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ANALYSIS OF ILLINOIS JUDICIAL ARTICLE OF 1961 AND ITS LEGISLATIVE AND JUDICIAL IMPLEMENTATION

HARRY G. FINS

HISTORICAL BACKGROUND

THE FIRST ILLINOIS Constitution was adopted in 1818, effective January 1, 1819, and remained in force for twenty-nine years.¹ The second Illinois Constitution was adopted in 1847, effective April 1, 1848, and remained in force for twenty-two years.² The third Illinois Constitution was adopted in 1870, effective August 8, 1870, and has been in force ever since.³ Thus, the court structure provided

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¹ The first Constitution was drafted by a Constitutional Convention called in pursuance of the Enabling Act of Congress of April 18, 1818, c. 67 (3 Stat. 428). It was adopted by the Convention of August 26, 1818, and became effective January 1, 1819, by virtue of the Congressional Resolution of December 3, 1818, admitting Illinois to the Union.

² The Constitution of 1848 was adopted by convention August 31, 1847. It was ratified by popular vote March 6, 1848, and declared in force April 1, 1848.

Pursuant to an act of the General Assembly calling a convention to amend the Constitution (Ill. Laws 1861, p. 84), a constitutional convention was assembled January 7, 1862, and adopted a proposed constitution on March 22, 1862. It was submitted to a popular vote and rejected June 17, 1862.

³ This is the constitution which is now in force and which was adopted in Conven-

by that Constitution has been in effect over ninety years, except that, in 1904, Section 34 was added to Article IV of the Constitution, making possible the creation of the Municipal Court of Chicago and the abolition of justices of the peace and police magistrates in the City of Chicago.⁴

By 1950, it was generally agreed that Illinois was in need of a new Judicial Article, but there was considerable diversity of opinion as to the provisions to be included in such Article. In 1951, a Judicial Article Revision Commission was appointed with directions that:

The Commission shall make a thorough study of the need for revising Article VI of the Constitution of Illinois and of the various alternatives for its revision that have been or may be suggested and shall prepare a proposed draft of an amendment or amendments to said Article for presentation to the Sixty-eighth General Assembly.⁵

On April 14, 1953, the Judicial Article Revision Commission reported:

The most serious consideration has been given, and must continue to be given, to the proposals of the Joint Committee of the Bar Associations; the vital subject of revision of the Article was given a laborious, intensive and protracted study by the Joint Bar Committee consisting of sincere and capable lawyers with many years of experience in the practice of law in Illinois. The original draft of a proposed Judicial Article submitted by that Joint Bar Committee, represented a compromise of the various ideas of its members and of the Bar Associations by which they were chosen. Following the various conferences of this Commission with the Joint Committee of the Bar Associations, the Bar Association proposal was revised several times.

Certain differences continue to exist, however, between this Commission and the Joint Committee of the Bar Associations, as to the latest revision of the proposed Judicial Article. A Sub-Committee appointed by the Commission and the Joint Bar Committee was unable to compose all of these differences.⁶

In 1953, a proposed Judicial Article drafted by a Committee of the Illinois State Bar Association and the Chicago Bar Association was

tion May 13, 1870. It was ratified by the people at an election July 2, 1870, and declared in force August 8, 1870.

A proposed constitution was adopted in Convention September 12, 1922. It was submitted to the people at an election December 12, 1922, and was rejected. See Dodd, *Illinois Rejects a New Constitution*, 7 MINN. L. REV. 177 (1923); Davis, *Defects and Causes of Defeat of the Proposed Constitution of 1922*, 26 CHICAGO B. RECORD 276 (1945).

⁴ See *Weiss Memorial Hosp. v. Kroucke*, 12 Ill.2d 98, 145 N.E.2d 71 (1957); *United Biscuit Co. v. Voss Truck Lines*, 407 Ill. 488, 95 N.E.2d 439 (1950).

⁵ Ill. Laws 1951, at 362.

⁶ Report of Commission, pp. 3-4.

presented to the Illinois Legislature.⁷ This draft was not acceptable to the Legislature.⁸ In 1955, the Bar Associations' draft was again introduced and again met with lack of success in the Legislature.⁹ In 1957, the Bar Associations' draft was again introduced, and, after many compromises, was, on June 27, 1957, adopted by the General Assembly.¹⁰ A sharp conflict arose in political as well as legal circles as to the desirability of the compromised Judicial Article of 1957. Heated debates on the subject took place in many parts of Illinois, and the newspapers gave the matter a great deal of attention. At the general election held on November 4, 1958, the Judicial Article of 1957 failed to receive the number of votes required by the Constitution for its adoption.¹¹ On December 8, 1958, the State Electoral Board, consisting of the Attorney General, the Auditor of Public Accounts, the State Treasurer, the Secretary of State and the Governor, announced the result of the election and declared that the Judicial Article of 1957 was not adopted.¹² On the same day, December 8, 1958, the proponents of the Article filed an election contest in the Circuit Court of Lake County. On May 21, 1959, the Circuit Court dismissed the contestants' petition and, on January 22, 1960, the Supreme Court of Illinois

⁷ See STEINER & GOVE, *LEGISLATIVE POLITICS IN ILLINOIS* 164-98 (1960).

⁸ *Id.* at 183.

⁹ *Id.* at 186-7.

For a history of the movement for the adoption of a new Judicial Article in Illinois, see Witwer, *The Illinois Constitution and the Courts*, 15 U. CHI. L. REV. 53 (1947); Cedarquist, *The Continuing Need for Judicial Reform in Illinois*, 4 DE PAUL L. REV. 153 (1955).

¹⁰ Senate Joint Resolution No. 47, Ill. Laws 1957, at 2909-15.

Section 2 of Article XIV of the Illinois Constitution of 1870 provides in part: "Amendments to this Constitution may be proposed in either House of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the yeas and nays of each house thereon, shall be entered in full on their respective journals, and said amendments shall be submitted to the electors of this State for adoption or rejection, at the next election of members of the General Assembly in such manner as may be prescribed by law."

¹¹ Section 2 of Article XIV of the Illinois Constitution of 1870, as amended in 1949 and adopted in 1950, commonly known as the Gateway Amendment, provides that "if either a majority of the electors voting at said election, or two-thirds of the electors voting on any such proposed amendment shall vote for the proposed amendment, it shall become a part of this Constitution."

¹² The total number of electors in the State of Illinois who voted on November 4, 1958, was 3,427,278. The total number of electors in the State of Illinois who voted on November 4, 1958, on the proposed Judicial Article Amendment of 1957 was 2,483,158, of which number 1,589,655 voted for and 893,503 voted against the proposed Constitutional Amendment. 1959-60 ILLINOIS BLUE BOOK 937.

affirmed,¹³ thus leaving the Judicial Article of the Constitution of 1870 in full force and effect.

1961 HOUSE JOINT RESOLUTION 39

In 1961, a proposed new Judicial Article drafted by a Committee of the Illinois State Bar Association and the Chicago Bar Association was presented to the Illinois Legislature, and there was also presented to the Legislature (with only a change in effective date) a draft of the proposed Judicial Article of 1957 which had failed in the referendum of 1958.^{13a} Neither draft was acceptable to the Illinois General Assembly. However, from these two proposals emerged a compromised Judicial Article which did not represent the choice of any individual or any group, but was acceptable to many former "opponents" on a "give and take" basis with the hope of improvement in the future. This compromised document was, on June 29, 1961, adopted by the House and, on June 30, 1961, concurred in by the Senate, as House Joint Resolution 39¹⁴ and will be submitted to the voters of Illinois on November 6, 1962, and, if approved in this referendum,¹⁵ will become effective on January 1, 1964.¹⁶

JUDICIAL ARTICLE OF 1961

The Judicial Article consists of 21 numbered sections and a Schedule of 13 numbered paragraphs.¹⁷ The Schedule provides for the transition from the present to the new judicial system and for the implementation of the Judicial Article by the General Assembly and by the Supreme Court of Illinois.¹⁸

1. Court System Simplified

The present Illinois court system, under the Constitution of 1870, is very complex. The Judicial Article of 1870 provides for "one supreme

¹³ *Scribner v. Sachs*, 18 Ill.2d 400, 164 N.E.2d 481 (1960).

^{13a} Both Resolutions were introduced in the General Assembly on the same day, March 28, 1961.

¹⁴ Ill. Laws 1961, pp. 917-25.

¹⁵ See note 11 *supra*.

¹⁶ Judicial Article of 1961, Schedule, para. 1.

¹⁷ The use of a "Schedule" to cover the transition from the old to the new law has been employed by each of the three Illinois Constitutions of 1818, 1848 and 1870, respectively.

¹⁸ The following analysis is presented on the assumption that the Illinois electorate will, in 1962, vote favorably on the Judicial Article of 1961.

court, circuit courts, county courts, justices of the peace, police magistrates, and such courts as may be created by law in and for cities and incorporated towns.”¹⁹ The Constitution of 1870 provides for “appellate courts,”²⁰ for a Superior Court of Cook County, for a Criminal Court of Cook County²¹ which “shall have the jurisdiction of a circuit court in all cases of criminal and quasi-criminal nature, arising in the County of Cook, or that may be brought before said court pursuant to law,”²² for a “probate court in each county having a population of over 50,000,”²³ and, by virtue of a constitutional amendment of 1904, for the creation of “municipal courts in the city of Chicago.”²⁴

In contrast with the above intricate court system, the Judicial Article of 1961 provides that “[t]he judicial power is vested in a Supreme Court, an Appellate Court, and Circuit Courts.”²⁵

2. Supreme Court

The Judicial Article of the Constitution of 1870 divided the State into seven judicial districts in each of which district one Supreme Court judge is elected, making the Supreme Court of Illinois a tribunal of seven judges.²⁶ The official United States census of 1960 shows that the total population of the State of Illinois is 10,081,158 and that the population of Cook County is 5,129,725. Despite the fact that Cook County is inhabited by more than half of the Illinois population, one Supreme Court judge is elected from the five counties of Cook, DuPage, Kankakee, Lake and Will, all of which counties comprise one judicial district for the election of one judge to the Supreme Court of Illinois. The remainder of the State, which consists of less than half of the Illinois population, elects the other six judges of the Supreme

¹⁹ ILL. CONST. art. VI, § 1.

²⁰ ILL. CONST. art. VI, § 11.

²¹ ILL. CONST. art. VI, §§ 23–4. Under sections 23 and 24 of article VI of the Illinois Constitution, the Superior and Circuit Courts of Cook County are placed upon the same footing, there being no distinction between them except in name, and, therefore, where a special statutory jurisdiction is conferred on the Circuit Court, the Superior Court will by the same Act, though not named, acquire a like jurisdiction, and vice versa. *People v. Leonard*, 415 Ill. 135, 112 N.E.2d 697 (1953); *Dwyer v. Dwyer*, 366 Ill. 630, 10 N.E.2d 344 (1937); *People ex. rel. Donovan v. Sweitzer*, 330 Ill. 426, 161 N.E. 730 (1928).

²² ILL. CONST. art. VI, § 26.

²³ ILL. CONST. art. VI, § 20.

²⁴ ILL. CONST. art. IV, § 34.

²⁵ Judicial Article of 1961, § 1.

²⁶ ILL. CONST. art. VI, §§ 1, 5.

Court. To cure this inequality of representation of the inhabitants of Cook County on the Supreme Court, the Judicial Article of 1961 divided the State into five judicial districts with Cook County as the First Judicial District.²⁷ Cook County will elect three of the seven Supreme Court judges and the rest of the State will elect the other four judges, each from a designated judicial district.²⁸

As a result of this change, the counties of Lake, DuPage, Will and Kankakee will also have greater representation on the Supreme Court. The population of these four counties, according to the official United States census of 1960, is as follows: Lake—293,656; DuPage—313,459; Will—191,617; and Kankakee—92,063. Under the Judicial Article of 1961, Lake and DuPage counties will belong to the Second Judicial District which has a population of 1,363,306, and Will and Kankakee counties will belong to the Third Judicial District which has a population of 1,266,779. Thus, the ratio of representation of each of these four counties on the Supreme Court will be greater than at present.

Similarly, inequality of representation on the Supreme Court will be removed between the present Third and Fourth Districts downstate. The present Third District has more than twice the number of inhabitants of the Fourth District, whereas under the Judicial Article of 1961 and the United States census of 1960, the Third, Fourth and Fifth Districts will be almost equal in population.

However, in order to allow the incumbent seven judges of the Supreme Court to continue in office, it is provided that Cook County's representation in the Supreme Court shall be increased to three judges gradually, as the offices of two downstate Supreme Court judges become vacant by death, resignation, removal, retirement or failure to be re-elected.²⁹

The Judicial Article of the Constitution of 1870 provides that four of the seven judges of the Supreme Court shall constitute a quorum³⁰

²⁷ Judicial Article of 1961, § 3.

²⁸ *Id.* § 4 and Schedule, para. 3 (a).

The population, according to the 1960 census, of the proposed Districts (other than Cook County) are: Second—1,363,306; Third—1,266,779; Fourth—1,119,293; and Fifth—1,202,055. See 50 Ill. B. J. 71 (1961). The geographical composition of these last mentioned four districts (other than Cook County) may be changed by law. Judicial Article of 1961, § 3.

²⁹ Judicial Article of 1961, Schedule, para. 13.

³⁰ ILL. CONST. art. VI, § 1.

and the concurrence of four shall be necessary to a decision, and the Judicial Article of 1961 provides likewise.³¹

3. *Chief Justice of Supreme Court*

The Judicial Article of the Constitution of 1870 provides that the judges of the Supreme Court shall choose one of their number as Chief Justice, but it does not provide as to how long he shall hold that office.³² The Supreme Court has by rule set a one-year term for the office of Chief Justice by providing that “[t]he term of chief justice shall begin on the second Monday of September in each year.”³³ The Judicial Article of 1961 provides that “[t]he judges of the Supreme Court shall select one of their number to serve as Chief Justice for a term of three years.”³⁴

4. *Appellate Court*

The Judicial Article of the Constitution of 1870 provides that the “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.”³⁵ By statute³⁶ there are now four Appellate Courts in Illinois, and by statute³⁷ the Supreme Court of Illinois assigns three judges to each district of the Appellate Courts. By statute³⁸ the Supreme Court, upon request of the Appellate Court, may increase the number of judges of any Appellate Courts, and by virtue of this statute the Appellate Court for the First District, sitting in Chicago and handling cases from Cook County only, now has nine judges—three branches of three judges each—and the Appellate Court for the Second District, sitting in Ottawa, now has six judges—two branches of three judges each.

The Judicial Article of 1961 has completely changed the composition of the Appellate Courts, as follows:³⁹

³¹ Judicial Article of 1961, § 4.

³² ILL. CONST. art. VI, § 6.

³³ ILL. REV. STAT. ch. 110, § 101.56 (1961).

³⁴ Judicial Article of 1961, § 4.

³⁵ ILL. CONST. art. VI, § 11.

³⁶ ILL. REV. STAT. ch. 37, § 25 (1961).

³⁷ ILL. REV. STAT. ch. 37, § 29 (1961).

³⁸ ILL. REV. STAT. ch. 37, §§45, 52 (1961).

³⁹ Judicial Article of 1961, § 6.

1. There will be one Appellate Court in the State with five branches, each covering a judicial district.

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

3. The judges of the Appellate Court will be elected as judges of this Court and not, as heretofore, as judges of the Circuit Courts.

4. There will be such number of divisions, of not less than three judges each, as the Supreme Court will prescribe.

5. There will be at least one division in each appellate district and each division will sit at times and places prescribed by rules of the Supreme Court.

6. The majority of a division will constitute a quorum and the concurrence of a majority of the division will be necessary to a decision of the Appellate Court.

To bring the statutes in harmony with the Judicial Article of 1961, it will be necessary to revise and to repeal many sections of the three Acts dealing with the Illinois Appellate Courts,⁴⁰ and to enact laws for the election of judges of the Appellate Court and the payment of their salaries.

5. Circuit Court Integrated

Under the Judicial Article of 1961, the Circuit Courts will be the only trial courts in the State of Illinois. The Article provides that on January 1, 1964:

All justice of the peace courts, police magistrate courts, city, village and incorporated town courts, municipal courts, county courts, probate courts, the Superior Court of Cook County, the Criminal Court of Cook County and the Municipal Court of Chicago are abolished and all their jurisdiction, judicial functions, powers and duties are transferred to the respective circuit courts, and until otherwise provided by law non-judicial functions vested by law in county courts or the judges thereof are transferred to the circuit courts.⁴¹

The State will be divided into judicial circuits each consisting of one or more counties.⁴² Cook County will constitute a judicial circuit.⁴³ There will be one circuit court for each judicial circuit.⁴⁴ At present

⁴⁰ ILL. REV. STAT. ch. 37, §§ 25-61a (1961).

⁴¹ Judicial Article of 1961, Schedule, para. 5(a).

⁴² Judicial Article of 1961, § 8.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

there are, by statute,⁴⁵ twenty circuits outside of Cook County, and, until changed by law, the existing judicial circuits will be continued.⁴⁶

To bring the Illinois statutes in harmony with the Judicial Article of 1961, it will be necessary to repeal the following Acts:

"An Act to revise the law in relation to the Criminal Court of Cook County," approved February 12, 1872, as amended.⁴⁷

"An Act to extend the jurisdiction of county courts, and to provide for the practice thereof, to fix the time for holding the same, and to repeal an act therein named," approved March 26, 1874, as amended.⁴⁸

"An Act to authorize county judges to interchange, hold court for each other and perform each other's duties," approved May 31, 1879.⁴⁹

"An Act to authorize the several county and probate judges in this State to interchange with and hold court for each other and with or for judges of circuit, superior, city, town and village and municipal courts and perform each other's duties and the duties of judges of circuit, superior, city, town and village and municipal courts in their own or any other county," approved May 13, 1903, as amended.⁵⁰

"An Act in relation to probate courts, defining the jurisdiction thereof, regulating the practice therein, and fixing the time for holding the same," approved April 27, 1877, as amended.⁵¹

"An Act to authorize the judge of the Probate Court in any county of more than 70,000 and less than 500,000 inhabitants to appoint a shorthand reporter for the taking and preservation of evidence, and fixing the compensation to be paid therefor," approved June 28, 1919, as amended.⁵²

"An Act to authorize county and probate judges to perform the duties of the office of one another in certain cases," approved April 10, 1885, as amended.⁵³

"An Act in relation to county and probate judges," approved May 5, 1917.⁵⁴

"An Act to prohibit county and probate clerks and deputy county or probate clerks from preparing certain documents and from holding certain positions," approved June 8, 1909.⁵⁵

"An Act to authorize the judges of county courts to appoint shorthand reporters for the taking and preservation of evidence and to provide for their compensation, in counties having a population of not more than 500,000," approved May 14, 1903, as amended.⁵⁶

⁴⁵ ILL. REV. STAT. ch. 37, § 72.1 (1961).

⁴⁶ Judicial Article of 1961, Schedule, para. 3 (b).

⁴⁷ ILL. REV. STAT. ch. 37, §§ 164-70 (1961).

⁴⁸ ILL. REV. STAT. ch. 37, §§ 171-296 (1961).

⁴⁹ ILL. REV. STAT. ch. 37, § 297 (1961).

⁵⁰ ILL. REV. STAT. ch. 37, § 298 (1961).

⁵¹ ILL. REV. STAT. ch. 37, §§ 299-321 (1961).

⁵² ILL. REV. STAT. ch. 37, §§ 322-4 (1961).

⁵³ ILL. REV. STAT. ch. 37, § 325 (1961).

⁵⁴ ILL. REV. STAT. ch. 37, §§ 326-7 (1961).

⁵⁵ ILL. REV. STAT. ch. 37, §§ 328-9 (1961).

⁵⁶ ILL. REV. STAT. ch. 37, §§ 330-2 (1961).

"An Act in relation to courts of record in cities, villages and incorporated towns," approved May 10, 1909, as amended.⁵⁷

"An Act in relation to the compensation and expenses of certain judges hereafter elected," approved July 22, 1959.⁵⁸

"An Act in relation to a municipal court in the City of Chicago," approved May 18, 1905, as amended.⁵⁹

"An Act in relation to Municipal Courts in cities and villages," approved June 26, 1929, as amended.⁶⁰

"An Act concerning the transfer of civil actions between courts of record of the same county," approved June 13, 1931, as amended.^{60a}

"An Act providing for the use without charge of certain courtrooms by police magistrates," approved July 11, 1957.⁶¹

"An Act to revise the law in relation to justices of the peace and constables," approved June 26, 1895, as amended.⁶²

In the Election Code,⁶³ many parts (particularly in Articles 2, 9 and 23) will have to be repealed and substitutions made because of the abolition of the Superior Court of Cook County, the Criminal Court of Cook County, the city, village, town and municipal courts, the county and probate courts, the Municipal Court of Chicago, justices of the peace and police magistrates, and because of the major changes in the methods of election and re-election of judges.

A careful examination will have to be made of the whole Illinois statute book to delete from various statutes references to the Superior Court of Cook County, the Criminal Court of Cook County, county courts, probate courts, city, village, town or municipal courts, the Municipal Court of Chicago, justices of the peace and police magistrates.

6. *Judicial Officers of Circuit Court*

The Circuit Court will consist of three grades of judicial officers: (a) circuit judges, (b) associate judges, and (c) magistrates.⁶⁴

(a) A *circuit judge* is elected and has all the authority possessed by the Circuit Court.

