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Recommended Citation

Harry G. Fins, *The Illinois Law Revision Commission*, 29 DePaul L. Rev. 443 (1980)
Available at: <https://via.library.depaul.edu/law-review/vol29/iss2/6>

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THE ILLINOIS LAW REVISION COMMISSION

Harry G. Fins*

The value of a modern, efficient system of statutory law cannot be overestimated. Absent the continuous updating of the statutes, and the repeal or amendment of deadwood provisions, an already complex body of law may become needlessly unwieldy and confusing. Illinois is one of a number of states that have recognized the need for creating a commission whose purpose is to monitor and revise the statutes. In this article, Mr. Fins examines the accomplishments of the Illinois Law Revision Commission, whose work benefits the legal community as well as the public in general.

BACKGROUND 1961-1975

The rapid growth of legislation without the commensurate effort to repeal or eliminate outdated or otherwise unnecessary laws has resulted in a steady accumulation of statutory law in Illinois. Included in this voluminous body of statutory law were archaic statutes that may have been appropriate when first enacted, but which have no function in today's society.¹ It is likely that there were numerous laws which were unknown to the public at large, to lawyers versed in Illinois law, and even to the public officials charged with their enforcement.²

The state legislature has not been completely oblivious to the problem of obsolete statutes cluttering the statute books. On several occasions the Illinois General Assembly has passed legislation to alleviate the situation. In response to the changes necessitated by the 1962 Judicial Article to the Illinois Constitution,³ the Illinois General Assembly enacted a total of 633 implementation bills during the period of 1963 through 1969.⁴ Over 100

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1. See notes 26-39 and accompanying text *infra*.

2. See Fins, *The Illinois Statute Book—A Dangerous Tool for the Bench and Bar*, 57 CHI. B. REC. 144 (1975) [hereinafter cited as Fins, 57 CHI. B. REC.].

3. ILL. CONST. art. VI (1962) (current version in ILL. CONST. art. VI (1970)).

4. For background information on the need for the coordination of the Illinois statutes with the judicial article of 1962, see Fins, *Analysis of Illinois Judicial Article of 1961 and Its Legislative and Judicial Implements*, 11 DEPAUL L. REV. 185 (1962); Fins, *Legislative Amendments Needed in 1965 to Coordinate Illinois Statutes with the New Judicial Article*, 3 ILL. INST. CONTINUING LEGAL EDUC. 61 (1965); Fins, *Guide to Illinois Revised Statutes 1965—Need for Coordination with New Judicial Article*, 4 ILL. INST. CONTINUING LEGAL EDUC. 51 (1966); Fins, *Need for Completion of Illinois Judicial Article Implementation Program in Legislative*

additional bills were enacted in 1971 to coordinate the revised statutes with the Illinois Constitution of 1970.⁵

Recognizing the serious need for a well-coordinated, intensive effort to effectuate thorough and continuous updating of the revised statutes, in 1975 the legislature created the Law Revision Commission⁶ (Commission). The Commission's legislatively prescribed function was to make a thorough study of Illinois statutory law and determine which laws were obsolete and should, therefore, be repealed.⁷ The Commission presented the findings of its investigations to the Illinois General Assembly along with recommended remedies. The Legislature responded favorably to the Commission's recommendations and effectuated some reforms.

The result of the Commission's activities has been impressive. In the four years since its inception, the Commission has been the driving force behind sweeping and important revisions in the Illinois Revised Statutes. This arti-

Session of 1969, 6 ILL. INST. CONTINUING LEGAL EDUC. 155 (1968); Fins, *Need for Coordination of Illinois Statutes with Unified Trial Court Under the Judicial Article*, 3 J. MAR. J. PRAC. & PROC. 17 (1969).

5. See generally Fins, *Need for Coordination of Illinois Statutes with New Constitution and Supreme Court Rules, Effective July 1, 1971*, 5 J. MAR. J. PRAC. & PROC. 1 (1971) [hereinafter cited as Fins, 5 J. MAR. J. PRAC. & PROC.].

6. Act of Aug. 29, 1975, P.A. 79-662, 1975 Ill. Laws 2076 (repealed 1977). The general assembly particularized the following reasons for creating the Law Revision Commission:

WHEREAS, the promiscuous spawning of legislation without any corresponding effort to repeal archaic, outmoded and unnecessary laws has caused a steady increase in the bulk of the statutory law of Illinois, until the Illinois Revised Statutes now consist of three inordinately thick volumes of text plus a one-volume index; and

WHEREAS, included within this formidable body of statutory law are many enactments which may have served a useful purpose at one time but which bear little or no relevance to the conditions of life in the last part of the twentieth century; and

WHEREAS, it seems highly likely that among the Illinois Statutes are many laws the existence of which is unknown not only to members of the general public but even to the officers who are charged with their enforcement.

Id. (preamble).

Several other states have also enacted legislation to create similar commissions. The New York Law Revision Commission was created in 1934 and is a permanent agency. N.Y. LEGIS. LAW § 70 (McKinney 1952). The California Law Revision Commission was created in 1953 and also is a permanent agency. CAL. GOV'T CODE §§ 10300-08 (West 1966). The Michigan Law Revision Commission was created in 1965 and also is a permanent agency. MICH. COMP. LAWS ANN. § 4.322 (1966). The Florida Law Revision Council was created in 1967 and is a permanent agency. FLA. STAT. ANN. § 13.90 (West 1967). The Connecticut Law Revision Commission was created in 1974, and also is a permanent agency. CONN. GEN. STAT. ANN. §§ 2-85 to -88 (West Supp. 1980).

The statutes creating the New York, California, Michigan, Florida, and Connecticut agencies state, in almost verbatim language, the objectives to be as follows: (1) to examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms, and (2) to propose, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.

7. See Act of Aug. 29, 1975, P.A. 79-662, §§ 2-3, 1975 Ill. Laws 2077.

cle examines chronologically these legislative improvements since the Commission's organization.

THE COMMISSION'S ACCOMPLISHMENTS IN 1976

During its first year of operation the Law Revision Commission played an important role in the passage of ten bills that amended 335 statutes.⁸ The primary objective of these bills was to coordinate the statutes with Illinois' constitutional provisions,⁹ the Supreme Court Rules,¹⁰ and the Civil Practice Act.¹¹ The bulk of the revisions fall into two major categories: (a) the deletion of references to archaic terminology and (b) the repeal of appellate provisions that had been superseded by the Supreme Court Rules.

Archaic Terminology

Perhaps the most significant modernization in Illinois legal terminology came as a result of the adoption of the Judicial Article of 1962,¹² which provided that Illinois circuit courts shall have "original jurisdiction of all justiciable matters."¹³ The many references to "courts of law" and "courts of chancery" were systematically eliminated to align the language of the stat-

8. These bills became the Act of Aug. 2, 1976, P.A. 79-1335, 1976 Ill. Laws 625, and the Acts of Aug. 6, 1976, P.A. 79-1358 to -1366, 1976 Ill. Laws 713-1096. It is of interest to observe that prior to the effective date of the Illinois Constitution of 1970, this project would have required the drafting of 335 separate bills. Section 8(d) of article IV of the Illinois Constitution of 1970, however, makes possible the amendment of a number of statutes by one bill, if the purpose of the change is (1) codification, (2) revision, or (3) rearrangement of laws. ILL. CONST. art. IV, § 8(d) (1970). This constitutional provision made it possible to combine the amendment of 335 different statutes into these 10 bills.

For the background and reasons for the statutory changes involved, see Fins, 5 J. MAR. J. PRAC. & PROC., *supra* note 5, and Fins, 57 CHI. B. REC., *supra* note 2, at 144-52.

9. Particularly, the bills were designed to coordinate the revised statutes with changes brought about by the Judicial Articles of 1962 and 1970. See ILL. CONST. art. VI (1970).

10. ILL. REV. STAT. ch. 110A (1977).

11. *Id.* ch. 110.

12. ILL. CONST. art. VI (1962) (incorporated as ILL. CONST. art. VI (1970)).

13. *Id.* § 9. Under § 9 of the Judicial Article of 1962, which has been incorporated in the 1970 Judicial Article, the standard for determining the presence or absence of circuit court jurisdiction is no longer whether the case falls within the historical categories of law or equity or whether it is covered by statute; the test is now simply whether the matter is "justiciable." See *People v. Gilmore*, 63 Ill. 2d 23, 344 N.E.2d 456 (1976). The court in *Gilmore* stated: "The jurisdiction of the circuit courts in these cases was not 'conferred' by the information or indictment; jurisdiction was conferred by the provisions of section 9 of article VI of the Constitution, which provides that circuit courts have 'original jurisdiction of all justiciable matters.'" *Id.* at 25, 344 N.E.2d at 358. See also *People v. Valdez*, 79 Ill. 2d 74, 402 N.E.2d 187 (1980). *Valdez* pointed out the sharp distinction between the Illinois Constitutions of 1870 and 1970. The court specifically held that the jurisdiction of the circuit courts is not derived from statute and that § 9 of article VI of the 1970 Constitution, which gives the circuit courts "original jurisdiction of all justiciable matters," is the source of their jurisdictional powers. *Id.* at 85, 402 N.E.2d at 193.

utes with the unified circuit court system.¹⁴ Additional terminology rendered obsolete by the Judicial Article of the Illinois Constitution included "Superior Court of Cook County," "county court," "justice of the peace," "constable," and "master-in-chancery."¹⁵

The Commission found it necessary to make other adjustments in the language of the statutes. The designation of the final order in equitable proceedings, formerly "decree," was changed to "judgment."¹⁶ This coordinated the statutes with the Illinois Constitution and Supreme Court Rules, wherein the term judgment is the designation for final orders in all civil cases. Similarly, to coordinate statutes pertaining to adversary civil proceedings with the uniform nomenclature of the Civil Practice Act, the Commission substituted the term "complaint" for the terms "petition" and "information."¹⁷ Also, the terms "petitioner" and "respondent" were replaced by "plaintiff" and "defendant."¹⁸ Finally, the Commission pinpointed obsolete words and phrases that reflected remnants of pre-1934 legal practice, before the Civil Practice Act became effective. Glaring examples of such anachronisms embodied in the statutes included "demurrer," "nihil dicit," and "riens per descent."¹⁹

14. See public acts cited at note 8 *supra*. The Illinois Appellate Court had enunciated numerous times since the Judicial Article of 1962 went into effect on January 1, 1964, the important changes in the basic composition of the circuit courts. See *City of Chicago v. Nielsen*, 38 Ill. App. 3d 941, 349 N.E.2d 532 (1st Dist. 1976) (the new constitution abolished the courts of limited jurisdiction and consolidated all law and chancery powers in one unified circuit court system); *Stevens v. Protectoseal Co.*, 27 Ill. App. 3d 724, 327 N.E.2d 427 (1st Dist. 1975) (the purpose of § 9 was to create a single integrated trial court structure); *Haas v. Pick Galleries, Inc.*, 12 Ill. App. 3d 865, 299 N.E.2d 93 (1st Dist. 1973) (unlike the previous inferior courts which had only limited jurisdiction, the present circuit court has unlimited and original jurisdiction); *In re Estate of Marcucci*, 5 Ill. App. 3d 484, 285 N.E.2d 141 (1st Dist. 1972) (the new judicial system abolished all distinctions between the courts of law and equity and conferred all judicial power on circuit courts without regard to specialized functions of a division within the court); *Douglas v. Papierz*, 121 Ill. App. 2d 242, 257 N.E.2d 570 (1st Dist. 1970) (jurisdictional differences between equity and law courts have been abolished, and today, Illinois circuit courts have original jurisdiction in all cases brought before them). See also *Lopin v. Cullerton*, 46 Ill. App. 3d 378, 361 N.E.2d 6 (1st Dist. 1977) (in Illinois, because jurisdiction is constitutional, and is vested in a unified trial court, the failure of the parties, in a 'justiciable matter', to comply with the provisions of a statute, may give rise to questions concerning procedure but not to questions concerning jurisdiction). For a collection of cases on this matter, see Fins, *Circuit Court Jurisdiction Under Illinois Constitution*, Illinois State Bar Ass'n, 9 Judicial Administration Newsletter No. 12 (June 1979).

