold two terms annually in each county. So in 1815, when the circuit courts were established, one regular term of the superior court was ordered in each county. (11) Whenever a capital case was to be tried, a special court was to be called in the county in which the offense was committed. (12) This court was to consist of two judges of the superior court. Its legality was

(10) I T.L. 335, Par 1. Jan. 19,1814
(11) I T.L. 349, Par. 15 Jan. 4,1815 See infra p 18.
(12) Ibid p.350, par 16

doubtful, inasmuch as the organic act vested exclusive jurisdiction over such cases in the superior court. The defense of the court's legality lies in the fact that two judges were a quorum of the superior court. Doubt regarding the validity of the law probably influenced the passage of another act in the following year by which two sessions of the superior court annually were provided for in each of the two circuits. (13) This furnished relief for the courts. On the other hand, the interests of the accused were safeguarded by the provision that special sessions of the court should be held for the trial of capital offenses. The difficulty was finally solved by the organic law of 1816 which took away from the superior court its exclusive original jurisdiction in capital cases and conferred this jurisdiction upon the circuit courts, which were also given original jurisdiction over all civil cases of the value of $100. The superior court was given appellate jurisdiction over all cases in the circuit court. (14)

(13) I T.L. 444, Paragraph 1, Jan. 21,1816
(14) U.S.Stat-at-Large Vol. III, p.328 Paragraph 3

In accordance with the authority granted by the act of 1804 the governor and judges established inferior courts. (15) The first of these was the court of general quarter sessions of the peace. (16) It was to consist of the justices of the peace, or any three of them, in each county (then called district). The justices of the peace were appointed by the governor to serve during good behavior. There were to be four regular sessions annually and as many special sessions as should be necessary. This court had criminal jurisdiction. Appeals lay to the General Court. The court was an adaptation of the English court of quarter sessions, coming through the colonies, the early states, the northwest territory, and Indiana territory.

By this same act a court of common pleas was established in each county. (17) It was to consist of a "competent number" of persons in each county, any three of whom were to constitute a quorum. They were to be appointed by the governor. The court had civil jurisdiction and corresponded in form to

(15) I T.L. 58-64, Oct. 1,1804. All 1804 laws were passed by the governor and judges of Indiana Territory.
(16) I T.L. 59, Paragraphs 1-7
(17) I T.L. 62, " 16-24

the court of quarter sessions. No compensation was provided for the judges. Appeals lay to the General Court.

In 1807 the courts of quarter sessions and common pleas were for all practical purposes united. (18) Nominally two courts were maintained, and separate records were kept for each, but the same judges sat in each court. (19) For the first three days of each term the court was called the court of quarter sessions, during the remainder it was the court of common pleas. (20) In the former capacity it exercised criminal jurisdiction, in the latter, civil. There were from three to five judges in each county, appointed by the governor and holding office for a term of four years, unless sooner removed for misconduct in office. Evidently the honor of being judge was not sufficiently desirable to ensure satisfactory performance of the duties of the position; so provision was made for the payment of a salary of three dollars a day during the term of the court. (21) This is the first time that the judge of a local court was given remuneration.

(18) I T.L. 105. July 3,1807.
(19) This was probably only legalizing an existing state of facts. It seems that from the beginning the same persons had always acted as justices of the Peace and of the court of common pleas.
(20) I T.L. 107, Paragraph 3
(21) I T.L. 107, " 5

Probate courts were established in each county by an act of 1804. (22) Each consisted of one judge appointed by the governor. No term was specified and no compensation provided. Four regular sessions and as many special sessions as should be necessary were to be held each year. When a final decree was to be passed, the probate judge was to call two judges of the court of common pleas to sit with him. Appeals lay to the superior court. Probate courts were abolished in 1813 and their duties conferred upon the court of common pleas. (23)

Justices of the peace were established in 1804. (24) Each justice had jurisdiction co-extensive with his county over minor civil cases. Appeals lay to the court of common pleas. The jurisdiction was changed from time to time in minor details. In the beginning every action for debt was recognizable before them. In 1810 their jurisdiction was limited to causes involving less than $60 and arising in the township in which the justice and the defendant resided. (25)

(22) I T.L. 57. Oct. 1, 1804.
(23) Infra p.17 I T.L. 275, paragraph 11. Aug. 20,1813
(24) I T.L. 20, Oct.1,1804
(25) I T.L. 243, Oct. 26,1810.

The act of 1807 mentioned above in connection with the court of common pleas established also courts of oyer and terminer for the trial of capital offenses.(26) The court consisted of one judge of the superior court and one or more of the common pleas judges. Sessions were to be held whenever necessary at the place of holding the court of common pleas. Bail was not allowed in capital cases; so to avoid injustice to the accused some means of securing a speedy trial was necessary. This court was quite a satisfactory device. It continued until the passage of the organic act of 1812, vesting exclusive jurisdiction over capital cases in the superior court. (27) This act, of course, made the court of oyer and terminer illegal. It seems to have been allowed to lapse. No law can be found abolishing it.

Orphans' courts were established in 1807. (28) They were the courts of common pleas under another name. They chose guardians for orphans under fourteen, heard complaints of apprentices, and performed other duties of a similar nature. This court was abolished in 1815. (29)

(26) Supra p. 13
(27) Supra p. 10
(28) I T.L. 140. July 4,1807.
(29) I T.L. 420, Paragraph 82. Jan. 21,1815

The organic act of 1812 was followed by important changes in the organization of the courts. The period from this time to the adoption of the constitution of 1820 was marked by the consolidation of the courts and the increase of their functions. The courts were given very extensive administrative powers. (30) Throughout the greater part of this period the chief administrative authority of the county was a court. An act of the territorial legislature passed in 1813 vested this power in the court of common pleas. (31) The number of judges was fixed at three, instead of varying from three to five at the governor's discretion. From time to time new administrative duties were added, such as conducting elections (32) appointing the county surveyor, (33) and overseeing road work in the county. (34)

(30) This was true of the period from 1804-1806. From 1806 to 1813 there was a separation of administrative and judicial functions; also in 1815.
(31) I T.L. 273, Paragraph 3. Aug. 20,1813
(32) I T.L. 297, Paragraph 5. Jan. 4,1814.
(33) I T.L. 304, Paragraph 1. Jan. 10,1814.
(34) I T.L. 323, Paragraph 1. Jan. 18,1814.

In 1815 there was a brief reversion to the system of separation of administrative and judicial functions. (35) A county court was established to take over the administrative functions of the county. This was a court in name only, since it had practically no judicial functions. These were granted to the circuit courts described below. (36) The county court was composed of the justices of the peace, any three of whom constituted a quorum.

In 1816 these county courts were abolished and their duties given to the two circuit courts. (37) This was the extreme of concentration. One court was exercising the executive and judicial functions of several counties.

The court of common pleas which, as has been pointed out, was the chief administrative authority of the county from 1813 to the establishment of the county court in 1815, was also the chief judicial authority. (38) It took the place of the old court of common pleas, the court of quarter sessions, the probate court, and the orphans' court. It was composed of three judges appointed by the governor for a term of four years. The compensation was three dollars per diem. Three terms of the court were ordered annually.

(35) I T.L. 345, Paragraph Jan 4,1815
(36) Infra p.18
(37) I T.L. 449, Paragraph 15. Jan 21,1816
(38) I T.L. 272-277. Aug. 20,1813 Juris p 273,Par 3

In 1815 the court of common pleas was abolished. (39) Two circuit courts were established to take over all the judicial functions formerly exercised by the courts of common pleas in their circuits. This resulted in a decrease of the number of offices and a still further concentration of judicial power. The circuit court consisted of one judge appointed by the governor to hold office throughout the territorial period, unless sooner removed for misconduct or malfeasance in office by a two-thirds vote of both houses of the legislature. This term is an indication of the fact that it was believed that Missouri would soon be admitted into the Union. Three terms of the court were to be held annually in each county of the circuit. The salary was $1500 a year payable quarterly out of the state treasury. The judge was required to be learned in the law and to have resided in the territory one year. This was the first appearance of the professional judge in the local courts. In 1818 an additional circuit court was provided. (40)

(39) I T.L. 349, Paragraph 12. Jan 4,1815
(40) I T.L. 616, Paragraph 1. Dec. 23, 1818.

The justices of the peace were shorn of some of their powers during these years. Except for the short time that they were members of the county court, they could act only as individual justices. No important changes were made in their jurisdiction. In 1814 they were given jurisdiction over cases involving up to $90. (41) In cases involving no more than $10 their judgment was final. In other cases either party might demand a jury of six. In cases involving more than $20 appeals lay to the court of common pleas. In 1818 justices were given jurisdiction over actions of trespass and damage suits involving as much as $50, except where title to lands was involved. (42) In cases where the sum in dispute was over $20 either party might demand a jury of six. (42a)

The organic act of 1816 recognized the system of courts established earlier in the year by the territorial legislature. The main features of the act have been discussed above in connection with the superior court.(43) With a few minor exceptions already noted this system of courts continued unchanged until the adoption of the constitution of 1820 and the admission of Missouri into the Union.

(41) I T.L. 306,Paragraph 1. Jan 11,1814.
(42) I T.L. 620,Paragraph 1. Dec. 23,1818.
(42a) Ibid paragraph 5.
(43) Supra p.11.

Chapter 2: 1820-1865

The constitution of 1820 introduced important changes in the organization of the courts. (1) There was a reaction from the extreme centralization of the territorial period. Administration and judicial matters were separated and each county had its own administrative body. The grouping of counties into circuits for the administration of justice was continued.

