

# **MAINE STATE LEGISLATURE**

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**STATE OF MAINE**

**98th Legislature**

**Report**

of the

**Judicial Council**

of the

**State of Maine**

Jan. 30, 1957



To the Honorable Senate and House of Representatives of  
The State of Maine:

The Judicial Council herewith submits its report to the 98th Legislature pursuant to Chapter 77 of the Resolves of 1955 entitled "Resolve Requesting Judicial Council to Study Certain Problems."

Under the Resolve, the Council at the request of the Legislature has studied "the desirability of removing domestic relations problems from the jurisdiction of the Superior Court and placing the same under the jurisdiction of Probate Courts, or elsewhere; to study the desirability of creating a District Court system integrating the activities of the present municipal court and trial justice system, and to study the desirability of a state-wide uniform probation and parole system;" and to "prepare specific legislative proposals for presentation to the 98th Maine Legislature, designed to reflect its conclusions, if any, with respect to the aforesaid subjects of domestic relations, municipal court system and probation and parole system."

The study was undertaken by a committee consisting of Justice Harold C. Marden, Chairman, Armand A. Dufresne, Jr., Charles F. Phillips, Orren C. Hormell, Edward I. Gross, Frank E. Southard, Jr. and Mrs. Ashmead White.

After consideration of the report of the committee, a copy of which is attached hereto, the Council took the following action:

**(1) Domestic Relations**

The Council adopted by a majority vote the conclusion reported by the committee as follows: (George B. Barnes wishes to be recorded as voting in the negative).

"That all domestic relations problems, including that of divorce, invoking civil remedies be transferred from the Superior Court to the Probate Courts, with progressive attention toward the establishment of a staff or staffs of personnel trained in marriage counselling and family discord analysis as an adjunct to the Probate Court system."

**(2) District Court System**

The committee submitted a divided report on the District Court question, and the Council took no action thereon. The Council adopted unanimously certain recommendations of the committee (with minor changes not altering the principles thereof) with respect to the Municipal Court system as follows:

- (a) That where the case load justifies it the Judge should be placed on and paid for full time application to his duties.
- (b) That uniform rules of practice, procedure and administration be provided for the Municipal Court system of Maine, and that a statute such as Section 6 of Chapter 106 of the Revised Statutes (1954) be enacted for the Municipal Court Judges.

(c) That the respective State sub-divisions involved be required to provide quarters and appointments whereby the dignity of the Court may be upheld.

(3) **Probation and Parole**

The Council unanimously adopted in principle the conclusion of the committee as follows:

"That a State Department of Probation (and Parole, with the idea of consolidating all work in the field under one head) be created, the head of which shall be a person with professional probation and parole field qualifications and responsible to a probation and Parole Commission consisting of such number and manner of selection as the Council may recommend or the Legislature determine, with Probation Officers to be appointed by the Commission in numbers commensurate to the average case load, from a list of candidates found qualified by the state personnel board upon specifications determined by the Director; to work on a full time basis and in districts assigned them and for compensation fixed and paid by the state, retaining to the Courts, however, power to appoint special probation officers in exceptional cases and a provision to protect adequately the training, experience and seniority of present incumbents."

The "specific legislative proposals" referred to in the Resolve will be covered in a supplemental report prepared by Justice Harold C. Marden with the assistance of the Revisor of Statutes.

Justice Francis W. Sullivan of the Superior Court and Armand A. Dufresne, Jr., Judge of Probate, ceased to be members of the Council upon becoming respectively Associate Justice of the Supreme Judicial Court and Justice of the Superior Court. We record again our appreciation of their valuable service and continued interest after their formal membership ended.

The Chairman and Secretary have been authorized by all members of the Council to affix their signatures hereto and to submit this report in their behalf.

Respectfully submitted:

Robert B. Williamson, Ex Officio Chairman

Frank F. Harding, Attorney General

Harold C. Marden

Edward I. Gross

Frank E. Southard, Jr.

George A. Cowan

George B. Barnes

Leonard A. Pierce

Charles F. Phillips

Mrs. Ashmead White

Orren C. Hormell

By Robert B. Williamson,

Ex Officio Chairman

Geo. A. Cowan, Secretary

Dated this 14th day of January, 1957.

