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Family Law - Survey of Illinois Law for the Year 1948-1949

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V. FAMILY LAW

Family law provides a never-ending series of interesting questions. True to norm, the greater portion of the problems presented during the current period concerned issues arising out of divorce suits. Many of the resulting decisions were little more than reiterations of familiar rules; others struck at bold steps which had been taken by the trial courts; but some brought new horizons into view.

Illustrative of the first group is the case of *Gleiser v. Gleiser*¹ wherein a default decree, granting plaintiff a divorce as well as the custody of a minor child, also provided for child support and attorney's fees although personal service on the non-resident defendant was lacking. Shortly after entry of the decree, the defendant, upon special appearance and leave granted, filed his petition seeking to vacate those portions of the decree calling for support money and attorney's fees because of the want of jurisdiction over his person. The petition was denied by the trial court after a hearing had been had thereon. That order was reversed, as might be expected, on direct appeal to the Illinois Supreme Court,² because the court noted that it had "long been the established rule of this State that a decree requiring the payment of alimony, child support or attorney's fees is a decree in personam."³ Such provisions being void for lack of personal jurisdiction, they may properly be vacated even though more than thirty days may have passed since the entry of the decree,⁴ and the petition to vacate does not, of itself, constitute a general appearance.⁵ The court was careful to point out, however, that the father's obligation to support his child had not ceased, either by the decree or by reason of the present ruling, provided jurisdiction to enforce the same could be obtained.

One viewing the holdings of Illinois courts, when dealing with the effect which remarriage has upon lump-sum alimony provi-

¹ 402 Ill. 343, 83 N. E. (2d) 693 (1949).

² Direct appeal was proper, under Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 199, because the alleged denial of due process presented a constitutional issue.

³ 402 Ill. 343 at 345, 83 N. E. (2d) 693 at 694.

⁴ *Thayer v. Village of Downers Grove*, 369 Ill. 354, 16 N. E. (2d) 717 (1938).

⁵ Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 144.

sions payable in installments,⁶ would think that the "trap" created thereby could be successfully avoided.⁷ The lump-sum alimony settlement incorporated in the divorce decree entered in *Hotzfield v. Hotzfield*⁸ required the husband to irrevocably name his wife and his minor child as beneficiaries under all life insurance then in force. Another clause of the settlement provided that, upon complete payment of the installments of alimony, the minor child should be named the sole beneficiary. The policies were to be held temporarily by the wife as security. Upon her remarriage prior to full payment of the lump-sum provision, the divorced husband petitioned for relief from any further obligation under the decree so far as it concerned the ex-wife and also sought the return of an insurance policy held by her. Denial of such petition was reversed on appeal on the basis that the holding in *Adler v. Adler*⁹ required it, but there is occasion to believe that a different result would presently be obtained because of an amendment, noted hereafter, which has been made to the Divorce Act.

The tribulations of the "battling" Borins are reasonably well-known to Chicago lawyers. Another chapter in their saga has been written by the holding in *Borin v. Borin*,¹⁰ a suit for divorce on the ground of desertion filed by Mrs. Borin on the day following the final disposition of a prior suit in which both parties had sought divorce but where relief had been denied to either. The present complaint originally charged the husband with adultery during the period which elapsed between the taking of a jury verdict and the rendition of the decree in the for-

⁶ *Adler v. Adler*, 373 Ill. 361, 26 N. E. (2d) 504 (1940); *Banck v. Banck*, 322 Ill. App. 369, 54 N. E. (2d) 577 (1944), leave to appeal denied, discussed in 22 CHICAGO-KENT LAW REVIEW 276. The prevailing rule, prior to the 1933 amendment to Ill. Rev. Stat. 1949, Vol. 1, Ch. 40, § 18, likewise seems to have been that the remarriage of the alimony recipient was such a change of condition as to warrant the termination of alimony payments: *Maginnis v. Maginnis*, 323 Ill. 113, 153 N. E. 654 (1926); *Stillman v. Stillman*, 99 Ill. 196, 39 Am. St. Rep. 21 (1881).

⁷ See, for example, *Reighley v. Continental Ill. Nat. Bank & Trust Co.*, 390 Ill. 242, 61 N. E. (2d) 29 (1945); *Kohl v. Kohl*, 330 Ill. App. 284, 71 N. E. (2d) 358 (1947); *Drangle v. Lindauer*, 323 Ill. App. 23, 54 N. E. (2d) 75 (1944), leave to appeal denied.