15. See generally Fins, *Re-Examination of 'Jurisdiction' in Light of New Illinois Judicial Article*, 53 ILL. B.J. 8 (1964).

16. Act of Aug. 6, 1976, P.A. 79-1358, 1976 Ill. Laws 713; Act of Aug. 6, 1976, P.A. 79-1363, 1976 Ill. Laws 973; Act of Aug. 6, 1976, P.A. 79-1364, 1976 Ill. Laws 1013.

17. Section 32 of the Civil Practice Act provides that "[t]he first pleading by the plaintiff shall be designated a complaint. The first pleading by the defendant shall be designated an answer." ILL. REV. STAT. ch. 110, § 32 (1977).

18. In § 21(1) of the Civil Practice Act, it is stated that "[t]he party commencing an action shall be called the plaintiff. The adverse party shall be called the defendant." *Id.* § 21(1).

19. ILL. REV. STAT. ch. 59, § 13 (1975) (repealed by Act of Aug. 6, 1976, P.A. 79-1365, § 27, 1976 Ill. Laws 1066); ILL. REV. STAT. ch. 87, § 2 (1975) (amended by Act of Aug. 6, 1976,

Superseded Appellate Provisions

In addition to the deletion of outmoded terminology, the Commission eliminated appellate provisions that were superseded by the Supreme Court Rules.²⁰ This was necessary as a result of the landmark Illinois Supreme Court decision of *People ex rel. Stamos v. Jones*,²¹ which held a statutory appellate provision "invalid" because "it exceeded the authority granted to the General Assembly by the constitution, [as] the constitution has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly."²² This important decision operated as an impetus for the re-examination of all Illinois statutes containing appellate provisions, with the object of retaining the desirable practices by converting them into court rules and by repealing or eliminating all the undesirable ones. This project resulted in a substantial revision of appellate rules, with the express proscription that "[t]he rules on appeals supersede statutory provisions inconsistent with the rules and govern all appeals."²³

THE COMMISSION'S ACCOMPLISHMENTS IN 1977

In 1977 the Law Revision Commission made further inroads into the formidable task of revising the Illinois statutes. Besides continuing the necessary updating of statutory terminology begun in the previous year, the Commission also turned its attention to repealing obsolete statutes that had remained on the books long after serving any useful purpose.²⁴ Additionally, in accordance with the growing recognition of the need to curtail sex-based discrimination, the Commission took active steps to eliminate gender-biased terminology from the statutes.²⁵

Obsolete Statutes

A modern body of statutory law should not be encumbered by deadwood provisions. Without an organized effort to revise the statutes, certain acts will technically remain in effect despite the fact that they no longer possess any meaning or usefulness. Three noteworthy examples of acts repealed

P.A. 79-1358, § 24, 1976 Ill. Laws 747; reenacted as ILL. REV. STAT. ch. 87, § 2 (1977). See text accompanying notes 199-240 *infra* for more examples of archaic terms and their definitions.

20. See Act of Aug. 6, 1976, P.A. 79-1359 to -1362, 1976 Ill. Laws 770-973; Act of Aug 6, 1976, P.A. 79-1365, 1976 Ill. Laws 1034.

21. 40 Ill. 2d 62, 237 N.E.2d 495 (1968) (appeal from final order). See also *People v. Taylor*, 50 Ill. 2d 136, 277 N.E.2d 878 (1972) (appeal from interlocutory order).

22. *People ex rel. Stamos v. Jones*, 40 Ill. 2d 62, 66, 237 N.E.2d 495, 500 (1968). In the recent case of *In re Marriage of Lentz*, ___ Ill. 2d ___, 403 N.E.2d 1036, 1037, the Illinois Supreme Court stated that "[a]ny legislative enactment in conflict with the rules of this court governing appeals [is] invalid."

23. ILL. REV. STAT. ch. 110A, § 1 (1977).

24. See notes 26-39 and accompanying text *infra*.

25. See notes 51-55 and accompanying text *infra*.

upon recommendations of the Commission are the Amendments and Jeofails Act,²⁶ the Drovers Act,²⁷ and the Foundlings Act.²⁸

First enacted in 1874, the Amendments and Jeofails Act was designed to alleviate the rigors of common law pleading and writ of error practice that prevailed at that time.²⁹ Since then, both of these procedural encumbrances have been abolished. Common law pleading was superseded by the Illinois Civil Practice Act and writ of error practice was replaced by the Supreme Court Rules.³⁰ Consequently, the Amendment and Jeofails Act finally was repealed in 1977,³¹ more than forty years after it had become totally obsolete because of the adoption of liberalized pleading in Illinois.

The Drover's Act provides a humorous example of a law that had outlived its usefulness in modern society. This Act, dating back to 1872, provided penalties for anyone guilty of riding or driving faster than a walk's-pace through a herd of livestock.³² Surprisingly, the legislature never formally repealed this Act, even though portions of it were amended in 1941. It was not until 1977 that this statutory non sequitur was severed from the Illinois statute books.³³

The third obsolete Act that was repealed at the behest of the Commission was the Foundlings Act.³⁴ Enacted in 1872, the Foundlings Act was never amended. It provided essentially a "self-help" adoption remedy³⁵ in favor of charitable institutions after mothers had abandoned their unwanted children. The self-help remedy provided by the Act was clearly contrary to the public policy of the State of Illinois, which requires adoption to be for-

26. *Id.* ch. 7 (1975) (repealed by Act of Sept. 16, 1977, P.A. 80-742, 1977 Ill. Laws 2211).

27. *Id.* ch. 44 (1975) (repealed by Act of Sept. 16, 1977, P.A. 80-739, 1977 Ill. Laws 2209).

28. *Id.* ch. 58 (1975) (repealed by Act of Sept. 14, 1977, P.A. 80-661, 1977 Ill. Laws 2016).

29. *Id.* ch. 7 (1975) (repealed by Act of Sept. 16, 1977, P.A. 80-742, 1977 Ill. Laws 2211). The Illinois Appellate Court has elaborated on the purposes behind the Amendment and Jeofails Act. See *Page v. W.F. Hallam & Co.*, 212 Ill. App. 462 (1919) (the purpose of this Act is to liberalize trial practice and render the courts more efficient by allowing amendments to pleadings in pending lawsuits in every case where the party seeking such privileges is able to show he is without culpable negligence).

30. See ILL. REV. STAT. ch. 110, §§ 21, 26, 39, 46, 54, (1975) (current version at ILL. REV. STAT. ch. 110 (1977)); *id.* ch. 110A §§ 329, 362, 366, 612, 615 (1975) (current version at ILL. REV. STAT. ch. 110A (1977)).

31. See note 26 and accompanying text *supra*.

32. ILL. REV. STAT. ch. 44, §§ 5, 6 (1975) (repealed by Act of Sept. 16, 1977, P.A. 80-739, 1977 Ill. Laws 2209). "Any person . . . who shall ride or drive faster than a walk, into or through a herd of horses, or other stock, which are being herded or driven, shall, . . . pay a fine . . . for each offense . . ." *Id.* § 5.

33. See note 7 and accompanying text *supra*.

34. ILL. REV. STAT. ch. 58 (1975) (repealed by Act of Sept. 14, 1977, P.A. 80-661, 1977 Ill. Laws 2016).

35. *Id.* The statute provided that when any parent willfully leaves a child at any charitable institution, the child is considered abandoned without the usual judicial determination of abandonment so that the parent loses all rights and interests in the child. *Id.* §§ 1, 2.

malized through judicial proceedings.³⁶ For example, the Adoption Act³⁷ and the Juvenile Court Act³⁸ recognize the competing interests present in adoptions. Both Acts provide procedural safeguards for preserving the rights of all interested parties, as well as criteria for determining the necessity of acquiring parental consent before adoption. The self-help remedy of the Foundlings Act effectively circumvented these legislative requirements, although the Act was probably unconstitutional as well.³⁹ The revocation of this Act removed an unnecessary and confusing element from modern adoption law.

Archaic or Outmoded Terminology

In 1977, the Commission continued its efforts to purge the revised statutes of archaic or outmoded terminology. Efforts in this respect were directed at three major problems: 1) the elimination of references to common law terminology pertaining to conveyances of real property, 2) the elimination of references to chattel mortgages, and 3) the continued deletion of references to the specialized court system in effect before the Judicial Article of the constitution vested original jurisdiction of all justiciable matters in the circuit courts.⁴⁰

Contemporary lawyers do not—and society as a whole does not—speak of “livery of seizin”⁴¹ or about participation in a “feoffment.”⁴² Until 1977, however, such terms were embodied in the Illinois Revised Statutes. Because

36. See ILL. REV. STAT. ch. 40, §§ 1501-1529 (1977).

37. *Id.*

38. *Id.* ch. 37, §§ 701-708.

39. The Foundlings Act was obviously unconstitutional for the following reasons:

(a) It did not provide for notice to parents as required by *Stanley v. Illinois*, 405 U.S. 645 (1972), and *People ex rel. Slawek v. Covenant Child Home*, 52 Ill. 2d 20, 284 N.E.2d 291 (1972). See also *Armstrong v. Manzo*, 380 U.S. 545 (1965) (held that failure to serve a father in an adoption proceeding and merely giving the father an opportunity to vacate a judgment for the adoption of his child violated due process of law).

(b) It allowed “self-help” without a court proceeding in apparent violation of *Fuentes v. Shevin*, 407 U.S. 67 (1972).

(c) It was special legislation in violation of § 13 of article VI of the Illinois Constitution of 1970, which provides: “The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.” ILL. CONST. art. VI, § 13 (1970).

40. See notes 13 & 14 *supra*.

41. “Livery of seizin” is “[t]he appropriate ceremony at [English] common law, for transferring the corporeal possession of lands or tenements by a grantor to his grantee.” BLACK’S LAW DICTIONARY 843 (5th ed. 1979). The act of transferring title itself was accomplished by either entering upon the land, if the action were in deed, or within sight of the land, if the action were at law, and physically handing over a clod of dirt or a twig as symbolic delivery of the whole. *Id.*

42. A “feoffment” is “[t]he gift of any corporeal hereditament to another, operating by transmutation of possession, and requiring as essential to its completion, that the seizin be passed, which might be accomplished either by investiture or by livery of seizin The essential part is livery of seizin.” *Id.* at 557.

the Act concerning conveyances expressly provides that "livery of seizin shall in no case be necessary for the conveyance of real property"⁴³ it is totally unnecessary to employ such outmoded nomenclature in present-day conveyance statutes. It is likewise unrealistic to refer to the ownership of title in real estate as "lawful seizin,"⁴⁴ as such ownership has nothing to do with the ancient ceremony of English common law. Various acts were amended, therefore, to eliminate this anomaly.⁴⁵

In another refinement of the Illinois statutes the Commission eliminated references to chattel mortgages.⁴⁶ In 1961, the General Assembly adopted the Uniform Commercial Code and thereby substituted the term "security interest" for "chattel mortgage."⁴⁷ Although several statutes were amended to reflect this change, a number of other acts had remained unaltered. Because this could easily lead to confusion, a number of acts were amended to correct the remaining statutes that used the old terminology.⁴⁸

The third type of language revision involved eliminating references to county courts and to the law/chancery distinction. While the Commission had discovered and deleted many such references in 1976,⁴⁹ the sheer number of outdated references necessitated further deletions in 1977.⁵⁰

Elimination of Gender-Biased Terminology

In the third major category of statutory revisions wrought in 1977, the Law Revision Commission proved itself sensitive to the growing recognition⁵¹ of equality between the sexes by removing gender-biased terminology from the Illinois statutes. Prior to 1977, Illinois statutes employed masculine

43. ILL. REV. STAT. ch. 30, § 1 (1977).

44. *See id.* §§ 3, 5 (amended by Act of Sept. 14, 1977, P.A. 80-660, 1977 Ill. Laws 2003).

45. Act of Sept. 14, 1977, P.A. 80-660, 1977 Ill. Laws 2003.

46. "Chattel mortgage" is defined as "[a] transfer of some legal or equitable right in personal property or creation of a lien thereon as security for payment of money or performance of some other act, subject to defeasance on performance of the conditions. . . ." BLACK'S LAW DICTIONARY 215 (5th ed. 1979).