The constitutional provisions were complete, providing for the general organization of all courts. A supreme court, circuit courts, and a court of chancery were provided for. (2) Judges of all these courts were to be appointed by the governor, by and with the advice and consent of the Senate, to hold office during good behavior. There was an ineffectual effort in the convention to create a term of six years. (3) Judges could not be under thirty or over sixty-five years old. (4) Their compensation could not be diminished during their term in office, and was not to be less than $2000 annually. (5) This was changed by constitutional amendment in 1822. (5a)

(1) Art. V deals with the judiciary.
(2) Constitution 1820 Art. V, par. 1.
(3) Journal of constitutional convention of 1820 p 23.
(4) Const. 1820, Art. V, Par. 14
(5) Ibid Par. 13
(5a) Infra p. 21.

Removal was by impeachment or, when there was no cause for impeachment, by the address of two-thirds of both houses of the legislature. (6) All courts were to appoint their own clerks, to hold during good behavior. (7)

The highest court was the Supreme Court. (8) It was practically the old Superior Court under a new name. It was to consist of three judges, two of whom were to constitute a quorum. Their salary was to be not less than $2000 a year. This minimum was removed by a constitutional amendment of 1822. (9) The court had appellate jurisdiciton only, except that it could issue writs of habeas corpus, mandamus, and other original remedial writs. The supreme court exercised a general superintending control over the inferior courts. The plan of having the court go on circuit was retained. The constitution provided that the legislature should divide the state into not more than four districts, in each of which the court was to hold two sessions annually, (10) but General Assembly was given power to abolish this requirement and provide for sessions of the court at one place only.

(6) Const. 1820 Art. V, Par 1.
(7) Ibid Par. 15
(8) Ibid. Pars. 2-5
(9) Amend. Ii R.S. 1825 p.66
(10) Const. 1820 Art. V Par. 5

These constitutional provisions were elaborated by the legislature. By an act of November 25,1820 four districts were established. (11) These were the same as the circuits established for the circuit courts.(12) A few weeks later the court was organized and its procedure arranged.(13) During the vacation of the court one judge could issue writs of supersedeas to the circuit or chancery courts. No rehearing was allowed on any writ of error or appeal which had once been dismissed on its merits. In cases of a division of opinion on an appeal or writ of error the decision of the lower court was allowed to stand. The court had general power over its rules of procedure, though the legislature could step in and change them. At first the salary of supreme judges was fixed at $2000 (14), but when the $2000 minimum was removed the salary was reduced to $1100. (15) In 1843 the court was ordered to hold two sessions annually at Jefferson City. These were to be the only sessions of the court. (16)

(11) I T.L. 672, Paragraph 1
(12) Infra p 24
(13) I T.L. 717. Dec. 12, 1820
(14) I T.L. 704. Dec. 8,1820
(15) I T.L. 975. Dec. 9,1822
(16) L. 1842-3, p. 48. Feb. 24,1843.

The constitution provided that the state should be divided into convenient circuits, in each of which there should be a circuit judge. (17) He was required to reside in his circuit after appointment. The other qualifications were the same as those for supreme judges. (18) The circuit court had jurisdiction over all cases not otherwise provided for. It was to exercise chancery jurisdiction until such time as inferior chancery courts should be provided for by the legislature. Inferior courts and justices of the peace were subject to the superintending control of the circuit court.

The legislature imposed additional qualifications upon the circuit judges. (19) They were required to be learned in the law and to have resided in the state one year. Three terms of the court were to be held annually in each county. The court was given jurisdiction over all criminal cases not otherwise provided for; exclusive original jurisdiction over all cases not suable before the justices of the peace or county courts; chancery jurisdiction; and appellate jurisdiction from the county courts and justices of the peace.

(17) Art. V, Paragraph 7
(18) Supra p. 20
(19) I T.L. 682. Nov. 28, 1820.

Appeals lay from it to the supreme court. At first there were four circuits. This number was increased from time to time. The salary was fixed at $2000 (20), but was soon reduced to $1000 after the constitutional amendment of 1822. (21) On different occasions there was agitation for an increase in this amount. (22)

There soon grew up a sentiment in favor of electing judges for limited terms. This resulted in the proposal of constitutional amendments. A number were proposed by the legislature in 1832 and voted on in 1834, but those amendments calling for the election of judges failed to pass. (23) The amendments as proposed provided for election of judges by the General Assembly. There was still little demand for popular election. The term proposed was six years. All circuit judgeships were to be vacated January 1,1836. This amendment and one vacating all the offices of clerk and making them elective were the only amendments to pass. The only possible thing that this amendment accomplished was to oust the judges. The offices were filled in the same manner as before.

(20) I T.L. 683. Const. 1820, Art. V, Paragraph 13
(21) I T.L. 975. Dec. 9,1822.
(22) Mo. Argus V IV No. 35.
(23) Senate Journal 1834-5, p 60

In 1843 the number of annual terms of the circuit court was reduced to two in each county, but all the circuit courts, except that of St.Louis County were allowed to hold special sessions whenever a prisoner was in jail more than eight weeks before the time of the next term to begin. (24) The existence of the St.Louis criminal court made such terms unnecessary in St. Louis. (25)

In the constitutional convention of 1820 there was considerable debate over the question of establishing a court of chancery. (26) In spite of the opposition of a large element of the convention, the office of chancellor was established. (27) The chancellor had original and appellate jurisdiction in matters of equity and exercised a general control over executors and guardians. Appeals lay from his decision to the supreme court. The legislature provided that the sessions should be held in the supreme court districts in the places of holding the supreme court. (28) The compensation was fixed at $2000. (29) The chancellor had the power to appoint a clerk in each district and to appoint commissioners

(24) L. 1843, p.57. Jan 16,1843.
(25) Infra p.28
(26) Journal of Constitutional Convention of 1820, pp.23ff
(27) Const. 1820 Art.V,paragraph 1
(28) T.L.I, p.701,paragraph 2. Dec. 8,1820.
(29) I T.L. 704. Dec. 8,1820.

in chancery. Suits against the state were to be tried in the court of chancery.(30) When the chancellor's decision was appealed from and his decree confirmed, 10% interest might be awarded in favor of the appellee from the time of the appeal to the confirmation of the decree. This was to prevent appeals intended merely to lengthen proceedings. The chancellor drew up his own rules of procedure. The court of chancery was abolished in 1822 and its duties given to the supreme court and the circuit courts. (31)

Probate courts were established in each county by an act of the legislature.(32) The court consisted of one judge, appointed by the governor and Senate for a term of four years. The judge was required to be twenty-two years old, a citizen of the United States and a resident of the state for at least one year. The court had exclusive original jurisdiction over cases involving wills, executors, guardians, etc. when the sum in dispute was less

(30) Art.III, paragraph 25 said that the legislature should provide a method for suing the state.
(31) Amend. II R.S.1825 p 66
(32) R.S.1825 p. 269. Jan.7,1825. Previous to this time the county court had exercised probate jurisdiction.

than $200; and concurrent jurisdiction with the circuit court in larger cases. These courts were soon abolished and their duties given again to the county courts, which were administrative tribunals with practically no judicial power. (33)

The justices of the peace were carried over from the territorial period with practically unchanged powers. In 1820 justices were elected by a majority of both houses of the legislature, instead of being appointed by the governor. The senators and representatives nominated justiees in their districts. The county court filled vacancies. Nominations were to be by a petition of twenty voters, the petition to nominate twice the number of justices to be chosen. The term was four years. (34) Justices were soon given jurisdiction over breach of the peace cases. (35) A law of 1824 provided that the existing justices should continue in office until new justices could be appointed.(36)

(33) II T.L. 125, Par 4, Jan 2,1827.
(34) I T.L. 642. Oct. 31,1820
(35) I T.L. 985. Dec. 14,1822.
(36) II T.L. 2. Dec. 10,1824.

In 1825 it was provided that there should not be more than four justices in each township. (37) Appeals were allowed in all cases over $1. In 1835 the office was filled by popular election. (38) There were to be not more than four justices to a township, elected by the voters of the township. Exceptions were made to this rule from time to time. St.Louis was allowed two justices to each ward.(39) The legislature passed a law declaring that justices had jurisdiction over corporations.(40) Many special laws were passed concerning the justices of various counties.

For some time the legislature established courts by general acts. As some parts of the state grew much more rapidly than others, the same system of courts would not work everywhere; so special tribunals came to be established in particular communities as they were needed. The first of these was the criminal court of St.Louis County, which took over the jurisdiction of the St.Louis circuit court in criminal matters. (41) The term was six years and the qualifications the same as those for

(37) R.S. 1825, p.469. Jan. 4,1825.
(38) R.S. 1835, p. 344.
(39) L. 1838-9,p.77. Feb. 9,1839.
(40) L. 1851 p.232. Feb. 17,1851.
(41) L. 1838-9 pp. 28-30. Jan. 29,1839.

circuit judges. The salary was $1000. The judge was allowed to act as attorney in civil cases. This court was established over the governor's veto.(42) He believed that the bill founding the court was unconstitutional, for the reason that the court was not an inferior court within the meaning of the constitutional provision and therefore could not be established by the legislature.(43) According to the constitution the circuit court had control over inferior courts.(44) Appeals were allowed to go from the criminal court directly to the supreme court, if the parties to the suit so desired.(45) Appeals from the justices of the peace might go to the criminal court instead of to the circuit court. Thus the circuit court was deprived of a large part of its power. The governor believed that an inferior court was one with limited jurisdiction, subject absolutely to the control of the circuit court.