⁸ 336 Ill. App. 238, 83 N. E. (2d) 605 (1948), noted in 44 Ill. L. Rev. 382 and 37 Ill. B. J. 492.

⁹ 373 Ill. 361, 26 N. E. (2d) 504 (1940).

¹⁰ 335 Ill. App. 450, 82 N. E. (2d) 70 (1949), noted in 33 Marquette L. Rev. 62.

mer case. An amended complaint was filed soon thereafter substituting desertion as the ground relied upon. The desertion was alleged to have been continuous since the time when the parties first became embroiled in litigation. Plaintiff, although successful in her pursuit for a decree, later moved the trial court to vacate the decree and to dismiss the amended complaint without prejudice on the ground that she had been induced to switch the charge from adultery to desertion because representations had been made that she would be given exclusive custody of her child with an adequate provision for the infant's support, representations she regarded as unfulfilled by the decree. On plaintiff's appeal from the denial of her motion, the Appellate Court reversed and ordered the complaint dismissed for want of equity, finding the situation to be one identical with that posed in *Floberg v. Floberg*,¹¹ which made it the duty of the court, on its own motion, to examine the question and to determine whether plaintiff had been deserted by the defendant for the requisite period.¹² The case serves to emphasize the rule of this state that the running of the period of desertion is tolled while a bona-fide action is pending between the parties, whether for divorce or separate maintenance, during which period the parties are not only justifiably living apart but must so live to give any substance to the pending complaint. Nothing short of a new desertion with a further completed period of separation would seem to suffice.

Illustrative of the second group of cases is *Clubb v. Clubb*¹³ wherein an attempt was made to enforce, through contempt proceedings, a local decree for alimony which had been entered in aid of a prior divorce decree rendered by an English court. Defendant sought to purge himself of contempt by asserting that

¹¹ 358 Ill. 626, 193 N. E. 456 (1934).

¹² The court stated its duty in terms of language to be found in *Ollman v. Ollman*, 396 Ill. 176 at 182, 71 N. E. (2d) 50 at 53 (1947), to the effect that: "In all divorce suits the public occupies the position of a third party. It does not plead, but is represented by the conscience of the court; and so, whenever a defense comes out in the evidence, whether alleged, or not, it is fatal to the proceeding. . . . This is true, not because the defendant has any just right to take advantage of a defense which he has not pleaded, but because the public interest is involved, and the conscience of the court, appealed to by this interest, does not permit the divorce unless the facts represented on the whole record justify it."

¹³ 402 Ill. 390, 84 N. E. (2d) 366 (1949), noted in 37 Ill. B. J. 310, reversing 334 Ill. App. 599, 80 N. E. (2d) 94 (1948), noted in 27 CHICAGO-KENT LAW REVIEW 65.

his failure to pay was occasioned solely by lack of funds. The trial court so found and dismissed the contempt citation. The Appellate Court for the First District reversed and remanded with directions to find defendant guilty. On further appeal, the Illinois Supreme Court heard argument on behalf of the defendant to the effect that equity lacked jurisdiction to compel payment of the past due alimony because (1) there was an adequate remedy at law; (2) that the power over contemptuous conduct did not extend to the enforcement of a money judgment for past due alimony; (3) that the contempt process was not proper under any rule of comity; and (4) the requirements of full faith and credit were inapplicable to the decree of a foreign country. In opposition, appellee argued that the decree which had been entered below was one for alimony, properly enforceable by contempt proceedings under Section 42 of the Chancery Act,¹⁴ and was one which was called for by principles of comity. The high court, reversing the action taken by the Appellate Court, held that the full faith and credit doctrine was inapplicable;¹⁵ that it was doubtful that the legislature, when enacting the statute relied upon, had in mind the enforcement of foreign decrees particularly since, without statute or treaty, the comity of the United States did not demand conclusive recognition of judgments emanating from foreign countries; and that, absent a statute giving specific authority, equity courts sitting in Illinois could not draw on any inherent equitable power for jurisdiction in divorce matters is solely the creature of statute.¹⁶

While the decision is probably correct in the light of existing provisions, it leaves the problem of dealing with the migrating alimony obligor in an unsatisfactory state. Part of the dis-

¹⁴ Ill. Rev. Stat. 1949, Vol. 1, Ch. 22, § 42.