47. ILL. REV. STAT. ch. 26, §§ 1-201(37), 9-102, 10-102 (1977).

48. Act of Sept. 14, 1977, P.A. 80-662, 1977 Ill. Laws 2017.

49. *See* notes 13, 14, and accompanying text *supra*.

50. Besides eliminating the term "county court," some duties of the former county judges and county courts were reposed in the circuit courts and some of the non-judicial duties were removed from the court system and placed in the county boards. This was accomplished by Act of Sept. 16, 1977, P.A. 80-704, 1977 Ill. Laws 2131; Act of Sept. 12, 1977, P.A. 80-585, 1977 Ill. Laws 1852; Act of Sept. 8, 1977, P.A. 80-571, 1977 Ill. Laws 1813; Act of Sept. 8, 1977, P.A. 80-551 to -555, 1977 Ill. Laws 1739-44; Act of Sept. 3, 1977, P.A. 80-471, 1977 Ill. Laws 1506.

51. *See, e.g.,* Stanton v. Stanton, 429 U.S. 501 (1977), *vacating and remanding* Stanton v. Stanton, 421 U.S. 7 (1975); Craig v. Boern, 429 U.S. 190 (1976); Reed v. Reed, 404 U.S. 71 (1971); People v. Ellis, 57 Ill. 2d 127, 311 N.E.2d 98 (1974); Phelps v. Bing, 58 Ill. 2d 32, 316 N.E.2d 775 (1974).

pronouns exclusively, even though the Illinois Constitution contains an equal rights provision.⁵²

Statutes were amended to provide equal substantive rights where, formerly, such rights were reserved to members of one sex. Examples of this type of change are the addition of "widower" to "widow" in some statutes and the elimination of both terms in lieu of "surviving spouse" in other acts.⁵³ Another important change was the substitution of "marriage" for "coverture," to remove the possible stigma that a married woman was in a state of subjugation under her husband's domination.⁵⁴ Unmistakably, these changes permit persons to obtain benefits that previously may have been unavailable to them solely because of their sex. Other amendments promoted by the Commission simply added the feminine pronoun wherever a masculine existed, or changed "male" and "female" designations to "person."⁵⁵ In most cases, this type of syntactic change had little effect on the underlying substantive rights of the sexes.

THE COMMISSION'S ACCOMPLISHMENTS IN 1978

The Illinois legal system inherited from common law procedure the legal tool known as a "writ."⁵⁶ The object of a writ is to notify the person to whom it is directed of the contents of a court order. Writs originated during a time when the reproduction of documents entailed the tedious task of copying documents longhand. The clerk of the court was delegated this function because the clerk was the official keeper of the court records. The clerk would prepare the writ, which embodied the substance of the court order, and present it to the sheriff for execution while the original order remained in the court file.

Since the photostating machine has come into common use, it is a simple task to reproduce the actual court order, which bears the genuine signature of the judge, and serve this copy directly on the party named. Photostating court orders and other legal documents rather than transcribing the information longhand will save thousands of hours of clerks' time while avoiding the

52. ILL. CONST. art. I, § 18 (1970). "The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts." *Id.*

53. Act of Jan. 4, 1978, P.A. 80-1154 to -1156, 1977 Ill. Laws 3441-62; Act of Aug. 26, 1977, P.A. 80-353 to -360, 1977 Ill. Laws 1258-68.

54. Act of Sept. 22, 1977, P.A. 80-933, 1977 Ill. Laws 2675-2705.

55. This project was accomplished by a series of public acts, each affecting a block of statutes. Act of Jan. 4, 1978, 80-1154 to -1156, 1977 Ill. Laws 3441-62; Act of Sept. 14, 1977, P.A. 80-656, 1977 Ill. Laws 1997; Act of Aug. 26, 1977, P.A. 80-353 to -360, 1977 Ill. Laws 1258-68; Act of Aug. 26, 1977, P.A. 80-328, 1977 Ill. Laws 1212; Act of Aug. 26, 1977, P.A. 80-331 to 334, 1977 Ill. Laws 1222-29; Act of Aug. 26, 1977, P.A. 80-344, 1977 Ill. Laws 1244; Act of Aug. 26, 1977, P.A. 80-348, 1977 Ill. Laws 1249.

56. A large variety of writs were in use in Illinois prior to 1978-writs of mandamus, injunction, habeas corpus, replevin, ne exeat, execution, attachment, possession, restitution, and assistance.

errors that inevitably accompany manual transcription. It has been estimated that this simple change, enacted by the legislature in 1978, will save the State of Illinois between three to five million dollars annually.⁵⁷

THE COMMISSION'S ACCOMPLISHMENTS IN 1979

In 1979 the Law Revision Commission enjoyed a successful year in its continuing quest to modernize the Illinois statutes. Although the numerous acts sponsored by the commission affected a wide variety of laws, the statutory modifications may be loosely categorized into three groupings. First, the Commission was responsible for the repeal of obsolete or anomalous provisions in the statutes. Second, bills were presented to remove procedural uncertainties from the statutes. Finally, acts were passed for the purpose of coordinating the statutes with other legislation, the Supreme Court Rules, and reviewing-court decisions.

Repeal of Obsolete Provisions

The Law Revision Commission successfully sponsored sixty-five bills in 1979, which affected 213 separate acts. Many of these bills repealed sections of acts that had been held unconstitutional during the seventy-five year period of 1903-1978.⁵⁸

Scire Facias

A good example of the Commission's progress in modernizing the Illinois statutes is the abolition of two forms of scire facias.⁵⁹ One type of scire facias proceeding existed as a means of foreclosing on a mortgage.⁶⁰ The purpose of the second form of scire facias was to revive a judgment.⁶¹

Scire facias to foreclose on a mortgage was a writ that issued upon default of a mortgagor, requiring the mortgagor to show cause why the mortgage

57. See H. Res. 219, 81st G.A., 1st Sess. (1979). The above discussed innovation was brought about by Act of July 31, 1978, P.A. 80-1284, 1978 Ill. Laws 816. The statute now provides that when a judgment or order is entered and "signed by a judge and filed and certified by the clerk of the court, such certified judgment or order shall, in each case, constitute the appropriate writ, and no separate writ need be issued." See ILL. REV. STAT. ch. 110, § 601 (1977 & Cum. Supp. 1978).

58. See Act of Aug. 28, 1979, P.A. 81-261, 1979 Ill. Laws 624; Act of Aug. 28, 1979, P.A. 81-269, 1979 Ill. Laws 642; Act of Aug. 28, 1979, P.A. 81-287 to -290, 1979 Ill. Laws 679-82. These statutes repealed 38 acts and sections of acts which had been held unconstitutional.

59. A writ of scire facias is a judicial writ founded upon an order or decree that required the party named therein to show cause why the instituting party should not benefit from the court's edict. BLACK'S LAW DICTIONARY 1208 (5th ed. 1979). The writ of scire facias was considered tantamount to a summons. See *Strauss v. Merchant's Loan & Trust Co.*, 119 Ill. App. 588, 594 (1st Dist. 1905).

60. ILL. REV. STAT. ch. 95, §§ 58-61 (1977) (as amended by Act of Aug. 28, 1979, P.A. 81-286, 1979 Ill. Laws 679).

61. *Id.* ch. 77, § 6 (as amended by Act of Aug. 28, 1979, P.A. 81-268, 1979 Ill. Laws 641).

should not be foreclosed.⁶² As a procedural matter, mortgage foreclosure by scire facias was held to be an "in rem"⁶³ proceeding "at law"⁶⁴ that could affect only the property described in the mortgage. The object of the proceeding was to enforce a specific lien. The ensuing judgment would only determine the amount due on the mortgage and direct a sale of the mortgaged premises to satisfy the judgment.⁶⁵

Since the early part of this century, the use of scire facias in Illinois to foreclose a mortgage had become nonexistent.⁶⁶ In addition, the archaic statutory procedure was not in harmony with certain sections of the Illinois Civil Practice Act.⁶⁷ Recognizing that this use of scire facias was inconsistent with modern real estate practice,⁶⁸ the Commission urged that the procedure be abolished and the legislature complied.⁶⁹

Scire facias also existed as a means of reviving a judgment that had become unenforceable after a lapse of seven years.⁷⁰ This procedure required a separate action, entirely apart from the action in which the original judgment was entered and encumbered by the formalities of affidavits and plead-

62. The writ of scire facias was regarded as both a form of process and a pleading. See *Wood v. People*, 16 Ill. 171, 172 (1854); *People v. Lewis*, 209 Ill. App. 3, 5 (2d Dist. 1918).

63. See *White v. Watkins*, 23 Ill. 426, 428 (1860); *State Bank v. Wilson*, 9 Ill. (4 Gilm.) 57, 61 (1847).

64. See *Chickering v. Failes*, 26 Ill. 508, 517-18 (1861).

65. See *Woodbury v. Manlove*, 14 Ill. 213, 216 (1852) (mortgage foreclosure by scire facias creates no lien on the other property of the mortgagor, and the only process that can issue upon it is a special execution against the mortgaged premises).

66. See *Carey, Brabner-Smith & Sullivan, Studies in Foreclosures in Cook County: Foreclosure Methods and Redemptions*, 27 ILL. L. REV. 595, 612 (1933). "Foreclosure of mortgages by scire facias was first authorized (in Illinois) by statute of January 17, 1825, and proceedings of this nature were very common during the first half of the [nineteenth] century, but the statute and practice thereunder have now become practically a dead letter." *Id.* at 612.

67. For example, § 55 of the Civil Practice Act, ILL. REV. STAT. ch. 110, § 55 (1977), provides: "Any relief which heretofore might have been obtained by scire facias may be had by employing an ordinary civil action." *Id.* See also *Smith v. Carlson*, 8 Ill. 2d 74, 132 N.E.2d 513 (1956) (a scire facias proceeding and a civil action in lieu thereof are concurrent and identical remedies).

68. Scire facias to foreclose a mortgage had its roots in the common law distinctions between law and equity. When Illinois had a bifurcated legal system, two concurrent remedies existed to foreclose a mortgage—a bill in chancery and scire facias at law. It is possible that the remedy at law existed to avoid the additional costs of a master in chancery fees. Today, since circuit courts have "original jurisdiction of all justiciable matters," see ILL. CONST. art. VI § 9 (1970), and masters of chancery are extinct, there is no reason to retain the cumbersome scire facias remedy. See also note 13 and accompanying text *supra*.

69. See Act of Aug. 28, 1979, P.A. 81-286, 1979 Ill. Laws 679 (repealed ILL. REV. STAT. ch. 95, §§ 58-62 (1977)).

70. See ILL. REV. STAT. ch. 77, § 6 (1977). Under existing Illinois law, no execution could "issue upon any judgment after the expiration of 7 years from the time the same is rendered, except upon the revival of the same by scire facias . . ." *Id.*

ings.⁷¹ Despite the enormous progress that had been made in updating procedural law in Illinois,⁷² the legislature had failed to abolish this vestige of archaic and inefficient practice. There was no justification for employing this repetitious and costly procedure when a petition in the original case where the judgment was entered would serve the same purpose. To accomplish this goal, the Commission urged the amendment of several statutes⁷³ to terminate the use of scire facias to revive a judgment, and the legislature complied by abolishing this procedure in 1979.⁷⁴

Abolition of Writs

In 1979 the Commission continued its efforts to abolish writs by sponsoring twenty-one bills that affected twenty-four acts, completely removing writs from the Illinois statutes and substituting certified copies of orders and judgments.⁷⁵ The abolished writs included writs of injunction, habeas corpus, replevin, execution, ne exeat, possession, restitution, and assistance.⁷⁶

71. See ILL. REV. STAT. ch. 83, § 24(b) (1977) (amended 1979). The statute provided that: [A]ctions to revive judgments . . . by scire facias shall be commenced by affidavit . . . setting forth a description of the original judgment by title of the action, date and amount thereof, together with a statement of any partial satisfaction of such original judgment . . . , [and] setting forth a written designation of the return day for the writ.