In 1841 a court of common pleas was established for St.Louis county.(46) It was composed of one

(42) Journal of Senate, 1838-9, pp. 260-262
(43) "Judicial power shall be vested ****in such inferior courts as the general assembly may from time to time ordain and establish." Art. V, paragraph 1
(44) Const. 1820, Art. V, paragraph 8
(45) L 1838-9, p. 29,paragraph 6.
(46) L.1840-1, p. 50. Jan 21,1841.

judge, appointed in the same way as the circuit judges, for a term of six years. The judge was given a salary of $1000 and was allowed certain fees in addition. Four terms of the court were to be held each year. The court had exclusive original jurisdiction over civil cases based on contract involving up to $500, when they were not cognizable before the justices of the peace or the county courts. It had concurrent original jurisdiction with the circuit court in matters involving more than $500 and referring to vessels and boats; and concurrent jurisdiction with the justices of the peace except in such cases as the law provided that the justices should have exclusive jurisdiction. It exercised a general control over the justices of the peace and heard appeals from their decisions unless such appeals were prohibited by law. The circuit court had general control over the court of common pleas and heard appeals from its decisions, unless one of the parties to the controversy objected in which cases the appeal went directly to the supreme court.

In 1845 a constitutional convention at Jefferson City drew up a constitution. The constitution was not ratified by the voters, but its provisions were

of interest as they show what sorts of changes were being agitated in the court system. (47)

The supreme court would have been kept unchanged, except that a twelve year term was provided and an additional qualification imposed: five years residence in the state.

Judges of the circuit court were to be chosen by popular election for a term of six years. Elections for judges were to be held at different times from those for other officials. This was a wise provision, and the need of such an arrangement is very much felt at present. It tends to take the judges out of politics. Vacancies were to be filled by special election if the remaining term was more than one year, if not, by appointment by the governor.

The provisions dealing with the courts were very brief. The legislature was left with very wide powers with regard to the courts.

Many of the changes which this constitution provided for were brought about within the next few years by means of constitutional amendments. In 1849 twelve year terms were provided for the supreme court judges. (48) Judges were to be eligible to

(47) Art. V of the proposed constitution dealt with the judiciary.
(48) Amend. Art. Iv. R.S. 1855, p.93.

succeed themselves. By this time the democratic movement was beginning to be more strongly felt in Missouri. So shortly after this reduction in the term, elective tenure was introduced during the legislative session of 1850-1 with a still shorter term: six years.(49) Vacancies were to be filled by special elections if the remaining term was more than twelve months, by appointment by the governor if the term was less than twelve months. The General Assembly was to provide for the procedure in cases of ties, contested elections, etc. This amendment went into effect in 1851, the first election being held on the first Monday in August, at which time all offices of judge of the supreme court were vacated.

In 1849 the supreme Court was made to go on circuit once more. Two sessions annually were ordered to be held at St.Louis.(50) Two annual sessions at St. Joseph were ordered in 1864. (51)

(49) Amend. Art.VI. R.S.1855, p.93
(50) L.1848-9,p.37. Mar. 10,1849.
(51) L.1863-4, p.23. Feb. 15,1864.

The salary of supreme court judges was increased several times during this period. First it was made $1500 (51a); then $1800 (51b); then $2500 (51c); and finally $3000 (51d)

During the legislative session of 1848-9 changes were made in the constitution regarding circuit courts, but not so radical as those embodied in the proposed constitution of 1845. Circuit judges were to be appointed for a term of eight years. (52) They were eligible for re-appointment. All offices of circuit judge were vacated March 1,1849. Article five of the amendments, passed at the same time, provided that a circuit judge could hold court in other circuits than his own.(53) This prevented the business of a court from coming to a standstill in case a judge was prevented from attending the sessions. In 1851 the office of circuit judge was made elective and the term reduced to six years.(54) Vacancies were to be filled by special election if the term remaining was more than six months, by appointment by the governor if it was less than six months.

(51a) L. 1850-1, p. 280. Mar. 3, 1851.
(51b) L. 1852-3, p. 145. Feb. 24, 1853.
(51c) L. 1854-5, p. 183. Feb. 22, 1855.
(51d) L. 1859-60, p. 90. Jan. 16,1860.
(52) Amend. Art. IV. R.S. 1855, p. 93.
(53) Amend. Art. V,R.S.1855, p. 93.
(54) Amend. Art. VII. R.S. 1855, p. 94.

The salary of circuit court judges was increased. In 1853 it was made $1250 (54a); in 1855, $1500 (54b); and in 1865, $2000 (54c).

When the era of special legislation began, soon after 1840, probate courts were established in many counties. The first of these was in St.Louis in 1845. (55) The court consisted of one judge who was elected by popular vote. In 1865 there were about forty such courts. The accompanying table I shows what counties had them. The general features of these probate courts was the same, though the powers differed slightly in different counties. There was always one judge, elected for a term varying from four to six years. Residence and citizenship requirements were imposed. The compensation was in the form of fees. In general the courts had jurisdiction over the usual probate matters: wills, guardianships, apprenticeships, and proceedings with regard to them. Records of all rules and proceedings

(54a) L.1852-3, p.145. Feb. 24,1853.
(54b) L. 1854-5, p. 183. Feb. 22, 1855.
(54c) L. 1864-5, p. 121. Feb. 18,1865.
(55) L. 1845, p.57. Mar. 15,1845.

were kept, open to public inspection. The courts were under the supervision of the circuit court and exercised concurrent jurisdiction with it in some cases. Appeals lay to the circuit court. As a rule the jurisdiction of the probate court was limited to cases involving fairly small sums.

Courts of common pleas were also established by special acts. There were various reasons why such courts were needed. In some instances the purpose of the court was to lessen the work of the circuit court. A large town in any county, not the county seat, would demand and receive one of these courts. Likewise a portion of a county inaccessible to the county seat was given a court of common pleas. There were eleven of these courts in 1865, as the accompanying table II shows. The qualifications of judges were similar to those of circuit judges. There was a combination of the fee and salary systems. The court had civil jurisdiction and served to relieve the circuit court and the justices of the peace. It was under the control of the circuit court.

In some cases a court was formed to exercise the functions of both a court of common pleas and a court of probate. Table III shows what counties had such courts in 1865.

TABLE I.

COUNTIES HAVING A SPECIAL PROBATE COURT 1845-65

County	City	Year established	Year abolished
Adair		1847	
Andrew		1849	
Barry		1849, 1854	1849
Bates		1853	1855
Buchanan		1851	1864
Caldwell		1855	
Camden		1855	
Carroll		1860	
Cedar		1847	
Clay		1855	
Cooper		1847	
Crawford		1855	
Dade		1845	
Dallas		1847	1851
Daviess		1851	
DeKalb		1849	
Dent		1861	1863
Dunklin		1847,1860	1849
Franklin		1851	
Gentry		1849	
Greene		1847	1855
Grundy		1849	
Henry		1849	
Hickory		1849,1861	1859, 1864
Jasper		1851	
Knox		1849	1851
Lafayette		1849	
Linn		1853	
Madison		1849	1851
Marion	Hannibal	1853	
Mercer		1849,1861	1859
Miller		1865	
Moniteau		1849	
Monroe		1855	
Morgan		1847	
Newton		1847	1859
Osage		1847	1849
Ozark		1849	
Pike		1849	
Platt		1849	

County	City	Year established	Year abolished
Polk		1847, 1861	1849, 1863
Pulaski		1849	1851
Putnam		1849	
Reynolds		1859	1865
Saline		1849	
Scott		1855	1861
Schuyler		1849	1851
Shannon		1849	1851
St. Genevieve		1845	
St. Louis		1845	
Sullivan		1849	
Vernon		1861	
Wayne		1859	
Worth		1865	

TABLE II.

COUNTIES HAVING A SPECIAL COURT OF COMMON PLEAS. 1845-1865

County	City	Year established	Year abolished.
Buchanan		1853	
Boone	Sturgeon	1860	
Cape Girardeau	Cape Girardeau	1851	
Chariton	Brunswick	1855	
Clinton	Cameron	1861	
Cooper		1855	1859
Cooper	Otterville	1861	
Jackson	Kansas City	1855	
Marion	Hannibal	1845	
Pike	Louisiana	1853	
Platte	Weston	1851	
Ray		1855	1855
St.Genevieve		1855	1859
St.Louis		1841	

TABLE III.

COUNTIES HAVING A SPECIAL COURT WITH BOTH COMMON PLEAS AND PROBATE JURISDICTION, 1845-1865

County	City	Year established	Year abolished
Andrew		1855	1859
Greene		1855	
Jackson		1855	
Mississippi		1855	1857
Newton	Neosho	1860	1861

The St.Louis Land Court was established in 1853. (56) It consisted of one judge, elected for a term of six years. It had jurisdiction over cases involving land questions: the title to land, contracts over land, etc. It exercised a superintending control over such cases in other courts. The judge received the same compensation as the judge of the St.Louis court of common pleas. (57) It had control over the probate court, the law commissioner's court, and the justices of the peace. Appeals lay from it to the supreme court. Two sessions of the court were held annually.

In 1851 the law commissioner's court was made a court of record.(58) The law commissioner was an elective official with a term of six years. He performed functions for the most part identical with those of the justices of the peace. He heard appeals from them in civil cases. The circuit court had the same authority over it as over the criminal court. The court was placed under the control of the land court in 1853. The law commissioner was given fees for his services.