⁵⁷ ILL. REV. STAT. ch. 37, §§ 333-5a (1961).

⁵⁸ ILL. REV. STAT. ch. 37, § 355b (1961).

⁵⁹ ILL. REV. STAT. ch. 37, §§ 356-426 (1961).

⁶⁰ ILL. REV. STAT. ch. 37, §§ 442-504 (1961).

^{60a} ILL. REV. STAT. ch. 146, § 37 (1961).

⁶¹ ILL. REV. STAT. ch. 37, § 504.1 (1961).

⁶² ILL. REV. STAT. ch. 79, §§ 1-191 (1961).

⁶³ ILL. REV. STAT. ch. 46 (1961).

⁶⁴ Judicial Article of 1961, § 8.

(b) An *associate judge* is elected and has all the authority possessed by the Circuit Court, except that (1) he may not be the Chief Judge of the circuit and (2) he may not participate in the appointment of magistrates.⁶⁵

(c) A *magistrate* is not an elected officer but is appointed by the circuit judges to serve at their pleasure.⁶⁶ In Cook County, until and unless changed by law, at least one-fourth of the magistrates will be appointed from and reside in the area outside the corporate limits of the City of Chicago.⁶⁷ The General Assembly is to limit or define the matters to be assigned to magistrates,⁶⁸ and, until otherwise prescribed by the General Assembly, the cases assigned to magistrates are to be those within the jurisdiction of the justices of the peace and police magistrates prior to January 1, 1964.⁶⁹

The Judicial Article of 1961, in Paragraph 4 of its Schedule, provides:

(b) Circuit judges shall continue as circuit judges of the several circuit courts.

(c) In Cook County, the judges of the Superior Court, the Probate Court, the County Court, and the Chief Justice of the Municipal Court of Chicago shall be circuit judges; the judges of the Municipal Court of Chicago, and the judges of the several municipal, city, village and incorporated town courts shall be associate judges of the Circuit Court.

(d) In counties other than the county of Cook, the county judges, probate judges, and the judges of the municipal, city, village and incorporated town courts shall be associate judges of the Circuit Court.

(e) Police magistrates and justices of the peace shall be magistrates of the several circuit courts, and unless otherwise provided by law shall continue to perform their non-judicial functions for the remainder of their respective terms.

It must be noted with care that insofar as decisions of cases are concerned, a circuit judge, an associate judge and a magistrate stand on the same footing; that is, a final judgment entered by an associate

⁶⁵ Judicial Article of 1961, §§ 8, 12.

⁶⁶ Judicial Article of 1961, § 12. It is of interest to note that for 36 years—from 1870 to 1906, when Section 60 of the Municipal Court of Chicago Act became operative—all justices of the peace in the City of Chicago were appointed by the Governor, by and with the advice of the Senate, but only upon the recommendation of a majority of the Circuit, Superior, and County Courts. ILL. CONST. art. VI, § 28; ILL. REV. STAT. ch. 37, § 420 (1961).

⁶⁷ Judicial Article of 1961, § 12.

⁶⁸ Judicial Article of 1961, § 8.

⁶⁹ Judicial Article of 1961, Schedule, para. 9. Justices of the peace and police magistrates have the same jurisdiction. ILL. CONST. art. VI, § 21. In civil cases, their jurisdiction is limited to claims not exceeding \$1,000.00 and, in criminal cases, to a fine not exceeding \$1,000.00 and imprisonment in the county jail not exceeding one year. ILL. REV. STAT. ch. 79, §§ 16, 165 (1961).

judge is not reviewable by a circuit judge and a final judgment entered by a magistrate is not reviewable either by an associate judge or by a circuit judge.⁷⁰ The final judgment of each of said officers is reviewable only by the Appellate and Supreme Courts of Illinois.

7. Chief Judge of Circuit Court

Under the Judicial Articles of 1961, the circuit judges and associate judges in each circuit will select one of the circuit judges to serve at their pleasure as Chief Judge of such circuit.⁷¹

The Chief Judge of the Circuit will, subject to the authority of the Supreme Court, have general administrative authority in the Circuit Court, including authority to provide for divisions, general or specialized, and for appropriate times and places of holding court.⁷²

8. All Courts Are Courts of Record

At present, justice of the peace courts and police magistrate courts are the only judicial tribunals in Illinois which are not courts of record. All other tribunals in the State are courts of record. Since the Judicial Article of 1961 will, on January 1, 1964, abolish all justice of the peace and police magistrate courts,⁷³ and "magistrates" of the integrated circuit courts will be judicial officers of this court, the institution of courts not of record will become extinct, as there will exist only the Supreme Court, the Appellate Court and the Circuit Courts, all of which are courts of record. To bring the Illinois statute in harmony with the Judicial Article of 1961, it will be necessary to delete

⁷⁰ However, as to interlocutory orders, one trial judge may review another trial judge. In *Johnson v. Moon*, 3 Ill.2d 561, 121 N.E.2d 774 (1954), the Supreme Court said at page 564: "At the outset the administrator contends that Judge Ward lacked authority to review the order entered by Judge Sbarbaro directing that the added counterdefendants be brought into the case and permitting the filing of the counterclaim. In our opinion, however, this contention was properly rejected by the Appellate Court upon the authority of *Roach v. Village of Winnetka*, 366 Ill. 578, 581. See 1 Ill. App.2d 6, 8, 9."

The law of Illinois is well established that it is error for more than one judge to participate in the proceedings in a given case, but each step in the cause should be by a single judge and this fact should appear from the record. *Wayland v. City of Chicago*, 369 Ill. 43, 15 N.E.2d 516 (1938); *Courson v. Browning*, 78 Ill. 208 (1875); *Hall v. Hamilton*, 74 Ill. 437 (1874); *Harvey v. Van DeMark*, 71 Ill. 117 (1873). The law as above announced will continue under the Judicial Article of 1961.

⁷¹ Judicial Article of 1961, § 8.

⁷² *Ibid.*

⁷³ Judicial Article of 1961, Schedule, para. 5(a).

from the statute all references to courts of record and to eliminate the distinction between courts of record and courts not of record.⁷⁴

9. Repeal of Other Constitutional Provisions

Article VI of the Illinois Constitution of 1870 is entitled "Judicial Department" and will be replaced by the Judicial Article of 1961. However, Article VI is not the only Article which deals with the Illinois judicial system. Thus:

(1) Section 5 of Article II of the Constitution (which Article is entitled "Bill of Rights") provides that "the trial of civil cases before justices of the peace by a jury of less than twelve may be authorized by law."

(2) Section 22 of Article IV of the Constitution (which Article is entitled "Legislative Department") provides that no local or special law shall be passed regulating the "jurisdiction and duties of justices of the peace" and "police magistrates."

(3) Section 34 of Article IV of the Constitution (which Article is entitled "Legislative Department") provides for "municipal courts in the city of Chicago" and, in 1905, the Municipal Court of Chicago came into being by virtue of this constitutional authority.⁷⁵

(4) Section 8 of Article X of the Constitution (which Article is entitled "Counties") provides for the election of a "county judge" and a "clerk of the circuit court," each with a four-year term of office.

(5) Section 9 of Article X of the Constitution (which Article is entitled "Counties") provides that the number of deputies and assistants of the clerks of all the courts of record of Cook County "shall be determined by rule of the circuit court, to be entered of record, and their compensation shall be determined by the county board."

(6) Section 10 of Article X of the Constitution (which Article is entitled "Counties") provides that the county board in counties other than Cook "shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other expenses in such manner and subject to such limitations as may be prescribed by law, and in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed,

⁷⁴ For example, see ILL. REV. STAT. ch. 3 § 181 (1961); ILL. REV. STAT. ch. 25, § 28 (1961); ILL. REV. STAT. ch. 53, § 51 (1961); ILL. REV. STAT. ch. 110, § 1 (1961).

⁷⁵ Weiss Memorial Hosp. v. Kroncke, 12 Ill.2d 98, 145 N.E.2d 71 (1957); United Biscuit Co. v. Voss Truck Lines, Inc., 407 Ill. 488, 195 N.E.2d 439 (1950).

the fees actually collected: Provided, that the compensation of no officer shall be increased or diminished during his term of office. All fees or allowances by them received, in excess of their said compensation, shall be paid into the County Treasury." By virtue of Section 8 of said Article X, the term "county officers" includes the county clerk and the clerk of the circuit court.

As a result of the adoption of the Judicial Article of 1961, the above mentioned Section 5 of Article II, Sections 22 and 34 of Article IV and Sections 8, 9 and 10 of Article X of the Illinois Constitution of 1870 will be repealed to the extent that they are inconsistent with the Judicial Article of 1961. In *City of Chicago v. Reeves*,⁷⁶ the Supreme Court of Illinois held that Section 2 of Article XIV of the Constitution (which Article is entitled "Amendments to the Constitution") does not prohibit implied amendments of other Articles of the Constitution relating to the same subject and necessarily resulting from the express amendment of one Article.

10. Election of Judges

(a) Nomination by Party Convention or Primary and Election at General Elections

At present there are employed in Illinois two statutory methods of nomination of judicial candidates: (1) by each political party in convention and (2) by a party primary. Judicial candidates for the Supreme Court, circuit courts and the Superior Court of Cook County are nominated by each political party in convention and judicial candidates for other courts are nominated by party primaries.⁷⁷

At present there are employed in Illinois three types of elections for judicial candidates: (1) general elections held on the first Tuesday after the first Monday in November of even numbered years, (2) judicial elections held on dates designated by the Constitution of 1870 or by statute, and (3) special elections designated by the Governor to fill vacancies for the remainder of a term in excess of a year. Judges of the Supreme Court and circuit courts are elected at judicial elec-

⁷⁶ 220 Ill. 274, 77 N.E.237 (1906).

⁷⁷ ILL. REV. STAT. ch. 46, §§ 7-1, 9-1 (1961). However, see Article 10 of The Election Code, ILL. REV. STAT. ch. 46 (1961), dealing with minor political parties, which provides that "[a]ny convention, caucus or meeting of qualified voters of any established political party as herein defined may make one nomination for each office therein to be filled at any election, for officers of such township, city, village, or incorporated town, by causing a certificate of nomination to be filed with the clerk of such township, city, village or incorporated town." ILL. REV. STAT. ch. 46 § 10-1 (1961).

tions.⁷⁸ Some judges of the Superior Court of Cook County are elected at judicial elections and some at general elections.⁷⁹ Judges of county and probate courts are elected at general elections.⁸⁰ Judges of city, village and town courts are elected at judicial elections.⁸¹ Judges of the Municipal Court of Chicago are elected at general elections.⁸² Some judges of municipal courts (other than Chicago) are elected at general and some at judicial elections.⁸³

Under the Judicial Article of 1961, all judges will be "nominated by party convention or primary and elected at general elections by the electors in the respective judicial districts, judicial circuits, counties, or units."⁸⁴

Thus, Supreme and Appellate Court judges will be elected within their respective judicial districts.⁸⁵ Circuit court judges will be elected within their respective judicial circuits.⁸⁶ Associate judges (in counties other than Cook) will be elected within their respective counties.⁸⁷ For the purpose of electing associate judges in Cook County, the county is divided into two election units—the City of Chicago as one unit and the area in the County of Cook outside of the City of Chicago as another unit.⁸⁸

Consequently, judges of city, town, village and municipal courts, who are now voted upon only by the electors of their respective municipalities, will, under the Judicial Article of 1961, be voted upon as associate judges by all the electors of their respective counties, except that the judges of the city, town, village and municipal courts of Cook County (other than associate judges of the Municipal Court of Chicago) will be voted upon as associate judges by the electors of that part of Cook County which is outside of the City of Chicago.

⁷⁸ ILL. CONST. art. VI, §§ 6, 14; ILL. REV. STAT. ch. 46, § 2-7 (1961).

⁷⁹ ILL. REV. STAT. ch. 46, § 2-10 (1961 Supp.).

⁸⁰ ILL. CONST. art. X, § 8; ILL. REV. STAT. ch. 46, § 2-13 (1961); ILL. REV. STAT. ch. 37, § 301 (1961).

⁸¹ ILL. REV. STAT. ch. 46, § 2-33 (1961); ILL. REV. STAT. ch. 37, § 337 (1961).

⁸² ILL. REV. STAT. ch. 46, § 2-33 (1961); ILL. REV. STAT. ch. 37, § 364 (1961).

⁸³ ILL. REV. STAT. ch. 46, § 2-33 (1961); ILL. REV. STAT. ch. 37, § 451 (1961).

⁸⁴ Judicial Article of 1961, § 10. Section 13 of the Judicial Article of 1961 defines "general election" as "the biennial election at which members of the General Assembly are elected.

⁸⁵ Judicial Article of 1961, § 3.

⁸⁷ *Ibid.*

⁸⁶ Judicial Article of 1961, § 8.

⁸⁸ *Ibid.*

(b) *Commission of Judges*

The Judicial Article of the Constitution of 1870 provides that “[a]ll judicial officers shall be commissioned by the governor.”⁸⁹ The Judicial Article of 1961 makes no such provision. It will, therefore, be necessary to provide by statute a method of certifying that a person who was elected as a judge is such. In this connection, it may be noted that, by statute, the Governor commissions clerks of court, county clerks, county treasurers, county commissioners, sheriffs, coroners, state’s attorneys and notaries public.⁹⁰

(c) *No Continuance in Office Until Successor is Qualified*

The Judicial Article of the Constitution of 1870 provides that “[a]ll officers provided for in this article shall hold their offices [sic offices] until their successors shall be qualified.”⁹¹ In contrast, the Judicial Article of 1961 provides:⁹²

Any judge who does not file a declaration within the time herein specified, or, having filed, fails of re-election, shall vacate his office at the expiration of his term, whether or not his successor, who shall be selected for a full term pursuant to Section 10 of this Article, shall yet have qualified.

11. Apportionment of Associate Judges

The Judicial Article of 1961 provides that there shall be at least twelve associate judges elected from the area in Cook County outside the City of Chicago and at least thirty-six associate judges from the City of Chicago.⁹³ In Cook County, the City of Chicago and the area outside the City of Chicago shall be separate units for the election or selection of associate judges. All associate judges from the area outside of the City of Chicago shall run at large from that area and such area

⁸⁹ ILL. CONST. art. VI, § 29.

⁹⁰ ILL. REV. STAT., ch. 25, § 3; ch. 37, §§ 27, 311, 339, 369; ch. 35, § 3; ch. 36, § 3; ch. 34, § 801; ch. 125, § 1; ch. 31, § 1; ch. 14, § 1; ch. 99, § 1 (1961).

⁹¹ ILL. CONST. art. VI, § 32.

⁹² Judicial Article of 1961, § 11.

⁹³ At present, Cook County, outside of the City of Chicago, has 12 city, town, village and municipal court judges, as follows: City Court of Chicago Heights—1; City Court of Calumet City—1; City Court of Blue Island—1; Town Court of Cicero—2; Village Court of Maywood—1; Village Court of Skokie—2; Municipal Court of Evanston—2; Municipal Court of Oak Park—1; Municipal Court of Elmwood Park—1. The Municipal Court of Chicago has 36. The Judicial Article of 1961 guarantees 48 associate judges in Cook County as a minimum.

apportionment of associate judges shall continue until changed by law. There shall be at least one associate judge from each county.⁹⁴

12. Selection and Tenure of Judges Subject to Future Legislation and Referendum

The subject of selection and tenure of judges is a problem upon which the contending parties in the Legislature were in hopeless conflict. A compromise was finally reached by inserting in the Judicial Article of 1961 the following:⁹⁵

Provided, however, the General Assembly may provide by law for the selection and tenure of all judges provided herein as distinguished from nomination and election by the electors, but no law establishing a method of selecting judges and providing their tenure shall be adopted or amended except by a vote of two-thirds of the members elected to each House, nor shall any method of selecting judges and providing their tenure become law until the question of the method of selection be first submitted to the electors at the next general election. If a majority of those voting upon the question shall favor the method of selection or tenure as submitted it shall then become law.

13. Filling Vacancy in Office of Judge

Section 32 of the Judicial Article of the Constitution of 1870 provides that vacancies in the office of judges shall be filled by election, but where the unexpired term does not exceed one year, the vacancy shall be filled by appointment by the Governor. On the other hand, Section 10 of the Judicial Article of 1961 provides that “[w]henever a vacancy occurs in the office of judge, the vacancy shall be filled for the unexpired portion of the term by the voters at an election as above provided in this Section, or in such other manner as the General Assembly may provide by law as set out in this Section and approved by the electors.” Thus, in the absence of future legislation approved by referendum, as set forth in Section 10 of the Judicial Article of 1961, there will not be any gubernatorial appointment of judges, and it will be impossible to hold a special election for judges to fill vacancies because Section 10 of the Judicial Article of 1961 expressly provides for election of judges “at general elections” and Section 13 of the Judicial Article of 1961 defines “general election” as “the biennial election at which members of the General Assembly are elected.”

⁹⁴ Judicial Article of 1961, § 8.

⁹⁵ Judicial Article of 1961, § 10.

14. *Judge's Qualifications*

The Judicial Article of the Constitution of 1870 does not require that judges be licensed attorneys at law, and, in fact, there have been in Illinois many judges who were not lawyers. Even at present, there are some county judges in downstate counties who are not lawyers. The Judicial Article of 1961 provides that "[n]o person shall be eligible for the office of judge unless he shall be a citizen and licensed attorney-at-law of this State, and a resident of the judicial district, circuit, county or unit for which selected."⁹⁶

15. *Judge's Activities*

The Judicial Article of 1961 places certain restrictions upon the activities of judges, as follows: "Judges shall devote full time to their judicial duties, shall not engage in the practice of Law or hold any other office or position of profit under the United States or this State or any municipal corporation or political subdivision of this State, and shall not hold office in any political party."⁹⁷

16. *Terms of Office*

The Judicial Article of the Constitution of 1870 provides for terms of office as follows: Supreme Court judges, nine years;⁹⁸ circuit judges, six years;⁹⁹ judges of the Superior Court of Cook County, six years;¹⁰⁰ county judges, four years;¹⁰¹ judges of the probate court, four years;¹⁰² all other officers, whose term of office is not otherwise provided in said Article, four years.¹⁰³ By virtue of statute, the term of office of judges of city, town and village courts, judges of the Municipal Court of Chicago, and judges of municipal courts other than Chicago is six years.¹⁰⁴

The Judicial Article of 1961 provides:

The term of office of judges of the Supreme Court and of the Appellate Court shall be ten years and of the circuit judges and associate judges of the Circuit Courts six years.¹⁰⁵

⁹⁶ Judicial Article of 1961, § 15.

⁹⁷ Judicial Article of 1961, § 16.

⁹⁸ ILL. CONST. art. VI, § 6.

⁹⁹ ILL. CONST. art. VI, § 12.

¹⁰⁰ ILL. CONST. art. VI, § 23.

¹⁰¹ ILL. CONST. art. VI, § 18.

¹⁰² ILL. CONST. art. VI, § 20.

¹⁰³ ILL. CONST. art. VI, § 32.

¹⁰⁴ ILL. REV. STAT. ch. 37, §§337, 364, 451 (1961).

¹⁰⁵ Judicial Article of 1961, § 14.

17. Protection of Incumbent Judicial Officers

Although the Judicial Article of 1961 provides for three Supreme Court judges to be elected from Cook County,¹⁰⁶ the seven incumbent judges of the Supreme Court are allowed to continue in office and to be re-elected until death, resignation, removal, retirement or rejection by the electorate.¹⁰⁷

Judges in office on January 1, 1964, are not subject to compulsory retirement at a prescribed age until after the expiration of their then current terms.¹⁰⁸

The Judicial Article of 1961 requires all judges to be licensed attorneys-at-law of this State,¹⁰⁹ and prohibits them from engaging in certain activities.¹¹⁰ To enable county and other judges (some of whom are not lawyers) to continue in office, it is provided that the requirements governing eligibility for office shall not affect the right of any incumbent to continue for the remainder of his existing term, and that provisions concerning prohibited activities shall not apply, for the remainder of such existing term, to a judge of a county, probate, city, village or incorporated town court, a justice of the peace or police magistrate.¹¹¹

Any law reducing the number of judges of the Appellate Court in any district or the number of circuit or associate judges in any circuit will be without prejudice to the right of judges in office at the time of its enactment to seek retention in office.¹¹²

Any change made in the area of a district or circuit or the reapportionment of districts or circuits is not to affect the tenure in office of any judge incumbent at the time such change or reapportionment is made.¹¹³

Although magistrates of the Circuit Courts are to be appointed by the circuit judges, not elected,¹¹⁴ incumbent justices of the peace and police magistrates are to be magistrates of the Circuit Courts for the remainder of their respective terms.¹¹⁵

¹⁰⁶ Judicial Article of 1961, §§ 3, 4.

¹⁰⁷ Judicial Article of 1961, Schedule, para. 13.

¹⁰⁸ Judicial Article of 1961, Schedule, para. 12(c).

¹⁰⁹ Judicial Article of 1961, § 15.

¹¹¹ Judicial Article of 1961, Schedule, para. 4(f).

¹¹³ Judicial Article of 1961, § 15.

¹¹⁵ Judicial Article of 1961, Schedule, para. 4(e).

¹¹⁰ Judicial Article of 1961, § 16.

¹¹² Judicial Article of 1961, § 11.