The clerk of such court shall file such affidavit as a *separate action* which shall be ancillary to the action in which the original judgment was entered. Upon the entry of a judgment of reviver execution may be issued in the scire facias action.

Id. (emphasis added).

72. See notes 91-161 and accompanying text *infra*. The Illinois Practice Act of 1907, which abolished the formalistic procedure of writ of error coram nobis, is an example of innovative change in Illinois procedural law. See ILL. REV. STAT. ch. 110, § 89 (1907) (as amended by ILL. REV. STAT. ch. 110, § 72 (1934)). The 1955 revision of the Civil Practice Act further modernized procedural law by abolishing writs of coram nobis, writs of audita querela, bills of review, and bills in the nature of bills of review. See ILL. REV. STAT. ch. 110, § 72 (1977).

There are also statutory provisions for the enforcement of the judgment without the necessity of filing a new action. Examples of these are: citation proceedings under § 73 of the Civil Practice Act, ILL. REV. STAT. ch. 110, § 73 (1977); proceedings under the Garnishment Act against persons who are indebted to the judgment debtor, *id.* ch. 62, §§ 33-52; and the collection of support for a spouse and child under the Marriage and Dissolution of Marriage Act, *id.* ch. 40, §§ 101-904.

73. The acts recommended for amendment were the Civil Practice Act, ILL. REV. STAT. ch. 110, § 55 (1977), the Judgment Act, *id.* ch. 77, § 6, and the Limitations Act, *id.* ch. 83, § 24(b).

74. Act of Aug. 28, 1979, P.A. 81-268, 1979 Ill. Laws 641, amended § 55 of the Civil Practice Act to read: "Scire facias abolished. Any relief which heretofore might have been obtained by scire facias may be had by employing a petition filed in the case in which the original judgment was entered, and notice shall be given in accordance with rules." *Id.*

75. Act of Aug. 28, 1979, P.A. 81-281, 1979 Ill. Laws 653; Act of Aug. 28, 1979, P.A. 81-256, 1979 Ill. Laws 613; Act of Aug. 28, 1979, P.A. 81-253 to -254, 1979 Ill. Laws 611-12; Act of Aug. 28, 1979, P.A. 81-239 to -251, 1979 Ill. Laws 583-608; Act of Aug. 28, 1979, P.A. 81-234 to -237, 1979 Ill. Laws 571-80.

76. See note 56 *supra*.

As a result, the bill enacted in 1978 has been superseded by the 1979 legislation.

Mittimus

The Commission also concentrated its efforts on abolishing another unnecessary procedural device, the requirement of mittimus in criminal and quasi-criminal and civil proceedings. A mittimus is simply a transcript of the minutes of a sentence, duly certified by the clerk,⁷⁷ which commands the sheriff to convey a prisoner to prison and to order the jailer safely to confine the prisoner in accordance with the court's sentence.⁷⁸ The clerk could certify the order and the sheriff could execute the sentence only as recorded.⁷⁹

The Supreme Court of Illinois found there to be no statutory requirement for mittimus.⁸⁰ On the contrary, the court found authority for the opposite position that a mittimus was unnecessary, because a prisoner, lawfully sentenced, could not be released from prison merely because no mittimus had accompanied imprisonment.⁸¹ If the prisoner was safely in custody there was no office for a mittimus to perform.⁸² Therefore, because mittimus was unnecessary for the enforcement of a criminal sentence, or in a quasi-criminal or civil proceeding, the Commission proposed that the requirement of mittimus be expressly eliminated in cases where a signed judgment or order would suffice. Again, the legislature complied.⁸³

77. *United States v. Denmark*, 138 F.2d 289, 291 (7th Cir. 1943); *Saunders v. United States*, 73 F. 782 (1st Cir. 1896).

78. BLACK'S LAW DICTIONARY 904 (5th ed. 1979).

79. *People v. Craydon*, 329 Ill. 398, 401, 160 N.E. 748, 750 (1928).

80. *See, e.g., People v. Thompson*, 358 Ill. 81, 192 N.E. 693 (1934). Quoting from two prior decisions, the Illinois Supreme Court stated: "As a matter of fact there is no special requirement in our statute that a sheriff or other officer must be supplied with a mittimus after an order and judgment of conviction and sentence to jail have been entered by the court." *Id.* at 88-89, 192 N.E. at 695-96.

81. *Id.* at 89, 192 N.E. at 696. "There is authority, at any rate, for the proposition that a prisoner who has been legally and properly sentenced to prison cannot be released from prison merely because of an imperfection in the warrant for commitment . . ." *Id.*

82. In a related matter, § 4(b) of article VI of the 1970 Illinois Constitution provides that where a defendant is sentenced to death by the judgment of a circuit court, an appeal is automatically perfected to the supreme court without any action by the defendant or counsel, and Supreme Court Rule 613(a) provides for a certified copy of the order of execution without the need for a mittimus. *See ILL. REV. STAT. ch. 110A, §§ 606, 613 (1977).*

83. Act of Aug. 28, 1979, P.A. 81-238, 1979 Ill. Laws 582, provides that:

(a) In all cases . . . when a person is imprisoned, . . . by virtue of a judgment or order which is signed by a judge, a copy of such judgment or order shall . . . constitute the mittimus, and no separate mittimus need be issued.

(b) Where no written judgment or order was signed by a judge, the practice heretofore prevailing shall be followed.

Id. § 1.

Lawyer's Status Under the Ejectment Act

Another statutory modification recommended by the Commission in 1979 involved the status of attorneys under the Ejectment Act.⁸⁴ The Ejectment Act provided the unique right of a defendant to stay court proceedings pending proof from the plaintiff's attorney that counsel had actual authority to use the plaintiff's name in instituting the action.⁸⁵ No other Illinois statute has provided a defendant with such extraordinary rights.

It was the belief of the Commission that these sections of the Ejectment Act were unconstitutional for two reasons. First, they constituted a legislative infringement upon an attorney's right to practice law under a license that was granted by the supreme court. Because the licensing of attorneys, therefore, is within the exclusive dominion of the judicial branch,⁸⁶ the legislature's intrusion into this field constituted a breach of the constitutional doctrine of separation of powers.⁸⁷ Second, these provisions of the Ejectment Act constituted unconstitutional special legislation⁸⁸ because they were made applicable only to an action of ejectment, while other similar actions involving real estate had no such provision.⁸⁹ The legislature responded favorably to the Commission's recommendation and repealed the troublesome sections of the Act.⁹⁰

Removal of Procedural Uncertainties from the Statutes

Defendant's Motion for Judgment at the Close of Plaintiff's Case in a Non-Jury Trial

One of the noteworthy revisions brought about by the Commission involved section 64 of the Civil Practice Act.⁹¹ This section provides the standard for weighing evidence in a non-jury trial on a defendant's motion for judgment at the close of the plaintiff's case. The section formerly had provided, in pertinent part, simply that "the court shall weigh the evi-

84. ILL. REV. STAT. ch. 45 (1977) (as amended by Act of Aug. 28, 1979, P.A. 81-284, 1979 Ill. Laws 678).

85. *Id.* §§ 15, 16. Essentially, the defendant filed an affidavit with the court that he had never been served with proof, in any way, of the authority of the attorney to use the name of the plaintiff stated in the complaint. *Id.* § 15. Upon such application, the court entered an order requiring the production of such authority and staying all proceedings until the necessary authority was supplied. *Id.* § 16.

86. *See In re Day*, 181 Ill. 73, 54 N.E. 646 (1899) (legislative acts interfering with the licensing of attorneys are repugnant to the constitution).

87. ILL. CONST. art. II, § 1 (1970). "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." *Id.*

88. ILL. CONST. art. IV, § 13 (1970). "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." *Id.*

89. *See, e.g.*, ILL. REV. STAT. ch. 106, § 44 (1977) (partition); ILL. REV. STAT. ch. 57 (1977) (forcible entry and detainer); ILL. REV. STAT. ch. 47 (1977) (condemnation).

90. Act of Aug. 28, 1979, P.A. 81-284, 1979 Ill. Laws 678.

91. ILL. REV. STAT. ch. 110, § 64 (1977) (as amended by Act of Aug. 28, 1979, P.A. 81-270, 1979 Ill. Laws 642).

dence.”⁹² The appellate courts encountered difficulty in interpreting the clause, and as a result there developed two opposing lines of decisions. One line of cases⁹³ held that the plaintiff’s evidence, along with all reasonable inferences, were to be construed in a light most favorable to plaintiff. On the other hand, the opposing line of cases⁹⁴ held that the trial judge must consider the credibility of the witnesses and all inferences to be drawn from the evidence.

The Illinois Supreme Court resolved the conflict in its decision of *City of Evanston v. Ridgeview House, Inc.*,⁹⁵ by stating that the judge in a non-jury case had the duty to pass on the credibility of the witnesses. The supreme court thereby clarified the role of the appellate court in reviewing a trial court’s decision granting judgment in favor of the defendant. The supreme court noted that the rule in jury cases is that a motion for a directed verdict should be granted only when all the evidence, “viewed in its aspect most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict could ever stand.”⁹⁶ In contrast, when the judge is the trier of fact, he or she must weigh all the evidence and pass on the credibility of the witnesses. The judge should not consider evidence in the light most favorable to the plaintiff.⁹⁷ Therefore, the supreme court ruled that the trial court’s decision should not be reversed unless it was contrary to the manifest weight of the evidence.⁹⁸

In accord with the *Ridgeview* court’s interpretation of section 64(3), the Civil Practice Act was amended, in 1979, to require that the judge consider the “credibility of the witnesses and the weight and quality of the evidence.”⁹⁹ This revision harmonizes section 64 with the Illinois Supreme Court decision¹⁰⁰ and eliminates the confusion, previously caused by section 64, over the proper construction.

92. *Id.*

93. *See, e.g.*, *Jordan/Tamarez/Caruso Advertising, Inc. v. Parker Career Center*, 10 Ill. App. 3d 247, 294 N.E.2d 59 (1st Dist. 1973); *Pascal & Assoc., Inc. v. Puchinello’s East, Inc.*, 9 Ill. App. 3d 456, 292 N.E.2d 429 (1st Dist. 1972); *De Bello v. Checker Taxi Co.*, 8 Ill. App. 3d 401, 292 N.E.2d 437 (1st Dist. 1972); *Russow v. Bobola*, 2 Ill. App. 3d 837, 277 N.E.2d 769 (2d Dist. 1972).

94. *See, e.g.*, *Jackson v. Spivey*, 26 Ill. App. 3d 670, 325 N.E.2d 323 (1st Dist. 1975); *Rey v. Rey*, 23 Ill. App. 3d 274, 319 N.E.2d 105 (2d Dist. 1974); *Drovers Nat’l Bank v. Ferrell*, 14 Ill. App. 3d 389, 302 N.E.2d 417 (1st Dist. 1973); *Hawthorn Melody Farms Dairy, Inc. v. Rosenberg*, 11 Ill. App. 3d 739, 297 N.E.2d 649 (1st Dist. 1973); *Bochenek v. Bochenek*, 5 Ill. App. 3d 65, 283 N.E.2d 95 (1st Dist. 1972).

95. 64 Ill. 2d 40, 349 N.E.2d 399 (1976).

96. *Id.* at 57-58, 349 N.E.2d at 408, *citing* *Pedrick v. Peoria R.R.*, 37 Ill. 2d 494, 229 N.E.2d 504 (1967).

97. *City of Evanston v. Ridgeview House, Inc.*, 64 Ill. 2d 40, 57-58, 349 N.E.2d 399, 407-08 (1976).

98. *Id.*

99. *See* *Block v. Dardanes*, ___ Ill. App. 3d ___, 404 N.E.2d 807 (1st Dist. 1980). *See* Act of Aug. 28, 1979, P.A. 81-270, § 1(3), 1979 Ill. Laws 642.

100. *See* notes 95-99 and accompanying text *supra*.