To the Honorable Senate and House of Representatives  
of the State of Maine:

In confirmation of the report of the Judicial Council dated January 14, 1957 and in further compliance with the mandate of Chapter 77 of the Resolves of 1955 entitled "Resolve Requesting Judicial Council to Study Certain Problems" there is here transmitted the "specific legislative proposals" referred to in the Resolve.

**1. Domestic Relations**

Attached hereto is a draft of a bill transferring Domestic Relations Problems from the Superior to the Probate Courts conforming to the recommendations of the Council.

**2. District Court System**

The recommendation of the Council "that Uniform rules of practice, procedure and administration be provided for the Municipal Court System of Maine" is completely expressed in a measure proposed by the State Bar Association entitled "An Act empowering the Supreme Judicial Court of Maine to Prescribe Rules." The purpose of the Council's recommendation being so met, no additional specific proposal is offered.

**3. Probation and Parole**

The Council recommends the establishment of a State Department of Probation and Parole, the principles of which have been expressed in a measure now before the Legislature entitled "An Act Establishing a State Probation and Parole System." The purpose of the Council's recommendation being so met in substance and with a view of obviating duplication of Legislative routine no additional specific proposal is offered. The reference Act is hereby endorsed in principle.

For the Judicial Council,

Respectfully submitted,

Harold C. Marden,  
Justice Superior Court  
Council Member

## JUDICIAL COUNCIL SUB-COMMITTEE REPORT

To the Chief Justice, Supreme Judicial Court of Maine,  
Chairman of the Judicial Council:

The sub-committee of the Council to which on April 6, 1956 was assigned the study of the subjects referred to the Council by Chapter 77 of the Resolves of 1956 to wit

- 1) Transfer of Domestic Relations problems to the Probate Courts, or elsewhere;
  - 2) Creation of a District Court System to integrate the Municipal Courts;
  - 3) Creation of a State wide Probation and Parole System;
- having studied and conferred by majority\* beg leave to report as follows:

### Domestic Relations

The situation which prompts this study arises from the diversity of jurisdiction now pertaining to domestic problems and the desire for better solution of the social problems involved and the need for prompt and continuous service to the parties involved. The table below reflects the present jurisdictional spread of responsibility.

	Trial Jus- tice	Jurisdiction Munici- pal	Pro- bate	Su- perior
Desertion and Willful Non-support, criminal offense	x	x		x
Custody and support where parents living apart, civil aspect			x	x
Ability but neglect to provide support, civil aspect	x	x	x	
Judicial separation, custody and support			x	
Adoption and changing name			x	x
Failure to comply with any Court order re support, criminal aspect	x		x	x

In practice almost all of the custodial problems are handled in the Superior Court in connection with divorces pending or adjudicated, the majority of support problems are also handled there with Municipal Courts handling substantially the remainder on the civil side of the docket and the majority of all support problems on the criminal side of the docket. It may be noted that with relation to the civil aspects of this class of cases, momentarily disregarding the relative volume of the types of issues raised, the statutory apportionment of jurisdiction as between the Probate and Superior Courts is equal. By far the greatest volume of cases fall in the divorce category and to the Superior Court.

\* Judges Dufresne, Gross, Southard and Marden

The question of the sufficiency of the service by our Courts to litigants under the present system is reflected accurately by reference to the number of terms of the Superior Court held in the respective counties of our state, Cumberland has ten, Androscoggin six, Aroostook, Kennebec Penobscot and York four each; Franklin, Hancock, Knox, Oxford, Sagadahoc, Somerset, Waldo and Washington three each, and Lincoln and Piscataquis two each. For those months of the year in which no term of Court is in session and for those counties with no resident Judge, such counties and their residents must rely upon a non-resident Judge to come in for "vacation" hearings, by special arrangement. While it is felt that the members of the Superior Court cooperate in meeting such requests, unquestionably all of the counties do not receive equal attention and in any event travel expense to the state is involved.