¹¹⁴ Judicial Article of 1961, § 12.

Even incumbent Masters in Chancery and referees, whose offices are completely abolished,¹¹⁶ may continue until the expiration of their terms and may thereafter, by order of court, conclude matters in which testimony has been received.¹¹⁷

18. Re-election of Judges

A Judge who has served a term in office is to be re-elected, not through nomination by party convention or primary, but is to be *submitted to the voters, on a special judicial ballot without party designation, on the sole question whether he shall be retained in office for another term.* In such election, no judicial candidate may run against him.

Section 11 of the Judicial Article of 1961 provides:

Not less than six months prior to the general election next preceding the expiration of his term of office, any judge previously elected may file in the office of the Secretary of State a declaration of candidacy to succeed himself, and the Secretary of State, not less than 61 days prior to the election, shall certify such candidacy to the proper election officials. At the election the name of each judge who has filed such a declaration shall be submitted to the voters, on a special judicial ballot without party designation, on the sole question whether he shall be retained in office for another term. The elections shall be conducted in the appropriate judicial districts, circuits, counties and units. The affirmative votes of a majority of the voters voting on the question shall elect him to the office for another term commencing the first Monday in December following the election. Any judge who does not file a declaration within the time herein specified, or, having filed, fails of re-election, shall vacate his office at the expiration of his term, whether or not his successor who shall be selected for a full term pursuant to Section 10 of this Article, shall yet have qualified.¹¹⁸

It must be noted with care that the re-election must involve only a judge's *candidacy to succeed himself*. Thus, a judge of the Appellate Court who desires to fill a vacancy in a Supreme Court judgeship will have to be "nominated by party convention or primary and elected at general elections,"¹¹⁹ the same as if he had never been a judge before. Likewise, a circuit judge who desires to fill a vacancy in an Appellate Court judgeship will have to be "nominated by party convention or primary and elected at general elections," the same as if he had never been a judge before. Similarly, an associate judge who de-

¹¹⁶ Judicial Article of 1961, § 8.

¹¹⁷ Judicial Article of 1961, Schedule, para. 8.

¹¹⁸ As to filling vacancies, see subtopic 13—"Filling Vacancies in Office of Judge."

¹¹⁹ Judicial Article of 1961, § 10.

sires to become a circuit judge will have to be "nominated by party convention or primary and elected at general elections," the same as if he had never been a judge before.

The Judicial Article of 1961 provides:¹²⁰

(a) Those elected judges in office on January 1, 1963 shall be entitled to seek retention in office under Section 11 of this Article.

(b) The terms of all judges in office on January 1, 1963 expiring otherwise than on the first Monday in December in an even numbered year are extended to the first Monday in December after the general election following the date at which such terms would otherwise expire. For the purpose of application of any laws providing for an increase in judicial salaries, every judge whose term is thus extended shall be regarded as commencing a new term on the date prescribed by prior law for the election of his successor.

19. Judicial Salaries Paid by State

As to judicial salaries, the provisions contained in the Judicial Article of the Constitution of 1870 are partial and incomplete. Provision is made therein for salaries of judges of the Supreme Court with the prohibition that "after said salaries shall be fixed by law, the salaries of the judges in office shall not be increased or diminished during the terms for which said judges have been elected."¹²¹ Provision is also made in the Constitution of 1870 for salaries of the judges of the Circuit Courts and the Superior Court of Cook County "out of the state treasury, . . . and such further compensation, to be paid by the county of Cook, as is or may be provided by law; such compensation shall not be changed during their continuance in office."¹²² There is nothing in the Constitution of 1870 as to salaries or compensation of county judges, probate judges, judges of the city, village, town or municipal courts, justices of the peace and police magistrates. These matters are covered by statute and the salaries of these judicial officers are paid from different sources, as follows: County and probate judges are paid partially by the State and in part by their respective counties;¹²³ judges of city, town and village courts are paid by the State;¹²⁴ judges of municipal courts are paid by their respective municipalities;¹²⁵ justices of the peace, having become in 1961 county (instead

¹²⁰ Judicial Article of 1961, Schedule, para. 12.

¹²¹ ILL. CONST. art. VI, § 7.

¹²² ILL. CONST. art. VI, § 25.

¹²³ ILL. REV. STAT. ch. 53, § 5c (1961); ILL. REV. STAT. ch. 37, § 320 (1961).

¹²⁴ ILL. REV. STAT., ch. 37, § 355 (1961).

¹²⁵ ILL. REV. STAT. ch. 37, §§ 363, 450 (1961).

of township) officers and, having become in 1961 salaried (instead of fee) officers, are paid by their respective counties;¹²⁶ police magistrates, having become in 1961 salaried officers, are paid by their respective municipalities.¹²⁷

The Judicial Article of 1961 covers the above subject matter as follows:¹²⁸

Judges and magistrates shall receive for their services salaries provided by law. The salaries of judges shall not be diminished during their respective terms of office. Judicial officers may be paid such actual and necessary expenses as may be provided by law. All salaries and expenses shall be paid by the State, except that judges of the Appellate Court for the First District and circuit and associate judges and magistrates of the Circuit Court of Cook County shall receive such additional compensation from the county as may be provided by law.

It is to be noted that under the Judicial Article of 1961, judicial salaries may not be diminished during terms of office, but may be increased during terms of office.

20. Retired Judges

At present a retired judge may not render any judicial services. In contrast, Federal judges who are retired may, with their consent, be assigned judicial duties,¹²⁹ and many retired Federal judges have rendered very valuable service. Patterned after the Federal statute, the Judicial Article of 1961 provides:¹³⁰

Any retired judge may, with his consent, be assigned by the Supreme Court to judicial service, and while so serving shall receive the compensation applicable to such service in lieu of retirement benefits, if any.¹³¹

21. Assignment of Judges to Circuit Courts

By statute, effective January 1, 1934, the Supreme Court of Illinois may assign judges of the circuit courts of the State and judges of the Superior Court of Cook County to serve in courts other than their own.¹³² The Judicial Article of 1961 provides that the Supreme Court,

¹²⁶ ILL. REV. STAT. ch. 53, § 59.1 (1961).

¹²⁷ ILL. REV. STAT. ch. 24, §§ 3, 13, 8 (1961).

¹²⁸ Judicial Article of 1961, § 17.

¹²⁹ 28 U.S.C. 294 (1958).

¹³⁰ Judicial Article of 1961, § 18.

¹³¹ See JUDICIAL RETIREMENT AND PENSION PLANS, American Judicature Society (1961).

¹³² ILL. REV. STAT. ch. 37, §§ 72.30, 72.31 (1961).

through the Chief Justice, in accordance with its rules, may make a “temporary assignment of any judge to a court other than that for which he was selected with the consent of the Chief Judge of the Circuit to which such assignment is made.”¹³³

22. *Assignment of Judges to Appellate Court*

The Appellate Court is to have a total of twenty-four judges.¹³⁴ “The Supreme Court shall have authority to assign additional judges to service in the Appellate Court from time to time as the business of the court requires.”¹³⁵ It is apparent that these “additional judges” will have to be either Supreme Court judges, circuit judges or associate judges. A judge may be assigned by the Supreme Court to a division of the Appellate Court in a district other than the district in which the judge resides, but this requires the consent of a majority of the Appellate Court judges of the district to which such assignment is made.¹³⁶

23. *Retirement, Suspension and Removal of Judges*

The Judicial Article of 1961 provides that “the General Assembly may provide by law for the retirement of judges automatically at a prescribed age.”¹³⁷

The Judicial Article of the Constitution of 1870 provides that “[t]he General Assembly may, for cause entered on the journals, upon due notice and opportunity of defense, remove from office any judge, upon concurrence of three-fourths of all the members elected, of each house.”¹³⁸

The Judicial Article of 1961 provides for the suspension or removal of a judge through a commission of judges, as follows:¹³⁹

[S]ubject to rules of procedure to be established by the Supreme Court and after notice and hearing, any judge may be retired for disability or suspended without pay or removed for cause by a commission composed of one judge of the Supreme Court selected by that court, two judges of the Appellate Court selected by that court, and two circuit judges selected by the Supreme Court. Such commission shall be convened by the Chief Justice upon order of the Supreme Court or at the request of the Senate.

¹³³ Judicial Article of 1961, § 2.

¹³⁴ Judicial Article of 1961, § 6.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ Judicial Article of 1961, § 18.

¹³⁸ ILL. CONST. art. VI, § 30.

¹³⁹ Judicial Article of 1961, § 18.

24. *Administration of Courts*

The Judicial Article of 1961 vests in the Supreme Court, through the Chief Justice, in accordance with its rules, general administrative authority over all courts in this State.¹⁴⁰

25. *Administrative Director and Staff*

In 1959, the Supreme Court of Illinois was, by statute,¹⁴¹ authorized to employ a Court Administrator for the courts of the State and a Deputy Administrator for the courts of Cook County. Such offices have been established and are now in operation, both serving at the pleasure of the Supreme Court. The Judicial Article of 1961 provides that "[t]he Supreme Court shall appoint an administrative director and staff, who shall serve at its pleasure, to assist the Chief Justice in his administrative duties."¹⁴²

26. *Judicial Conference*

The Judicial Article of the Constitution of 1870 provides:¹⁴³

All judges of courts of record, inferior to the Supreme Court, shall, on or before the first day of June, of each year, report in writing to the judges of the Supreme Court, such defects and omissions in the laws as their experience may suggest; and the judges of the Supreme Court shall, on or before the first day of January, of each year, report in writing to the Governor such defects and omissions in the Constitution and laws as they may find to exist together with appropriate forms of bills to cure such defects and omissions in the laws.

For a number of years the Illinois judiciary did not pay much attention to the above constitutional requirement. However, in 1954, the Supreme Court of Illinois called a judicial conference and did likewise in the years of 1955, 1956 and 1957.¹⁴⁴

On November 14, 1957, the Supreme Court of Illinois adopted Rule 56-1, reading as follows:¹⁴⁵

A. There shall be a Judicial Conference to consider the business and the problems pertaining to the administration of justice in this State, and to make recommendations for its improvement.

¹⁴⁰ Judicial Article of 1961, § 2.

¹⁴² Judicial Article of 1961, § 2.

¹⁴¹ ILL. REV. STAT. ch. 37, §§ 23c-23n (1961).

¹⁴³ ILL. CONST. art. VI, § 31.

¹⁴⁴ See "The Judicial Conference: A New 'Child' Comes of Age in Illinois" by the Honorable Roger J. Kiley, then Judge of the Appellate Court of Illinois for the First District and now Circuit Judge of the United States Court of Appeals for the Seventh Circuit, 44 A.B.A.J., 835-8, 841 (1958).

¹⁴⁵ ILL. REV. STAT. ch. 110, § 101.56-1 (1961).

B. The judges of the Supreme Court, the Appellate Court, the circuit and superior courts shall be members of the Conference.

C. The Supreme Court shall appoint an executive committee to assist it in conducting the Judicial Conference.

- (1) The committee shall consist of six judges of the circuit and superior courts of Cook County and six judges of the circuit court from outside Cook County. The Chief Justice of the Supreme Court shall be an *ex officio* member of the committee.
- (2) In the initial appointment of the committee, four members shall be named for one year, four members for two years, and four members for three years. Thereafter new members shall be appointed for a term of three years.
- (3) Each year the Supreme Court shall designate one of the members of the committee to act as chairman.
- (4) The committee shall meet at such time and such place as may be necessary, or at the call of the Supreme Court.
- (5) The committee shall recommend to the Supreme Court the appointment of such other committees as are necessary to further the objectives of the Conference.
- (6) The committee shall, at least 60 days prior to the date on which the Judicial Conference is to be held, submit to the Supreme Court a suggested agenda for the annual meeting.

D. The Conference shall meet at least once each year at a place and on a date to be designated by the Supreme Court.

E. The Supreme Court shall name a secretary of the Conference who need not be a judge. The secretary shall have charge of keeping the records and proceedings of the Conference. The secretary shall keep minutes of the meetings of the Executive Committee and shall perform such other services as the Supreme Court may from time to time direct.

The Judicial Article of 1961 provides:¹⁴⁶

The Supreme Court shall provide by rule for and shall convene an annual judicial conference to consider the business of the several courts and to suggest improvements in the administration of justice, and shall report thereon in writing to the General Assembly not later than January thirty-first in each legislative year.

27. Original Jurisdiction of Reviewing Courts

A. Supreme Court

The Judicial Article of the Constitution of 1870 vests in the Supreme Court "original jurisdiction in cases relating to the revenue, in *mandamus* and *habeas corpus*."¹⁴⁷ In construing this constitutional provision, the Supreme Court held that it does not have original jurisdiction in prohibition.¹⁴⁸ The Judicial Article of 1961 provides that

¹⁴⁶ Judicial Article of 1961, § 19.

¹⁴⁷ ILL. CONST. art. VI, § 1.

¹⁴⁸ *People v. Circuit Court of Cook County*, 173 Ill. 272, 50 N.E. 928 (1898); *People v. Circuit Court of Cook County*, 169 Ill. 201, 48 N.E. 717 (1897).

"[t]he Supreme Court may exercise original jurisdiction in cases relating to the revenue, mandamus, prohibition and habeas corpus."¹⁴⁹ The Judicial Article of 1961 also vests in the Supreme Court "such original jurisdiction as may be necessary to the complete determination of any cause on review,"¹⁵⁰ which provision appears to be broader than the language employed in the Judicial Article of the Constitution of 1870, but this new provision may be declaratory of what the law is now, as the Supreme Court has issued writs of certiorari, prohibition and mandamus in aid of its appellate jurisdiction and this is frequently referred to loosely as an original proceeding in the Supreme Court.¹⁵¹

B. Appellate Court

Section 11 of "An Act to establish appellate courts"¹⁵² provides:

The said appellate courts respectively, may issue the writ of mandamus to cause a proper record to be duly certified, or to cause any other act to be done which may be necessary to enforce the due administration of justice in all matters, suits or proceedings, which could or might by appeal or writ of error or in any other lawful manner, be brought within their respective jurisdictions. . . . And the said appellate courts, respectively, may also issue writs of certiorari,

¹⁴⁹ Judicial Article of 1961, § 5.

¹⁵⁰ *Ibid.*

¹⁵¹ *People v. Henry*, 10 Ill.2d 324, 139 N.E.2d 737 (1957); *People v. Circuit Court of Will County*, 369 Ill. 438, 17 N.E.2d 46 (1938); *People v. Superior Court of Cook County*, 359 Ill. 612, 195 N.E. 517 (1935); *People v. Circuit Court of Washington County*, 347 Ill. 34, 179 N.E. 441 (1931); *People v. Superior Court of Cook County*, 234 Ill. 186, 84 N.E. 875 (1908).

In *Schmidt v. Equitable Life Assurance Society*, 376 Ill. 183, 33 N.E.2d 485 (1941), the Supreme Court held that a litigant may not submit to the reviewing court "original evidence not offered in the trial court." The *Schmidt* case was followed in *Atkins v. Atkins*, 393 Ill. 202, 65 N.E.2d 801 (1946); *Dogett v. North American Life Insurance Company*, 328 Ill. App. 613, 66 N.E.2d 747 (1946); *Koepke v. Schumacher*, 328 Ill. App. 113, 65 N.E.2d 224; *People v. Ferror*, 313 Ill. App. 202, 39 N.E.2d 707 (1942). In *Goodrich v. Sprague*, 376 Ill. 80, 32 N.E.2d 897 (1941), and in *Walaite v. C., R. I. & P. Ry. Co.*, 376 Ill. 59, 33 N.E.2d 119 (1941), the Supreme Court held that a motion for new trial is addressed to the *nisi prius* court and, in the absence of a ruling on that motion by the trial court, the Appellate Court, having appellate jurisdiction only, had no jurisdiction to pass upon the motion for new trial. Does the Judicial Article of 1961 change the law in these respects?

The provision that Illinois reviewing courts shall have "such original jurisdiction as may be necessary to complete determination of any cause on review" is based upon the New Jersey Constitution of 1947, Art. VI, § V, para. 3. In *State v. Ferrell*, 29 N.J. Super. 183, 102 A.2d 70 (1954), and *Ballurio v. Castellini*, 28 N.J. Super 368, 100 A.2d 678 (1953), evidence was allowed to be introduced in the reviewing court, but this power is not to be exercised in the absence of imperative necessity therefor. *Mancuso v. Rothenberg*, 67 N.J. Super 248, 170 A.2d 482 (1961); *Appeal of Kresge-Newark, Inc.*, 30 N.J. Super 489, 105 A.2d 12 (1954).

¹⁵² ILL. REV. STAT. ch. 37, § 35 (1961).

error, supersedeas and all other writs not prohibited by law, which may be necessary to enforce the due administration of justice in all matters within their jurisdiction.

Under the above statute, the Supreme Court of Illinois has consistently held that, while the Appellate Court has no original jurisdiction, it has power to award writs of mandamus, certiorari and prohibition to aid or protect its appellate jurisdiction.¹⁵³ The Judicial Article of 1961 provides that “[t]he Appellate Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.”¹⁵⁴ This, however, may result in a continuation in the operation of the law as heretofore.

28. Appeals from Circuit Court to Supreme Court

The Judicial Article of the Constitution of 1870 provides that the Supreme Court “shall have original jurisdiction in cases relating to the revenue, in mandamus and habeas corpus, and appellate jurisdiction in all other cases”¹⁵⁵ and further provides for Appellate Courts “to which such appeals and writs of error as the general assembly may provide, may be prosecuted from circuit and other courts.”¹⁵⁶

Thus, there is no constitutional provision for a mandatory direct appeal from any Illinois trial court to the Supreme Court in any case whatsoever, and all direct appeals from a trial court to the Supreme Court of Illinois are purely statutory and may be changed by the Illinois Legislature at any time.¹⁵⁷

By virtue of statute, judgments and decrees of trial courts are reviewed directly by the Supreme Court in the following:

Cases in which a franchise is involved¹⁵⁸

Cases in which a freehold is involved¹⁵⁹

Cases in which the validity of a statute is involved¹⁶⁰

Cases in which a construction of the constitution is involved¹⁶¹

¹⁵³ *People v. Haas*, 351 Ill. 68, 183 N.E. 813 (1932); *Hooper v. Rooney*, 293 Ill. 370, 127 N.E. 711 (1920); *People v. Pam*, 276 Ill. 181, 114 N.E. 504 (1916); *People v. Circuit Court of Cook County*, 169 Ill. 201, 48 N.E. 717 (1897).

¹⁵⁴ Judicial Article of 1961, § 7.

¹⁵⁵ ILL. CONST. art. VI, § 2.

¹⁵⁶ ILL. CONST. art. VI, § 11.

¹⁵⁷ *Smith v. People*, 98 Ill. 407 (1881); *Fleischman v. Walker*, 91 Ill. 318 (1878); *Young v. Stearns*, 91 Ill. 221 (1878).

¹⁵⁸ ILL. REV. STAT. ch. 110, § 75 (1961).

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

- Cases relating to revenue¹⁶²
 Cases in which the State is interested as a party or otherwise¹⁶³
 Cases in which the validity of a municipal ordinance is involved and the trial judge certifies that in his opinion public interest requires an appeal to the Supreme Court¹⁶⁴
 Cases in which the validity of a county zoning ordinance or resolution is involved and the trial judge certifies that in his opinion the public interest requires an appeal to the Supreme Court¹⁶⁵
 Cases under the Public Utilities Act¹⁶⁶
 Cases under the Unemployment Compensation Act¹⁶⁷
 Cases under the Health and Safety Act¹⁶⁸
 Cases under the Marketing Fresh Fruits and Vegetables Act¹⁶⁹
 Cases under the Detective and Detective Agencies Act¹⁷⁰
 Cases under the Illinois Nursing Act¹⁷¹
 Cases under the Pharmacy Act¹⁷²
 Cases under the Chiropody Act¹⁷³
 Cases under the Optometry Act¹⁷⁴
 Cases under the Consumer Act¹⁷⁵
 Cases under the Rivers, Lakes and Streams Act¹⁷⁶
 Cases under the Cemetery Care Act¹⁷⁷
 Cases under An Act concerning land titles (Torrens System)¹⁷⁸
 Cases under the Illinois Professional Engineering Act¹⁷⁹
 Cases under the Illinois Structural Engineering Act¹⁸⁰
 Cases under the State Housing Act¹⁸¹
 Cases under the Medical Center District Act¹⁸²
 Cases under the Oil Inspection Act¹⁸³
 Cases under the Public Accountants Act¹⁸⁴
 Cases under the Illinois Land Surveyors Act¹⁸⁵
 Cases under the Vocational Schools and Classes Act¹⁸⁶

¹⁶² *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ ILL. REV. STAT. ch. 111½, § 73 (1961). The Illinois Motor Carrier Act adopts the provisions of the Public Utility Act dealing with judicial review. ILL. REV. STAT. ch. 95½, § 282.25 (1961).

¹⁶⁷ ILL. REV. STAT. ch. 48, §§ 520, 685 (1961).

¹⁶⁸ ILL. REV. STAT. ch. 48, §§ 137.7, 137.8, 137.16 (1961).

¹⁶⁹ ILL. REV. STAT. ch. 5, § 154 (1961).

¹⁷⁸ ILL. REV. STAT. ch. 30, § 70 (1961).

¹⁷⁰ ILL. REV. STAT. ch. 38, § 608z (1961).