Appeal by One of Several Parties

The Commission discovered discrepancies between section 81¹⁰¹ of the Civil Practice Act and Illinois Supreme Court Rule 303(a).¹⁰² Section 81 of the Civil Practice Act allowed a party to appeal a judgment and use all the names of the parties to whom the judgment applied, for the purpose of the appeal. In direct contrast, rule 303(a) allowed a party to appeal a judgment, but any parties subject to the judgment who wished to join the appeal could do so only by filing a notice of their intent to join the appeal. The conflict is apparent because in the former case a party's name might be used for purposes of the appeal without his or her consent,¹⁰³ whereas in the latter case the only way the party's name could be used in the appeal was if he or she expressly filed a notice to join the appeal.

In *People ex rel. Stamos v. Jones*,¹⁰⁴ the Illinois Supreme Court held that a statutory appellate provision was invalid because in enacting that provision, the General Assembly had exceeded the authority vested in it by the state constitution.¹⁰⁵ Furthermore, in *People v. Jackson*,¹⁰⁶ the same court held that where a statute and a supreme court rule, both dealing with procedure, were in conflict, the supreme court rule predominated and the statute was invalid.¹⁰⁷ However, section 81 remained on the books for years until its repeal in 1979.¹⁰⁸

Repealing section 81 not only resolved the conflict with rule 303(a), but also aligned statutory law with well-established case law regarding divisibility of judgment.¹⁰⁹ Several Illinois court cases¹¹⁰ have held that only those parties who appeal a judgment of the trial court are entitled to the benefits

101. ILL. REV. STAT. ch. 110, § 81 (1977).

102. *Id.* ch. 110A, § 303(a).

103. If a party's name was used on the appeal but that party did not wish to join in the appeal, no costs could be taxed against him or her. ILL. REV. STAT. ch. 110, § 81 (1977).

104. 40 Ill. 2d 62, 237 N.E.2d 495 (1968).

105. *Id.* at 66, 237 N.E.2d at 498.

106. 69 Ill. 2d 252, 371 N.E.2d 602 (1977). In *Jackson*, the court was faced with the issue of whether the judge or the counsel for the parties should conduct a voir dire examination of prospective jurors in criminal cases. Section 115-4(f) of the Code of Criminal Procedure vested authority to conduct the voir dire examination in the counsel for the parties, ILL. REV. STAT. ch. 38, § 115-4(f) (1977), whereas Illinois Supreme Court Rules 431 and 234, ILL. REV. STAT. ch. 110A, §§ 234, 431 (1977), vested authority in the trial judge to conduct the examination. See also *People v. Jovicevic*, 63 Ill. App. 3d 106, 379 N.E.2d 665 (1st Dist. 1978) (relying on *People v. Jackson*, 69 Ill. 2d 252, 371 N.E.2d 602 (1977), the court in *Jovicevic* reasoned that a statute would be void if it were a legislative infringement upon the powers of the judiciary); *People v. Menken*, 54 Ill. App. 3d 199, 369 N.E.2d 363 (4th Dist. 1977) (when a supreme court rule and a statute conflict, the rule must prevail if adopted through constitutional power); *People v. Brumfield*, 51 Ill. App. 3d 637, 366 N.E.2d 1130 (3d Dist. 1977) (Illinois Constitution provides that a supreme court rule predominates over a statute when dealing with procedure).

107. *People v. Jackson*, 69 Ill. 2d 252, 371 N.E.2d 602 (1977).

108. See Act of Aug. 28, 1979, P.A. 81-258, 1979 Ill. Laws 622.

109. P.A. 81-258 was long overdue because section 81 of the Act was in complete discord with the concept of the divisibility of judgment. At common law, a judgment against two or

of a reversal. Hence, parties who do not join in an appeal are left with the judgment rendered by the trial court. With the repeal of section 81, the statutory language is presently in accord with both the supreme court rules and Illinois case law.

Insurance Code

Another important matter requiring the Commission's attention was the conflict between section 403A and section 407 of the Illinois Insurance Code.¹¹¹ Section 403A provides that the administrative hearings conducted pursuant to the Insurance Act were subject to the Administrative Review Act (ARA).¹¹² On the other hand, section 407 of the Insurance Code set forth specific procedural steps for judicial review that conflicted with the procedures of the ARA. There were five instances of conflict between the two sections. First, under section 407 the first pleading was called a "petition,"¹¹³ whereas under the ARA it is called a "complaint."¹¹⁴ Second, under section 407 the first pleading was to be filed within 30 days from the administrative decision.¹¹⁵ In contrast, under the ARA it must be filed within 35 days from the service of the administrative order.¹¹⁶ Third, under section 407 a certified copy of the petition had to be served upon the Director of Insurance,¹¹⁷ while under ARA no such requirement exists.¹¹⁸ Fourth, section 407 required the Director of Insurance to file a transcript of the administrative agency record within ten days after service of the petition.¹¹⁹ In contrast, under the ARA, the transcript must be filed within thirty-five days after service of the complaint.¹²⁰ Finally, section 407 allowed the circuit court to hear "additional evidence,"¹²¹ but under the ARA

more plaintiffs was a unit. Therefore, in order to sue out a writ of error to reverse a judgment, *all* of the judgment debtors had to join as plaintiffs in error. Section 81 was enacted in 1933 to alleviate some of the harshness of the strict common law rule by allowing one party to an appeal to use the names of the remaining parties. See note 103 and accompanying text *supra*. Although section 81 tempered the common law rule it was not in complete harmony with section 50(6) of the Illinois Civil Practice Act. ILL. REV. STAT. ch. 110, § 50(6) (1977). Section 50(6) provides: "[T]he fact that any order or judgment is joint does not deprive the court of power to set it aside as to fewer than all the parties, and if so set aside it remains in full force and effect as to the other parties." *Id.*

110. See, e.g., *Griffin v. Griffin*, 29 Ill. 2d 354, 194 N.E.2d 641 (1963); *Otta v. Otta*, 58 Ill. App. 2d 63, 207 N.E.2d 143 (5th Dist. 1965); *Schoendienst v. Fink*, 58 Ill. App. 2d 203, 207 N.E.2d 325 (5th Dist. 1965).

111. Insurance Code §§ 403A, 407, ILL. REV. STAT. ch. 73, §§ 1015A, 1019 (1977).

112. ILL. REV. STAT. ch. 110, §§ 264-279 (1977).

113. *Id.* ch. 73, § 1019(1).

114. *Id.* ch. 110, § 267.

115. *Id.* ch. 73, § 1019(1).

116. *Id.* ch. 110, § 267.

117. *Id.* ch. 73, § 1019(1).

118. *Id.* ch. 110, § 269.

119. *Id.* ch. 73, § 1019(1).

120. *Id.* ch. 110, §§ 267-270; ch. 110A § 291.

121. *Id.* ch. 73, § 1019(1).

no additional evidence may be heard.¹²² The disparity between the two acts was heightened by the fact that twelve other statutory sections expressly adopted the review procedure of section 407.¹²³

At the Commission's insistence, the General Assembly eradicated the procedural confusion surrounding the Illinois Insurance Code by enacting legislation¹²⁴ that authorized use of the Administrative Review Act as the means for review of administrative orders and decisions of the Director of the Department of Insurance.

Venue Act

The Commission, while continuing its efforts to resolve procedural conflicts, uncovered a legislative oversight concerning the old Venue Act.¹²⁵ For many years the procedural steps for obtaining a change of place of trial in civil and criminal cases were covered by one statute. In 1963, the subject of the change of place of a trial in criminal cases was included in section 115-4 of the Code of Criminal Procedure. Thereafter a considerable number of sections of the old Venue Act, which had been applicable to criminal cases only, were repealed. However, four sections applicable only to criminal cases were inadvertently left in the old Venue Act, which is now used for civil cases only. To remedy this confusing situation, the statutes involved were amended to effect the appropriate transfer of the four sections from one statute to the other without making any change whatsoever in the substantive law.¹²⁶

Limitations Act

In 1976, the Law Revision Commission alerted the legislature to the possibly conflicting terminology in section 24 of the Limitations Act.¹²⁷ Prior

122. *Id.* ch. 110, § 274.

123. *See id.* ch. 73, §§ 640.2, 737.19a, 743.27, 744, 755, 767.63, 1013.1, 1019, 1034, 1065.18-28, 1065.50, 1065.216, (sections 767.63 and 1034 were amended by Act of Aug. 28, 1979, P.A. 81-283, 1979 Ill. Laws 671); ch. 32, § 560, amended by Act of Aug. 28, 1979, P.A. 81-283, 1979 Ill. Laws 671.

124. Act of Aug. 28, 1979, P.A. 81-283, 1979 Ill. Laws 671. The enactment of P.A. 81-283 was also influenced to some extent by *Physician's Professional Liab. Trust v. Wilcox*, 53 Ill. App. 3d 973, 369 N.E.2d 165 (1st Dist. 1977). In *Physician's*, the reviewing court was faced squarely with the conflicting procedure of § 407 and the Administrative Review Act. The Illinois Attorney General represented the appellant, the Director of Insurance, and contended that the Administrative Review Act applied. *Id.* at 975, 369 N.E.2d at 168. The reviewing court sustained the attorney general's position. *Id.* at 980, 369 N.E.2d at 171.

125. ILL. REV. STAT. ch. 146, §§ 18-35 (1963) (amended 1979).

126. *See* Act of Aug. 28, 1979, P.A. 81-272, 1979 Ill. Laws 644.

127. ILL. REV. STAT. ch. 83, § 24a (1977). The Limitations Act provides that under certain conditions a new action may be filed within one year after a dismissal of the first action. This is true even though the limitation period for the filing of such an action has elapsed. *Id.*

to 1976, section 24 employed the term "non-suit" while section 52¹²⁸ of the Civil Practice Act used the term "voluntary dismissal." Section 24 was thereafter amended¹²⁹ by deleting the words "non-suit" and incorporating the words "voluntary dismissal."

This amendment apparently resolved the terminology conflict until some doubts arose regarding the application of section 24 to federal actions that were dismissed for lack of jurisdiction.¹³⁰ Generally, federal courts had based their decisions on the historical meaning of the term "non-suit."¹³¹ In an effort by the Commission to remove all confusion surrounding section 24, it was amended again¹³² to provide specifically that the extended one-year period was applicable to cases where "the action is dismissed by a United States District Court for lack of jurisdiction."¹³³

Administrative Review Act

Section 2 of the Administrative Review Act¹³⁴ provides that the Act shall govern judicial review of final decisions of any administrative agency that expressly adopts the provisions of the Act.¹³⁵ All other modes of review formerly available to agencies adopting the Act, including common law writ of certiorari, are no longer available. Under the Act, a circuit court exercises reviewing authority over state agencies' decisions.¹³⁶ The circuit court's authority is thus somewhat analogous to the authority the appellate court exercises over appeals from a circuit court.¹³⁷ Findings of fact made by the administrative agency are held to be prima facie true, but the circuit court otherwise has the power to consider all questions of law and fact presented by the entire record before it.¹³⁸

In contrast to review under the Administrative Review Act, the common law writ of certiorari is employed for the review of administrative proceed-

128. ILL. REV. STAT. ch. 110, § 52 (1977).

129. See Act of Aug. 6, 1976, P.A. 79-1358, 1976 Ill. Laws 712.

130. See, e.g., Hupp v. Gray, 73 Ill. 2d 78, 382 N.E.2d 1211 (1978) (the one-year period within which a non-suited plaintiff may refile an action begins to run from the date of a non-suit in the United States district court and not from the date of its affirmance on appeal).

131. A "non-suit" is an "[a]ction in form of a judgment taken against a plaintiff who has failed to appear to prosecute his action or failed to prove his case. Under rules practice, the applicable term is dismissal . . ." BLACK'S LAW DICTIONARY 954 (5th ed. 1979). See *McColgan v. Jones*, Hubbard & Donnell, 11 Cal. 2d 243, 78 P.2d 1010 (1938).

132. See Act of Aug. 28, 1979, P.A. 81-279, 1979 Ill. Laws 652. (effective Jan. 1, 1980).

133. *Id.* § 1.

134. ILL. REV. STAT. ch. 110, §§ 264-279 (1977).

135. *Id.* § 265.

136. *Id.* § 274.

137. See, e.g., *Adamek v. Civil Serv. Comm'n*, 17 Ill. App. 2d 11, 149 N.E.2d 466 (1st Dist. 1958) (though similar, review powers are statutory, not of general appellate jurisdiction).