Very seldom, if ever, does the same Judge have consecutive terms in a given county. This means that recurrent domestic disputes between the same parties are heard by different Judges. The needs of dependents and the earning capacity of the husband and father changes from time to time, the needs of the children as to custodial attention varies from time to time. Not only should Court service be promptly available but it would be greatly to the advantage of the persons involved and the Judge charged with the responsibility of aiding the situation if one Judge could follow a given family situation from the beginning to the end of its internal controversy.

Term-wise the Probate Court in each county is in constant session.

#### **In favor of the transfer to Probate Courts**

1. Service to the parties involved, prompt hearings.
2. Continuity of control and administration of the case by one Judge.
3. Step toward consolidation of domestic relations matters to one Court.
4. Enable Superior Court to devote the time thus freed to matters requiring jury consideration with resultant benefit to heavy dockets.

The time thus made available to the Superior Court would vary from three to five days per term in the smaller counties to seven to ten days per term in the larger counties.

#### **Contra**

1. Additional duty assigned the Probate Courts.  
This sub-committee estimates that the transfer would increase the work of the Probate Courts by one-third to one-half.
2. Increase in cost of operating the Probate Courts.  
It is fair to assume that additional work would call for increase in pay. This assumption would indicate that each county, might be faced with  $\frac{1}{3}$  additional Probate Court expense to  $\frac{1}{2}$  additional Probate Court expense.

It is not felt that the increased availability of a forum to which domestic affairs might be referred would appreciably increase the demand for hearing.

3. Probate judges elected rather than appointed.

While domestic affairs generate bitter controversies with resultant criticism of any decision, the method of selecting the judges is not considered significant in this respect.

**Generally**

Your committee is not unmindful of the suggestion by the legislature expressed in the reference resolve that the field of domestic relations might be placed "elsewhere" than the Probate Court system, and in the light of current trend, presumably in an entirely new branch of our judicial system to be devoted to Domestic Relations and with specialized staff for psychiatric study, marriage counselling and other service. Such innovation should be the ultimate goal of every state. Every available tool for the maintenance and repair of the family structure should be and eventually must be utilized. Your committee is not ready to recommend, however, at this time, that Maine with its predominantly rural complexion, the absence of large centers of population and the comparatively great travel distances, is ready to attempt such a complete change. In due course, the services of persons trained in the analysis of family discord should be enlisted but in connection first with the existing system.

A portion of your committee desires to register its suggestion that all domestic relations matters, except those involving acts distinctly criminal in nature, be placed within the jurisdiction of the Probate Courts, in effect removing such matters invoking only civil remedies from the Municipal Courts.

**Conclusion**

For the reasons expressed above, your committee recommends to the Council that all domestic relations problems, including that of divorce, invoking civil remedies be transferred from the Superior Court to the Probate Courts, with progressive attention toward the establishment of a staff or staffs of personnel trained in marriage counselling and family discord analysis as an adjunct to the Probate Court system.

**District Court System**

It has been said by the Hon. Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey, in referring to municipal courts, that "The general neglect of such courts is incomprehensible, because it must be apparent to all who consider the matter that the local courts of first instance are the very foundation of the enforcement of the criminal law. On them rest the primary responsibility for the maintenance of peace in the various communities of the state, for safety on our streets and highways, and, most important of all, for the development of respect for law on the part of our citizenry, on which in the

last analysis, all of our democratic institutions depend. This is the underlying reason why I have repeatedly called the municipal courts the most important in our state. Not only is the work of the municipal court fundamental to the preservation of the social order, but, . . . . it comes in direct contact with thousands where the other trial courts only reach hundreds and where the appellate courts reach very few indeed. It is obvious that the use in the Constitution of the term 'inferior courts' is a phrase, however it may be justified historically, which should never be applied to the municipal courts. It is a court of first impression with limited jurisdiction, but it is in no respect an inferior court."

It is presumed that the subject referred to this committee contemplates the replacement of the present municipal court system with a district court system, the objects being to increase the court's efficiency in the administration of right and justice, attract highly qualified individuals as judges thereof, and promote constant recommendations for the improvement of the Court.

The present system is composed of fifty distinct municipal courts, all with separate charters and somewhat similar jurisdictions. Some areas have two or three municipal courts within a comparatively small radius, while other localities have no court whatsoever located physically close at hand. The judges are appointees giving the court part-time, and who, because of the low judicial salary must devote the major portion of their time to private practice in order to gain a livelihood. The prestige and respect of and toward some of the municipal courts is sadly lacking, while others could be greatly improved upon in that phase of their position.