¹⁷⁹ ILL. REV. STAT. ch. 48½, § 57 (1961).

¹⁷¹ ILL. REV. STAT. ch. 91, § 35.51 (1961).

¹⁸⁰ ILL. REV. STAT. ch. 131½, § 10h (1961).

¹⁷² ILL. REV. STAT. ch. 91, § 55.19 (1961).

¹⁸¹ ILL. REV. STAT. ch. 67½, § 183 (1961).

¹⁷³ ILL. REV. STAT. ch. 91, § 82b (1961).

¹⁸² ILL. REV. STAT. ch. 91, § 130.7 (1961).

¹⁷⁴ ILL. REV. STAT. ch. 91, § 103.21 (1961).

¹⁸³ ILL. REV. STAT. ch. 104, § 14h (1961).

¹⁷⁵ ILL. REV. STAT. ch. 74, § 43b (1961).

¹⁸⁴ ILL. REV. STAT. ch. 110½, § 45 (1961).

¹⁷⁶ ILL. REV. STAT. ch. 19, § 75a (1961).

¹⁸⁵ ILL. REV. STAT. ch. 133, § 47.04 (1961).

¹⁷⁷ ILL. REV. STAT. ch. 21, § 64.20 (1961).

¹⁸⁶ ILL. REV. STAT. ch. 144, § 17j.32 (1961).

- Cases under the Privately-Operated Colleges Act¹⁸⁷
- Cases under the Business Schools Act¹⁸⁸
- Cases under the Illinois Aeronautics Act¹⁸⁹
- Cases under the Veterinary Medicine and Surgery Practice Act¹⁹⁰
- Cases under the Physical Therapy Act¹⁹¹
- Cases under the Dental Surgery Act¹⁹²
- Cases under the Illinois Plumbing License Law¹⁹³
- Cases under the Barbers Act¹⁹⁴
- Cases under the Beauty Culturists Act¹⁹⁵
- Cases under the Real Estate Brokers and Salesmen Act¹⁹⁶
- Cases under the Architects Act¹⁹⁷
- Cases under the Drainage Code¹⁹⁸
- Cases under the Election Code¹⁹⁹
- Cases involving registration as a voter²⁰⁰
- Cases wherein injunction is sought to restrain disbursement of public moneys²⁰¹
- Cases under the local improvement provision of the Illinois Municipal Code²⁰²
- Cases involving the sale of realty for delinquent taxes²⁰³
- Cases under the Private Car Lines Companies Act^{203a}
- Cases under the Water Well Contractor's License Act^{203b}
- Cases involving taxation of liquor^{203c}
- Cases under the Airport Authorities Act²⁰⁴
- Cases under the Eminent Domain Act²⁰⁵
- Cases under the Motor Fuel Tax Act²⁰⁶
- Cases under the Retailers' Occupational Tax Act²⁰⁷

¹⁸⁷ ILL. REV. STAT. ch. 144, § 133 (1961).

¹⁸⁸ ILL. REV. STAT. ch. 144, § 159 (1961). ¹⁹³ ILL. REV. STAT. ch. 111½, § 116.62 (1961).

¹⁸⁹ ILL. REV. STAT. ch. 15½, § 22.69 (1961). ¹⁹⁴ ILL. REV. STAT. ch. 16¾, § 14.90 (1961).

¹⁹⁰ ILL. REV. STAT. ch. 91, § 124.15 (1961). ¹⁹⁵ ILL. REV. STAT. ch. 16¾, § 26h (1961).

¹⁹¹ ILL. REV. STAT. ch. 91, § 22.25 (1961). ¹⁹⁶ ILL. REV. STAT. ch. 114½, § 8h (1961).

¹⁹² ILL. REV. STAT. ch. 91, § 62h (1961). ¹⁹⁷ ILL. REV. STAT. ch. 10½, § 13h (1961).

¹⁹⁸ ILL. REV. STAT. ch. 42, §§ 3-25, 5-15, 8-10, 8-21, 10-7, 11-7, 11-17, 12-16 (1961).

¹⁹⁹ ILL. REV. STAT. ch. 46, § 23-30 (1961).

²⁰⁰ ILL. REV. STAT. ch. 46, §§ 6-47, 6-52, 6-59, 6-60 (1961).

²⁰¹ ILL. REV. STAT. ch. 102, § 16 (1961).

²⁰² ILL. REV. STAT. ch. 24, § 9-2-140 (1961).

²⁰³ ILL. REV. STAT. ch. 120, § 718 (1961).

^{203a} ILL. REV. STAT. ch. 120, § 372.4b (1961).

^{203b} ILL. REV. STAT. ch. 111½, § 116.75 (1961).

^{203c} ILL. REV. STAT. ch. 43, § 163c (1961). ²⁰⁵ ILL. REV. STAT. ch. 47, § 12 (1961).

²⁰⁴ ILL. REV. STAT. ch. 15½, § 68.18 (1961). ²⁰⁶ ILL. REV. STAT. ch. 120, § 432a (1961).

²⁰⁷ ILL. REV. STAT. ch. 120, § 451 (1961). The Service Use Tax Act, the Service Occupation Tax Act, and the Hotel Operator's Occupation Tax Act [ILL. REV. STAT. ch. 120, §§ 439.42, 439.112, 481b.37 (1961)] incorporate by reference Section 12 of the Retailers' Occupational Tax Act [ILL. REV. STAT. ch. 120, § 451 (1961)], thus making judgments in proceedings under each of said three Acts also appealable directly to the Supreme Court.

- Cases under the Cigarette Tax Act²⁰⁸
- Cases under the Cigarette Use Tax Act²⁰⁹
- Cases under the Business of Transmitting Messages Tax Act²¹⁰
- Cases under the Consumption of Gas Tax Act²¹¹
- Cases under the Electricity Tax Act²¹²
- Cases under the Revenue Act of 1939²¹³
- Cases under Community Currency Exchanges Act²¹⁴
- Cases under the Illinois Savings and Loan Act²¹⁵
- Cases under the Wages of Employees on Public Works Act²¹⁶
- Cases involving forfeiture under the Uniform Narcotic Drug Act²¹⁷
- Cases under the Uniform Criminal Extradition Act²¹⁸
- Cases involving felonies²¹⁹
- Cases under the Post Conviction Hearing Act, only by leave of the Supreme Court²²⁰
- Cases under the Workmen's Compensation Act, only by leave of the Supreme Court²²¹
- Cases under the Workmen's Occupational Diseases Act, only by leave of the Supreme Court²²²

The Judicial Article of 1961 provides:²²³

Appeals from the final judgments of circuit courts shall lie directly to the Supreme Court as a matter of right only (a) in cases involving revenue, (b) in cases involving a question arising under the Constitution of the United States or of this State, (c) in cases of habeas corpus, and (d) by the defendant from sentence in capital cases.

Let us examine these four categories:

(a) *Revenue*

The Illinois Civil Practice Act provides for a direct appeal from the trial court to the Supreme Court in all cases "relating to reve-

²⁰⁸ ILL. REV. STAT. ch. 120, § 453.8 (1961).

²⁰⁹ ILL. REV. STAT. ch. 120, § 453.51 (1961).

²¹⁰ ILL. REV. STAT. ch. 120, § 467.12 (1961).

²¹¹ ILL. REV. STAT. ch. 120, § 467.27 (1961).

²¹² ILL. REV. STAT. ch. 120, § 479 (1961).

²¹³ ILL. REV. STAT. ch. 120, § 619 (1961).

²¹⁷ ILL. REV. STAT. ch. 38, § 22-31 (1961).

²¹⁴ ILL. REV. STAT. ch. 16½, § 52.2 (1961).

²¹⁸ ILL. REV. STAT. ch. 60, § 27 (1961).

²¹⁵ ILL. REV. STAT. ch. 32, § 864 (1961).

²¹⁹ ILL. REV. STAT. ch. 38, § 780½ (1961).

²¹⁶ ILL. REV. STAT. ch. 48, § 39s-9 (1961).

²²⁰ ILL. REV. STAT. ch. 38, § 832 (1961).

²²¹ ILL. REV. STAT. ch. 48, § 138.19 (1961). The Minimum Wage Act for women and minors provides for review in accordance with the provisions of the Workmen's Compensation Act [ILL. REV. STAT. ch. 48, § 198.13 (1961)], and the Act for Workmen's Compensation or Occupational Diseases Insurance for Rejected Employers provides for review in accordance with the provisions of the Workmen's Compensation Act [ILL. REV. STAT. ch. 73, § 1091 (1961)].

²²² ILL. REV. STAT. ch. 48, § 172.54 (1961).

²²³ Judicial Article of 1961, § 5.

nue.”²²⁴ The Judicial Article of 1961 brings about no change in this category.

(b) *Constitutionality*

The Illinois Civil Practice Act provides for a direct appeal in all cases in which “the validity of a statute or a construction of the constitution is involved.”²²⁵ Under this statutory provision, the Supreme Court of Illinois has consistently held that where a construction of the Constitution of the United States is involved, the Supreme Court of Illinois has jurisdiction on a direct review.²²⁶ Therefore, the Judicial Article of 1961 brings about no change in this category.

(c) *Habeas Corpus*

At present, the Illinois law on this subject is as follows: Where a person is held for the alleged commission of a crime and he proceeds by *habeas corpus* to bring about his release, an order discharging the prisoner or an order remanding the prisoner to the custody of the officer who held him is not appealable by either party.²²⁷ However, in a *habeas corpus* which is brought for the purpose of obtaining the custody of a child, an order granting the custody of the child to the petitioner or an order remanding the child to the custody of the respondent is appealable.²²⁸

²²⁴ ILL. REV. STAT. ch. 110, § 75 (1961).

²²⁵ *Ibid.*

²²⁶ *Light v. Light*, 12 Ill.2d 502, 147 N.E.2d 34 (1958); *Pope v. Pope*, 2 Ill.2d 152, 117 N.E.2d 65 (1954); *People v. Chicago Lloyds*, 391 Ill. 492, 63 N.E.2d 479 (1945); *Atkins v. Atkins*, 386 Ill. 345, 54 N.E.2d 488 (1944); *Groom v. Freyne Engineering Co.*, 374 Ill. 113, 28 N.E.2d 274 (1940); *Van Dyke v. Illinois Commercial Men's Ass'n*, 358 Ill. 458, 193 N.E. 490 (1934).

The rule has long been settled in Illinois that if an appeal is taken to the Appellate Court and errors are assigned of which the Appellate Court has jurisdiction, the party taking the appeal is deemed to have waived all constitutional questions involved. *People v. Cospser*, 5 Ill.2d 97, 125 N.E.2d 60 (1955), cert. denied 350 U.S. 844; *People v. Parker*, 396 Ill. 583, 72 N.E.2d 848 (1947); *People v. Billow*, 377 Ill. 236, 36 N.E.2d 339 (1941). Likewise, by taking an appeal to the Appellate Court of Illinois, all federal constitutional questions are waived. *Parker v. Illinois*, 333 U.S. 571 (1948); *Pennsylvania R.R. v. Illinois Brick Co.*, 297 U.S. 447 (1936); *Central Union Co. v. Edwardsville*, 269 U.S. 190 (1925).

²²⁷ *People v. Loftus*, 400 Ill. 432, 81 N.E.2d 495 (1948); *People v. McAnally*, 221 Ill. 66, 77 N.E. 544 (1906); *Ex parte Thompson*, 93 Ill. 89 (1879).

Habeas corpus to determine the validity of extradition proceedings is an exception to this rule and is reviewable by appeal to or writ of error from the Supreme Court. ILL. REV. STAT. ch. 60, § 27 (1961).

²²⁸ *People v. Weihe*, 30 Ill. App.2d 361, 174 N.E.2d 897 (1961); *Giacopelli v. The Crittenton Home*, 16 Ill.2d 556, 158 N.E.2d 613 (1959); *People v. Wingate*, 376 Ill. 244, 33

The Judicial Article of 1961 which makes *habeas corpus* appealable in all cases and by direct review to the Supreme Court is a complete innovation in the law of Illinois.^{228a} It should be noted, however, that the Judicial Article of the Constitution of 1870 gives the Supreme Court original jurisdiction in *habeas corpus*,²²⁹ and that the Judicial Article of 1961 does likewise.²³⁰

N.E.2d 467 (1941); *People v. Sheehan*, 373 Ill. 79, 25 N.E.2d 502 (1940); *People v. Burr*, 316 Ill. 166, 147 N.E. 47 (1925); *Cormack v. Marshall*, 211 Ill. 519, 71 N.E. 1077 (1904).

As to whether an order in a *habeas corpus* proceeding for the release of a person from a state mental hospital is appealable, see *Shamel v. Belinson*, 15 Ill. App.2d 570, 147 N.E. 2d 90 (1958), which reviewed the proceeding, and *People v. Kankakee State Hospital Staff*, 30 Ill. App.2d 151, 174 N.E.2d 1 (1961), which held same unappealable.

^{228a} In divorce and separate maintenance cases, petitions to obtain custody of children seem to be in essence "habeas corpus" proceedings. Thus, in *Jarrett v. Jarrett*, 415 Ill. 126, 112 N.E.2d 694 (1953), a post-divorce petition was filed and the question involved was "the jurisdiction of a circuit court to modify the custody provisions of a divorce decree after the death of the spouse to whom the custody of the child was awarded by he decree." The Supreme Court pointed out that "Habeas corpus was employed in *People ex rel. Good v. Hoxie*, 175 Ill. App. 563, and in *Smith v. Bruner*, 312 Ill. App. 658, to determine the custody of children after the death of the spouse to whom custody had been awarded by a divorce decree." The Supreme Court then concluded that the circuit court had jurisdiction whether the application for the change in child custody "bore the title of the divorce case or the caption of an independent *habeas corpus* proceeding." In *People v. Jenkins*, 34 Ill. App.2d 255, 180 N.E.2d 359 (1962), a petition for habeas corpus was filed by a father against maternal grandparents to obtain custody of a child, while in *Kokotekian v. Kokotekian*, 23 Ill. App.2d 171, 161 N.E.2d 712 (1959), a post-divorce petition was filed by a father against a paternal grandmother to obtain custody of a child. The legal problems presented and the results reached in the trial and reviewing courts were identical in both cases. It seems that decisions pertaining to child custody in divorce and separate maintenance cases will be appealable, under the Judicial Article of 1961, from the circuit courts directly to the Supreme Court as a matter of constitutional right. Judicial Article of 1961, § 5.

A contested adoption proceeding involves a determination as to who is entitled to the custody of the child. Is it not in essence a "habeas corpus" proceeding? If so, will it be appealable, under the Judicial Article of 1961, from the circuit court directly to the Supreme Court? See *People v. Weihe*, 30 Ill. App.2d 361, 174 N.E.2d 897 (1961), where "habeas corpus" was successfully employed to annul an order of adoption.

A contested proceeding under the Family Court Act to decide whether a minor is a dependent, neglected or delinquent child, involves a determination as to who is entitled to the custody of the child. Thus, in *People v. Sempek*, 12 Ill.2d 581, 147 N.E.2d 295 (1958), the Supreme Court said: "On the relation of one Ada M. Ryan three petitions under the Family Court Act (Ill. Rev. Stat. 1955, chap. 23, par. 190 et seq.) were filed in the circuit court of Cook County, seeking to take the three children of Edward and Betty Sempek from their parents and place them under the guardianship of some suitable person to be appointed by the court." Is it not in essence a "habeas corpus" proceeding? If so, will it be appealable, under the Judicial Article of 1961, from the circuit courts directly to the Supreme Court?

²²⁹ ILL. CONST. art. VI, § 2.

²³⁰ Judicial Article of 1961, § 5.

(d) *Capital Cases*

Prior to July 1, 1953, a writ of error in a non-capital criminal case was issued as a matter of right, but a writ of error in a capital case was issued only upon application to the Supreme Court itself, or to a Justice thereof, if the court was in vacation, the allowance or refusal of such writ of error in a capital case being discretionary with the Court or Justice, and the Supreme Court has on many occasions denied the writ of error in capital cases.²³¹ This discretionary writ of error in capital cases was made a matter of right by the statutory amendment which went into effect on July 1, 1953.²³² Thus, capital cases are now reviewable directly by the Supreme Court and will, under the Judicial Article of 1961, likewise, be reviewable by the Supreme Court.²³³

A case involving an offense which is punishable by death or imprisonment remains a "capital case" even if the sentence is imprisonment and not death. In *Fitzpatrick v. United States*,²³⁴ the defendant was indicted for murder. The Federal statute involved provided the penalty of death for murder and further provided that the jury may qualify the verdict by adding the words "without capital punishment." A Federal statute also provided for direct review of the District Court judgment by the Supreme Court of the United States in the case of a "conviction of a capital crime." The jury returned a verdict of guilty "without capital punishment." The Government challenged the jurisdiction of the Supreme Court, contending that since the sentence was "without capital punishment," it was not "a conviction of a capital

²³¹ In *Bowers v. Green*, 2 Ill. 42 (1832), the Supreme Court said: "At common law, the only mode of removing a cause from an inferior court of record, to a superior court for reversal, was by a writ of error, and this writ was a writ of right, which could not be denied *except in capital cases*." In *Unknown Heirs of Langworthy v. Banker*, 23 Ill. 484 (1860), the Supreme Court said: "A writ of error is a writ of right by the common law, and lies in all cases, civil and criminal, *except capital cases*, but can, of course, be regulated by statute." In *Peak v. The People*, 76 Ill. 289 (1875), the Supreme Court quoted: "A writ of error is a writ of right by the common law, and lies in all cases, civil and criminal, *except capital cases*, but can, of course be regulated by statute." In *People v. Wilson*, 400 Ill. 461, 81 N.E.2d 211 (1948), the Supreme Court said: "In the case of a defendant in the criminal case, who is adjudged to suffer capital punishment, he is not entitled to a writ of error as a matter of right." In *People v. Ross*, 344 Ill. App. 407, 101 N.E.2d 112 (1951), the Court said: "writ of error, however, is a writ of right by the common law and lies in all cases, civil and criminal, *except capital cases*, but can, of course, be regulated by statute."

²³² ILL. REV. STAT. ch. 38, § 769.1 (1961).

²³³ There are in Illinois only three capital offenses, namely, murder, aggravated kidnapping for ransom and treason. ILL. REV. STAT. ch. 38, §§ 9-1, 10-2, 30-1 (1961).

²³⁴ 178 U.S. 304 (1900).

crime." The Supreme Court overruled the Government's contention and held that the Supreme Court had jurisdiction on direct review from the District Court because the case involved a "conviction of a capital crime." The Court said:²³⁵

The test is not the punishment which is imposed but that which *may* be imposed under the statute.²³⁶ A conviction for murder, punishable with death, is not the less a conviction for a capital crime by reason of the fact that the jury, in a particular case, qualifies the punishment.²³⁷

In *People v. St. Lucia*,²³⁸ the defendant was charged with murder and was given a life sentence. After verdict, he made application to be admitted to bail, contending that since he was not sentenced to death, he was not involved in a "capital case" and was entitled to be released on bail. The trial court overruled his contention and the Supreme Court of Illinois affirmed and said:²³⁹

Plaintiff in error seeks to bring here the question of the refusal of the court to admit him to bail after the verdict of the jury. Murder is a capital offense under the constitution and the statute, whether judgment be imprisonment or hanging, and is a case in which the defendant is not entitled to bail. The act of June 25, 1917, (Laws of 1917, p. 338,) providing that a defendant convicted of a criminal offense which under the law is bailable is entitled to a reasonable time in which to make application for *supersedeas* and is entitled to bail in the meantime, does not apply to capital cases.²⁴⁰

²³⁵ *Id.* at page 307.

²³⁶ Emphasis by the Supreme Court.

²³⁷ Followed in *Good Shot v. United States*, 179 U.S. 87 (1900), and *Good Shot v. United States*, 104 F. 257 (C.A. 8th Cir., 1900).

In *Caesar v. State*, 127 Ga. 710, 57 S.E.66 (1907), the defendant was indicted for murder which was punishable by death or imprisonment. The jury returned a verdict finding defendant guilty of murder with a recommendation that he be imprisoned in the penitentiary for life. The defendant sued out a writ of error from the Supreme Court of Georgia to review his life sentence. An amendment to the Georgia Constitution vested the Supreme Court with jurisdiction "in all cases of conviction of a capital felony" and created a Court of Appeals vesting it with jurisdiction in other cases. The Supreme Court of Georgia held that even though the sentence in the murder case was life imprisonment, not death, it involved a "conviction of a capital felony" and the Supreme Court (not the Court of Appeals) had jurisdiction.

The Caesar case was followed in *Climer v. State*, 78 Ga. App. 125, 126, 50 S.E.2d 633, (1948); *Birdell v. State*, 200 Ga. 785, 38 S.E.2d 589 (1946); *Mika v. State*, 196 Ga. 473, 26 S.E.2d 616 (1943); *Dawson v. State*, 130 Ga. 127, 133, 60 S.E. 315 (1907).

However, if the defendant is charged with a crime which may be punishable by death but is found guilty of a lesser crime which is not punishable by death, the case loses its status as a capital case and becomes a non-capital case. *Meriwether v. State*, 189 Ga. 746, 8 S.E.2d 72 (1940); *Rakes v. United States*, 212 U.S. 55 (1909). Thus, if a defendant is charged with murder through assault and battery, but is found guilty of assault and battery only, the case, for the purpose of review, is not a capital case.