(56) L. 1852-3, p. 90. Feb. 23, 1853.
(57) $1000. supra p.30

By 1865, then, the court system was quite complicated. There was lack of uniformity in the organization of the courts. In different counties the courts of the same name had different jurisdiction. The general law was that probate matters should be taken care of by the county court, yet in ~~the majority~~ many of the counties there was a probate court. Uniformity was badly needed. Ordinarily a system of courts established by special acts is not satisfactory.

(58) L. 1851, p. 241. Feb. 17,1851.

CHAPTER III: 1865-1875.

The general provisions of the constitution of 1865 with regard to the courts were very much the same as those of the first constitution after its amendment in 1851. (1) Additional qualifications were imposed upon judges. Besides being thirty years old, judges were now required to have been five years a citizen and three years a qualified voter in Missouri.(2) The terms of judges were the same. (3) The compensation of judges was left to the discretion of the legislature, but no judge's salary was to be diminished during his term in office.(4) Removal of judges was still possible either by impeachment or by address of both houses of the legislature.(5) Only the two highest courts retained the power of appointing their clerks.(6)

The supreme court was composed of three judges, two of whom were sufficient for a quorum.(7) Elective tenure was provided. (8) The judges served for six

(1) Art. VI. deals with the judiciary.
(2) Const. 1865 Art. VI. paragraph 18.
(3) Ibid. Paragraphs 6,14.
(4) Ibid Paragraph 20
(5) Art. VII. Paragraph 6; Art. VI, Paragraph 19.
(6) Ibid Paragraph 22.
(7) Ibid Paragraph 4.
(8) Ibid Paragraph 7

years and "till their successors were elected and qualified." (9) They retired by rotation. The judge with the shortest time to serve was to preside. (10) The legislature was given the power to decide the procedure in case of ties and contested elections.(11) Any vacancy was to be filled by appointment by the governor until the next general election occuring more than three months after the vacancy, when a judge was to be elected to serve the remainder of the term.(12) The court had appellate jurisdiction only, except that it could issue writs of habeas corpus, mandamus, and other original remedial writs.(13) It exercised superintending control over the inferior courts. In any case in which the supreme court might be equally divided the final decision was to be left to a referee, learned in the law, appointed by the parties to the suit, or by the court, if the parties were unable to agree.(14) Judges of the supreme court were required to give their opinion in legal matters to the governor or either house of the legislature on demand. (15) Sittings of the court were to be held in

(9) Ibid Paragraph 6.
(10) Ibid Paragraph 7.
(11) Ibid Paragraph 9.
(12) Ibid Paragraph 8.
(13) Ibid Paragraph 3.
(14) Ibid Paragraph 10.
(15) Ibid Paragraph 11.

districts established by the legislature.(16) There were not to be more than four of these districts, and the legislature could, if it saw fit, provide that all the sittings of the court should be held at one place.

A new court, called the district court, was introduced by this constitution.(17) Its purpose was to relieve the supreme court. The legislature was to establish not less than five districts, each of which was to include at least three circuits. St.Louis county was not to be in any of these districts. The circuit court of that county was composed of three judges who met in general session to decide questions of law and to correct errors in trials held by the individual judges.(18) This general session performed very much the same functions as the district courts. The district court was composed of the circuit judges of the district, a majority of them constituting a quorum. Their original jurisdiction within their respective districts was the same as that of the supreme court. Appeals lay to the district court from the circuit and inferior courts within the district, with the exception of the probate and county courts. No appeal was to lie

(16) Ibid Paragraph 5.
(17) Ibid Paragraph 13.
(18) Infra p.42

from the circuit or inferior courts directly to the supreme court, except from the St.Louis circuit court.

There were comparatively few changes in the circuit courts. The legislature was ordered to establish convenient circuits, one of which should be the county of St.Louis.(19) There was to be one judge in each circuit, as formerly. The circuit court of St.Louis county was the only exception.(20) It was to have three judges. The circuit judge was elected for a term of six years.(21) Vacancies were to be filled by appointment by the governor if the remaining term was less than six months, otherwise by special election.(22) Circuits could not be changed at the session of the legislature just preceding an election for circuit judges. (23) This provision was intended to prevent unjust manipulation of the districts so as to secure the election of judges belonging to the party in power in the legislature.

The time and place of the sessions were to be determined by the legislature.(24) In case a judge was unable to hold court on account of sickness or some other cause, the judge of another circuit was

(19) Const. 1865 Art. VI. Paragraph 14.
(20) Infra p. 42 Art. VI. Paragraph 15.
(21) Const. 1865 Art. VI. Paragraph 14.
(22) Ibid Paragraph 14.
(23) Ibid Paragraph 14.
(24) Ibid Paragraph 13.

allowed to sit in his place. (25) The court had jurisdiction over all criminal cases not otherwise provided for by law and exclusive original jurisdiction over all civil cases not cognizable before the justices of the peace until the General Assembly should direct otherwise. (26) It also exercised a superintending control over the inferior courts and justices of the peace.(27)

The St.Louis circuit court was organized differently from the other circuit courts.(28) It consisted of three judges, who tried cases separately. The court en banc decided questions of law and corrected errors in trials. The judges were to retire in rotation, one every two years. Additional judges could be provided at the discretion of the legislature. This was to be the only court of record in St.Louis county having civil jurisdiction, except the probate and county courts.

The constitution provided finally that county courts should be established in each county for the transaction of county business.(29) They were the administrative authorities of the county and had

(25) Ibid Paragraph 17.
(26) Ibid Paragraph 13.
(27) Ibid Paragraph 21.
(28) Ibid Paragraph 15.
(29) Ibid Paragraph 23.

probate jurisdiction as well, but the legislature was empowered to establish separate probate courts if it saw fit.(30) Justices of the peace were also to be provided for in each county.

The first change in the supreme court was brought about by a constitutional amendment in 1870.(31) Appeals were to lie from the circuit to the supreme court. The supreme court was given the functions of the district courts, which were abolished. (32) In 1872 the number of judges was increased to five, three to make a quorum.(33) The term was at the same time increased to ten years, one judge being elected every two years, as before. In 1875 the court was required to hold only one session annually at the capital, one at St.Louis, and one at St.Joseph.(34) Previously there had been two at each place.(35) No other changes were made in the supreme court until the adoption of the third constitution in 1875.

Since the district courts were intended to take over the functions of the supreme court respecting

(30) Ibid Paragraph 23.
(31) Amendment Nov. 8,1870; L. 1870 p.500.
(32) L.1871 p.16 -Feb. 15,1871.
(33) Amendment Nov. 5,1872. L.1872 p.3 of Resolutions.
(34) L. 1875 p.33. Jan.30,1875.
(35) Supra p. 32

appeals from the circuit courts, the provisions of the Revised Statutes of 1865 referring to appeals from these courts (with the exception of the St. Louis circuit court) were made to refer to the district courts.(36) In 1868 it was enacted that a majority vote of the judges of a district should be necessary to reverse the decision of a circuit court.(37) These courts did not seem to relieve the supreme court of any of its work, but merely created an additional step in litigation; so in 1870 they were abolished by a constitutional amendment.(38)

No changes were made in the circuit courts until 1870, when two or more general sessions in each county were ordered.(39) It was provided at the same time that all circuit courts, with the exception of the St.Louis court, could hold special sessions whenever necessary, for the trial of criminal cases. (40) The existence of the criminal court made such sessions unnecessary at St.Louis. In this same year the circuit court of Gentry,Nodaway,Andrew, Holt, and Atchison counties was ordered to hold an extra session in each of those counties. Each county was to pay the judge $200 extra each year.(41) In 1871

(36) L. 1867 p.82. Mar.2,1867.
(37) L.1868 p.43. Feb.27,1868.
(38) Amendment Nov.8,1870. L.1870 p.500
(39) L.1870 p.35. Mar. 22,1870.
(40) L. L870 p.36. Mar. 22, 1870.
(41) L. 1870 p.41 Feb. 3,1870.

Jackson County was made a separate circuit, making 24 circuits in all.(42) The circuit court of Jackson county was ordered to hold two sessions annually at Kansas City and two at Independence, the county seat.(43)

Soon after the adoption of the constitution of 1865 the legislature passes an act to carry into effect the provisions regarding the St.Louis circuit court.(44) This court was to take over the functions of the St.Louis court of common pleas, the land court, and the law commissioner's court.(45) There were ordered five general and as many special terms as should be necessary.(46) The general term consisted of the court en banc, the special, of one judge. Appeals lay from the special to the general terms,(47) and from the general to the supreme court.(48) The court was allowed to classify its business and distribute it among the judges.(49) Judges were to help each other out. The salary was $4000 a year, half paid by the city and half by the state.(50) When the business of this court

(42) L. 1871,p.28. Feb.28,1871.
(43) Ibid Paragraph 3
(44) L. 1865-6,pp.70 ff. Dec. 19,1865.
(45) Ibid p.70,Paragraph 1.
(46) Ibid p.72,Paragraphs 8,9.
(47) Ibid p.73, Paragraph 14.
(48) Ibid p.74, Paragraph 17.
(49) Ibid p.73, Paragraph 15.
(50) Ibid p. 74, Paragraph 22.

became too large for three judges, the number was increased to five.(51) Soon the salary was increased to $5500, $3500 being paid by the city.(52)

The St.Louis criminal court, which had been in existence since its establishment in 1839, was continued during this period. Soon after the salary of judges of the St.Louis circuit court was increased, the salary of the criminal court judge was also made $5500,$3500 to be paid by the city.(53) No changes were made in its organization, but the jurisdiction of the court was limited by the establishment of a new court.