138. ILL. REV. STAT. ch. 110, § 274 (1977). See also *Sye v. Wood Dale Fire Protection Dist. No. 1*, 43 Ill. App. 3d 48, 356 N.E.2d 938 (2d Dist. 1976) (parties brought before an administrative agency are entitled to have that body base its decision on evidence received at the hearing).

ings where no statutory provision is available for judicial review.¹³⁹ Generally, judicial review of decisions of municipal administrative bodies acting by virtue of a municipal ordinance and of other administrative decisions not expressly reviewable by statute were reviewable by common law certiorari. Unfortunately, review under common law certiorari provided only a limited remedy, and the powers of the reviewing court were curtailed. The only judgment the court had authority to render was (a) that the petition be dismissed and the writ of certiorari quashed (which was a judgment in favor of the defendant) or (b) that the record of proceedings be quashed (which was a judgment in favor of the plaintiff).¹⁴⁰ The court had no authority to remand the matter to the administrative agency, or to enter an order quashing the writ or record in part.¹⁴¹

On the other hand, review under the ARA provides a more flexible remedy. The reviewing circuit court may require a bond to be posted, stay the agency decision pending final disposition of the case, affirm or reverse the decision in whole or in part, remand the decision in whole or in part, remand the case for the purpose of taking additional evidence, or enter a money judgment in favor of the successful party.¹⁴² From the above enumeration of powers, it is clear that judicial review under the ARA is a superior remedy to judicial review by the historical form of common law certiorari.

It should be noted that recent Illinois decisions have, for all practical purposes, abolished the rigid distinctions that formerly existed between review under common law certiorari and under the ARA.¹⁴³ In a proceeding pursuant to a writ of certiorari today, the reviewing court performs substantially the same functions as the reviewing court does under the ARA.¹⁴⁴ Not-

139. See *Smith v. Department of Pub. Aid*, 67 Ill. 2d 529, 367 N.E.2d 1286 (1977) (common law writ of certiorari is a general means of reviewing administrative decisions that are not reviewable under any statute); *Bartunek v. Lastovken*, 350 Ill. 380, 183 N.E. 333 (1932) (jurisdiction to issue common law writ of certiorari not limited to property right); *Quinlin & Tyson, Inc. v. City of Evanston*, 25 Ill. App. 3d 879, 324 N.E.2d 65 (1st Dist. 1975) (certiorari has remained the appropriate method of review of municipal administrative agency decisions where the Administrative Review Act is not in effect).

140. See *People v. Fisher*, 373 Ill. 228, 230, 25 N.E.2d 785, 788 (1940) (in actions based on common law certiorari the court may only quash the proceedings or quash the writ and dismiss the petition); *People v. Lindblom*, 182 Ill. 241, 244-45, 55 N.E. 358, 359-60 (1899) (review under common law certiorari is not general appellate jurisdiction).

141. See *Hoffman v. Department of Fin.*, 374 Ill. 494, 30 N.E.2d 34 (1940) (court is without authority to quash writ in part and enter judgment fixing amount of tax); *People v. Fisher*, 373 Ill. 228, 25 N.E.2d 785 (1940) (court may only quash writ, or quash return, since statute makes provision for no other order).

142. ILL. REV. STAT. ch. 110, § 275 (1977).

143. See *Homefinders, Inc. v. City of Evanston*, 65 Ill. 2d 115, 357 N.E.2d 785 (1966) (substantial differences that at one time existed between common law and statutory certiorari have been all but obliterated); *S & F Corp. v. Daley*, 59 Ill. App. 3d 1024, 376 N.E.2d 699 (1st Dist. 1978) (the differences between common law and statutory certiorari are no longer apparent).

144. See *Smith v. Department of Pub. Aid*, 67 Ill. 2d 529, 367 N.E.2d 1286 (1977) (the extent of review under common law certiorari conforms to review under the Administrative

withstanding the similarities between the forms of review, the Commission's desire to bring about uniformity of review of administrative decisions¹⁴⁵ prompted the Commission actively to encourage the adoption of the Administrative Review Act by various state agencies, and the legislature has complied in part with the recommendations of the Commission.¹⁴⁶

Judicial Notice Act

The scope of the Judicial Notice Act¹⁴⁷ was broadened through the efforts of the Law Revision Commission. Before 1979, the Illinois courts were empowered to take judicial notice of matters of public record,¹⁴⁸ and of the laws of foreign jurisdictions.¹⁴⁹ Peculiarly, however, the various circuit

Review Act); *S & F Corp. v. Bilandic*, 62 Ill. App. 3d 193, 378 N.E.2d 1137 (1st Dist. 1978) (the standard of review is similar for cases brought under the Act or under common law certiorari). In *Penrod v. Dept. of Corrections*, 72 Ill. App. 3d 649, 651, 391 N.E.2d 59, 61 (1979), the court said: "Defendants contend the trial court erred by not applying the principles of common law certiorari which they allege is more limited in scope than statutory administrative review. We cannot agree. The Illinois Supreme Court has established that there is no longer a viable difference between these two types of proceedings. In *Smith v. Department of Public Aid*, 67 Ill. 2d 529, 541, 367 N.E.2d 1286, 1293 (1977) [citations omitted], the court stated: "This court has recently held that the substantial differences that at one time existed between common law and statutory certiorari have been all but obliterated.' "

The fashioning of a new remedy is not a novel experience for the Supreme Court of Illinois. Thus, in *People v. Davis*, 54 Ill. 2d 494, 298 N.E.2d 161 (1973), the supreme court held that although the Post-Conviction Hearing Act expressly limits its application to convicts "imprisoned in the penitentiary" (*i.e.*, convicted of felonies) who claim denial of a substantial constitutional right [ILL. REV. STAT. ch. 38, § 122-1 (1977)], "this court has fashioned a remedy for a defendant convicted of a misdemeanor who asserts that there was a substantial denial of his constitutional rights." 54 Ill. 2d at 497, 298 N.E.2d at 163. *Accord*, *People v. Warr*, 54 Ill. 2d 487, 298 N.E.2d 164 (1973).

145. See generally *Fins, Need for Uniformity in Judicial Review of Administrative Decisions*, 61 ILL. B.J. 366 (1973).

146. Act of Aug. 20, 1979, P.A. 81-211, 1979 Ill. Laws 377, and Act of Aug. 28, 1979, P.A. 81-265, 1979 Ill. Laws 632, provide for the adoption of the Administrative Review Act by nine additional public agencies. For example, Park Commission rulings, orders of the Department of Agriculture, and review under the Business Corporation Act are now reviewable under the Administrative Review Act.

147. ILL. REV. STAT. ch. 51, §§ 48a-48b (1977) (as amended by Act of Aug. 28, 1979, P.A. 81-285, 1979 Ill. Laws 678).

148. See *Nordine v. Illinois Power Co.*, 32 Ill. 2d 421, 206 N.E.2d 709 (1965) (court will take judicial notice of documents that are a matter of public record); *People v. Middleton*, 43 Ill. App. 3d 1030, 357 N.E.2d 1238 (1st Dist. 1976) (court will take judicial notice of every domestic corporation and every foreign corporation licensed to do business in the state); *People v. Mitchell*, 35 Ill. App. 3d 151, 341 N.E.2d 153 (1st Dist. 1975) (document involved a matter of public record and the court will take judicial notice). Also, the Illinois statutes give a broad definition to the term "public record." See ILL. REV. STAT. ch. 116, § 43.103 (1977).

149. The Uniform Judicial Notice of Foreign Law Act, ILL. REV. STAT. ch. 51, § 48g (1977), provides that "[e]very court of this state shall take judicial notice of the common law & statutes of every state, territory, and other jurisdiction of the United States." *Id.* § 1.

By virtue of the above statute, the Supreme Court of Illinois in *Moscow v. Mutual Life Insurance Co.*, 387 Ill. 378, 56 N.E.2d 399 (1944), took judicial notice of the common law of

courts in Illinois did not have the power to take judicial notice of the ordinances of all municipalities and counties within the state.¹⁵⁰ For example, the Circuit Court for DuPage County, the eighteenth circuit court, could take judicial notice only of ordinances promulgated in DuPage County. The Circuit Court for the Second Circuit, which encompasses twelve counties, however, could judicially notice the ordinances in all twelve counties.¹⁵¹ Another senseless distinction existed when a case was transferred from one circuit to another. For instance, if a case involving an ordinance of a municipality located in DuPage County was filed in the Circuit Court for Sangamon County, that court could not take judicial notice of that ordinance. If the case were originally filed in DuPage County, however, and was then transferred, by change of venue, to Sangamon County, the Sangamon Circuit Court could judicially notice the DuPage County ordinance.

There is no reason why Illinois circuit courts should not take judicial notice of the ordinances of every Illinois governmental unit. This is especially true now that home rule under the state constitution elevates many local ordinances to a status comparable to state statutes.¹⁵² At the Commission's urging, the appropriate statute was amended to provide for liberal judicial notice provisions. As a result, Illinois courts may now take judicial notice of all municipal and county ordinances anywhere in the State.¹⁵³

Application of the Civil Practice Act and Supreme Court Rules to Other Acts

Prior to the Law Revision Commission's creation, the Illinois Legislature did not have a uniform method of incorporating the contents of the Civil Practice Act and the Supreme Court Rules into other acts. In 1979 the

Pennsylvania. In *Hyatt v. Cox*, 57 Ill. App. 2d 293, 206 N.E.2d 260 (4th Dist. 1965), the court said: "The trial court and this court are required by statute to take judicial notice of the case law of our sister states [citing ILL. REV. STAT. ch. 51, §§ 48(b), 48(g) (1961)]."

150. In contrast to the above statutes and cases was § 1 of the Judicial Notice Act, ILL. REV. STAT. ch. 51, § 48(a) (1977), which provided that:

Every court of original jurisdiction . . . shall take judicial notice of the following:

. . . .

Second, [a]ll ordinances of every county within the judicial circuit or other territory for which such court has been established, or within the judicial circuit from which a case has been brought to such court by a change of venue or otherwise.

Id. § 48a(1). See Fins, *Judicial Notice—The Illinois Anomaly*, 7 J. Mar. J. Prac. & Proc. 15.

151. See ILL. REV. STAT. ch. 37, § 72.1 (1977) (amended by Act of Aug. 28, 1979, P.A. 81-285, 1979 Ill. Laws 678).

152. ILL. CONST. art. VII, § 6 (1970).

153. The Act of Aug. 28, 1979, P.A. 81-285, 1979 Ill. Laws 678, provides that Illinois circuit courts shall take judicial notice of "First: All general ordinances of every municipal corporation within the State. Second: All ordinances of every county within the State." It should be noted that this needed change was also urged by the Chief Justice of the Illinois Supreme Court in his 1979 Annual Report to the Illinois General Assembly. Illinois State Bar Ass'n, 9 Judicial Administration Newsletter No. 9 (March 1979).

Commission took steps to remedy this technical problem, and the result was the amendment of twenty-seven acts¹⁵⁴ to provide a uniform system of incorporation. The form employed in these amendments states that: "[t]he provisions of the Civil Practice Act, and all existing and future amendments of such Act and modifications thereof, and the Supreme Court Rules now or hereafter adopted in relation to that Act, shall apply to all proceedings hereunder, except as otherwise provided in this Act."¹⁵⁵ With the use of this provision the legislature has remedied the total lack of uniformity previously encountered in legislative materials.

Seeking Wrong Remedy Not Fatal

In 1973, the Illinois Legislature amended eight statutes¹⁵⁶ covering proceedings involving Attachment, Attachment of Water Craft, Habeas Corpus, Injunction, Mandamus, Ne Exeat, Quo Warranto, and Replevin. To each amended act a section was added that allowed plaintiffs, who were entitled to relief, to amend their pleadings if they inadvertently requested the wrong remedy.¹⁵⁷ Additionally, if the plaintiff did amend the pleadings the defendant was entitled to assert additional defenses.¹⁵⁸ However, this section applied only to the statutes mentioned above and was not incorporated generally into the Civil Practice Act. This oversight led to harsh results in several judicial decisions. For example, in *People v. Freeman*,¹⁵⁹ a petition was filed under section 72 of the Civil Practice Act. The appropriate remedy in that case was habeas corpus. The trial court dismissed the petition, and the appellate court affirmed, because there was no provision for amending pleadings in a section 72 proceeding or in the Civil Practice Act generally.