²³⁸ 315 Ill. 258, 146 N.E. 183 (1925).

²³⁹ *Id.* at page 269, 146 N.E. at 187.

²⁴⁰ Followed in *People v. Schanda*, 352 Ill. 36, 185 N.E. 183 (1933), where the de-

At present, by statute,²⁴¹ misdemeanors are reviewable by the Appellate Courts and felonies by the Supreme Court. However, if a constitutional question is involved in a misdemeanor, it is reviewable directly by the Supreme Court.²⁴² Under the Judicial Article of 1961, felonies, other than capital cases, will be reviewable by the Appellate Court, not by the Supreme Court.²⁴³ However, in view of the protection afforded by the Bill of Rights of the Illinois Constitution²⁴⁴ and the Fourteenth Amendment to the Constitution of the United States to persons accused of crime, it is to be expected that a substantial number of criminal cases (other than capital cases) will be reviewable directly by the Supreme Court of Illinois because of the presence of a State or Federal constitutional question.²⁴⁵

*29. In Other Cases Concurrence of General Assembly,
Governor and Supreme Court Necessary*

The Judicial Article of 1961 limits direct review by the Supreme Court to four categories: (a) revenue, (b) constitutionality, (c) ha-

pendant was convicted of murder and sentenced to imprisonment in the penitentiary for 29 years.

The Illinois decision in *People v. St. Lucia* was followed in the case of *In Re Berry*, 198 Wash. 317, 88 P.2d 427 (1939), where the authorities with divergent views on the problem are collected and discussed.

²⁴¹ ILL. REV. STAT. ch. 38, § 780½ (1961).

²⁴² *People v. Jackson*, 22 Ill.2d 382, 176 N.E.2d 803 (1961); *People v. Beefink*, 21 Ill.2d 282, 171 N.E.2d 632 (1961); *People v. Burnett*, 20 Ill.2d 624, 170 N.E.2d 546 (1960); *People v. Van Scoyk*, 20 Ill.2d 232, 170 N.E.2d 151 (1960); *People v. Mayo*, 19 Ill.2d 136, 166 N.E.2d 440 (1960); *People v. Watkins*, 19 Ill.2d 11, 166 N.E.2d 433 (1960); *People v. Berry*, 17 Ill.2d 247, 161 N.E.2d 315 (1959); *People v. West*, 15 Ill.2d 171, 154 N.E.2d 286 (1958); *People v. Mack*, 12 Ill.2d 151, 145 N.E.2d 609 (1957); *People v. Clark*, 9 Ill.2d 400, 137 N.E.2d 820 (1956); *People v. Shambley*, 4 Ill.2d 38, 122 N.E.2d 172 (1954); *Thompson v. The People*, 410 Ill. 256, 102 N.E.2d 315 (1951).

²⁴³ Judicial Article of 1961, § 7.

²⁴⁴ ILL. CONST. art. II.

²⁴⁵ An examination of volumes 18, 19, 20 and 21 Illinois, Second Series, shows that during the year 1960 the Supreme Court of Illinois filed 84 opinions involving criminal cases. Of this number, 7 were capital cases and 23 (other than the capital cases) involved constitutional questions. Thus, it can be seen that the number of criminal cases which will, under the Judicial Article of 1961, reach the Supreme Court on the basis of constitutional questions involved is likely to be substantial.

Furthermore, in view of the recent holdings by the Supreme Court of the United States that convictions by State courts devoid of evidence constitute violations of "due process of law" under the Fourteenth Amendment to the Constitution of the United States, *Garner v. Louisiana*, 368 U.S. 157 (1961) and *Thompson v. City of Louisville*, 362 U.S. 199 (1960), it may be expected that "constitutional questions" will be raised in more criminal cases than heretofore.

beas corpus, and (d) capital cases, and then provides: "Subject to law hereafter enacted, the Supreme Court has authority to provide by rule for appeal in other cases from the circuit courts directly to the Supreme Court."²⁴⁶ It seems that to add another category for direct review by the Supreme Court will require the concurrence of the General Assembly, the Governor and the Supreme Court.^{246a}

30. Appeals from Appellate to Supreme Court

The Judicial Article of 1961 provides:²⁴⁷

Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right only (a) in cases in which a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court, and (b) upon the certification by a division of the Appellate Court that a case decided by it involves a question of such importance that it should be decided by the Supreme Court. Subject to rules, appeals from the Appellate Court to the Supreme Court in all other cases shall be by leave of the Supreme Court.

Let us examine these three categories:

(a) Constitutionality First Arising in Appellate Court

Prior to January 1, 1956, writs of error issued as a matter of constitutional right by the Supreme Court to the Appellate Court where a

²⁴⁶ Judicial Article of 1961, § 5.

The express limitation of "Subject to law hereafter enacted" is not the consequence of inadvertent draftsmanship. It is the result of a conscious political battle on the subject. In the 1957 draft of the Illinois State and Chicago Bar Associations, the language used was: "The Supreme Court has exclusive authority to provide by rule for appeal in other cases from the circuit courts directly to the Supreme Court." The General Assembly rejected this language and inserted instead: "Subject to law hereafter enacted, the Supreme Court has authority to provide by rule for appeal in other cases from the circuit courts directly to the Supreme Court." (S.J. Res. No. 47, Laws 1957, p. 2910.) The same political battle was repeated in 1961, when the draft of the Illinois State and Chicago Bar Associations used the following language: "The Supreme Court has exclusive authority to provide by rule for appeal in other cases from the circuit courts directly to the Supreme Court." The General Assembly rejected this language and inserted instead: "Subject to law hereafter enacted, the Supreme Court has authority to provide by rule for appeal in other cases from the circuit courts directly to the Supreme Court." (H.J. Res. 39, Laws 1961, p. 3918.)

The above requirement is entirely dissimilar to the provision of the Federal statutes that rules made by the Supreme Court of the United States "shall not take effect until they have been reported to Congress by the Chief Justice . . . , and until the expiration of ninety days after they have been thus reported." 28 U.S.C. §§ 2072, 2073; 18 U.S.C. § 3771 (1958).

^{246a} Some persons contend that under the above quoted provision the Supreme Court will have authority to add by rule a category for direct appeal from the circuit courts to the Supreme Court and said rule will remain valid until the Legislature and Governor invalidate it by statute.

²⁴⁷ Judicial Article of 1961, § 5.

constitutional question was not involved in the trial court but arose for the first time in the Appellate Court, in which situation the right to a writ of error existed whether the order to be reviewed was final or interlocutory.²⁴⁸ Since January 1, 1956, this is available by appeal.²⁴⁹ Therefore, the Judicial Article of 1961 brings about no change in this category.

On the other hand, prior to January 1, 1956, writs of error issued, as a matter of constitutional right, by the Supreme Court to the Appellate Court in cases where by the decision of the trial court a franchise or freehold was not involved, but by the decision of the Appellate Court a franchise or freehold became involved for the first time in that court,²⁵⁰ and since January 1, 1956, this review is by appeal.²⁵¹ Under the Judicial Article of 1961, cases involving a franchise or a freehold are not singled out for any special treatment, as they were in the Judicial Article of the Constitution of 1870, and decisions of the Appellate Court in such cases will be reviewable by the Supreme Court only by the three methods available in all other cases.

(b) *Certificate of Importance by Appellate Court*

The Appellate Court Act²⁵² and the Civil Practice Act²⁵³ provide for an appeal from the Appellate Court to the Supreme Court by a certificate of importance from the Appellate Court that the case involves a question of such importance that it should be passed upon by the Supreme Court.²⁵⁴ However, the Appellate Court has no authority to grant a certificate of importance unless the order entered by the Appellate Court is final.²⁵⁵ An order dismissing an appeal is a final order.²⁵⁶ An order of affirmance or reversal, without remandment, or an order remanding the cause to the trial court with directions to enter

²⁴⁸ ILL. CONST. art. VI, § 11. *Hallberg v. Goldblatt Bros.*, 363 Ill. 25, 1 N.E.2d 220 (1935); *Bagdonas v. Liberty Land & Inv. Co.*, 309 Ill. 103, 140 N.E. 49 (1923); *Jones v. Chicago, R.I. & P. Ry.*, 231 Ill. 302, 83 N.E. 215 (1907).

²⁴⁹ ILL. REV. STAT. ch. 110, § 74(3) (1961). *People v. Scott*, 19 Ill.2d 500, 167 N.E.2d 194 (1960); *In re Estate of Green*, 16 Ill.2d 598, 158 N.E.2d 610 (1959); *People v. Flynn*, 13 Ill.2d 368, 148 N.E.2d 767 (1958).

²⁵⁰ ILL. CONST. art. VI, § 11. *Altschuler v. Altschuler*, 410 Ill. 169, 101 N.E.2d 552 (1951).

²⁵¹ ILL. REV. STAT. ch. 110, § 74(3) (1961). ²⁵³ ILL. REV. STAT. ch. 110, § 75 (1961).

²⁵² ILL. REV. STAT. ch. 37, § 32 (1961). ²⁵⁴ ILL. REV. STAT. ch. 110, § 75 (1961).

²⁵⁵ *Dowdall v. Hutchens*, 347 Ill. 326, 179 N.E. 858 (1932); *People v. Brown*, 272 Ill. 146, 111 N.E. 557 (1916).

²⁵⁶ *Spivey Bldg. Corp. v. Illinois Iowa Power Co.*, 375 Ill. 128, 30 N.E.2d 641 (1940).

a particular judgment or decree is a final order.²⁵⁷ However, an order reversing and remanding to the trial court for a new trial or hearing is not a final order.²⁵⁸

It must be observed with care that in providing for appeals from the circuit courts to the Supreme Court, the Judicial Article of 1961 requires that there be "final judgments."²⁵⁹ Likewise, in providing for appeals from the circuit courts to the Appellate Courts, the requirement is that there be "final judgments."²⁶⁰ *On the other hand, in providing for appeals from the Appellate Court to the Supreme Court no final judgments are required.*²⁶¹

Insofar as appeal by certificate of importance is concerned, the Judicial Article of 1961 follows the present practice, except that the judgment of the Appellate Court will not have to be final for the purpose of review by the Supreme Court. Thus, in a case where the Appellate Court reverses the circuit court and remands the cause for a new trial, under the present practice, the Appellate Court may not grant a certificate of importance for review by the Supreme Court, whereas under the Judicial Article of 1961, the Appellate Court will be able to do so. It is apparent that the reviewability of a case of such importance should not be contingent upon the technicality of finality or lack of finality and the provision on the subject in the Judicial Article of 1961 is superior to that of the present practice.

²⁵⁷ *Cereal Byproducts Co. v. Hall*, 15 Ill.2d 313, 155 N.E.2d 14 (1959); *Thomas v. Richards*, 13 Ill.2d 311, 148 N.E.2d 740 (1958); *Chicago College of Osteopathy v. Puffer*, 5 Ill.2d 441, 126 N.E.2d 26 (1955); *Nye v. Nye*, 411 Ill. 408, 105 N.E.2d 300 (1952); *Morris v. Beatty*, 390 Ill. 568, 62 N.E.2d 478 (1945); *Vick v. Illinois Bankers Life Ass'n*, 292 Ill. App. 341, 11 N.E.2d 46 (1937); *Mitchell v. King*, 187 Ill. 452, 55 N.E. 310 (1900); *Englewood Connecting Ry. v. Chicago & E.I.R.*, 117 Ill. 611, 6 N.E. 684 (1886); *Joliet & C.R.R. v. Healy*, 94 Ill. 416 (1880).

²⁵⁸ *Larson v. Larson*, 19 Ill.2d 200, 166 N.E.2d 561 (1960); *People v. Stanard*, 9 Ill.2d 372, 137 N.E.2d 829 (1956); *Lees v. Chicago & N.W. Ry.*, 409 Ill. 536, 100 N.E.2d 653 (1951); *Cory Corporation v. Fitzgerald*, 403 Ill. 409, 86 N.E.2d 363 (1949); *Cowen v. Harding Hotel Co.*, 396 Ill. 477, 72 N.E.2d 177 (1947); *Anderson v. Board of Education*, 390 Ill. 412, 61 N.E.2d 562 (1945); *Dowdall v. Hutchens*, 347 Ill. 326, 179 N.E. 858 (1932); *People v. Board of Education*, 275 Ill. 195, 113 N.E. 965 (1916). An order of the Appellate Court holding that count one of a two count complaint stated a cause of action and reversing and remanding the cause to the trial court as to said count one is not final and appealable as to this count, and the order as to count one may not be reviewed by the Supreme Court. *Young v. Wilkinson*, 18 Ill.2d 428, 164 N.E.2d 39 (1960).

²⁵⁹ Judicial Article of 1961, § 5.

²⁶⁰ Judicial Article of 1961, § 7.

²⁶¹ Judicial Article of 1961, § 5.

(c) *Leave to Appeal by Supreme Court*

The Appellate Court Act²⁶² and the Civil Practice Act²⁶³ provide for appeal from the Appellate to the Supreme Court by leave of the Supreme Court, but again require finality of the Appellate Court judgment with a provision for the striking of the "portion of the judgment of the Appellate Court remanding the cause for new trial or hearing."²⁶⁴

As to this method of review, the Judicial Article of 1961 provides that "[s]ubject to rules, appeals from the Appellate Court to the Supreme Court in all other cases shall be by leave of the Supreme Court."²⁶⁵ Under this provision, the Supreme Court will have very broad powers and may make any rule it sees fit, including the abandonment of the present statutory policy of finality for the review of an Appellate Court judgment by the Supreme Court.

When a petition is presented to the Supreme Court of Illinois for leave to appeal from a decision of the Appellate Court, the Supreme Court of Illinois is confronted with considerations similar to those which face the Supreme Court of the United States when a petition for certiorari is presented to it for review of a decision of a United States Court of Appeals. In the latter situation, when there were presented important issues fundamental to the further conduct of the litigation, the Supreme Court of the United States on a number of occasions has granted certiorari and reviewed the case despite the fact that the order of the Court of Appeals was interlocutory.²⁶⁶ The federal policy seems wiser and more workable than the present Illinois practice.

²⁶² ILL. REV. STAT. ch. 37, § 32 (1961).

²⁶³ ILL. REV. STAT. ch. 110, § 75 (1961).

²⁶⁴ ILL. REV. STAT. ch. 110, § 75 (1961). See *Gannon v. Chicago, M. & St. P. & P. Ry.*, 22 Ill.2d 305, 175 N.E.2d 785 (1961), and *Petty v. Illinois Central R.R.*, 11 Ill.2d 485, 144 N.E.2d 601 (1957), where the Supreme Court remanded the causes to the Appellate Court with directions to reinstate the remanding orders which had been stricken by the Appellate Court. See also the majority and minority opinions in *John v. Tribune Co.*, decided by the Supreme Court of Illinois on January 23, 1962, Docket No. 36450, and *People ex rel Wabash Railroad Co. v. Hoffman*, decided by the Supreme Court of Illinois on March 23, 1962, Docket No. 36926, where a writ of mandamus was granted by the Supreme Court of Illinois directed to the Appellate Court of Illinois, involving remanding orders of Appellate Courts.

²⁶⁵ Judicial Article of 1961, § 5.

²⁶⁶ *Cold Metal Process Co. v. United Engineering & Foundry Co.*, 351 U.S. 445 (1956); *Sears Roebuck & Co. v. Mackey*, 351 U.S. 427 (1956); *Johnson v. Eisentrager*, 339 U.S. 763 (1950); *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Land v. Dollar*, 330 U.S. 731 (1947); *United States v. General Motors Corp.*, 323 U.S. 373 (1945).

In connection with the review of Appellate Court judgments by the Supreme Court, it should be noted that the Criminal Code²⁶⁷ provides that "misdemeanors" shall be reviewed by the Appellate Court and "felonies" by the Supreme Court. Defendants whose misdemeanors are reviewed by the Appellate Court have, under the Judicial Article of the Constitution of 1870, an absolute right to a further review by the Supreme Court.²⁶⁸ This mode of mandatory review of an Appellate Court judgment by the Supreme Court will not exist under the Judicial Article of 1961, and defendants in criminal cases reviewed by the Appellate Court will, in order to reach the Supreme Court, have to resort to the above discussed three methods, namely, (a) constitutionality first arising in Appellate Court, (b) certificate of importance by the Appellate Court, and (c) leave to appeal by the Supreme Court, and none other.

*31. Appeal from Final Judgment of Circuit Court
Is a Constitutional Right in All Cases*

The Judicial Article of the Constitution of 1870 provides for Appellate Courts "to which such appeals and writs of error as the general assembly may provide, may be prosecuted from the circuit and other courts."²⁶⁹ Thus, at present, appeals are purely statutory, dependent for their availability upon the General Assembly.²⁷⁰ Similarly, in a statutory proceeding where a statute expressly provides that the decision of the trial court shall be conclusive, the proceeding is not reviewable,²⁷¹ and in a statutory proceeding where no appeal or writ of error is provided for, the proceeding is not reviewable.²⁷² This policy is completely changed by the Judicial Article of 1961, as ap-

²⁶⁷ ILL. REV. STAT. ch. 38, § 780½ (1961).

²⁶⁸ ILL. CONST. art. VI, § 11; *People v. Booth*, 390 Ill. 330, 61 N.E.2d 370 (1945); *Smith v. People*, 98 Ill. 407 (1881).

²⁶⁹ ILL. CONST. art. VI, § 11.

²⁷⁰ The right of appeal is purely statutory and may be exercised only within the limits prescribed by legislative grant. *Village of Niles v. Szczesny*, 13 Ill.2d 45, 47, 147 N.E.2d 371, 372 (1958). The right of appeal is purely statutory. *People v. Bristow*, 391 Ill. 101, 123, 62 N.E.2d 545, 555 (1945).

²⁷¹ *People v. Dusher*, 411 Ill. 535, 104 N.E.2d 775 (1952).

²⁷² *People v. Ross*, 407 Ill. 199, 95 N.E.2d 61 (1950); *People v. Cornelius*, 392 Ill. 599, 65 N.E.2d 439 (1946); *Ekendahl v. Svolos*, 388 Ill. 412, 58 N.E.2d 585 (1944); *City of Chicago v. Steamship Lines*, 328 Ill. 309, 159 N.E. 301 (1927); *Phelps v. Board of Appeals*, 325 Ill. 625, 156 N.E. 826 (1927); *In re Forbes*, 316 Ill. 141, 146 N.E. 448 (1925); *People v. Ross*, 344 Ill. App. 407, 101 N.E.2d 112 (1951); *People v. Cornelius*, 332 Ill. App. 271, 74 N.E.2d 900 (1947).

peals from final judgments of the circuit courts, involving (a) revenue, (b) constitutionality, (c) habeas corpus, and (d) capital cases are reviewable by the Supreme Court “*as a matter of right*” guaranteed by the Constitution²⁷³ and “[i]n *all cases*, other than those appealable directly to the Supreme Court, appeals from final judgments of a Circuit Court lie *as a matter of right* to the Appellate Court,”²⁷⁴ again guaranteed by the Constitution, effective January 1, 1964.

32. *What Order is a “Final Judgment” is a Constitutional Question*

The Judicial Article of 1961 expressly guarantees the right of appeal to the Supreme Court from “*final judgments*” of the circuit courts in four enumerated categories²⁷⁵ and further guarantees the right of appeal to the Appellate Court from “*final judgments*” in “*all cases*,” other than those appealable directly to the Supreme Court.²⁷⁶

Section 50(2), which was added to the Illinois Civil Practice Act in 1955, effective January 1, 1956, reads as follows:

If multiple parties or multiple claims for relief are involved in an action, the court may enter a final order, judgment or decree as to one or more but fewer than all of the parties or claims only upon an express finding that there is no just reason for delaying enforcement or appeal. In the absence of that finding, any order, judgment or decree which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not terminate the action, is not enforceable or appealable, and is subject to revision at any time before the entry of an order, judgment or decree adjudicating all the claims, rights and liabilities of all the parties.

Thus, prior to 1956, an order was final which determined the rights of the parties and referred the cause to a Master in Chancery to state an account,²⁷⁷ whereas subsequent to January 1, 1956, the finality of such order is left, by the Legislature, to the discretion of the trial judge, and if the trial judge does not state that “there is no just reason for delaying enforcement or appeal” (which is purely a matter of opinion upon which various judges may differ), the judgment is not final.²⁷⁸ Likewise, prior to 1956, a decree which found the interest of the parties and ordered partition was final and appealable, although the question whether the premises were susceptible to division or sale was

²⁷³ Judicial Article of 1961, § 5.

²⁷⁵ *Id.*, § 5.

²⁷⁴ *Id.*, § 7.

²⁷⁶ *Id.*, § 7.

²⁷⁷ *Barnhart v. Barnhart*, 415 Ill. 303, 114 N.E.2d 378 (1953); *Altschuler v. Altschuler*, 399 Ill. 559, 78 N.E.2d 225 (1948).