¹⁵ Referring to *Boissevan v. Boissevan*, 252 N. Y. 178, 169 N. E. 130 (1929), the Illinois court said: "This decision seems to be authority for recognition of the foreign judgment to the extent that a judgment for arrears in payment of alimony based thereon may be procured in a State court but that, in the absence of a particular statute for that purpose, the foreign judgment cannot be enforced as one for the payment of alimony rendered by courts of a State." See 402 Ill. 390 at 395, 84 N. E. (2d) 366 at 369.

¹⁶ That a court of equity hearing divorce matters is exercising only a statutory and not an inherent jurisdiction is amply borne out by such cases as *Arndt v. Arndt*, 399 Ill. 490, 78 N. E. (2d) 272 (1948); *Smith v. Smith*, 334 Ill. 370, 166 N. E. 85 (1929); and *Smith v. Johnson*, 321 Ill. 134, 151 N. E. 550 (1926).

satisfaction with the decision may lie in the fact that the plaintiff, in her complaint, sought only a judgment for the arrears in alimony payments and did not seek to have the English decree established here as a local equitable decree.¹⁷ Such had been done in *Rule v. Rule*,¹⁸ the first Illinois case to grant equitable relief against a wandering defendant under an obligation to pay alimony imposed by the decree of a sister state. There may or may not be significance in the fact that the court rendering the decision in the instant case seemingly cast no reflection upon the holding therein.

If the decision of the Appellate Court for the Second District in *Parker v. Parker*¹⁹ is to stand, however, the spouse who migrates before jurisdiction can attach is apt to find that he does not leave all his troubles behind when he abandons his family. In that case, a mother, suing in her own behalf but also and primarily claiming as the next friend for her minor daughter, filed a complaint in equity seeking to require the father-defendant to contribute to the support of his child. It appeared therein that an Indiana divorce had been granted the mother, together with custody of the child, but the decree was properly silent as to alimony or support for the husband was beyond the jurisdiction for purpose of personal service. The defendant's motion to strike the complaint had been sustained purely on the question of law involved, the argument proceeding on the ground that the only statutory authority for equitable action in matters of this character was in conjunction with the local granting of a divorce.²⁰ The plaintiff, on appeal, successfully stressed the constitutional mandate calling for a remedy for every wrong²¹ as well as the plenary jurisdiction which equity

¹⁷ The Illinois Supreme Court, 402 Ill. 390 at 396, 84 N. E. (2d) 366 at 369, stressed the fact that in almost all the cases cited by plaintiff, in which a judgment or decree of a sister state had been enforced, the local court "had first established the judgment as its judgment or decree."

¹⁸ 313 Ill. App. 108, 39 N. E. (2d) 379 (1942), noted in 21 CHICAGO-KENT LAW REVIEW 46-7.

¹⁹ 335 Ill. App. 293, 81 N. E. (2d) 745 (1948), noted in 37 Ill. B. J. 317 and 1949 U. of Ill. Law Forum 151. Leave to appeal has been denied.

²⁰ Ill. Rev. Stat. 1949, Vol. 1, Ch. 40, § 19.

²¹ Ill. Const. 1870, Art. II, § 19.

has long exercised over the interests and estates of minors. The court, accepting the validity of the Indiana divorce decree and the custody order contained therein,²² reasoned that the divorce had no effect upon the moral or legal obligations of the defendant to support his minor offspring.²³ It said that acceptance of the defendant's argument would be tantamount to sanctioning the "abrogation of the legal obligation of parenthood," for a father would need have only to leave the jurisdiction so personal service could not be had and, no support order being entered against him, there would be nothing to support supplemental proceedings in any other jurisdiction where he might be found. The Appellate Court for the First District, in *Hawkins v. Hawkins*,²⁴ had reached the opposite conclusion on a similar case because of the absence of specific statutory authority to support any action. The dispute existing between the districts now makes the problem one for high court consideration if the legislature is unwilling to take action. There is adequate basis elsewhere on which to ground a solution.²⁵

The impact which a subsequent Nevada absolute divorce decree may have on a prior separate maintenance decree handed down in Illinois became the matter of issue in *Buck v. Buck*,²⁶ a case which brings new light into a much confused area of the law. The plaintiff therein, in 1943, had been granted a decree of separate maintenance by an Illinois court. The husband then moved to Nevada and, meeting residential requirements, filed a complaint for divorce there. The wife, being fully informed of the pending action, appeared in the Nevada case and filed an answer and cross-bill. The Nevada court granted the wife a divorce and approved a property settlement under which she

²² Restatement, Conflict of Laws, § 116.