The Commission urged that a provision be added to the Civil Practice Act that would permit liberality in amendment of pleadings in all proceedings

154. Act of Sept. 14, 1979, P.A. 81-661, 1979 Ill. Laws 1466.

155. *Id.* § 26.

156. ILL. REV. STAT. ch. 11, § 44; *id.* ch. 12, § 47; *id.* ch. 65, § 36.1; *id.* ch. 69, § 24; *id.* ch. 87, § 12; *id.* ch. 97, § 13; *id.* ch. 112, § 17; *id.* ch. 119, § 28 (1973). See Schallau v. City of Northlake, — Ill. App. 3d —, 403 N.E.2d 266 (1st Dist. 1979); Pierson v. Bloodworth, — Ill. App. 3d —, 401 N.E.2d 1320 (5th Dist. 1980).

157. The amended sections as they appear in the statutes listed in note 150 *supra* state that:

Where relief is sought under this Act and the Court determines, on motion directed to the pleadings, or on motion for summary judgment or upon trial, that the plaintiff has pleaded or established facts which entitle him to relief but that he has sought the wrong remedy, the Court shall permit the pleadings to be amended, on just and reasonable terms, and the Court shall grant the relief to which plaintiff is entitled on the amended pleadings or upon the evidence. In considering whether a proposed amendment is just and reasonable, the Court shall consider the right of the defendant to assert additional defenses, to demand a trial by jury, to plead a counter-claim or third party complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed.

ILL. REV. STAT. ch. 11, § 44; *id.* ch. 12, § 47; *id.* ch. 65, § 36.1; *id.* ch. 69, § 24; *id.* ch. 87, § 12; *id.* ch. 97, § 13; *id.* ch. 112, § 17; *id.* ch. 119, § 28 (1973).

158. See note 157 *supra*.

159. 26 Ill. App. 3d 443, 326 N.E.2d 207 (1st Dist. 1974).

governed by the Civil Practice Act. The legislature complied, and consequently section 46.1¹⁶⁰ was added to the Civil Practice Act in 1979.¹⁶¹

COORDINATION OF STATUTES WITH NEW LEGISLATION
AND SUPREME COURT DECISIONS

Illinois Marriage and Dissolution of Marriage Act

In its role as coordinator of the Illinois statutes with new legislation, the Commission effectuated the amendment¹⁶² of all statutes referring to the old Divorce Act.¹⁶³ The Marriage and Dissolution of Marriage Act,¹⁶⁴ effective October 1, 1977, introduced new terminology governing Illinois domestic relations law. For example, "dissolution of marriage" replaced the former "divorce," "declaration of invalidity of marriage" replaced "annulment," and "legal separation" was substituted for "separate maintenance." Nineteen acts were amended to coordinate all Illinois statutes with the terminology of the Marriage and Dissolution of Marriage Act.

Gender-Biased Terminology

In a continuation¹⁶⁵ of its efforts to eliminate gender bias from the Illinois Revised Statutes, the Law Revision Commission along with the Commission on the Status of Women, brought about the elimination of gender bias in employment through the amendment of fifteen acts.¹⁶⁶ Gender-biased terminology relating to real property ownership and disposition was also eliminated, through the amendment of three acts.¹⁶⁷

Paternity Act

Under the Paternity Act,¹⁶⁸ a paternity action must be filed within two years following the birth of a child out of wedlock.¹⁶⁹ The Act provides that the statutory two year filing period tolls if the alleged putative father is located outside of the state. There was no provision in the Act, however, to toll the filing period if the alleged putative father was concealed *within* the

160. See Act of Aug. 28, 1979, P.A. 81-271, 1979 Ill. Laws 643. Since § 46 of the Civil Practice Act deals with amendments, the addition of P.A. 81-271 was inserted in the Civil Practice Act as § 46.1. The text of § 46.1 is identical to that reproduced in note 157 *supra*.

161. Section 46.1 currently applies to *all* civil proceedings because numerous statutes incorporate the Civil Practice Act by reference.

162. Act of Aug. 28, 1979, P.A. 81-230, 1979 Ill. Laws 552.

163. ILL. REV. STAT. ch. 40 (1975).

164. ILL. REV. STAT. ch. 40, §§ 301, 401, 402 (1977).

165. See text accompanying notes 51-55 *supra*.

166. Act of Aug. 28, 1979, P.A. 81-257, 1979 Ill. Laws 614.

167. Act of Aug. 28, 1979, P.A. 81-266, 1979 Ill. Laws 633.

168. ILL. REV. STAT. ch. 40, §§ 1351-1368 (1977).

169. *Id.* § 1354.

state. At the Commission's urging, the Paternity Act was amended¹⁷⁰ to remedy this situation so that the filing period now tolls not only when the alleged putative father is out of state, but also when he is concealed within the state.

Probate Act

Very often in a complex statutory system, the legislature amends statutes and inadvertently affects numerous other statutes. For example, a number of acts had been closely tied with the provisions of the Probate Act of 1939.¹⁷¹ When the legislature provided an entirely new section plan in 1975 for the Probate Act,¹⁷² some acts that were not amended failed to conform with the new provisions. To render the statutes involved meaningful, the Commission submitted amendments¹⁷³ to coordinate with the respective sections of the Probate Act of 1975, and these amendments were enacted into law.

The Illinois Court System

Another major concern of the Law Revision Commission was the presence of outmoded terminology employed throughout the Illinois court system. The Commission pointed out that writs of procedendo, error, and supersedeas were still present in the Supreme Court Act.¹⁷⁴ However, the purpose and use of these writs had long since lapsed into obsolescence. Consequently, upon the Commission's recommendation, the legislature amended the Supreme Court Act¹⁷⁵ to delete references to these outmoded phrases.

Prior to 1964, the Illinois Appellate Court owed its composition and status to statutory law.¹⁷⁶ As a result of the Judicial Article of 1962,¹⁷⁷ however, the composition of the appellate court system was completely changed.¹⁷⁸ Through the Commission's efforts, the Appellate Court

170. Act of Aug. 28, 1979, P.A. 81-233, 1979 Ill. Laws 569.

171. ILL. REV. STAT. ch. 3, §§ 151-501 (1939).

172. ILL. REV. STAT. ch. 110 1/2, § 1-1 (1975).

173. Act of Aug. 28, 1979, P.A. 81-264, 1979 Ill. Laws 630.

174. ILL. REV. STAT. ch. 37 (1977).

175. Act of Aug. 28, 1979, P.A. 81-275, 1979 Ill. Laws 649.

176. See ILL. CONST. art. VI, § 11 (1870). "Appellate courts shall be held by such number of judges of the circuit courts, and at such times and places and in such manner as may be provided by law." *Id.*

177. ILL. CONST. art. VI (1962).

178. Under the Judicial Article of 1962 and the 1970 Constitution, the organization of the Appellate Court is as follows:

1. There is one Appellate Court in the State with five branches, each covering a judicial district. Each judicial district must have not less than three judges.

2. The Appellate Court consisted in 1964 of a total of twenty-four judges, twelve of whom were from Cook County, and three from each of the four downstate judicial districts. However, these numbers are subject to change by law.

Act of 1877 was remodeled¹⁷⁹ to reflect accurately the tribunal's current status as a constitutional court.

On December 31, 1963, the Superior Court of Cook County ceased to exist, yet reference to it remained in four acts until 1979. At the Commission's request, these obsolete references were deleted.¹⁸⁰ Similarly, masters in chancery had been abolished, yet a reference to them remained in one act until 1979. This reference was also removed, thereby conforming the statutory language with the realities now prevailing in the Illinois legal system.¹⁸¹

The Commission discovered additional conflicts that existed in the court system. First, one act was repealed¹⁸² that dealt with motion practice in the supreme court, a subject fully covered in Supreme Court Rule 361.¹⁸³ Second, the Commission was responsible for the removal of an obsolete provision that required the filing of a praecipe to obtain a fee bill from a clerk of the court.¹⁸⁴ Finally, because section 18 of article VI of the Illinois Constitution¹⁸⁵ provides that the clerk of the supreme court is appointed, not elected, an outdated statutory reference to election was deleted.¹⁸⁶

Supreme Court Decisions

In addition to revising the terminology of various statutes, the Law Revision Commission harmonized certain acts with Illinois Supreme Court decisions. In *People v. Jackson*,¹⁸⁷ the Illinois Supreme Court held unconstitutional a provision of the criminal code that involved trial attorneys' rights to question jurors on voir dire. The court held that a conflicting Supreme Court Rule took precedence over the statute, because the Illinois Constitution vested administrative power in the supreme court to promulgate rules governing trial and appellate procedure. The Commission brought this mat-

3. The judges of the Appellate Court are elected as judges of this Court and not, as theretofore, assigned from among the judges of the Circuit Courts and the judges of the Superior Court of Cook County.

4. There are in each district such number of divisions as the Supreme Court prescribes. Each division must have not less than three judges.

5. Each branch or division sits at times and places prescribed by rules of the Supreme Court.

6. The majority of a division constitutes a quorum and the concurrence of a majority of the division is necessary to a decision of the Appellate Court.

H. FINS, ILLINOIS APPELLATE PRACTICE UNDER THE NEW CONSTITUTION 140-41 (2d ed. 1977).

179. See Act of Aug. 28, 1979, P.A. 81-260, 1979 Ill. Laws 623.

180. See Act of Aug. 28, 1979, P.A. 81-282, 1979 Ill. Laws 666.

181. See Act of Aug. 28, 1979, P.A. 81-259, 1979 Ill. Laws 622.

182. Act of Aug. 28, 1979, P.A. 81-278, 1979 Ill. Laws 651.

183. ILL. REV. STAT. ch. 110A, § 361 (1977).

184. See Act of Aug. 28, 1979, P.A. 81-277, 1979 Ill. Laws 651.

185. ILL. CONST. art. VI, § 18 (1970).

186. See Act of Aug. 28, 1979, P.A. 81-276, 1979 Ill. Laws 650.

187. 69 Ill. 2d 252, 371 N.E.2d 602 (1977).

ter to the legislature's attention, and the Act was amended to conform with the supreme court's ruling.¹⁸⁸

Two other acts were amended, in a similar fashion, to conform to the supreme court decisions of *People v. Briceland*¹⁸⁹ and *Natural Gas Pipeline Co. of America v. Slattery*.¹⁹⁰ A provision of section 4 of the Environmental Protection Act¹⁹¹ was held unconstitutional in *Briceland* because it permitted the Environmental Protection Agency to prosecute cases before the Pollution Control Board.¹⁹² The court held that, subject to the provision of article V, section 15, of the Illinois Constitution,¹⁹³ the attorney general was the only officer authorized to institute and prosecute proceedings before the Pollution Control Board.¹⁹⁴ Accordingly, section 4 of the Environmental Protection Act was amended¹⁹⁵ to comply with the *Briceland* court's decision.

Finally, section 76 of "[a]n Act concerning public utilities"¹⁹⁶ was amended to avoid a possible constitutional challenge. Before the amendment, a portion of the Public Utilities Act could have been interpreted so as to permit the Illinois Commerce Commission to impose cumulative penalties on public utilities found to be in violation of the Commission's order before the utility had a chance to seek review of the order.¹⁹⁷ Section 76 therefore was amended to provide a thirty-day period during which a public utility convicted of a violation may seek review of the order before penalties are imposed.¹⁹⁸

1976-1979 MODERNIZATION OF LEGAL TERMINOLOGY

One of the aims of the Illinois Law Revision Commission is to present Illinois statutes in "the language of the people" instead of employing antiquated "Latin" and "Norman-French" terms. The objective is to make the Illinois statutes understandable by non-lawyers as well as lawyers. Towards this goal, the deletion of the following anachronisms has been accomplished:

188. See Act of Aug. 28, 1979, P.A. 81-263, 1979 Ill. Laws 628.

189. 65 Ill. 2d 485, 359 N.E.2d 149 (1976).

190. 302 U.S. 300 (1937).