In order to relieve the criminal court of some of its business, the St.Louis court of criminal correction was founded in 1866.(54) A judge was to be elected with a term of four years.(55) The judge was to receive $3500.(56) The court was given exclusive original jurisdiction over all misdemeanors under state law committed in St.Louis county, with the exception of assault and battery, in which it had concurrent jurisdiction with the justices of the peace.(57) Felony cases went to the criminal court. The court was to be open at all times, and the

(51) L. 1870 p.37. Mar. 4,1870.
(52) L. 1871 p.19. Mar. 17,1871.
(53) L. 1871-2 p.283. Mar. 30,1872.
(54) L. 1865-6 pp.77ff. Mar 15,1866.
(55) Ibid p. 78,Paragraph 2.
(56) Ibid Paragraph 6.
(57) Ibid Paragraph 10.

proceedings were summary.(58) The court seemed to answer the purpose for which it was organized, for three years later it was made a court of record.(59) The judge was required to have the qualifications of a circuit judge.(60) The circuit court was to appoint a substitute in case the judge should be prevented by sickness or some other cause from holding court.(61).

In 1871 a criminal court similar to that in St. Louis was established in Jackson county.(62)

In 1873 a court of law and equity was established in Kansas City.(63) This court consisted of one judge elected for six years.(64) He was required to have the same qualifications as a circuit judge,(65) and had the powers of a circuit judge over all civil cases.(66) His salary was $2000.(67) Two terms of the court were held at Kansas City and two at Independence each year.(68) This was practically the

(58) Ibid p.79,Paragraph 11.
(59) L. 1869 pp.194ff. Mar. 15,1869.
(60) Ibid p.194,Paragraph 3.
(61) Ibid p.195,Paragraph 4.
(62) L.1871 pp.110ff. Feb.3,1871.
(63) L. 1873 pp.195ff. Feb. 18,1873.
(64) Ibid p.195,Paragraph 6.
(65) Ibid p.195,Paragraph 5.
(66) Ibid p.195, Paragraph 2.
(67) Ibid p.196, Paragraph 8.
(68) Ibid p.197, Paragraph 10.

same thing as providing for an additional circuit judge. An additional division of the circuit court could not be provided, for the constitution said that each circuit court, with the exception of that of St.Louis county, should have one judge.(69)

As in the previous period, courts of common pleas and probate were established by special acts. Some counties were given a court with both common pleas and probate jurisdiction. The accompanying tables IV,V,VI show what counties had these courts.

As a general rule, the county courts during this period consisted of three members, elected for six years.(70) Sometimes the county was divided into three districts, each of which elected one judge for the county court. This court was the chief administrative authority of the county. The general rule was that they had probate jurisdiction,(71) but many counties were given probate courts by the legislature.

Most of the laws referring to the justices of the peace during this period were special acts. In

(69) Supra p. 41 Art. VI,Paragraph 14.
(70) Wagner's Mo.Stat.1870, Art. V,Paragraph 1,p.439.
(71) Art.VI,Paragraph 23. Supra p. 42

TABLE IV.

COUNTIES HAVING A SPECIAL COURT WITH BOTH PROBATE AND COMMON PLEAS JURISDICTION 1865-1875.

County	City	Year established	Year abolished
Barry		1874	
Caldwell		1870	1873
Daviess		1867	1872
Dunklin	Clarkton	1868	
Greene		1855	
Henry		1869	
Jackson		1855	1871
Jasper		1869	
Macon		1868	1872
Newton	Neosho	1860	
Newton		1872	
Perry		1871	
Pettis		1867	1873
Ray		1867	

TABLE V.

COUNTIES HAVING A SPECIAL PROBATE COURT, 1865-1875.

County	City	Year established	Year abolished
Adair		1847,1870	1867, 1874
Andrew		1849	
Atchison		1872	
Audrain		1872	
Barry		1854	1874
Barton		1866	
Bates		1871	
Benton		1867	
Bollinger		1872	
Boone		1872	
Buchanan		1866	
Butler		1866	
Caldwell		1855,1873	
Camden		1855	
Cape Girardeau		1872	
Carroll		1860	
Carter		1866	
Cedar		1847	
Chariton		1866	
Christian		1866	
Clark		1873	
Clay		1855	
Clinton		1873	
Cooper		1847	
Crawford		1855	
Dade		1845	
Dallas		1874	
Daviess		1851,1872	
DeKalb		1849,1866	
Dent		1870	
Dunklin		1860	
Franklin		1851,1867	
Gasconade		1870	
Gentry		1849	
Grundy		1849,1866	
Henry		1849,1873	
Hickory		1867	
Holt		1870	
Howell		1866	

County	City	Year established	Year abolished
Jackson		1871	
Jasper		1851, 1866	1868
Jefferson		1872	
Johnson		1866	
Knox		1873	
Laclede		1867	
Lafayette		1849	
Lawrence		1866	
Lewis		1873	
Lincoln		1870	
Linn		1853,1866	
Livingston		1866	
Maries		1872	
Marion	Hannibal	1853	
McDonald		1870	
Mercer		1861	
Miller		1865	
Mississippi		1866	
Moniteau		1849	
Monroe		1855, 1873	
Montgomery		1870	
Morgan		1847	
New Madrid		1866	
Nodaway		1866	
Oregon		1866	
Ozark		1847, 1869	
Pemiscot		1866	
Pettis		1873	
Phelps		1866	
Pike		1849	
Platte		1849	
Polk		1867	
Pulaski		1875	
Putnam		1849	
Ralls		1866	1868
Randolph		1872	
Ripley		1870	
Saline		1849, 1871	
Scott		1866, 1873	
Shelby		1873	
St.Clair		1867	
St.Francois		1871	1873
St.Genevieve		1845	
St.Louis		1845	

County	City	Year established	Year abolished
Stoddard		1866, 1869	1868
Stone		1871	
Sullivan		1849, 1866	
Taney		1870	
Texas		1870	
Vernon		1861	
Warren		1866	
Wayne		1859	
Webster		1866	
Worth		1865	
Wright		1866	

This list of probate courts affords the most striking example of the confusion throughout the entire judicial system. In many cases probate courts were established at one session of the legislature and abolished at the next. In some cases there are two acts establishing a court in the same county, with no intervening act abolishing it. The reason for this does not appear. It may have been due to mistakes in the legislature, as the laws regarding these courts were in a very chaotic condition. It may be that the probate court in some counties lapsed during the civil war, and the second act thus merely reestablished the old court.

TABLE VI.

COUNTIES HAVING A SPECIAL COMMON PLEAS COURT, 1865-1875.

Counties	City	Year established	Year abolished
Boone	Sturgeon	1860	
Buchanan		1853	1873
Cape Girardeau		1851	
Chariton	Brunswick	1855	1875
Clark		1870	1873
Cass		1867	1874
Clinton	Cameron	1861	1872
Cooper		1855	1859
Cooper	Otterville	1861	
Jackson	Kansas City	1855	1871
Jasper	Joplin	1874	1875
Johnson		1867	1872
Lafayette		1867	1872
Lawrence		1870	1874
Linn		1867	
Livingston		1869	1872
Macon	LaPlata	1875	
Macon	New Cambria	1874	
Marion	Hannibal	1845	
Moniteau		1869	
Pike	Louisiana	1853	
Platte		1851	
Randolph	Moberly	1875	
St.Louis		1841	
Saline		1869, 1871	1871
Scott		1867	1869

1868 the jurisdiction of justices in counties over 50,000 was enlarged.(72) They were to have jurisdiction over actions based on contract involving up to $200. In cases of injury to person or property they were given jurisdiction up to $100. They were also given concurrent jurisdiction with the circuit court in some additional cases.

One additional justice was provided for towns over 2000.(73) The county court was given the power to appoint an additional justice on the petition of twelve voters that they were five miles away from a justice of the peace. The additional justice was to hold office until the next election.(74)

In 1870 the justices were ordered to hold court whenever necessary, except on Sundays.(75)

In 1872 justices of the peace in counties over 100,000 were given jurisdiction over cases involving mechanics'liens up to $300.(76) In smaller counties their jurisdiction in such cases was limited to $90, the same as in ordinary cases.

(72) L.1868 p.59. Mar. 21,1868.
(73) L.1868 p.60. Mar. 26,1868.
(74) L.1869 p.62. Feb. 10,1869.
(75) L.1870 p.54. Mar. 12,1870.
(76) L. 1871-2 p.44. Mar. 30,1872.

Many minor changes were made in the jurisdiction and procedure of justices' courts, but no others are of sufficient importance to be noted here.

CHAPTER IV: 1875-1914.

The constitution of 1875 contained limitations upon the power of special legislation with regard to the courts. No special law could be made regarding the procedure or jurisdiction of any court.(1) Criminal courts were permitted to be extablished only in counties of more than 50,000 population.(2) The salaries of judges could be neither increased nor diminished during their term in office.(3) The prohibition upon increase was new, that upon decrease was carried over from the previous constitution. Removal of judges by address as well as by impeachment was retained, but with certain restrictions.(4) No judge could be removed by address unless continued physical or mental infirmity prevented him from performing his duties. Previously he could be removed for any cause that was not ground for impeachment.(5) The consent of two-thirds of each house of the legislature and of the governor was necessary for removal by address. The judge was

(1) Const. 1875, Art. IV, Paragraph 53.
(2) Ibid Art. VI, Paragraph 31.
(3) Ibid Paragraph 33.
(4) Ibid Paragraph 41.
(5) Supra pp. 21, 38.

entitled to notice and the right to be heard in his own defense.