²³ *Kelley v. Kelley*, 317 Ill. 104, 147 N. E. 659 (1925); *Plaster v. Plaster*, 47 Ill. 290 (1868); *Hoover v. Hoover*, 307 Ill. App. 590, 30 N. E. (2d) 940 (1940).

²⁴ 288 Ill. App. 623, 6 N. E. (2d) 509 (1937), abst. opin.

²⁵ *Davies v. Fisher*, 34 Cal. App. 137, 166 P. 833 (1917); *Riggs v. Riggs*, 91 Kan. 593, 138 P. 628, Ann. Cas. 1915D 809 (1914); *Winner v. Schucart*, 202 Mo. App. 176, 215 S. W. 905 (1919); *Geary v. Geary*, 102 Neb. 511, 167 N. W. 778, 20 A. L. R. 809 (1918).

²⁶ 338 Ill. App. 179, 86 N. E. (2d) 415 (1949), noted in 27 CHICAGO-KENT LAW REVIEW 318.

accepted certain monetary benefits. The ex-wife later petitioned the Illinois court for an increase in the support money granted by the Illinois decree. Her request was met by the action of the defendant, again a resident of Illinois, in calling the court's attention to the Nevada decree as well as to the petitioner's active participation in the Nevada proceeding. Despite petitioner's claim of lack of jurisdiction in, and imposition on, the Nevada court, the lower Illinois court ruled that the Nevada decree, being valid, operated to negative the prior Illinois order. The Appellate Court, finding that the Nevada decree met the requirements for full faith and credit as recently announced by the United States Supreme Court,²⁷ blocked any collateral attack thereon, principally because of the petitioner's voluntary appearance and submission to the jurisdiction of that state.²⁸

The plaintiff in *Lagow v. Snapp*,²⁹ claiming as widow of her intestate deceased husband, had been awarded both the homestead and an undivided share of the realty under a partition decree. The appealing defendant, relying on a post-nuptial contract made between the plaintiff and her husband, asserted the widow had parted with all interest in her husband's property. The plaintiff's reply had been, *inter alia*, that the contract was contrary to public policy because it had operated to relieve the husband of his duty to support,³⁰ with which reply the chancellor had agreed. The Supreme Court, when affirming the decree, admitted that a wife might "by a written contract with her husband, based upon a valuable consideration, release to him her rights in his property and estate and thereby extinguish her right

²⁷ *Sherrer v. Sherrer*, 334 U. S. 343, 68 S. Ct. 1087, 92 L. Ed. 1429, 1 A. L. R. (2d) 1355 (1948); *Coe v. Coe*, 334 U. S. 378, 68 S. Ct. 1094, 92 L. Ed. 1451, 1 A. L. R. (2d) 1376 (1948).

²⁸ Those specially interested in the problem might wish to compare the decision with the holding in *Lynn v. Lynn*, 275 App. Div. 269, 88 N. Y. S. (2d) 791 (1949), where a New York court of equivalent rank reached an opposite result.

²⁹ 400 Ill. 414, 81 N. E. (2d) 144 (1948), noted in 37 Ill. B. J. 272.

³⁰ The agreement, entered into at a time when the plaintiff and her husband were contemplating separation, contained the following pertinent sentence: "And the said Harriet Lagow further releases and relinquishes forever all her rights, interest or claims which she may now have against the said Earle Lagow, or any interest she may hereafter acquire against him or may have present or prospective in his estates, real or personal, either as heir, widow or otherwise." See 400 Ill. 414 at 417, 81 N. E. (2d) 144 at 146.

as widow, including the right of dower,"³¹ but pointed out that it had consistently declared that contracts "wherein the wife attempted to discharge her husband from his legal obligation to maintain her . . . are against public policy and are therefore void."³² Defendant's counsel did not challenge the latter principle but did argue that the agreement before the court was simply a property settlement. The court rejected this contention because the contract, taken as a whole, was said to reveal an intention not only to settle property rights but also to provide the husband with a release from the obligation of maintenance and support. If the overly-ambitious draftsman had used more restraint when phrasing the agreement, he might have produced an entirely different result.