The proposed system is believed to contemplate full time judicial appointees who shall serve a district, which may be a section of a county, an entire county or more than one county depending upon the potential case load and which court to be the only court of limited jurisdiction within the district created. In this connection it should be noted that inasmuch as the strength of the municipal court rests largely in the fact that it is a "local" court acquainted with the local people and problems, so too the district judge must remain close to his district and it is the opinion of the committee that should the district idea be accepted, it should not involve judges on circuit. An efficient district court system could relieve higher courts of some of the case load, not because that in itself is desirable, but by "down grading" some offenses whereby they would come within the jurisdiction of the court of first resort, greater service could be rendered the welfare of the area. Many situations arising out of neighborhood disputes which might well ripen into serious litigation may often be corrected if the court at hand has power to finally dispose of the case without reference to a court of greater jurisdiction, and less local knowledge. To be of such service, under any system, the magistrate must be able to devote patient time to the thorough exploration of the case and its causes. "Patient" time is more readily available when the emoluments of the

office enable the judge to give it without the thought lurking in his mind that he must get back to earning a living.

### Conclusions

Your committee submits a divided report on this subject. A portion of the committee feels that the present Municipal Court system serves well the function with which it is charged, bearing in mind that the proximity of such a Court to the area and people it serves is its strength. A second portion of the committee feels that the problem should be left to "local option" under appropriate referendum measure. A third portion of the committee feels that some consolidation of the present courts could properly be made, for example Portland Municipal Court could well include South Portland; Bangor Municipal Court could well serve Brewer; Lewiston Municipal Court could well serve Auburn; Augusta Municipal Court could well include Hallowell.

Your committee is unanimous in urging

1. That where the case load justifies it the Judge should be placed on and paid for full time application to his duties.
2. That uniform rules of practice, procedure and administration be adopted that the Municipal Court system so constituted be under the administrative supervision of the Chief Justice of the Supreme Judicial Court.
3. That the respective municipalities be required to provide quarters and appointments whereby the dignity of the Court may be upheld.

### Probation and Parole

Study into the desirability of a State-wide Probation and Parole system seems to resolve itself largely, your committee feels, into consideration of the Probation system, or much more accurately, the lack of it, inasmuch as there now exists a state wide parole organization as part of the Department of Institutional Service. There is no state wide probation system in the sense of a system supervised by and responsible to a state director or department head. The survey and report made by the League of Women Voters in December 1954 presents an accurate picture of the Probation effort in Maine.

Briefly the law now provides that the Chief Executive with the consent of his Council shall appoint in any county of the state where, in his judgment, such appointment is advisable, one probation officer, who shall be a citizen of the county for which he is appointed and of good moral character, and who shall hold office during the pleasure of the Governor and Council and receive such remuneration as the county commissioners shall fix. Special provisions apply to Cumberland and Androscoggin counties. The fourteen counties remaining rely on the general law above cited for their officers. The result is total lack of uniformity in qualifications, policy, administration of the office, liaison between the courts of the county and the probation office, methods of administration and supervision of the probationers. While the Na-

tional Probation Association fixes 60 cases as a maximum case load for a member of a Probation Staff, the officers in Maine have from a number of some less than 60 up to 350 cases without clerical aid, office space, or compensation for full time employment. Three counties, possibly a fourth, have full time probation officers. The officers in these three or four counties (Androscoggin, Cumberland, Penobscot and York) have what might be termed a staff but for each member of the staff, including the clerical assistants, the case load is several times the recommended national maximum. In every county the time available for work with the probationer, the study and treatment of and for the reason of his delinquency is at either an absolute minimum or non-existent.

Brevity in the discussion of this subject must not be taken to reflect unimportance. Its importance cannot be over-emphasized. According to National figures the cost of good probation work is about 1/15th the cost of maintaining the subject in a state institution. The first offender, and the great majority of probationers come from that class, can be helped. Even with the totally inadequate supervision given by the majority of our officers, inadequate not by intention of the officer, but because of his case load, part time work and pay and lack of working facilities, the percentage of "repeaters" is low. An adequate system would, in the opinion of the committee, save its cost many times over.