The qualifications of judges of the supreme court were changed. They were now required to be learned in the law.(6) The age requirement was the same as in the constitution of 1865: 30 years. Judges were required to have been citizens of the state five years previous to election. Under the constitution of 1865 they were required to have been citizens of the United States five years and qualified voters three years. The sessions of the court - two a year until otherwise provided by law--(7) were to be held at the capital instead of in districts. The number of judges was left at five, three making a quorum.(8)

The St.Louis Court of Appeals was established to act as the appellate court for the city of St.Louis and the counties of St.Louis, St.Charles, Lincoln and Warren.(9) Appeals lay from it to the supreme court in the more important cases only: felonies, cases involving more than $2500, cases involving the validity of the constitution of the United States or that of

(6) Art. VI, Paragraph 6.
(7) Ibid Paragraph 9.
(8) Ibid Paragraph 5.
(9) Ibid. Paragraph 12.

Missouri, or the validity of a treaty or statute of the United States or authority exercised under the United States, cases involving the construction of state revenue laws or the title to a state office, cases involving the title to real estate, cases in which any political subdivision of the state or any state officer should be a party.(10) There were three judges elected for a term of twelve years by the voters of the counties under the jurisdiction of the court.(11) One judge was to be elected every four years.(12) The qualifications were the same as those for judges of the supreme court and the salary the same as that of the judges of the St.Louis circuit court.(13) Each of the counties under the jurisdiction of the court was to pay its proportionate share of the salaries of the judges according to its taxable property.

The qualifications of circuit judges were left unchanged, except that the circuit judge was required to live in his circuit at the time of his election, as well as after.(14) The legislature was authorized to provide for the election of one or more additional

(10) Ibid Paragraph 12.
(11) Ibid Paragraph 13.
(12) Ibid Paragraph 16.
(13) Ibid Paragraph 13.
(14) Ibid Paragraph 26.

judges in any circuit of only one county.(15)

The circuit court of St.Louis was to consist of five judges.(16) The legislature was authorized to provide additional judges as they were needed. Each judge was to sit separately for the trial of causes and the transaction of business in special term. Appeals lay from these special terms to the St.Louis court of Appeals. All the judges were to sit in general term whenever they deemed it necessary, to draw up rules of procedure or transact any other business authorised by law. The general term had no appellate power over the special term.

A probate court was established in every county, to consist of one judge elected by popular vote.(17) These courts were to be uniform, except that a separate clerk could be provided or the judge could be required to act as his own clerk.(18) The legislature could also provide that the probate judge might be a member of the county court.(19) The old practice of having a complicated system of probate courts established by special acts was done away with.

(15) Ibid Paragarph 28.
(16) Ibid Paragraph 27.
(17) Ibid Paragraph 34.
(18) Ibid Paragraph 35.
(19) Ibid Paragraph 36.

Each county was to have a county court of from one to three judges.(20) The legislature was authorized to provide for its powers. It was intended dhiefly to attend to the administrative affairs of the county.

The existing inferior courts, not provided for in the constitution of 1875, were to lapse at the expiration of the terms of their incumbents, and their duties were to be taken over by the proper court.(21)

The supreme court continued to be overworked; so in 1881 an amendment was proposed to the constitution, which would have increased the number of judges from five to six and permitted its division into a criminal and a civil branch.(22) This amendment failed to pass when submitted to the voters in 1882. In 1883 the legislature tried to lighten the work of the court by providing that whenever four judges thought it necessary, three commissioners might be appointed by the court to assist it.(23) The appointment was to be for two

(20) Ibid Paragraph 36.
(21) Ibid Paragraph 42.
(22) L.1881 p.328.
(23) L.1883 p.60. Mar.22,1883.

years, but the court could dispense with the commission at an earlier date. Their salary was to be $3600 a year. All cases submitted on brief and any cases in which the parties would consent were to be sent to the commission for determination. This commission was appointed at once (23a) The establishment of another court of appeals in 1884 helped to lighten the work of the supreme court.(24)

In 1890 an amendment was passed increasing the number of judges of the supreme court to seven, four to be in one division and three in the other.(25) The court was allowed to divide the cases between the two branches. Cases were to be heard by the whole court: when the judges of the division were equally divided, when there was a dissenting opinion, when there was a federal question involved, or when the division so ordered. By this provision there was practically no danger of conflicts arising between the two divisions. The court was given the privilege of dispensing with these divisions and of redividing whenever it saw fit.

(23a) 77 Mo.-title page
(24) Infra p.58
(25) Amendment 1890.

An amendment was proposed in 1907 calling for a further increase in the number of judges to nine and increasing the pay of judges of the supreme court and of the Kansas City court of appeals to $5500.(26) This amendment was defeated in 1908. It would have done away with the anomalous situation in which the judges of the St.Louis court of appeals get more than the judges of the supreme court, the highest court in the state ($4500), and more than the judges of the Kansas City court of appeals ($3500), a court doing exactly the same work as the St.Louis court.

In 1911 the expedient of having the supreme court appoint a temporary commission to help it out was again resorted to.(27) There were to be four commissioners appointed by the judges, to hold office four years. Not more than two were to belong to the same political party. Their qualifications and salary were to be the same as those of the supreme court judges. The court en banc was permitted to refer cases to the commissioners for the preparation of a statement of facts and an opinion upon the legal questions involved. The commissioners might

(26) L. 1907 p.458.
(27) L. 1911 p.190. Mar. 27,1911.

be called upon to sit with the court at any time. All opinions by the commissioners were to be in writing, and any commissioner not agreeing with his colleagues was to file a separate opinion. Thus again there were safeguards against a lack of uniformity in the decisions of the court. This scheme, while not so satsifactory as an increase in the number of judges, secures some relief for the court.

An amendment of 1884 provided a second court of appeals, to be located at Kansas City.(28) The territorial jurisdiction of the St.Louis court of appeals was extended to include about one-half of the counties in the state, and the state assumed the entire burden of the court's expenses. All counties not under the jurisdiction of the St.Louis court were under that of the Kansas City court. The legislature was given the power of establishing a third court of appeals at any time, of changing the time of holding the courts, of increasing or decreasing the pecuniary jurisdiction of the courts, of providing for the transfer of cases from one court of appeals to another or from a court of appeals to the supreme court. These provisions were intended to make it possible for the courts to share

(28) R.S.1889 p.87.

the burden of work about equally. If one of the courts of appeals got very far behind in its docket, some of its cases could be transferred to the other court. Furthermore, if the legislature thought that certain kinds of cases were being wrongly decided by the courts of appeals, it could have them heard by the supreme court.

The organization of the Kansas City court was similar to that of the St.Louis court. Its jurisdiction was the same.

The decisions of the courts of appeal were to be final. Whenever a judge of a court of appeals, however, believed that a decision of the court was contrary to a previous decision of the supreme court or one of the courts of appeals, the court of appeals must, during the same term, transfer the case to the supreme court for rehearing and determination.

This additional court of appeals was established with the purpose of lightening the work of the supreme court without lengthening the process of litigation. It is to be noted that all cases reviewable by the supreme court went there directly from the circuit courts and not via the courts of appeals. Uniformity of decisions was protected by the provision for a rehearing before the supreme court in case any decision of the court of appeals

was thought by a judge to be contrary to precedent.

The law carrying into effect the provisions of this amendment provided for a court of three judges to be elected for a term of twelve years, one judge retiring every four years.(29) The organization of the court was to be similar to that of the St.Louis court. The salary was $3500.

In 1901 the pecuniary jurisdiction of the courts of appeals was increased to $4500.(30) This was done to relieve the supreme court, which continued to fall behind in its docket. In 1909 the judges of the Kansas City court of appeals were appointed to act as commissioners to draw up syllabi of their decisions. (31) They were to receive $1000 for acting in this capacity. It amounted practically to a mere increase in salary, as the duties imposed were very slight.

In 1909 a third court of appeals was established at Springfield.(32) It will be remembered that the amendment creating the Kansas City court gave the legislature power to establish one additional court, if it thought necessary.(33) The Springfield court of appeals took some counties from the jurisdiction

(29) L. 1885, p 114. Feb. 3, 1885.
(30) L. 1901 p.107. Mar. 20,1901.
(31) L. 1909, p. 393. June 15,1909.
(32) L. 1909, p. 393. June 12,1909.
(33) Supra p. 58

of each of the older courts. The court consisted of three judges with the same salary, term, and qualifications as the judges of the Kansas City court. A law passed at the same time provided that the judges of the three courts should meet at least once a year and provide for an equal distribution of the cases pending.(34) The presiding judge of the St.Louis court of appeals was to determine the time and place of the meeting. In case the docket of one court was overcrowded or the judge of the proper court was unable to try the case, a case could be transferred from one court to the other. The clerk of the court from which the case was transferred and the clerk of the court to which it was to go were required to notify the attorneys in the case of such transfer. The pecuniary jurisdiction of the courts was increased by this act to $7500.(35) In 1913 the territorial jurisdiction of the Springfield court was extended by the addition of several counties from the St.Louis district.(36) provision was made for the court to sit during part of its term at Poplar Bluff.

(34) L. 1909 p.396. June 12,1909.
(35) L.1909 p. 397. June 12,1909.
(36) L. 1913, p. 204. Mar. 21,1913.