The case of *Arndt v. Arndt*³³ having again come before an appellate tribunal,³⁴ the way was opened for consideration of the rare problem of a plaintiff's right to have annulment of a marriage entered into because of the alleged fraudulent representation by defendant that the plaintiff was the father of her unborn child where the plaintiff admitted sexual contact with defendant prior to the marriage but where there was no cohabitation following the ceremony. Only two other cases from Illinois, those of *Helfrick v. Helfrick*³⁵ and *Short v. Short*,³⁶ would seem to deal with the point.³⁷ In the first, the court held the

³¹ 400 Ill. 414 at 419, 81 N. E. (2d) 144 at 147. Among the cases so declaring are *Weinebrod v. Rohdenburg*, 343 Ill. 318, 175 N. E. 379 (1931); *Kirchner v. Morrison*, 320 Ill. 236, 150 N. E. 690 (1926); *Edwards v. Edwards*, 267 Ill. 111, 107 N. E. 847, Ann. Cas. 1917A 64 (1915); *Stokes v. Stokes*, 240 Ill. 330, 88 N. E. 829 (1909).

³² Prior expressions of this view may be seen in *Vock v. Vock*, 365 Ill. 432, 6 N. E. (2d) 843 (1937); *Van Koten v. Van Koten*, 323 Ill. 323, 154 N. E. 146, 50 A. L. R. 437 (1926); *Lyons v. Shanbacher*, 316 Ill. 569, 147 N. E. 440 (1925).

³³ 336 Ill. App. 65, 82 N. E. (2d) 908 (1948). *Feinberg, P. J.*, wrote a dissenting opinion.

³⁴ See 399 Ill. 490, 78 N. E. (2d) 272 (1948), reversing 331 Ill. App. 85, 72 N. E. (2d) 713 (1947), noted in 27 CHICAGO-KENT LAW REVIEW 68-9. The issue there had been whether the putative husband was obliged to pay attorney's fees to the alleged wife in support of her defense to an annulment action.

³⁵ 246 Ill. App. 294 (1927).

³⁶ 265 Ill. App. 133 (1932).

³⁷ Two other Illinois cases contain the same general issue although the fraudulent representations pertained to other matters. In *Lyon v. Lyon*, 230 Ill. 366, 82 N. E. 850, 13 L. R. A. (N. S.) 996, 12 Ann. Cas. 25 (1907), a case refusing to follow the rule of *DiLorenzo v. DiLorenzo*, 174 N. Y. 467, 67 N. E. 63, 95 Am. St. Rep. 609 (1903), annulment based on an allegation of untrue representations as to health was denied, the court saying the representation charged was "similar in kind to

false representation no ground for annulment. In the second, without mention of the prior decision, the same court ruled that the defendant's cross-bill to a suit by the "wife" for separate maintenance should have been sustained.

Measuring the facts and circumstances of the instant case with what it conceived to be the trend of opinion, the majority decided that, with the exception of *Foss v. Foss*³⁸ and other Massachusetts cases,³⁹ there was no controlling decision which declared that the plaintiff had to go without a remedy.⁴⁰ A well-reasoned dissent,⁴¹ however, took the position that plaintiff, having admitted intercourse with the defendant within the possible period of gestation, should, as a matter of public policy, be barred from undertaking to bastardize the child,⁴² particularly since the plaintiff appeared to have accepted defendant's assertions without any investigation whatsoever, thereby demonstrating the lack of an essential allegation to a complaint predicated on fraud.⁴³ There is, therefore, room to speculate whether the decision should stand.

that of a pregnant woman, who induces a man with whom she has had illicit intercourse to marry her by the false representation that he is the father of her child. But such representation, under such circumstances, does not constitute fraud for which the marriage will be annulled." See also *Hull v. Hull*, 191 Ill. App. 307 (1915), where the fraudulent representation was said to be that the defendant-husband had not engaged in sexual relations prior to marrying plaintiff, but annulment was denied.

³⁸ 94 Mass. (12 Allen) 26 (1866).