²⁷⁸ *Hanley v. Hanley*, 13 Ill.2d 209, 148 N.E.2d 792 (1958); *Ariola v. Nigro*, 13 Ill.2d 200, 148 N.E.2d 787 (1958).

left for future determination,²⁷⁹ whereas subsequent to January 1, 1956, the finality of such decree of partition is left to the whim of the trial judge as to whether he will state that in his opinion "there is no just reason for delaying enforcement or appeal," and if the trial judge refuses to do so, appealability may be delayed for years.²⁸⁰

Since appeal at present in Illinois is purely statutory and there is no constitutional requirement that it be made available, the Legislature may impose conditions or restrictions thereon, but, under the Judicial Article of 1961, appeals from "final judgments" are a constitutional right,²⁸¹ and neither the Legislature nor the Supreme Court may place any restriction thereon. It may reasonably be contended that, under the Judicial Article of 1961, Section 50(2) of the Illinois Civil Practice Act, which became effective on January 1, 1956, will be unconstitutional and that finality will have to be determined as it was prior to January 1, 1956, without the statutory restriction thereon. On the other hand, there is room for the contention that the framers of the Judicial Article of 1961 used the term "final judgment" as defined in Section 50(2) of the Civil Practice Act. The acceptance of this view would practically make Section 50(2) a part of the Illinois Constitution and would remain unalterable by the Legislature or the courts except through a constitutional amendment. In view of this grave problem which lies at the base of a large number of appeals, repeal of Section 50(2) must be given prompt, serious and careful consideration. Attention may also be given to the possibility that while Section 50(2) of the Civil Practice Act, as a legislative provision, would be unconstitutional, this provision (which results in the postponement of the appeal period), if promulgated as a rule of the Supreme Court, may be valid under the constitutional mandate that "[t]he Supreme Court shall provide by rule for expeditious and inexpensive appeals."²⁸²

33. Legislature Deprived of Power to Control Right of Appeal from Circuit and Appellate Courts

A careful examination of the Judicial Article of 1961 shows that the Legislature will have no power to control the right of appeal from

²⁷⁹ Rabe v. Rabe, 386 Ill. 600, 54 N.E.2d 518 (1944); Hardin v. Wolf, 318 Ill. 48, 148 N.E. 868 (1925).

²⁸⁰ Getzelman v. Kohler, 14 Ill.2d 396, 152 N.E.2d 833 (1958). As to what constituted "appealable orders" prior to January 1, 1956, see FINS, ILLINOIS PROCEDURE 609-23 (1950).

²⁸¹ Judicial Article of 1961, §§ 5, 7.

²⁸² *Id.* § .

either interlocutory or final judgments of the circuit courts to the Supreme or Appellate Courts or from the Appellate Court to the Supreme Court.²⁸³ Thus:

1. An appeal from a final judgment involving *revenue* is taken from the circuit court to the Supreme Court "as a matter of right" guaranteed by the Judicial Article of 1961.²⁸⁴

2. An appeal from a final judgment involving a *State or Federal Constitutional question* is taken from the circuit court to the Supreme Court "as a matter of right" guaranteed by the Judicial Article of 1961.²⁸⁵

3. An appeal from a final judgment in *habeas corpus* is taken from the circuit court to the Supreme Court "as a matter of right" guaranteed by the Judicial Article of 1961.²⁸⁶

4. An appeal by a defendant from a sentence in a *capital case* is taken from the circuit court to the Supreme Court "as a matter of right" guaranteed by the Judicial Article of 1961.²⁸⁷

5. Appeals in "all cases" (other than the above specific four categories) from final judgments are taken from the circuit court to the Appellate Court "as a matter of right" guaranteed by the Judicial Article of 1961.²⁸⁸

6. Appeals from interlocutory orders are, by the Judicial Article of 1961, taken away from the control of the Legislature and vested in the Supreme Court *exclusively* by the following provision: "The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of the Circuit Court."²⁸⁹ The limitation that an interlocutory appeal be taken to the Appellate Court *only* is in accord with the present practice under Section 78 of the Illinois Civil Practice Act²⁹⁰ whereby an interlocutory appeal may be taken

²⁸³ Section 8 of the Judicial Article of 1961 provides for direct appeal from the final judgments of the circuit courts to the Supreme Court in cases involving (a) revenue, (b) constitutionality, (c) habeas corpus, and (d) capital cases, and then states that "[s]ubject to law hereafter enacted, the Supreme Court has authority to provide by rule for appeal in other cases from the circuit courts directly to the Supreme Court." This "other cases" category is the only mode of appeal concerning which the Legislature will have an opportunity to participate in the exercise of its choice.

²⁸⁴ Judicial Article of 1961, § 5.

²⁸⁶ *Ibid.*

²⁸⁵ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ *Id.* § 7. See subtopic 29 *supra*, as to possibility of additional categories for direct appeal from Circuit to Supreme Court.

²⁸⁹ Judicial Article of 1961, § 7.

²⁹⁰ ILL. REV. STAT. ch. 110, § 78 (1961).

only to the Appellate Court and not to the Supreme Court, even though the issues involve a franchise, a freehold, the validity of a statute, the construction of the Constitution, the validity of a municipal ordinance, the validity of a county zoning ordinance or resolution, revenue, or the interest of the state,²⁰¹ and Section 78(6) of the Civil Practice Act provides that where an appeal is taken from such an interlocutory order to the Appellate Court, "[t]he order or judgment of the Appellate Court upon the appeal is not reviewable."²⁰²

7. An appeal from the Appellate Court to the Supreme Court in a case involving a *State or Federal constitutional question* which arises for the first time in and as a result of the action of the Appellate Court is "a matter of right" guaranteed by the Judicial Article of 1961.²⁰³

8. An appeal from the Appellate Court to the Supreme Court by a certificate of importance of the Appellate Court is "a matter of right" guaranteed by the Judicial Article of 1961.²⁰⁴

9. An appeal from the Appellate Court to the Supreme Court by leave of the Supreme Court is, by the Judicial Article of 1961, "[s]ubject to rules" of the Supreme Court,²⁰⁵ and is beyond the control of the Illinois Legislature.

10. At present, the time for filing a notice of appeal or a petition for leave to appeal is set forth in the Illinois Civil Practice Act,²⁰⁶ but the Judicial Article of 1961 provides that "[t]he Supreme Court shall provide by rule for expeditious and inexpensive appeals."²⁰⁷ Thus, the

²⁰¹ *Seagram Distillers Co. v. Armanetti*, 19 Ill. App.2d 575, 154 N.E.2d 866 (1958); *People v. Kostaken*, 10 Ill.2d 549, 141 N.E.2d 44 (1957); *Webb v. Marodas*, 268 Ill. App. 338 (1932); *Bistor v. McDonough*, 262 Ill. App. 404 (1931); *Klever Shampay Karpel Kleaners, Inc. v. City of Chicago*, 238 Ill. App. 291 (1925); *Murray v. Haggman*, 315 Ill. 437, 146 N.E. 472 (1925); *People v. Sears*, 230 Ill. App. 484 (1923); *Mobile & O.R.R. v. Fraser*, 169 Ill. App. 210 (1912); *New Ohio Washed Coal Co. v. Coal Belt R.R.*, 116 Ill. App. 153 (1904).

²⁰² *Cory Corp. v. Fitzgerald*, 403 Ill. 409, 86 N.E.2d 363 (1949); *Naprawa v. Chicago Flat Janitor's Union*, 382 Ill. 124, 46 N.E.2d 27 (1943); *Smith v. Bunge*, 358 Ill. 229, 193 N.E. 122 (1934). "The statute does no more than grant an immediate right to review the order itself; it does not change the interlocutory character of the order. The judgment of an Appellate Court reviewing such an order may therefore itself be reviewed as a part of the case after there has been a final adjudication. See *Town of Vandalia v. St. Louis, Vandalia and Terre Haute Railroad Co.*, 209 Ill. 73, 81." *Firebaugh v. McGovern*, 404 Ill. 143, 147-48, 88 N.E.2d 473, 475 (1949); *Hall v. Chicago & N.W. Ry.*, 5 Ill.2d 135, 125 N.E.2d 77 (1955).

²⁰³ Judicial Article of 1961, § 5.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ ILL. REV. STAT. ch. 110, §§ 75-77 (1961).

²⁰⁷ Judicial Article of 1961, § 7.

setting of the time for the prosecution of appeals is vested in the Supreme Court *exclusively*.

In view of the fact that the Illinois Legislature will no longer have power to control the right of appeal from the circuit courts and Appellate Court and in order to bring the Illinois Civil Practice Act into harmony with the Judicial Article of 1961, Article VIII—Appellate Practice (constituting Sections 74 to and including 94) of the Civil Practice Act will have to be meticulously re-examined. For example:

(1) Section 75 of the Civil Practice Act (dealing with jurisdiction of Appellate and Supreme Courts) will have to be repealed as inconsistent with the Judicial Article of 1961.

(2) Section 78 of the Civil Practice Act (dealing with interlocutory appeals) will have to be repealed and a rule of the Supreme Court substituted therefor.

(3) Sections 79, 84, 85 and 90 of the Civil Practice Act (granting the Supreme Court power to make rules pertaining to appellate practice) should be repealed as superfluous in view of the provision of the Judicial Article of 1961 that “[t]he Supreme Court shall provide by rule for expeditious and inexpensive appeals.”

(4) Sections 86 (dealing with transfer of cases from Appellate to Supreme Court and vice-versa) and 86.1 (dealing with pleas in reviewing courts) of the Civil Practice Act should be repealed as already covered by Supreme Court Rules 47 and 70, respectively.

Furthermore, all the other provisions for appeal contained in the various Acts throughout the Illinois Statute book are unnecessary and should be repealed as surplusage,²⁹⁸ including sub-sections 72(6) and 73(7) of the Civil Practice Act.

That part of Sections 68.1(4) and 68.3(2) of the Civil Practice Act (enacted in 1955 and effective January 1, 1956) which provides that

²⁹⁸ See Adoption of Children, ILL. REV. STAT. ch. 4 § 9.1-20 (1961); Arbitration and Awards, ILL. REV. STAT. ch. 9, § 118 (1961); Attachment, ILL. REV. STAT. ch. 11, § 40 (1961); Attachment of Water Craft, ILL. REV. STAT. ch. 12, § 29 (1961); Ejectment, ILL. REV. STAT. ch. 45, § 37 (1961); Forcible Entry and Detainer, ILL. REV. STAT. ch. 57, § 19 (1961); Garnishment, ILL. REV. STAT. ch. 62, § 86 (1961); Mandamus, ILL. REV. STAT. ch. 87, § 10 (1961); Replevin, ILL. REV. STAT. ch. 119, § 21 (1961); Trust Estates, ILL. REV. STAT. ch. 22, § 52b (1961); Municipal Code, ILL. REV. STAT. ch. 24, §§ 4-9-1, 4-9-2, 5-9-56, 7-1-4, 9-3-20, 9-3-43, 10-9-63 (1961); Eminent Domain, ILL. REV. STAT. ch. 47, § 14 (1961); Escheats, ILL. REV. STAT. ch. 49, § 6 (1961); State Housing, ILL. REV. STAT. ch. 67½, § 179 (1961); Neighborhood Redevelopment, ILL. REV. STAT. ch. 67½, § 285 (1961); Foreign Judgments, ILL. REV. STAT. ch. 77, § 98 (1961); Mental Health Code, ILL. REV. STAT. ch. 91½, § 2-4 (1961); Oil and Gas, ILL. REV. STAT. ch. 104, § 71 (1961).

the filing of a post trial motion stays the appeal period until the court rules upon the motion should be repealed and substitution therefor made by rule of the Supreme Court so as to comply with the provision of the Judicial Article of 1961 that "[t]he Supreme Court shall provide by rule for expeditious and inexpensive appeals."²⁹⁹ However, if these two specified statutory provisions were held unconstitutional, no change in the law would be effected, as the law prior to 1956 was that a motion to vacate or set aside a judgment or decree stayed the appeal time until the court ruled on the motion.³⁰⁰

34. *Appeal by State in Criminal Cases*

In American jurisdictions there is a complete lack of unanimity on the question as to whether and in what situations the sovereign may seek a review from a decision in favor of a defendant in a criminal case.³⁰¹ Prior to 1933, the State of Illinois had no right of review in any criminal case.³⁰² By virtue of Section 17 of Division 13 of the Criminal Code,³⁰³ as amended in 1933, the State of Illinois may sue out writs of error to review final judgments in criminal cases in two situations:³⁰⁴

(1) where the sufficiency of the indictment or information is challenged by motion to quash prior to plea and the motion is sustained.

(2) where the indictment or information is attacked by motion in arrest of judgment after verdict of a jury or finding of the court, the

²⁹⁹ Judicial Article of 1961, § 7.

³⁰⁰ "If a party in interest in any judgment or decree which is final and appealable files a motion to vacate or set aside the same, the motion stays the running of the time within which the notice of appeal must be filed, and if the motion is disposed of on its merits during the thirty-day period or thereafter, the time for filing of a notice of appeal begins to run from the date such motion is disposed of." *Corwin v. Rheims*, 390 Ill. 205, 216, 61 N.E.2d 40, 44 (1945).

³⁰¹ See Dowling, *Extending the State's Right to Appeal In Criminal Cases in Illinois*, 42 CHI. B. RECORD 361 (1961); Friedenthal, *Government Appeals in Federal Criminal Cases*, 12 STAN. L. REV. 71 (1959); Kronenberg, *Right of a State to Appeal in Criminal Cases*, 49 J. CRIM. L., C. & P. S. 473 (1959); Miller, *Appeals by the State in Criminal Cases*, 36 YALE L.J. 486 (1927); Constitutionality of Statute Permitting Appeal by State in Criminal Case, 113 A.L.R. 636 and 157 A.L.R. 1065.

³⁰² *People v. Barber*, 348 Ill. 40, 180 N.E. 633 (1932); *People v. John York Co.*, 80 Ill. App. 162 (1898); *People v. Miner*, 144 Ill. 308, 33 N.E. 40 (1893); *People v. Glodo*, 12 Ill. App. 348 (1883); *People v. Royal*, 1 Scam. 557 (1839); *People v. Dill*, 1 Scam. 257 (1836).

³⁰³ ILL. REV. STAT. ch. 38, § 747 (1961).

³⁰⁴ *People v. Vitale*, 364 Ill. 589, 5 N.E.2d 474 (1936). See FINS, APPEALS AND WRITS OF ERROR IN ILLINOIS 44-51 (11th ed.—1962).

indictment or information is searched and found wanting in some one or more material requirements, the motion is granted and the indictment or information set aside.

In 1961, the above statute was amended to provide that the State of Illinois may sue out interlocutory writs of error in criminal cases in three situations:

- (1) Order or judgment quashing an arrest warrant.
- (2) Order or judgment quashing a search warrant.
- (3) Order or judgment suppressing evidence entered preliminary to trial.³⁰⁵

The Judicial Article of 1961 provides for appeals to the Supreme Court "as a matter of right" in cases involving (a) revenue, (b) constitutionality, (c) habeas corpus, and (d) capital cases, and in "*all cases*," other than those appealable to the Supreme Court, appeals may be taken "as a matter of right" to the Appellate Court "except that after a trial on the merits in a criminal case, no appeal shall lie from a judgment of acquittal."³⁰⁶ It is, therefore, clear that appeal is available as a matter of right from final judgments in all cases, both civil and criminal, and to all parties, the State as well as the defendant, with the *single exception* "that after a trial on the merits in a criminal case, no appeal shall lie from a judgment of acquittal." Thus, the right of the State of Illinois to a review in criminal cases will be, under the Judicial Article of 1961, broader than it is at present. For example, consider the case of *People v. Sortino*, where a writ of error was sued out by the State from the Supreme Court of Illinois under Docket No. 36044, and the case of *People v. Mosby*, where a writ of error was sued out by the State from the Supreme Court of Illinois under Docket No. 36052, and both of which writs of error were, on November 17, 1960, on motion of each of the defendants, dismissed by the Supreme Court without opinion. In each of the above cases the Criminal Court of Cook County had discharged the defendant because he had not been brought to trial within four months from the date of commitment in accordance with Illinois Revised Statutes, Chapter 38, Section 748, commonly known as the "four-term Act" and sometime referred to as the "four-month Act." In view of the fact that the right of the State to review is purely statutory, and since the statutory grounds for

³⁰⁵ Prior to the 1961 amendment, the State had no right to a review from an order suppressing evidence in a criminal case. *People v. Moore*, 410 Ill. 241, 102 N.E.2d 146 (1951).

³⁰⁶ Judicial Article of 1961, §§ 5, 7.

review are limited to decisions upon (1) motions to quash indictment or information and (2) motions in arrest of judgment, the acquittal of Sortino and Mosby because of the expiration of the "four-month" term without a trial on the merits did not fall within either of the statutory grounds. On the other hand, since the State will, by virtue of the Judicial Article of 1961, have a constitutional right of appeal in *all cases*, except "that after a trial on the merits in a criminal case, no appeal shall lie from a judgment of acquittal,"³⁰⁷ the acquittal of a defendant because of the expiration of the "four-month" term, without a trial on the merits, will entitle the State to an appeal.

What constitutes an acquittal after "a trial on the merits?" If evidence as to the commission of the alleged crime is heard by the trial court and a judgment of acquittal is entered, it is clearly an acquittal after "a trial on the merits." What if the defendant files in the trial court a special plea of "former conviction" or "immunity from prosecution" and the trial court decides in favor of the defendant on the plea and acquits him, will the State, under the Judicial Article of 1961, be entitled to prosecute an appeal? We believe not, because a decision of the trial court in favor of the defendant on the special plea is an acquittal after "a trial on the merits."³⁰⁸

³⁰⁷ *Id.* § 7

³⁰⁸ *People v. Drymalski*, 22 Ill.2d 347, 175 N.E.2d 553 (1961); *People v. Nitti*, 365 Ill. 20, 5 N.E.2d 476 (1936); *People v. Vitale*, 364 Ill. 589, 5 N.E.2d 474 (1936); *People v. White*, 364 Ill. 574, 5 N.E.2d 472 (1936).

By statute, all defenses are available under the general issue, including any defense that might be raised under a special plea in bar, but the statute does not abolish special pleas and such pleas, including the pleas in bar, are appropriate and available in a criminal case only in those instances where they were permitted at common law and are restricted to their common law scope. *People v. Furgeson*, 20 Ill.2d 295, 170 N.E.2d 171 (1960).

In *People v. Drymalski*, 22 Ill.2d 347, 175 N.E.2d 553 (1961), the Supreme Court of Illinois said at page 351: "A 'trial' has been defined as a judicial examination, in accordance with the law of the land, either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has jurisdiction over it, (*People v. Vitale*, 364 Ill. 589, 592,) and it has been also held that a hearing on the factual sufficiency of a plea which, if sustained, will terminate the litigation, is a trial. (*People v. White*, 364 Ill. 574; *People v. Finkelstein*, 372 Ill. 186.)"

Under the Judicial Article of 1961, no appeal will be available to either party from an order granting probation. The defendant will not be able to take an appeal, because the voluntary acceptance of probation, suspended sentence or parole waives the defendant's right to appeal. *People v. Brown*, 345 Ill. App. 610, 104 N.E.2d 333 (1952); *People v. Collis*, 344 Ill. App. 539, 101 N.E.2d 739 (1951). The State will not be able to prosecute an appeal, because an order granting probation is not reviewable, as the cause remains pending in the trial court. *People v. Mayfield*, 414 Ill. 146, 111 N.E.2d 164 (1953); *People v. Martin*, 350 Ill. App. 196, 112 N.E.2d 526 (1953).

As to the review of interlocutory orders in criminal cases, which was made available to the State of Illinois by the statutory amendment of 1961, the matter will be under the control of the Supreme Court by virtue of the following provision of the Judicial Article of 1961: "The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of the Circuit Court."³⁰⁹

35. Discretionary Review from Final Judgment of Circuit Court Is Not Available

In the following situations, review of final judgments of trial courts is a matter of discretion, not a matter of right:

(1) Writ of error under the Workmen's Compensation Act³¹⁰ and Rule 60 of the Supreme Court.³¹¹

(2) Writ of error under the Workmen's Occupational Diseases Act.³¹²

(3) Writ of error under the Post Conviction Hearing Act³¹³ and Rule 27 of the Supreme Court.³¹⁴

(4) Writ of error in criminal case under Rule 65-1(2) of the Supreme Court.³¹⁵

The Judicial Article of 1961 makes a review of final judgments of Circuit Courts in "all cases," civil and criminal, "*a matter of right*" guaranteed by the Constitution.³¹⁶ This excludes the possibility of making review subject to leave of court.

Furthermore, it is to be noted that in dealing with appeals from the Appellate Court to the Supreme Court, the Judicial Article of 1961 provides for three situations, two of which are specified "as a matter of right" and, as to the third, it provides that appeals from the Appellate Court to the Supreme Court "shall be by leave of the Supreme Court."³¹⁷ No such "leave of court" provision exists as to review of

³⁰⁹ Judicial Article of 1961, § 7.

³¹⁰ ILL. REV. STAT. ch. 48, § 138.19 (1961).

³¹¹ ILL. REV. STAT. ch. 110, § 101.60 (1961). The Minimum Wage Act for women and minors provides for review in accordance with the provisions of the Workmen's Compensation Act ILL. REV. STAT. ch. 48, § 198.13 (1961), and the Act for Workmen's Compensation or Occupational Diseases Insurance for Rejected Employers provides for review in accordance with the provisions of the Workmen's Compensation Act. ILL. REV. STAT. ch. 73, § 1091 (1961).

³¹² ILL. REV. STAT. ch. 48, § 172.54 (1961).

³¹³ ILL. REV. STAT. ch. 38, §§ 826-32 (1961).