For some years after the adoption of the constitution of 1875 there was no change in the jurisdiction of the circuit courts. In 1891 their jurisdiction was extended and defined.(37) The circuit court now had jurisdiction over all criminal cases not otherwise provided for; exclusive original jurisdiction over all cases not cognizable before probate courts, county courts, and justices of the peace and not otherwise provided for; concurrent original jurisdiction with the justices of the peace in cases for the recovery of more than $50 and less than $250; concurrent original jurisdiction with the justices of the peace in cities or counties over 50,000 in all cases for the recovery of more than $50 and less than $300; appellate jurisdiction from the inferior courts and the justices of the peace unless prohibited by law. The court also had general control over inferior courts and over executors, guardians, lunatics, and minors. ~~It will be noticed that the circuit court was given greater pecuniary jurisdiction in urban than in rural communities. This is another bit of evidence showing the failure of the justice of the peace system in cities.~~

(37) L. 1891 pp.106-108. Mar. 19,1891, Apr.1,1891.

The salary of circuit judges remained fixed at $2000. However, in 1895 they were allowed their expenses while holding court away from their place of residence.(38) An itemized list of these expenses was required to be handed in to the state auditor. In 1905 an allowance of $100 a month was made for traveling expenses, except in cities over 300,000 and circuits of one county. No list of expenditures was required.(39) Judges in circuits consisting of one county and in cities over 300,000 received increases in other ways. By making allowances for traveling expenses, the constitutional provision prohibiting an increase in the salary of judges during their term in office was circumvented.

There were many laws pertaining only to one circuit. The amount of judicial business grew rapidly; so the number of circuits was increased frequently.* In circuits consisting of only one county, the number of judges was sometimes increased. From time to time special sessions of the circuit court were ordered at a large townwhich was not the county seat.(40)

The number of judges of the St.Louis circuit court was increased to seven in 1895.(41) A few weeks

(38) L. 1895 p.128. Mar. 2,1895.
(39) L.1905 p.291. Mar. 10,1905.
(40) Chariton County L.1893 p.137. Apr.19,1893.
(41) L.1895 p.130. Mar. 12,1895.
* There were 29 circuits in 1875 and 37 in 1914, 7 were added after 1900.

after this increase it was provided that beginning January 1,1897 there should be nine judges.(42) At that time the circuit court was to take over the jurisdiction of the St.Louis criminal court. Criminal cases were to be given the preference. Three judges were to be elected every two years. In 1903 the number of judges was increased to eleven, and the court was given charge of delinquent childrenIs cases.(43) In 1905 the number of judges was increased to twelve.(44) Three or more judges were to be assigned to try criminal cases, which were to be given precedence over civil cases. Shortly after this the number of judges required to be assigned to criminal cases was made two or more.(45) Judges were to serve in this division in rotation. The judges appoint one of their number to serve as judge of the juvenile court.(46) The work in this division is very light and is kept up in addition to the regular work.

The changes in the Jackson county circuit court were similar to those in the St.Louis circuit court, and were due likewise to the enormous increase in judicial business. In 1885 two judges were provided

(42) L.1895 p.130. Mar. 26,1895.
(43) L. 1903 p.142. Mar. 26,1903.
(44) L. 1905 p.127. Mar. 21,1905.
(45) L. 1905 p.128. Aprl. 6,1905.
(46) Infra p.72

for the court.(47) There was to be no other court of civil jurisdiction in the county, except the probate court. In 1889 the number of judges was increased to four.(48) There were to be four divisions of the court, in each of which cases were to be tried separately. Judges were assigned to the several divisions by lot. In 1901 a fifth judge and another civil division were added.(49) In 1905 the circuit court in counties having a city whose population was greater than 150,000 and less than 400,000 (i.e.Jackson county) was permitted to draw up its own special rules of procedure.(50) About the same time the session of the court at Independence was made a separate division of the court, a sixth judge being provided.(51) The judges were allowed to transfer cases from one division to another and to draw up rules of procedure consistent with the code of procedure and with the constitution and laws of the state. This shows the growing tendency towards allowing the courts to have complete control over their procedure. In 1907 two additional civil divisions and judges were ordered.(52) The laws of 1913

(47) L.1885 p.129. Mar. 20,1885.
(48) L. 1889 p.75. Feb.11,1889.
(49) L. 1901 p.117. Mar. 13,1901.
(50) L. 1905 P.119. Mar. 31,1905.
(51) L. 1905 p.121. Apr. 12, 1905.
(52) L. 1907 p.201. Mar. 15,1907.

provided that judges should be elected to a particular numbered division, instead of being assigned to a division after election.(53) At the same session two more judges were added, making ten in all.(54)

Two judges were provided for the circuit courts of several counties: Buchanan in 1889 (55), Jasper in 1901 (56), St.Louis in 1909 (57), Greene in 1909 (58). The additional judge of the Greene County circuit court took the place of the judge of the criminal court, which was abolished by the same act.

The judges whose compensation was not increased by the act of 1905 (59) were provided for by special laws. In 1897 it had been enacted that the judge of a circuit court in a county having more than 50,000 inhabitants and an assessed wealth of more than $25,000,000 and adjoining a city of 300,000 population (i.e.St.Louis county) should receive $125 a month from the county in addition to his regular salary.(60) By a law of 1895 the judge of any circuit in which there was only one county and one judge was to receive $1200 extra each year.(61) This money was to be paid

(53) L.1913 p.206. Mar. 14,1913.
(54) L.1913 p.211. Mar.22,1913.
(55) L. 1889 p.74. Apr. 13,1889.
(56) L. 1901 p.120. Mar. 25,1901.
(57) L. 1909 p. 408. June 16,1909.
(58) L. 1909 p.413. Apr; 26,1909.
(59) Supra p. 63
(60) L. 1897 p.73. Mar. 12,1897.
(61) L. 1895 p.127. Mar. 18,1895.

out of funds raised by the imposition of an additional docket fee.

In 1914 there were special courts of common pleas at Hannibal, Louisiana, Cape Girardeau, and Sturgeon. The existence of these courts would seem to violate the provision of Article VI Paragraph 42 that all inferior courts not provided for in the constitution of 1875 should lapse at the expiration of the terms of the incumbents at the time the constitution was adopted. Apparently the constitutionality of these courts has not been questioned, and in any event it would probably be upheld on the theory that for all practical purposes they are a part of the circuit court system.

In 1879 the salary of judges of the criminal courts was increased to $3000, $2000 to be paid by the state and $1000 by the county.(62) The legislature had power to establish such courts in counties over 50,000.(63)

In 1914 there were criminal courts remaining in the following counties: Jackson,Buchanan, and in the 15th judicial circuit.

In 1877 two sessions of the St.Louis criminal court were ordered annually.(64) In 1895 the court

(62) L.1879 p.86. May 6,1879.
(63) Supra p. 51 Art. VI Paragraph 31.
(64) L. 1877 p. 221. Apr. 24,1877.

was divided into two divisions, each with one judge. (65) The additional judge was to be appointed by the governor to hold office until the first Monday in January 1897, at which time the criminal court was to be abolished and its duties given to the circuit court.(66) The additional judge was to have the qualifications of a circuit judge, must be a resident of the city and learned in the law. He was to receive the same compensation as the judge of the criminal court.(67) The work of the court was to be divided between the two judges.

In 1907 an additional division was provided for the Jackson county criminal court.(68) Provision was made for the appointment of a judge for the division by requiring that the judge of a civil division of the circuit court should act in that capacity in case the docket of the criminal court became too crowded. The circuit judge was to receive the same compensation while acting as criminal judge as while he was acting as circuit judge. In 1913 the criminal court was ordered to remain in session until it had disposed of the cases pending.(69)

(65) L. 1895 p.130. Mar. 26,1895.
(66) Supra p.64
(67) $3000, supra p.67
(68) L. 1907 p.209. Mar. 19,1907.
(69) L. 1913 p.217. Mar 14,1913.

In 1909 a second division of the St.Louis court of criminal correction was established.(70) The additional judge was to receive $4000 a year from the city, and was to be elected for a term of four years. He was to have concurrent jurisdiction with the court as already established.(71)

The St.Louis court of general sessions was established in 1907.(72) This court had criminal jurisdiction: it conducted the preliminary examination in cases of felony and the more serious misdemeanors. There was one judge, elected to serve for four years. The circuit court was to appoint a substitute in case of sickness. The judge was to be paid $4000 a year by the city. The proceedings were summary, and the sessions were held daily. The court was declared unconstitutional by the supreme court.(73) It was held not to be a court, because it conducted the preliminary hearing only and, with one exception, could not make a binding judgment. If it developed in the hearing that the accused was guilty of a misdemeanor instead of a felony, he could plead guilty of the

(70) L. 1909 p.399. June 10,1909.
(71) supra p.46
(72) L. 1907 p.212. Apr. 15,1907.
(73) State ex rel v. Nart. 209 Mo. 708.

misdemeanor and be sentenced by the judge of the court of general sessions instead of being tried by the court of criminal correction. This was held to violate the constitutional provision requiring an indictment or an information for every criminal prosecution.(74) In accordance with this decision the legislature abolished the court.(75)

Probate courts were established in every county by an act of 1877.(76) There was one judge, elected for a term of four years. He was required to be 24 years old, to have been five years a citizen, and one year a resident of the county in which he was elected. There were four terms of the court annually. The compensation was in the form of fees. Probate judges were given permission to practice law, except, of course, in their own courts.(77) In 1897 it was provided that in cities over 300,000 (i.e.St.Louis) the city should pay the probate judge the same salary as was given the judge of the circuit court.(78) In 1899 the probate judge was given power to hold the county court when the judges of the county court were unable to attend.(79) He had no power to levy

(74) Art.II, Paragraph 12.
(75) L.1909 p.432. May 14,1909.
(76) L. 1877 p.229. Apr. 9,1877.
(77) L. 1883 p.73. Mar. 24,1883.
(78) L. 1897 p.82. Mar. 20, 1897.
(79) L. 1899 p.158. Mar. 30,1899.

taxes, except for the current expenses and for the running of the schools. This law was passed because of the fact that the government in ~~many~~ some counties was at a standstill. The county courts in these counties had repudiated certain county bonds issued during the era of railroad building. They were ordered by the United States court to levy taxes to pay off the bonds, but refused to do so. Many of the judges were placed in jail, and the others were in hiding. So in order to allow the business of the county to be carried on the legislature allowed the probate court to transact the ordinary affairs.