### Conclusions

Your committee recommends to the Council that a State Department of Probation (and Parole, with the idea of consolidating all work in the field under one head) be created, the head of which shall be a person with professional probation and parole field qualifications and responsible to a Probation and Parole Commission consisting of such number and manner of selection as the Council may recommend or the Legislature determine, with Probation Officers to be appointed by the Commission in numbers commensurate to the average case load, from a list of candidates found qualified by the state personnel board upon specifications determined by the Director, to work on a full time basis and in districts assigned them and for compensation fixed and paid by the state, retaining to the Courts however, power to appoint special probation officers in exceptional cases and a provision to protect adequately the training, experience and seniority of present incumbents.

Respectfully submitted

Harold C. Marden

Armand A. Dufresne

Edward I. Gross

Frank E. Southard, Jr.

by

**Harold C. Marden**

Read and approved:

Doris Pike White

Dr. Charles F. Phillips

Uncommitted:

Orren C. Hormell

STATE OF MAINE

IN THE YEAR OF OUR LORD, NINETEEN HUNDRED  
FIFTY-SEVEN

AN ACT Transferring Domestic Relations Problems from  
Superior to Probate Courts.

Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. R. S., c. 112, § 2, amended.** The 1st paragraph of section 2 of chapter 112 of the Revised Statutes is hereby amended to read as follows:

'All civil actions, except scire facias and other special writs, shall be commenced by original writs, which, in the Superior Court, may be issued by the clerk, in term time or vacation, and framed to attach the goods and estate of the defendant and for want thereof to take the body, or as an original summons, with or without an order to attach goods and estate; ~~and in~~, and in the Probate Courts, when a libel for divorce is inserted therein, may be issued by the Register, in term time or vacation, and framed to attach the goods and estate of the libellee. In actions against corporations and in other cases where goods or estate are attached and the defendant is not liable to arrest, the writ and summons may be combined in one. A writ issued by the clerk of any county may be made returnable in any other county in which the action might be legally brought.'

**Sec. 2. R. S., c. 112, § 3, amended.** Section 3 of chapter 112 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 3. Justice writs.** Writs issued by a trial justice or judge of a municipal court ~~or judge of probate~~ shall be signed by him or by the clerk or recorder ~~or register of probate~~ of such court and sealed, except as provided by section 6 of chapter 108.'

**Sec. 3. R. S., c. 153, § 9, amended.** Section 9 of chapter 153 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 9. Jurisdiction.** Each judge may take the probate of wills and grant letters testamentary or of administration on the estates of all deceased persons who, at the time of their death, were inhabitants or residents of his county or who, not being residents of the State, died leaving estate to be administered in his county, or whose estate is afterwards found therein; also on the estate of any person confined in the State Prison under sentence of imprisonment for life; and has jurisdiction of all matters relating to the settlement of such estates and shall have and exercise jurisdiction and all powers, duties and authority necessary for exercising the jurisdiction heretofore had and exercised by the Superior Court in matters of divorce, as prescribed

**in sections 55 to 70, inclusive, of chapter 166.** He may grant leave to adopt children, change the names of persons, appoint guardians for minors and others according to law, and has jurisdiction as to persons under guardianship, and as to whatever else is conferred on him by law.'

**Sec. 4. R. S., c. 166, § 19, amended.** Section 19 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 19. Custody and support decreed when parents live apart.** If the father and mother of a minor child are living apart from each other, the judge of probate ~~or the superior court justice~~ in the county where either resides, on petition of either, in term time or vacation, and after such notice to the other as he may order, may decree which parent shall have the exclusive care and custody of the person of such minor or he may apportion the care and custody of the said minor between the parents, as the good of the child may require; ~~and he~~. He may order the father of the minor child or children to contribute to the support of such minor child or children such sums payable weekly, monthly or quarterly as are deemed reasonable and just and may enforce obedience by appropriate decrees, execution issuing for said sums when payable and for costs; which decrees shall be in force until further order of the judge ~~or justice~~. An appeal shall lie from such decree or decrees to the Supreme Court of Probate, where originating in the court of probate, ~~or to the supreme judicial court where originating in the superior court~~ but the original decrees shall be in force until reversed.'