³¹⁴ ILL. REV. STAT. ch. 110, § 101.27 (1961).

³¹⁵ ILL. REV. STAT. ch. 110, § 101.65-I (2) (1961).

³¹⁶ Judicial Article of 1961, §§ 5, 7.

³¹⁷ *Id.* § 5.

final judgments of the Circuit Courts, and it seems clear that such a requirement, either by statute or rule of court, would be in conflict with the provisions of the Judicial Article of 1961 for appeals in all cases "as a matter of right."³¹⁸

36. Appeal Period

At present the Illinois statutes provide for a variety of appeal periods. For example: Under the Civil Practice Act, the notice of appeal must be filed within 60 days from the rendition of the final judgment or decree.³¹⁹ Under the Adoption Act, the notice of appeal must be filed within 30 days from the final order or judgment.³²⁰ Under the Forcible Entry and Detainer Act, the notice of appeal must be filed within 5 days from the rendition of the judgment.³²¹

As to criminal cases, the period for review is much longer. Until 1961, there was no statute on the subject and the twenty-year common law period for writ of error was followed.³²² In 1961, the period was reduced by statute to three years with a proviso that after the three-year period it may be prosecuted only by petition showing lack of culpable negligence in the failure to act within the three years.³²³ In sharp contrast with the long Illinois period for review of criminal cases is the Federal Rule which requires a defendant convicted in the Federal court to file his notice of appeal within ten days after the rendition of the decision by the United States District Court.³²⁴

Since appeal in Illinois is purely statutory and the various legal subjects are covered by a multitude of statutes, it is understandable how this complicated situation developed.

³¹⁸ *Id.* §§ 5, 7.

Under the Judicial Article of 1961, final judgments in post-conviction proceedings will be appealable, as a matter of constitutional right, from the circuit courts directly to the Supreme Court, because (a) they involve constitutional questions and (b) they are in essence "habeas corpus" proceedings. Judicial Article of 1961, § 5. See *Young v. Ragen*, 337 U.S. 235 (1949); *People v. Loftus*, 400 Ill. 432, 81 N.E.2d 495 (1948); *Marino v. Ragen*, 332 U.S. 561 (1947).

³¹⁹ ILL. REV. STAT. ch. 110, § 76 (1961).

³²⁰ ILL. REV. STAT. ch. 4, § 9.1-20 (1961).

³²¹ ILL. REV. STAT. ch. 57, §§ 19-22 (1961). For a collection of statutes and cases dealing with the great variety of statutory periods for appeal, see *FINS, APPEALS AND WRITS OF ERROR IN ILLINOIS* 15-22 (11th ed.—1962).

³²² *People v. Munroe*, 15 Ill.2d 91, 154 N.E.2d 225 (1958); *People v. Hartfield*, 11 Ill.2d 300, 142 N.E.2d 696 (1957); *People v. Williams*, 4 Ill. App.2d 506, 124 N.E.2d 537 (1955); *People v. Binkowski*, 394 Ill. 171, 68 N.E.2d 304 (1946); *People v. Shaffer*, 393 Ill. 445, 66 N.E.2d 419 (1946); *People v. Chapman*, 392 Ill. 168, 64 N.E.2d 529 (1946); *People v. Murphy*, 296 Ill. 532, 129 N.E. 868 (1921).

³²³ ILL. REV. STAT. ch. 38, § 769.1 (1961).

³²⁴ FED. R. CRIM. P. 37(a).

The Judicial Article of 1961 provides that “[t]he Supreme Court shall provide by rule for expeditious and inexpensive appeals.”³²⁵ The Supreme Court will, therefore, have to provide an appeal period for all cases. Since appeals in the State of Illinois *in all cases*, civil and criminal, will be, after January 1, 1964, a matter of constitutional right emanating from the *very same* constitutional provisions,³²⁶ the period for appeal—whether the Supreme Court chooses 30, 60 or 90 days or any other period—should be as uniform as possible.³²⁷

In the following situations the reviewing court may, by virtue of statute, allow a litigant to proceed with review although the normal time for review has expired:

(1) Appeal in civil cases after the expiration of 60 days and within one year from the rendition of the final order, judgment or decree, under Section 76 of the Illinois Civil Practice Act.³²⁸

(2) Appeal under local improvement provisions of the Illinois Municipal Code after the expiration of 30 days from the entry of the final order or judgment.³²⁹

(3) Writ of error or appeal in criminal cases after three years from the date of the final judgment.³³⁰

Since the Judicial Article of 1961 provides that “[t]he Supreme Court shall provide by rule for expeditious and inexpensive appeals,”³³¹ it will be necessary to repeal these statutory provisions and to replace

³²⁵ Judicial Article of 1961, § 7.

³²⁶ *Id.* §§ 5, 7.

³²⁷ Unequal opportunities accorded by a State in connection with the right of review may raise serious constitutional questions under the “due process of law” and “equal protection of laws” clauses of the Fourteenth Amendment to the Constitution of the United States.

The due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States are violated where a state statute providing for writs of error in all criminal cases as a matter of right is so administered as to deny full appellate review in a non-capital felony case to an indigent defendant solely because of his inability to pay for a transcript of the record, while granting such review to all other defendants. *Griffin v. Illinois*, 351 U.S. 12 (1956); *People v. Griffin*, 9 Ill.2d 164, 137 N.E.2d 485 (1956). A statute deprives a defendant of a constitutional right guaranteed by the Fourteenth Amendment if it denies him appellate review of a conviction merely because he cannot afford to pay for the record of his trial. *Eskridge v. Washington Prison Bd.*, 357 U.S. 214 (1958). A state may not, consistently with the Federal Constitution, require an indigent defendant in a criminal case to pay a filing fee before permitting him to file a motion for leave to appeal in one of its courts. *Burns v. Ohio*, 360 U.S. 252 (1959).

³²⁸ ILL. REV. STAT. ch. 110, § 76 (1961).

³²⁹ ILL. REV. STAT. ch. 24, § 9-2-141 (1961).

³³⁰ ILL. REV. STAT. ch. 38, § 769.1 (1961).

³³¹ Judicial Article of 1961, § 7.

them with rules of the Supreme Court if the Court desires to make provisions therefor.

37. *Appeal Bond*

Under the present Illinois law, no appeal bond is required for the purpose of prosecuting an appeal from a final judgment or decree of a trial court to the Appellate or Supreme Courts, except in the following situations:

(1) An appeal from a final judgment in an action under the Forcible Entry and Detainer Act requires the filing of an appeal bond.³³²

(2) An appeal from an order of the County Court refusing an application for registration as a voter requires the posting of an appeal bond in the sum of \$200.00.³³³

(3) If the appellant is not a resident of Illinois or is insolvent, the court may dismiss the appeal for failure to file a cost bond, in accordance with Rule 52 of the Supreme Court of Illinois.³³⁴

Since, under the present law, appeals from trial courts do not involve any constitutional rights, the General Assembly and the Supreme Court may place thereon such restrictions as they deem advisable. On the other hand, under the Judicial Article of 1961, appeals from "final judgments" of circuit courts are in *all cases* "a matter of right" guaranteed by the Constitution. Therefore, it is very doubtful whether the General Assembly or the Supreme Court may place any restrictions or limitations by requiring a bond and thereby hinder the litigant or burden him in the exercise of an absolute constitutional right.

Moreover, to require an appeal bond in some cases and not in others creates unequal treatment by the State in connection with the right of review and raises serious constitutional questions under the "due process of law" and "equal protection of laws" clauses of the Fourteenth Amendment to the Constitution of the United States.³³⁵

The foregoing discussion has no bearing on the requirement of a *supersedeas* bond, as a *supersedeas* merely suspends the enforcement of the judgment and does not affect the right of appeal.³³⁶

³³² ILL. REV. STAT. ch. 57, §§ 19-22 (1961).

³³³ ILL. REV. STAT. ch. 46, §§ 6-47, 6-52 (1961).

³³⁴ ILL. REV. STAT. ch. 110, § 101.52 (1961).

³³⁵ See *Griffin v. Illinois*, 351 U.S. 12 (1956); *Eskridge v. Washington Prison Bd.*, 357 U.S. 214 (1958); and *Burns v. Ohio*, 360 U.S. 252 (1959), discussed in footnote 327 *supra*.

³³⁶ In *Gumberts v. East Oak St. Hotel Co.*, 404 Ill. 386, 88 N.E.2d 883 (1949), the Supreme Court said: "The operation and effect of *supersedeas* is generally well under-

38. *Writ of Error Abolished*

The Judicial Article of the Constitution of 1870 provides for two methods of review: (1) appeal and (2) writ of error.³³⁷ The Illinois Civil Practice Act, which has been in effect since January 1, 1934, abandoned the writ of error as a mode of review and confined review to appeal only.³³⁸ A large number of other statutes have followed the same course.³³⁹ The Criminal Code, as amended in 1959, effective January 1, 1960, provides that a party in a criminal case entitled to a writ of error may proceed by appeal instead of writ of error.³⁴⁰ The Judicial Article of 1961 has eliminated the writ of error as a mode of review and specifically provides for review in all cases exclusively by appeal.³⁴¹

To bring the Rules of the Supreme Court in harmony with the Judicial Article of 1961, Rules 60, 61, 62, 63, 64 and 66, dealing with writs of error, will have to be abrogated.

39. *Review of Administrative Action to be Governed by Statute*

The Judicial Article of 1961 contains two provisions regarding review of administrative action:

(1) "The Circuit Court shall have . . . such powers of review of administrative action as may be provided by law."³⁴²

(2) "The Appellate Court shall have such powers of direct review of administrative action as may be provided by law."³⁴³

Should the Legislature repeal the present statutes providing for administrative review and fail to make provision for review of administrative action, the circuit courts, which will have "unlimited original jurisdiction of all justiciable matters,"³⁴⁴ would have authority to review administrative decisions by common law certiorari.³⁴⁵

stood. Its object and purpose are to suspend the efficacy of a judgment or decree. The *supersedeas* operates against the enforcement of the judgment and not against the judgment itself. Its purpose is accomplished by staying all future proceedings on the judgment." *Id.* at 389, 88 N.E.2d at 885.

³³⁷ ILL. CONST. art. VI, §§ 8, 11, 19.

³³⁸ ILL. REV. STAT. ch. 110, § 74 (1961).

³³⁹ For example, see ILL. REV. STAT. ch. 11, § 26; ch. 45, § 50; ch. 112, § 15 (1961). See also FINS, *Illinois Should Substitute Appeal for Writ of Error in All Cases*, 45 ILL. B.J. 230 (1956).

³⁴⁰ ILL. REV. STAT. ch. 38, § 769.1 (1961). ³⁴² *Id.* § 9.

³⁴¹ Judicial Article of 1961, §§ 5, 7. ³⁴³ *Id.* § 7.

³⁴⁴ *Id.* § 9.

³⁴⁵ "The common law writ of certiorari is available to review administrative proceedings in cases wherein powers are conferred upon administrative tribunals and no pro-

Within the last fifty years, several attempts have been made to have the Supreme Court of Illinois review administrative decisions directly, without the necessity of taking the case through a trial court, but the Supreme Court of Illinois has consistently held that, under the Judicial Article of the Constitution of 1870, it could not do so.³⁴⁶

Under the Judicial Article of 1961, the Illinois court system will consist of three tiers—Circuit Court, Appellate Court and Supreme Court—and will structurally closely resemble the Federal court system which consists of three tiers—District Court, Court of Appeal and Supreme Court—and where the trial tribunal (District Court) is integrated, having jurisdiction over all justiciable matters—law, equity, admiralty, bankruptcy, civil and criminal. In the Federal system, decisions of some federal administrative agencies do not go to the United States District Court at all and are reviewed or enforced by the United States Court of Appeals.³⁴⁷ Some of the federal administrative agencies whose decisions are so reviewed or enforced by the United States Court of Appeals are: National Labor Relations Board,³⁴⁸ Federal Trade Commission,³⁴⁹ Securities and Exchange Commission,³⁵⁰ Civil Aeronautics Board,³⁵¹ and Federal Power Commission.³⁵²

The Illinois General Assembly will have to determine, as a matter of policy, whether the action of any, or some, or all of the State administrative agencies shall be reviewed by the circuit courts, as is the present practice, or directly by the Appellate Court. The Administrative Review Act³⁵³ will have to be reconsidered and Sections 13 and 14 thereof³⁵⁴ substantially amended.

vision is made by the statute for a review of such proceedings." *FINS, ILLINOIS ADMINISTRATIVE PROCEDURE* ch. 2 (1942).

³⁴⁶ Certification by the State Tax Commission, *Eli Bates House v. Board of Appeals*, 358 Ill. 596, 193 N.E. 526 (1934); appeal to set aside decision of Board of Appeals of Cook County, *North Chicago Hebrew Congregation v. Board of Appeals*, 358 Ill. 549, 193 N.E. 519 (1934); certiorari to review decision of Industrial Board of Illinois, *Courter v. Simpson Construction*, 264 Ill. 488, 106 N.E. 350 (1914).

³⁴⁷ See *FINS, FEDERAL JURISDICTION AND PROCEDURE* 176-7 (1960).

³⁴⁸ 29 U.S.C. § 160 (1958).

³⁴⁹ 15 U.S.C. § 45 (1958).

³⁵⁰ 15 U.S.C. §§ 77i, 77vvv, 78y, 79x, 80a-42, 80 b-13 (1958).

³⁵¹ 49 U.S.C. § 1486 (1958).

³⁵² 16 U.S.C. § 8251 (1958).

³⁵³ ILL. REV. STAT. ch. 110, §§ 264-79 (1961).

³⁵⁴ ILL. REV. STAT. ch. 110, §§ 276-77 (1961).

40. *Interlocutory Appeals*

Appeals from interlocutory orders are at present available in Illinois by virtue of the following three statutory provisions:

(a) Section 78 of the Illinois Civil Practice Act³⁵⁵ as amended in 1961:

1. Granting an injunction.
2. Modifying an injunction.
3. Refusing an injunction.
4. Dissolving an injunction.
5. Refusing to dissolve an injunction.
6. Refusing to modify an injunction.
7. Appointing a receiver.
8. Refusing to appoint a receiver.
9. Giving other or further powers or property to a receiver already appointed.
10. Refusing to give other or further powers or property to a receiver already appointed.
11. Placing a mortgagee in possession of mortgaged premises.
12. Refusing to place a mortgagee in possession of mortgaged premises.

(b) Section 77 of the Illinois Civil Practice Act, providing for an appeal from an order granting a new trial.³⁵⁶

³⁵⁵ ILL. REV. STAT. ch. 110, § 78 (1961). In Illinois no appeal from an interlocutory order was possible prior to 1887. *Murray v. Hagmann*, 315 Ill. 437, 146 N.E. 472 (1925); *J. H. Walters & Co. v. Canham Sheet Metal Corp.*, 8 Ill. App. 2d 121, 130 N.E. 2d 675 (1955). On July 1, 1887, there came into effect "An Act to provide for appeals from interlocutory orders granting injunction or appointing receivers." The provisions of that Act were substantially re-enacted as Section 123 of the Practice Act of 1907, and the same provisions were substantially (but with some modification in procedure) re-enacted as Section 78 of the Civil Practice Act of 1933, which section was supplemented by Rule 31 of the Supreme Court of Illinois. The constitutionality of said Section 78 and Rule 31 was sustained in *Hallberg v. Goldblatt Bros.*, 363 Ill. 25, 1 N.E.2d 220 (1936). Prior to January 1, 1956, the following orders were not appealable: An order denying an application for the appointment of a receiver. *Bagdonas v. Liberty Land & Inv. Co.*, 309 Ill. 103, 140 N.E. 49 (1923); *Eichenbaum v. State & Quincy Bldg. Corp.*, 295 Ill. App. 617 (1938). An order allowing a motion to dissolve a temporary injunction. *American Dixie Shops, Inc. v. Springfield Lords, Inc.*, 8 Ill. App. 2d 129, 130 N.E.2d 532 (1955); *Liberty Nat'l Bank v. City of Chicago*, 342 Ill. App. 328, 96 N.E. 2d 663 (1950); *Stephens v. Stephan*, 216 Ill. App. 107 (1919); *Springfield Gas & Elec. Co. v. City of Springfield*, 206 Ill. App. 575 (1917). An order denying a motion for a temporary injunction. *Springfield Gas & Elec. Co. v. City of Springfield*, 206 Ill. App. 575 (1917); *Builders' Painting & Decorating Co. v. Advisory Bd. Bldg. Trades*, 116 Ill. App. 264 (1904). These interlocutory orders were made appealable by the amendment to Section 78 of the Civil Practice Act which became effective January 1, 1956. In 1961, interlocutory orders placing or refusing to place a mortgagee in possession of mortgaged premises were made appealable.

³⁵⁶ ILL. REV. STAT. ch. 110, § 77 (1961). An appeal from an order granting a new trial was unknown in Illinois prior to the passage of the Civil Practice Act. *Kavanaugh v. Washburn*, 387 Ill. 204, 56 N.E.2d 420 (1944). The constitutionality of this innovation has been sustained in the following cases: *Goodrich v. Sprague*, 385 Ill. 200, 52 N.E.2d 250 (1944); *Baumgardner v. Boyer*, 384 Ill. 584, 52 N.E.2d 247 (1944); *Scott v. Freeport Motor Cas. Co.*, 379 Ill. 155, 39 N.E.2d 999 (1942).

(c) Section 17 of Division 13 of the Criminal Code³⁵⁷ as amended in 1961:

1. Order or judgment quashing an arrest warrant.
2. Order or judgment quashing a search warrant.
3. Order or judgment suppressing evidence entered preliminary to trial.

To bring the Illinois statutes in harmony with the Judicial Article of 1961, all of the above statutory provisions dealing with interlocutory appeals will have to be repealed and the Supreme Court will have the choice of promulgating, in lieu thereof, such rules as it deems advisable, as the Judicial Article of 1961 provides that "[t]he Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of the Circuit Court."³⁵⁸

Under Section 78 of the Civil Practice Act, interlocutory appeals involving injunctions, receivership or mortgage foreclosures may be taken only to the Appellate Court and not to the Supreme Court, even though the issues involve a constitutional question, revenue, or a freehold.³⁵⁹ On the other hand, under Section 77 of the Civil Practice Act, an appeal from an order granting a new trial is appealable to the Appellate Court or to the Supreme Court as in appeals from final orders in other cases.³⁶⁰ Likewise, in criminal proceedings, review from interlocutory orders (which was made possible by statutory amendment of 1961) will, no doubt, frequently involve State and Federal constitutional questions of search and seizure and will be reviewable directly by the Supreme Court.³⁶¹ However, under the Judicial

³⁵⁷ ILL. REV. STAT. ch. 38, § 747 (1961).

³⁵⁸ Judicial Article of 1961, § 7.

³⁵⁹ *Seagram Distillers Co. v. Armanetti*, 19 Ill. App. 2d 575, 154 N.E.2d 866 (1958); *People v. Kostaken*, 10 Ill.2d 549, 141 N.E.2d 44 (1957); *Webb v. Marozas*, 268 Ill. App. 338 (1932); *Bistor v. McDonough*, 262 Ill. App. 404 (1931); *Klever Shampay Karpel Kleaners, Inc. v. City of Chicago*, 238 Ill. App. 291 (1925); *Murray v. Hagmann*, 315 Ill. 437, 146 N.E.2d 472 (1925); *People v. Sears*, 230 Ill. App. 484 (1923); *Mobile & O. R.R. v. Fraser*, 169 Ill. App. 210 (1912); *New Ohio Washed Coal Co. v. Coal Belt Ry.*, 116 Ill. App. 153 (1904).

³⁶⁰ In *Trustees of Schools v. Schroeder*, 23 Ill.2d 74, 177 N.E.2d 178 (1961), an appeal from an order in a condemnation case granting a new trial was taken to the Supreme Court, which Court entertained jurisdiction and said: "This is an appeal, upon leave granted by this court, from an order of the circuit court of Cook County granting a new trial in an eminent domain proceeding. Our jurisdiction is based upon Section 12 of the Eminent Domain Act. (Ill. Rev. Stat. 1959, chap. 47, par. 12) and section 77(2) of the Civil Practice Act. Ill. Rev. Stat. 1959, chap. 110, par. 77." *Id.* at 75-6, 177 N.E.2d at 178.