191. ILL. REV. STAT. ch. 111 1/2, § 1004(e) (1977).

192. 65 Ill. 2d at 501-02, 359 N.E.2d at 157.

193. ILL. CONST. art. V, § 15 (1970).

194. 65 Ill. 2d at 500-01, 359 N.E.2d at 156-57.

195. Act of Aug. 23, 1979, P.A. 81-219, 1979 Ill. Laws 484.

196. ILL. REV. STAT. ch. 111 2/3, § 76 (1977).

197. See *Natural Gas Pipeline Co. v. Slattery*, 302 U.S. 300 (1937). The Court stated: "[A]ny application of the statute subjecting the appellant to the risk of the cumulative penalties pending an attempt to test the validity of the order in the courts for a reasonable time after the decision would be a denial of due process." *Id.* at 310.

198. See Act of Aug 23, 1979, P.A. 81-219, 1979 Ill. Laws 484.

*riens per descent*¹⁹⁹

A plea by an heir sued for the debt of his ancestor that he had no lands by descent from the ancestor.²⁰⁰

*demurrer*²⁰¹

An allegation that, admitting the facts of the preceding pleading to be true, as stated by the party making it, the party has yet shown no cause why the party demurring should be compelled by the court to proceed further.²⁰²

*nihil dicit*²⁰³

The name of the judgment rendered against a defendant who fails to put in a plea or answer to the plaintiff's declaration by the day assigned. In such a case, judgment is given against the defendant of course, as he or she says nothing to show why it should not.²⁰⁴

*nil dicit*²⁰⁵

This has the same meaning as "nihil dicit" because "nil" is a contracted form of "nihil."²⁰⁶

*jeofails*²⁰⁷

I have failed; I am in error. Certain statutes are called statutes of amendments and jeofails, because where a pleader perceives any slip in the form of the proceedings and acknowledges the error (jeofaile), he or she is at liberty, by those statutes, to amend it.²⁰⁸

*seizin*²⁰⁹

The completion of the feudal investiture, by which the tenant was admitted into the feud and performed the rights of homage and fealty. Seizin is a technical term to denote the completion of that investiture, by which the tenant was admitted into the tenure, and without which no freehold could be constituted or pass.²¹⁰

*feoffor*²¹¹

Feoffment is a gift of a freehold interest in land accompanied by livery of seizin. In medieval days it was the normal mode of transferring a freehold interest in land of free tenure. The essential part is the livery of seizin. The feoffor is the person who makes the feoffment.²¹²

199. Act of Aug. 6, 1976, P.A. 79-1365, § 27, 1976 Ill. Laws 1034.

200. BOUVIER'S LAW DICTIONARY 2960 (F. Rawle 3d rev. ed. 1914).

201. Act of Aug. 6, 1976, P.A. 79-1365, § 27, 1976 Ill. Laws 1034.

202. BOUVIER'S LAW DICTIONARY 837 (F. Rawle 3d rev. ed. 1914).

203. Act of Aug. 6, 1976, P.A. 79-1365, § 27, 1976 Ill. Laws 1034.

204. BOUVIER'S LAW DICTIONARY 2830 (F. Rawle 3d rev. ed. 1914).

205. Act of Aug. 6, 1976, P.A. 79-1358, § 24, 1976 Ill. Laws 713.

206. BLACK'S LAW DICTIONARY 942 (5th ed. 1979).

207. Act of Sept. 16, 1977, P.A. 80-742, 1977 Ill. Laws 2211.

208. BOUVIER'S LAW DICTIONARY 1690 (F. Rawle 3d rev. ed. 1914).

209. Act of Sept. 14, 1977, P.A. 80-660, 1977 Ill. Laws 2003.

210. BOUVIER'S LAW DICTIONARY 3036 (F. Rawle 3d rev. ed. 1914).

211. Act of Sept. 14, 1977, P.A. 80-660, 1977 Ill. Laws 2003.

212. BOUVIER'S LAW DICTIONARY 1206 (F. Rawle 3d rev. ed. 1914).

feoffee ²¹³

The person to whom a fee is conveyed. ²¹⁴

praecipe ²¹⁵

A written order to the clerk of the court to issue a writ. ²¹⁶

scire facias ²¹⁷

The name of a writ (and of the whole proceeding) founded on some public record.

A judicial writ at common law to revive judgment or to obtain satisfaction thereof from sureties upon bail or other recognizances taken in the proceedings in which the judgment is rendered. ²¹⁸

venditio re exponas ²¹⁹

The name of a writ of execution, directed to the sheriff, commanding the sheriff to sell goods or chattels, and in some states, lands, which have been taken in execution by virtue of a *feri facias*, and which remain unsold. ²²⁰

vendue ²²¹

A sale: generally a sale at public auction; and more particularly a sale so made under the authority of law, as by a constable, sheriff, tax collector, administrator, etc. ²²²

mittimus ²²³

"A *mittimus* is only a transcript of the minutes of the conviction and sentence duly certified by the clerk. The clerk can only certify to the order of the court and the sheriff can only execute the sentence of the court as recorded." ²²⁴

supersedeas ²²⁵

An auxiliary process designed to supersede the enforcement of the judgment of the court below, brought up by writ of error for review. ²²⁶

213. Act of Sept. 14, 1977, P.A. 80-660, 1977 Ill. Laws 2003.

214. BOUVIER'S LAW DICTIONARY 1206 (F. Rawle 3d rev. ed. 1914).

215. Act of Aug. 28, 1979, P.A. 81-277, 1979 Ill. Laws 679.

216. BOUVIER'S LAW DICTIONARY 2650 (F. Rawle 3d rev. ed. 1914).

217. Act of Aug. 28, 1979, P.A. 81-268, 1979 Ill. Laws 641; Act of Aug. 28, 1979, P.A. 81-286, 1979 Ill. Laws 679.

218. BOUVIER'S LAW DICTIONARY 3014 (F. Rawle 3d rev. ed. 1914).

219. Act of Aug. 28, 1979, P.A. 81-281, 1979 Ill. Laws 659.

220. BOUVIER'S LAW DICTIONARY 3389 (F. Rawle 3d rev. ed. 1914).

221. Act of Aug. 28, 1979, P.A. 81-231, 1979 Ill. Laws 563; Act of Aug. 28, 1979, P.A. 81-281, 1979 Ill. Laws 659.

222. BLACK'S LAW DICTIONARY 1395 (5th ed. 1979).

223. Act of Aug. 28, 1979, P.A. 81-238, 1979 Ill. Laws 581.

224. *People v. Graydon*, 329 Ill. 398, 401, 160 N.E. 748, 750 (1928). *United States v. Denemark*, 138 F.2d 289, 291 (7th Cir. 1943). See also BOUVIER'S LAW DICTIONARY 2234 (F. Rawle 3d rev. ed. 1914).

225. Act of Aug. 28, 1979, P.A. 81-260, 1979 Ill. Laws 623; Act of Aug. 28, 1979, P.A. 81-275, 1979 Ill. Laws 649; Act of Aug. 28, 1979, P.A. 81-281, 1979 Ill. Laws 653.

226. *Williams v. Bruffy*, 102 U.S. 248 (1880). See also BOUVIER'S LAW DICTIONARY 3186 (F. Rawle 3d rev. ed. 1914).

procedendo ²²⁷

A procedendo operates in the same manner as the mandate or remanding order of a court of review. ²²⁸

precept ²²⁹

A writ directed to the sheriff, or other officer, commanding some official duty. ²³⁰

capias ²³¹

A writ directing the sheriff to take the person of the defendant into custody. ²³²

capias ad satisfaciendum ²³³

A writ directed to the sheriff or coroner, commanding these officers to take and confine the person therein named and keep him or her safely so that the named party may be present in court on the return day of the writ, to satisfy (*ad satisfaciendum*) the party who has recovered judgment. ²³⁴

nonsuit ²³⁵

The name of a judgment given against a plaintiff who is unable to prove a case, or refuses or neglects to proceed to the trial of a cause after it has been put at issue, without determining such issue. ²³⁶

demandant ²³⁷

The plaintiff or party who brings a real action. A "real action" was, at common law, one brought for the specific recovery of lands, tenements, or hereditaments. ²³⁸

writ of error ²³⁹

A writ issued from a court of appellate jurisdiction, directed to the judge or judges of a court of record, requiring them to remit to the appellate court the record of an action before them, in which a final judgment has been entered, in order that examination may be made of certain errors alleged to have been committed, and that the judgment may be reversed, corrected, or affirmed, as the case may require. ²⁴⁰

227. Act of Aug. 28, 1979, P.A. 81-275, 1979 Ill. Laws 649.

228. *McCord v. Briggs & Turivas*, 338 Ill. 158, 168, 170 N.E. 320, 329 (1930). *See also* BOUVIER'S LAW DICTIONARY 2729 (F. Rawle 3d rev. ed. 1914).

229. Act of Aug. 28, 1979, P.A. 81-254, 1979 Ill. Laws 612.

230. BOUVIER'S LAW DICTIONARY 2660 (F. Rawle 3d rev. ed. 1914).

231. Act of Aug. 28, 1979, P.A. 81-284, 1979 Ill. Laws 678.

232. BOUVIER'S LAW DICTIONARY 415 (F. Rawle 3d rev. ed. 1914).

233. Act of Aug. 28, 1979, P.A. 81-235, 1979 Ill. Laws 573.

234. BOUVIER'S LAW DICTIONARY 419 (F. Rawle 3d rev. ed. 1914).

235. Act of Aug. 28, 1979, P.A. 81-231, 1979 Ill. Laws 563.

236. BOUVIER'S LAW DICTIONARY 2360 (F. Rawle 3d rev. ed. 1914).

237. Act of Aug. 6, 1976, P.A. 79-1365, 1976 Ill. Laws 1034.

238. BOUVIER'S LAW DICTIONARY 833, 2813 (F. Rawle 3d rev. ed. 1914).

239. Act of Aug. 28, 1979, P.A. 81-260, 1979 Ill. Laws 623; Act of Aug. 28, 1979, P.A. 81-275, 1979 Ill. Laws 649.

240. BLACK'S LAW DICTIONARY 1143-44 (5th ed. 1979).

THE TASK AHEAD

The Law Revision Commission has, during its existence, accomplished many of its intermediary goals, but there is more work yet to be done. This remains the Commission's task for the immediate future. There is now a movement afoot for the enactment of a Code of Civil Procedure in Illinois.²⁴¹ The members of the legislature, the bench, and the bar have responded to the project with great enthusiasm. It is of interest to observe that although Illinois has had a Code of Criminal Procedure since 1963,²⁴² this state does not have, seventeen years later, a Code of Civil Procedure. Such a code would be a valuable and convenient legal tool for the lawyer and layman alike. It would greatly reduce the number of chapters in the voluminous statute books and would eliminate many overlapping statutory provisions that now exist. The Act that created the Illinois Law Revision Commission specifically states that one of its objectives is to reduce the "three inordinately thick volumes of text"²⁴³ of the revised statutes. The Commission is therefore participating actively in the sponsorship of a Code of the Civil Procedure for the State of Illinois. On March 28, 1980, the Chairman of the Commission, joined by members of the Commission and others, introduced in the Illinois House of Representatives H.B. 3262 for the enactment of the Code of Civil Procedure. The Commission has proven its value²⁴⁴ and its continued active participation is imperative for the much-needed progress in the coordination and modernization of Illinois law.

241. Fins, *Code of Civil Procedure for Illinois*, 68 ILL. B.J. 312 (1980).

242. ILL. REV. STAT. ch. 38, §§ 100-1 to -1105 (1977).

243. Act of Aug. 29, 1975, P.A. 79-662, preamble 1975 Ill. Laws 2076 (repealed 1977).

244. In 1975, the legislature assigned to the Commission a life span of two years. Act of Aug. 29, 1975, P.A. 79-662, 1975 Ill. Laws 2076. In 1977, the Commission's duration was extended for another two years. Act of Sept. 18, 1977, P.A. 86-789, 1977 Ill. Laws 2327. Act of Sept. 21, 1979, P.A. 81-855, 1979 Ill. Legis. Serv. 1906, extended the Commission's duration to December 31, 1981.