**Sec. 5. R. S., c. 166, § 43, amended.** The 1st sentence of section 43 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

'Whenever a man, having a wife, a minor child or children, residing in this State and being of sufficient ability or being able to labor and provide for them, willfully and without reasonable cause, refuses or neglects to provide suitable maintenance for them, ~~the superior court~~ the probate court and any municipal court, in term time, or any judge ~~or justice~~ of said courts in vacation, in the county where the wife or such minor child or children reside, on petition of the wife for herself and for such child or children, or of such child or children by their guardian, after such notice to the husband or father as it may order, and hearing, may order him to contribute to the support of his wife and such minor child or children or either of them such sums payable weekly, monthly or quarterly as are deemed reasonable and just, and may enforce obedience by appropriate decrees.'

**Sec. 6. R. S., c. 166, § 55, amended.** The last sentence of section 55 of chapter 166 of the Revised Statutes is hereby repealed, as follows.

~~'The superior court, or any justice thereof in vacation, has jurisdiction of bills for divorce in all counties.'~~

**Sec. 7. R. S., c. 166, § 56, amended.** Section 56 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 56. Commencement of proceedings; service.** The libelant may file in the clerk's register's office a libel, signed by him, or insert it in a writ of attachment with power to attach real and personal property, to respond to the decrees of the probate court ~~as in other suits; and service.~~ Service thereon shall be made by summons and copy, 14 days before it is returnable; ~~the~~. The court in any county or ~~a justice~~ the judge thereof in vacation, may order notice as in other suits; provided, however, notice. Notice may be ordered upon writs of attachment with a libel inserted therein notwithstanding the fact that no attachment either real or nominal has been made on said writ; ~~and no~~. No service of a writ of attachment with a libel for divorce inserted therein shall be held to be insufficient solely because no attachment either actual or nominal was made thereon, provided the same be personally served on the libellee by summons and copy ~~as aforesaid~~, or if notice be given in the manner and by such means as the court ~~or any justice thereof~~ may order under the provisions of this or the following section 57.'

**Sec. 8. R. S., c. 166, § 59, amended.** Section 59 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 59. Pending libel, wife's expenses paid by husband.** Pending a libel, the court, or ~~any justice~~ the judge thereof in vacation, may order the husband to pay to the wife, or to her attorney for the wife, sufficient money for her defense or prosecution thereof, and to make reasonable provision for her separate support, on petition for which costs and counsel fees may be ordered; enter such decree for the care, custody and support of the minor children as the court deems proper; and in all cases enforce obedience by appropriate processes on which costs and counsel fees shall be taxed as in other actions.'

**Sec. 9. R. S., c. 166, § 60, amended.** Section 60 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 60. Court may free wife from restraint pending libel.** Pending a libel, the court, or ~~any justice~~ the judge thereof in vacation, on petition of the wife, may prohibit the husband from imposing any restraint on her personal liberty; and enforce obedience by appropriate processes.'

**Sec. 10. R. S., c. 166, § 61, amended.** Section 61 of chapter 166 of the Revised Statutes is hereby amended to read as follows:

**'Sec. 61. Issues for jury in divorce libels.** Whenever, in a hearing on a libel for divorce, any question of fact arises which may properly be submitted to a jury, issues may be framed for that purpose under the direction of the presiding justice judge, whereupon the case shall be transmitted by sending copies of the pleadings and issues so framed

therein, attested as true by register of probate, to the Supreme Court of Probate for jury determination which case so transferred will be in order for hearing at the next term of the Supreme Court of Probate. After determination of the framed issues by the jury, the case shall be then remitted to the probate court for further proceedings, and the findings of a jury thereon shall have the same force and effect as similar findings in probate appeals. All libels for divorce shall be in order for hearing at the first or return term, provided service of said libel has been made in accordance with the provisions of this chapter not less than 60 days before said return term ~~and may be heard by any justice thereof in vacation~~.

In Senate Chamber  
Read and placed on file  
January 30, 1957  
1,000 copies ordered printed  
in pamphlet form  
CHESTER T. WINSLOW,  
Secretary