³⁹ *Arno v. Arno*, 265 Mass. 282, 163 N. E. 861 (1928); *Crehore v. Crehore*, 97 Mass. 330, 93 Am. Dec. 98 (1867).

⁴⁰ Consider, for example, *Lyman v. Lyman*, 90 Conn. 399, 97 A. 312, L. R. A. 1916E 643 (1916); *Jackson v. Ruby*, 120 Me. 391, 115 A. 90 (1921); *Gard v. Gard*, 204 Mich. 255, 169 N. W. 908, 11 A. L. R. 923 (1918); *Winner v. Winner*, 171 Wis. 413, 177 N. W. 680, 11 A. L. R. 919 (1920).

⁴¹ The dissenting opinion calls attention to the anomalous character of the decision in *Short v. Short*, 265 Ill. App. 133 (1932), by pointing out that the opinion therein, granting annulment, was handed down by the same judge who had written the opinion in the earlier case of *Helfrick v. Helfrick*, 246 Ill. App. 294 (1927), which had denied annulment.

⁴² *People ex rel. Cullison v. Dile*, 347 Ill. 23, 179 N. E. 93 (1931). In *Orthwein v. Thomas*, 127 Ill. 554 at 562, 21 N. E. 430 at 431 (1889), the Illinois Supreme Court had noted that the "law presumes that every child in a Christian country is prima facie the off-spring of a lawful, rather than a meretricious union of the parents. [It] is unwilling to bastardize children. . . . The presumption of the law is not lightly to be repelled; it is not to be lightly broken in upon or shaken by a mere balance of probabilities."

⁴³ *Bishop, Marriage and Divorce*, Vol. 1, § 167, states: "A man who means to act upon such representations should verify them by his own inquiry. The law presumes that he uses due caution in a matter in which his happiness for life is so materially involved and it makes no provision for relief of a blind credulity, however it may have been produced."

The legislature adopted three important statutory amendments during the period of this survey. The first empowers the Supreme Court to adopt rules providing for a sixty day "cooling off" period in divorce cases so as to provide an opportunity to effect a reconciliation.⁴⁴ The second, enacted to overcome constitutional objections which had rendered sterile prior attempts to create a special divorce division,⁴⁵ now provides for state-wide operation of such tribunals.⁴⁶ The third, intended to obviate the construction previously placed on Section 18 of the Divorce Act as it related to the payment of alimony after remarriage,⁴⁷ directs that lump-sum alimony provisions, although payable in installments, shall continue in effect until discharged in full even though the ex-spouse entitled thereto should remarry or either party to the decree should die.⁴⁸ Another bill concerning family relations, one designed to compel support of dependent wives, children and poor relatives, both within and without the state,⁴⁹ has already been exposed to criticism over its possible unconstitutionality.⁵⁰

VI. PROPERTY

REAL AND PERSONAL PROPERTY

Owners of land can no longer expect to thwart prospective adverse claimants simply by keeping them off the surface of the land. They must cock a watchful eye toward the air above, according to the holding in *Poulos v. P. H. Hill Company, Inc.*,¹ wherein the land owner was denied the right to erect a building on some two and one-half feet of his property because an adjoining owner had acquired the right, by prescription, to maintain a fire escape over the premises through its long continued presence in the air

⁴⁴ Laws 1949, p. 1189, H. B. 1010; Ill. Rev. Stat. 1949, Vol. 2, Ch. 110, § 126.

⁴⁵ *Hunt v. Cook County*, 398 Ill. 412, 76 N. E. (2d) 48 (1947).

⁴⁶ Laws 1949, p. 730, S. B. 307; Ill. Rev. Stat. 1949, Vol. 1, Ch. 37, § 105.19 et seq.

⁴⁷ See cases cited in note 6, ante.

⁴⁸ Laws 1949, p. 729, S. B. 175; Ill. Rev. Stat. 1949, Vol. 1, Ch. 40, § 19.

⁴⁹ Laws 1949, p. 1191, H. B. 869; Ill. Rev. Stat. 1949, Vol. 1, Ch. 68, § 50 et seq.

⁵⁰ See Fins, "Legislation Affecting Practice," 38 Ill. B. J. 71, particularly p. 91
1 401 Ill. 204, 81 N. E. (2d) 854 (1948).