In 1877 the justices of the peace were given concurrent jurisdiction with the circuit court over misdemeanors, except in cities having courts of exclusive criminal jurisdication.(80) In 1913 the jurisdiction of justices in cities over 200,000 and under 400000 was increased to $500.(81) Justices in these cities were required to have lived two years in the state and one year in the district in which they were chosen. This law was intended to relieve the circuit courts in the larger cities to secure a

(80) L. 1877 p.281. Apr. 17,1877.
(81) L. 1913 p.394. Mar. 25, 1913.

higher class of men for justices by the payment of a salary and the imposition of residence requirements.

In 1877 the justices appointed by the county court (82) were required to live in the neighborhood of the petitioners and five miles from the nearest justice.(83) The justices of the peace in St.Louis were required to be elected by districts.(84) In 1887 three additional justices were provided for cities over 100,000.(85) In 1899 it was provided that when the number of cases decided before a justice in a city of more than 300,000 should exceed 2200 a year, there should be an additional justice for that district.(86) In 1895 the justices in townships of more than 100,000 population were given a salary of $200 a year.(87) All fees were to be turned into the state treasury. Justices in cities over 200,000 and under 400,000 were given a salary of $2500 a year, payable by the county.

The last court to be established was the juvenile court for the trial of youthful offenders. The first court was established in 1903 in counties of 150,000 and over.(88) The law applied to children under sixteen. The circuit court appointed one of its judges

(82) Supra p. 49
(83) L.1877 p.282. Mar. 1,1877.
(84) L. 1877 p.283. Apr. 27,1877.
(85) L. 1887 p.206. Mar. 30,1887.
(86) L. 1899 p.268. Apr. 29,1899.
(87) L.1895 p.203. Apr. 11,1895.
(88) L.1903 p.213.Mar.23,1903

to act as judge of the juvenile court. The punishment was left to the discretion of the judge.

In 1907 similar courts were established in counties over 100,000 and under 150,000.(89) Children sixteen years of age and under, not inmates of any charitable institution were made subject to the jurisdiction of the court. Neglected and delinquent children were to be under the care of the court. The criminal court acted as the juvenile court. While acting in that capacity, it was to make use of a different mode of procedure from that ordinarily used. Children were not to be confined with criminals. Any child found to be neglected could be placed in the care of some reputable person.

The third act applied to counties of 50,000 and over.(90) The circuit court was to have original jurisdiction over juvenile offenders until another judge could be provided.

All of these courts had probation officers. Most offenders were released on parole and had to report at intervals to these probation officers. The worst offenders were placed in the reform school or some similar institution. In 1911 children seventeen years were placed under the jurisdiction of the court.(91)

(89) L. 1907 p.217. Mar. 19,1907.
(90) L. 1909 p.423. June 12,1909.
(91) L. 1911 p.177. Apr. 11, 1911.

In counties containing a city of the first class original jurisdiction was given to the criminal, instead of to the circuit court.

A law passed in 1913 gave the probate court in counties under 50,000 jurisdiction over delinquent children's cases.(92) Proceedings, like those in the other juvenile courts, were to be summary and informal, based on petition. The supreme court declared this law unconstitutional.(93) The constitution declared that probate courts should be uniform in their organization, jurisdiction, duties, and practices.(94) This law was held to violate that provision in that it gave additional powers to the probate courts in special counties. It was held further that the law violated the provision that there should be no criminal prosecution, except upon information and indictment.(95) The other juvenile court laws did not violate this provision, because they said that what would ordinarily be felonies and misdemeanors should not be such when committed by children.

(92) L. 1913 p.148.
(93) State ex rel. vs Tincher, 258 Mo. 1.
(94) Art. VI, Paragraph 35.
(95) Art. II, Paragraph 12.

CHAPTER V: CONCLUSION.

Perhaps the most important defect in the judicial system of the state has been lack of co-ordination. The constitutions have established a very simple system of courts, suitable only for the most sparsely settled parts of the state. The theory is that the legislature will establish additional courts where it is necessary. This practice has resulted in great confusion, and in courts with overlapping jurisdictions. Until the adoption of the constitution of 1875 probate courts were established by special acts. Frequently the probate court of one county had a different jurisdiction from that of another county. The majority of the counties had probate courts, although the general law was that the county court exercised probate jurisdiction. The constitution of 1875 provided for the establishment of probate courts with uniform jurisdiction, but there were still courts established by special acts. Several counties were given criminal and common pleas courts. The work of these courts would be much more satisfactory if they were made a branch of the circuit court.

For a long time the justice of the peace system has not been satisfactory especially in cities. The justices are frequently corrupt or inefficient or both.

Attempts have been made to secure better justices by giving justices a salary and by imposing residence requirements, but these efforts have not been successful. It is quite probable that the justice of the peace system would be abolished in cities, were it not for the fact that the constitution makes this impossible.(1)

For a number of years the appellate courts have been in arrears. The supreme court is three years behind in its docket; the St.Louis court of appeals is two years behind. Some of the counties under the jurisdiction of the St.Louis court should be placed in the Springfield district.

In recent years there has been an enormous increase in litigation. In 1872 the 29th circuit was established (L.1811-2 p.30). It was over twenty years before another circuit was added (L.1895 p.149). Since 1900 eight have been added. The 38th was established at the last session of the legislature. The whole system should be overhauled and a new division into circuits made.

Missouri judges are paid much less than those of other states. Judges of the supreme court receive $4500 a year; judges of the St.Louis Court of appeals,$5500 (2);

(1) Const. 1875, Art. VI, paragraph 37
(2) When the St.Louis court of appeals was founded the counties under its jurisdiction paid the judges salaries.(supra p53). The salary was made the same as that of the St.Louis Circuit judges.

judges of the Kansas City court of appeals, $3500, plus $1000 for preparing syllabi of their opinions; judges of the Springfield court of appeals, $3500; circuit court judges in St.Louis, $5500, in Jackson county, $5000, in Buchanan, Greene, Jasper, and St.Louis counties, $4500, in Pettis county $3200, and in all other counties, $2000, plus $1200 for traveling expenses. This schedule should be revised completely. The Missouri Code Commission (3) suggests the following scale: judges of the supreme court, $7500; of the courts of appeals, $6000; circuit judges in cities or counties composing separate circuits and having over 100,000 inhabitants, $5500; and all other circuit judges, $4500, plus actual and necessary traveling expenses. This scale is much more equitable than the present one, and much pressure is being brought to bear on the legislature to induce it to enact it.

In May 1914 Governor Major appointed the Missouri Code Commission to suggest changes in the criminal and civil procedure of the courts of the state. Incidentally the commission has also suggested changes in the organization of the judicial system.(4) Most of these have been mentioned. The suggestions have been embodied in bills, which were considered by the last session of the legislature (1914-1915). They tend to simplify

(3) Infra .
(4) Report of the Mo.Code Commission to the Governor.

civil and criminal procedure and to bring about a much needed co-ordination in the judicial system.

Most of the suggestions of the Commission were disregarded. The legislature did, however, increase the salaries of judges of the Supreme Court and of the courts of appeals.(5) The increase is in the form of remuneration for serving as commissioners to decide what opinions shall be published in the official reports and to prepare syllabi. In this way the provisions were made to apply to the judges then serving without violating the constitutional prohibition of increase of a judge's salary during his term in office. The salary of judges of the Supreme Court was made $7500; that of judges of the courts of appeals, $6000.

Two additional circuit judges were provided for St.Louis, making fourteen in all.(6)

The constitution of Missouri was adopted in 1875 and in a great many ways is entirely unsuited to the present needs of the state. One reason advanced for the refusal of the legislature to adopt the suggestions of the Code Commission was that any change made under the present constitution can amount to little more than a makeshift, and that it is better to have things as they are till a new constitution can be adopted.

(5) Commitee Substitute for Sen.Bills, Nos.386,387, 388,389.
(6) Sen. Bill 205

The Code Commission (7) and other bodies have suggested that a constitution is undoubtedly needed for the old one is inadequate for the state's needs. It is to be hoped that a new constitution will be drawn up in the near future, which will provide among other things for a simpler and more efficient system of courts, one that will answer the needs of all parts of the state.

(7) Report of Code Com. p.15.

UNIVERSITY OF MISSOURI
COLUMBIA

DEAN OF THE UNIVERSITY FACULTY

May 20th, 1915.

Dean Walter Miller,

211 Academic Hall.

Dear Dean Miller:

Enclosed I am sending the dissertation of Mr. J. J. Gravely and the receipt of the binding fee. I approve this dissertation in connection with Mr. Gravely's candidacy for the degree of Master of Arts.

Very truly yours,

IL:S

UNIVERSITY OF MISSOURI
COLUMBIA

SCHOOL OF LAW

24 May, 1915.

Dear Dean Miller,

I found great pleasure in reading Mr. Gravely's dissertation, which seems to me to meet the standard required of master's dissertations.

Very truly yours,
Manley O. Hudson

Dean Walter Miller

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