³⁶¹ *Marcus v. Search Warrants*, 367 U.S. 717 (1961); *Mapp v. Ohio*, 367 U.S. 643 (1961); *People v. Jackson*, 22 Ill.2d 382, 176 N.E.2d 803 (1961); *People v. Burnett*, 20 Ill.2d 624, 170 N.E.2d 546 (1960); *People v. Van Scoyk*, 20 Ill.2d 232, 170 N.E.2d 151

Article of 1961, *all interlocutory* appeals will have to be taken *to the Appellate Court* and none directly to the Supreme Court.³⁶²

41. Masters in Chancery, Referees and Special Commissioners in Trial Courts Abolished

The Judicial Article of the Constitution of 1870 does not mention Masters in Chancery. These officers have come into being in Illinois as a part of general chancery practice. Their appointment and fees to be paid to them for their services are governed by statute.³⁶³ The Judicial Article of 1961 provides: "There shall be no masters in chancery or other fee officers in the judicial system."³⁶⁴ That "referees" are included in the abolition of masters in chancery is made clear in Paragraph 8 of the Schedule to the Judicial Article of 1961, wherein it is stated that "[m]asters in chancery and referees in office in any court on the Effective Date of this Article [January 1, 1964] shall be continued as masters in chancery or referees, respectively, until the expiration of their terms, and may thereafter by order of court, wherever justice requires, conclude matters in which testimony has been received." This constitutional prohibition against masters in chancery and fee officers will, no doubt, apply as well to special commissioners, as "[t]he terms special commissioners and master in chancery have long been used interchangeably."³⁶⁵

In order to bring the Illinois statutes in harmony with the Judicial Article of 1961, it will be necessary for the General Assembly to give attention to the statutes involved.³⁶⁶ It will also be necessary to repeal Section 61 of the Illinois Civil Practice Act, which section provides

(1960); *People v. Mayo*, 19 Ill.2d 136, 166 N.E.2d 440 (1960); *People v. Watkins*, 19 Ill. 2d 11, 166 N.E.2d 433 (1960); *People v. Berry*, 17 Ill.2d 247, 161 N.E.2d 315 (1959); *People v. West*, 15 Ill.2d 171, 154 N.E.2d 286 (1958); *People v. Clark*, 9 Ill.2d 400, 137 N.E.2d 820 (1956); *People v. Shambley*, 4 Ill.2d 38, 122 N.E.2d 172 (1954).

³⁶² Judicial Article of 1961, § 7.

³⁶³ ILL. REV. STAT. ch. 90, §§ 1-13; ch. 53, §§ 38, 38b; ch. 37, § 341; ch. 37, § 415 (1961).

³⁶⁴ Judicial Article of 1961, § 8.

³⁶⁵ *Price v. Seator*, 337 Ill. App. 248, 254, 85 N.E.2d 848, 851 (1949), citing *Harding v. Hundy*, 24 U.S. (11 Wheat.) 46 (1826); *Davis v. Davis*, 30 Ill. 180 (1863); *White v. Haf-faker*, 27 Ill. 349 (1862); and *Farnsworth v. Strasler*, 12 Ill. 482 (1851). See also ILL. REV. STAT. ch. 40, § 16; ch. 68, § 22 (1961).

³⁶⁶ ILL. REV. STAT. ch. 90, §§ 1-56; ch. 117, §§ 1-10 (1961), will have to be repealed, and many statutes which make provision for functions to be performed by Masters in Chancery, Commissioners or Referees will require revision.

for references to masters or referees,³⁶⁷ and to abrogate Rule 14-1 of the Supreme Court of Illinois.³⁶⁸

42. *Justices of the Peace and Police Magistrates Abolished*

The Judicial Article of the Constitution of 1870 provides for justices of the peace and police magistrates.³⁶⁹ The Judicial Article of 1961 provides that on January 1, 1964, the offices of justice of the peace and police magistrate are abolished.³⁷⁰ However, the incumbents are to serve as "magistrates" of the circuit court until the end of their respective terms.³⁷¹

43. *Merger of Law and Equity Jurisdiction*

The merger of law and equity developed in Illinois gradually:

(1) The Illinois Civil Practice Act, which was enacted in 1933, effective January 1, 1934, merged law and equity as to venue, process, parties, pleading and appellate practice.³⁷²

(2) In *Horner v. Jamieson*, decided in 1946, the Supreme Court said:³⁷³

Plaintiff contends that there is no provision in law for the filing of an equitable counterclaim in an action of ejectment. Prior to 1935, section 19 of the Ejectment Act (Cahill's Stat. 1933, chap. 45, par. 19), provided that the defendant to an ejectment action could demur to the declaration as in personal actions or plead the general issue, under which defendant might introduce in evidence any matter that would tend to defeat the plaintiff's action except as otherwise provided by the Ejectment Act. Under this provision it was held that estoppel in pais was not available as a defense to an action of ejectment. (*Metzger v. Horn*, 312 Ill. 173; *Wakefield v. VanTassell*, 202 Ill. 41; *Wright v. Stice*, 173 Ill. 571; *Winslow v. Cooper*, 104 Ill. 235.) Section 10 of the Ejectment Act as amended in 1935 (Ill. Rev. Stat. 1945, chap. 45, sec. 10) provides that rules of pleading and practice in other civil cases shall apply to actions of ejectment so far as they are applicable and except as is otherwise provided by this act. Section 19 of the act was amended permitting a defendant to file a motion as in ordinary civil cases and to answer by way of general or specific denial or by affirmative defense. These provisions permit a defendant to plead equitable defenses to an ejectment action to the same extent that he might plead such defenses to other civil actions under the Civil Practice Act. *Firke v. McClure*, 389 Ill. 543.

³⁶⁷ ILL. REV. STAT. ch. 110, § 61 (1961).

³⁶⁸ ILL. REV. STAT. ch. 110, § 101.14-1 (1961).

³⁶⁹ ILL. CONST. art VI, § 1.

³⁷⁰ Judicial Article of 1961, Schedule, para. 5(a).

³⁷¹ *Id.* para. 4(e). See subtopic 6—Judicial Officers of Circuit Court.

³⁷² ILL. REV. STAT. ch. 110, §§ 1-94 (1961).

³⁷³ 394 Ill. 222, 223-4, 68 N.E.2d 287, 288 (1946).

(3) In *Ellman v. DeRuiter*, decided in 1952, where plaintiff sought to set aside a judgment at law after the expiration of thirty days, the Supreme Court said:³⁷⁴

While our present Civil Practice Act has not effected a complete amalgamation of the practice and procedure in common-law and suits in equity in this jurisdiction, it is our opinion that there has been a fusion sufficient to enable a court of law, when the occasion demands it, to apply equitable principles in administering the summary relief available under the motion which has been substituted for writ of error *coram nobis*. Stated differently, it is our belief that the motion may, under our present practice, be addressed to the equitable powers of the court, when the exercise of such power is necessary to prevent injustice.

(4) Following the *Ellman* case, the Illinois Civil Practice Act was revised in 1955, effective January 1, 1956, and established a uniform practice at law and in equity for the setting aside of judgments and decrees after the expiration of thirty days, as follows:³⁷⁵

Relief from final orders, judgments and decrees, after 30 days from the entry thereof, may be had upon petition as provided in this section. Writs of error *coram nobis* and *coram vobis*, writs of *audita querela*, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for said relief heretofore available, either at law or in equity, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order, judgment or decree from which relief is sought or of the proceedings in which it was entered. There shall be no distinction among actions at law, suits in equity and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.

(5) The Judicial Article of the Constitution of 1870 provides that “[t]he circuit court shall have *original jurisdiction of all cases in law and equity*.”³⁷⁶ In sharp contrast, the Judicial Article of 1961 provides that “[t]he Circuit Court shall have *unlimited original jurisdiction of all justiciable matters*.”³⁷⁷ Therefore, the jurisdictional distinction between law and equity will no longer exist, and the maintaining of separate law and equity dockets will no longer be necessary.

(6) At the present time, judges in the circuit courts of the State and judges in the Superior Court of Cook County sit in a double capacity—as judges at law and as chancellors in equity. Only equity cases may

³⁷⁴ 412 Ill. 285, 292, 106 N.E.2d 350, 353-4 (1952).

³⁷⁵ ILL. REV. STAT. ch. 110, § 72(1) (1961). As to writ of error *coram nobis* and bill of review, see FINS, *Unnecessary Successive Suits in Illinois Practice*, 6 JOHN MARSHALL L.Q. 469 (1941).

³⁷⁶ ILL. CONST. art VI, § 12.

³⁷⁷ Judicial Article of 1961, § 9.

be referred to a master in chancery,³⁷⁸ and the abolition of masters in chancery³⁷⁹ is another step in the direction of merger of law and equity jurisdiction, as all non-jury cases will be tried alike.

(7) The merger of law and equity jurisdiction will have no effect on the present right of trial by jury, as Section 5 of Article II of the Illinois Constitution of 1870 provides that "[t]he right of trial by jury as heretofore enjoyed, shall remain inviolate."

To bring the Illinois statutes in harmony with the Judicial Article of 1961, it will be necessary to amend Sections 1, 44(2) and 64 of the Illinois Civil Practice Act³⁸⁰ and to abrogate Rules 9, 10 and 11 of the Supreme Court of Illinois,³⁸¹ which acknowledge a distinction between law and equity jurisdiction and make provision therefor.

44. Broader Scope of Probate Practice

In *Howard v. Swift*,^{381a} the Supreme Court of Illinois reviewed the law pertaining to the jurisdiction of probate courts and said:^{381b}

The jurisdiction of the probate court is defined and restricted by section 20 of article 6 of the State constitution. So far as applicable to this case, section 20 provides: 'Said courts, when established, shall have original jurisdiction of all probate matters, the settlement of estates of deceased persons,' etc. The probate court, by virtue of the constitution, is therefore not a court of general jurisdiction, but its jurisdiction is circumscribed and restrained by the constitution. Any legislative acts which attempt to extend such jurisdiction beyond that conferred by the constitution are violative of the constitution. Such court has no general equitable jurisdiction but can only exercise equitable power within the zone conferred by the constitution. (*Hannah v. Meinshausen*, 299 Ill. 525; *People v. Seelye*, 146 id. 189; *Davis, Cory & Co. v. Chicago Dock Co.* 129 id. 180; *People v. Loomis*, 96 id. 377.) The probate court has no jurisdiction over trust estates. (*Dingman v. Beall*, 213 Ill. 238.) The law which purported to confer upon probate courts jurisdiction to supervise and control testamentary trusts created by wills proved and probated in probate courts was held by this court as not relating to a 'probate matter,' as defined by section 20, and it was held unconstitutional. (*In re Estate of Mortenson*, 248 Ill. 520; *Frackelton v. Masters*, 249 id. 30.) A contingent claim which has not developed into an absolute liability cannot be proved and allowed in the probate court against an estate. *Foreman Trust and Savings Bank v. Tauber*, 348 Ill. 280; *Chicago Title and Trust Co. v. Fine Arts Building*, 288 id. 142; *Pearson v. McBean*, 231 id. 536.

The liability sought to be imposed upon the decedent's estate is founded upon the alleged fraudulent and unlawful acts of the deceased while in his life-

³⁷⁸ *Flake v. Pretzel*, 381 Ill. 498, 46 N.E.2d 375 (1943).

³⁷⁹ Judicial Article of 1961, § 8.

³⁸⁰ ILL. REV. STAT. ch. 110, §§ 1, 44(2), 64(1961).

³⁸¹ ILL. REV. STAT. ch. 110, §§ 101.9, 101.10, 101.11 (1961).

^{381a} 356 Ill. 80, 190 N.E. 102 (1934).

^{381b} *Id.* at 84-5, 190 N.E. 104-5.

time acting as an officer and director of the Securities Company. We can not agree with the contention of the claimant that the cause of action stated is a money claim, equitable in its nature. The cause of action stated is clearly one of tort.

* * *

The claimant also contends that the language employed in sections 60 and 70 of the Administration act clearly comprehends the exhibiting in the probate court of all types of legal liabilities of the decedent, both *ex contractu* and *ex delicto*. In view of what we have heretofore said, if we are to give such sections the meaning urged by the claimant, such sections, in so far as they attempt to confer upon the probate court jurisdiction to hear and determine actions *ex delicto*, would be violative of section 20.

The claimant was not without remedy even though his case was in tort. The circuit court, by section 12 of article 6 of our constitution, has original jurisdiction of all causes in law and equity. Under this constitutional provision the circuit court has jurisdiction of actions against administrators and executors to enforce the legal liabilities of the decedent regardless of the character or form of the action, and such jurisdiction is not impaired either by section 20 or the statute conferring original jurisdiction on the probate court 'of all probate matters' and 'the settlement of estates of deceased persons.' *Darling v. McDonald*, 101 Ill. 370; *Roberts v. Flatt*, 142 id. 485; *Morse v. Pacific Railway Co.*, 191 id. 356; *Starrett v. Brosseau*, 208 id. 408.

In view of the fact that under the Judicial Article of 1961, all probate matters will be handled by the circuit courts which will have "unlimited original jurisdiction of all justiciable matters," the scope of probate practice will include claims *ex contractu*, *ex delicto*, legal, equitable and trust matters without limitation.

45. Final Order Is "Judgment" Not "Decree"

Historically, the last order in an action at law was denominated a "judgment" and the last order in a suit in equity was denominated a "decree." In the Illinois Civil Practice Act, which deals with actions at law and in equity, the designation "judgment" alone is employed in some sections of the Act,³⁸² and the designation of "judgment" and "decree" is used simultaneously in other sections of the Act.³⁸³ The Federal Rules of Civil Procedure have adopted the designation of "judgment" for all cases—in equity as well as at law—and have completely abandoned the designation of "decree."³⁸⁴ The Judicial Article of 1961 provides for appeals from the "*final judgments* of the circuit

³⁸² ILL. REV. STAT. ch. 110, §§ 5, 13.4, 16, 20, 22,23,27.1,29,44,46,53,56,71 (1961).

³⁸³ ILL. REV. STAT. ch. 110, §§ 8,10,14,50,57,57.1,64,68.3,72,73,74,75,76,77,78,82,87,88,89,92 (1961).

³⁸⁴ FED. R. CIV. P. 54,55,56,57,58,59,60,62,68,70.

courts"³⁸⁵ and for appeals in *all cases*, other than those appealable directly to the Supreme Court, to the Appellate Court from "*final judgments*" of a circuit court.³⁸⁶ It is, therefore, clear that the designation of "decree" is not intended to be used after January 1, 1964, when the Judicial Article becomes effective. That this uniform nomenclature was deliberately chosen is evident by the fact that, in dealing with the enforcement of orders entered by Illinois courts *prior* to January 1, 1964, paragraph 5(c) of the Schedule of the Judicial Article of 1961 refers to "judgments and decrees" theretofore entered by the predecessor courts, as follows:

Each court into which jurisdiction of other courts is transferred shall succeed to and assume jurisdiction of all causes, matters and proceedings then pending, with full power and authority to dispose of them and to carry into execution or otherwise to give effect to all orders, judgments and decrees theretofore entered by the predecessor courts.

Furthermore, the fact that the uniform terminology of "final judgment," as used in the Judicial Article of 1961 pertaining to appeals in all cases, was deliberately chosen is apparent when compared with Sections 74, 75, 76, 77, 78, 82, 87, 88, 89 and 92 of the Illinois Civil Practice Act,³⁸⁷ all of which sections also deal with the subject of appeal and in all of which sections "judgment" and "decree" are employed simultaneously.

46. Rule Making Power of Supreme Court

The Judicial Article of the Constitution of 1870 does not mention anything pertaining to rule-making powers of the Supreme Court. However, the Supreme Court has decided that rule-making is part of its inherent powers and that it needs no express authorization in order to make rules pertaining to practice and procedure in the courts of the State.³⁸⁸ Accordingly, there are now in effect a number of rules promulgated by the Supreme Court of Illinois regulating practice and procedure in the Illinois trial and reviewing courts. Since rule-making power is inherent in the Supreme Court, no express authorization is necessary, and the Court may, under the Judicial Article of 1961, con-

³⁸⁵ Judicial Article of 1961, § 5.

³⁸⁶ *Id.* § 7.

³⁸⁷ ILL. REV. STAT. ch. 110 (1961).

³⁸⁸ *Gyure v. Sloan Valve Co.*, 367 Ill. 489, 11 N.E.2d 963 (1937); *Winning v. Winning*, 366 Ill. 57, 7 N.E.2d 750 (1937); *Hallberg v. Goldblatt Bros.*, 363 Ill. 25, 1 N.E.2d 220 (1936); *Ginsberg v. Ginsberg*, 361 Ill. 499, 198 N.E. 432 (1935); *People v. Cowdrey*, 360 Ill. 633, 196 N.E. 838 (1935); *People v. Callopy*, 358 Ill. 11, 192 N.E. 634 (1934).

tinue to promulgate rules of practice and procedure under its inherent authority, as it has been doing for many years.

47. *Licensing of Attorneys*

The Judicial Article of 1870 does not mention anything pertaining to the licensing of attorneys at law by the Supreme Court. However, the Supreme Court has decided that the licensing of attorneys is part of its inherent power and that it needs no express authorization therefor.³⁸⁹ The Judicial Article of 1961, like its predecessor, does not mention anything pertaining to the licensing of attorneys at law, but, since this power is inherent in the Supreme Court, no express authorization is necessary, and the Court may continue to exercise its authority in the licensing of attorneys at law as it has been doing heretofore.

48. *Supreme Court Commissioners*

As to censure, suspension and disbarment of attorneys at law in this State, the Supreme Court of Illinois operates through appointed commissioners,³⁹⁰ who hear evidence and report their findings and recommendations to the Supreme Court for decision.³⁹¹ The Supreme Court also has original jurisdiction to hold laymen in contempt for the unauthorized practice of law,³⁹² and when a question of fact arises in such proceeding, the Supreme Court refers the matter to a commissioner for the hearing of evidence and the commissioner then reports his findings and recommendations to the Supreme Court for decision.³⁹³

³⁸⁹ *In re Anastaplo*, 18 Ill.2d 182, 163 N.E.2d 429 (1960); *In re Latimer*, 11 Ill.2d 327, 143 N.E.2d 20 (1957); *In re Anastaplo*, 3 Ill.2d 471, 121 N.E.2d 826 (1954); *In re Frank*, 293 Ill. 263, 127 N.E. 640 (1920); *In re Day*, 181 Ill. 73, 54 N.E. 646 (1899).

³⁹⁰ ILL. SUP. CT. R. 59.

³⁹¹ For example, see *In re Browning*, 23 Ill.2d 483, 179 N.E.2d 14 (1962); *In re Crane*, 23 Ill.2d 398, 178 N.E.2d 349 (1961); *In re Ahern*, 23 Ill.2d 69, 177 N.E.2d 197 (1961); *In re Fuma*, 22 Ill.2d 429, 176 N.E.2d 779 (1961); *In re Bodkin*, 21 Ill.2d 458, 173 N.E.2d 440 (1961); *In re Hansen*, 21 Ill.2d 326, 172 N.E.2d 772 (1961); *In re Eaton*, 14 Ill.2d 338, 152 N.E. 2d 850 (1958); *In re McCallum*, 391 Ill. 400, 64 N.E.2d 310 (1945).

³⁹² *People v. Barasch*, 21 Ill.2d 407, 173 N.E.2d 417 (1961); *People v. Schafer*, 404 Ill. 45, 87 N.E.2d 773 (1949); *People v. Tinkoff*, 399 Ill. 282, 77 N.E.2d 693 (1948); *People v. Novotny*, 386 Ill. 536, 54 N.E. 2d 536 (1944); *People v. Goodman*, 366 Ill. 346, 8 N.E.2d 941 (1937); *People v. Chicago Motor Club*, 362 Ill. 50, 199 N.E.1 (1935); *People v. Motorists' Ass'n*, 354 Ill. 595, 188 N.E. 827 (1933); *People v. Association of Real Estate Tax-Payers*, 354 Ill. 102, 187 N.E. 823 (1933); *People v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901 (1931). See *In re Bhd. of R.R. Trainmen*, 13 Ill.2d 391, 150 N.E.2d 163 (1958).

³⁹³ For example, see *People v. Barasch*, 21 Ill.2d 407, 173 N.E.2d 417 (1961), where the Honorable Roger J. Kiley, Justice of the Appellate Court of Illinois for the First

Section 8 of the Judicial Article of 1961 provides that "there shall be no masters in chancery or other fee officers in the judicial system." Since the terms "special commissioner" and "masters in chancery" have been used interchangeably,³⁹⁴ the argument has been advanced that, under the Judicial Article of 1961, the Supreme Court of Illinois will not be able to employ these commissioners in connection with disciplinary action involving the practice of law. This contention finds no support in the history of the Judicial Article of 1961. The insistence upon abolition of masters in chancery in the trial courts was the result of the undesirable "fee system" whereby litigants were, in many cases, compelled to pay large sums to Masters in Chancery. On the other hand, commissioners appointed by the Supreme Court in disciplinary proceedings have always devoted their time and energies gratuitously, as a public service, without any compensation whatsoever. The prohibition in the Judicial Article of 1961 against "masters in chancery" was not intended for or directed against commissioners of the Supreme Court and should have no application to them.

49. Clerks of Court

At present, the selection of clerks of the various courts, their respective terms and their compensation is governed by provisions contained in two different Articles of the Illinois Constitution of 1870 (Article VI, entitled "Judicial Department" and Article X, entitled "Counties") and in a number of Acts spread in various chapters of the Illinois Statute book. Thus, the Clerk of the Supreme Court is elected for a term of six years.³⁹⁵ His salary is fixed by statute and paid by the State.³⁹⁶ Clerks of the Appellate Courts are elected for a term of six years.³⁹⁷ They receive no salaries and, as compensation, retain the statutory fees which are paid to them by litigants. However, beginning with November, 1962, Clerks of the Appellate Courts will (by virtue of a statutory amendment which was approved on May 16, 1961) become salaried officers paid by the State and the fees and costs

District, acted as special commissioner for the Supreme Court of Illinois. See also *In re Bhd. of R.R. Trainmen*, 13 Ill.2d 391, 150 N.E.2d 163 (1958), where the Honorable Charles H. Thompson, a former Justice of the Supreme Court of Illinois, acted as special commissioner for the Supreme Court of Illinois.

³⁹⁴ *Price v. Seator*, 337 Ill. App. 248, 85 N.E.2d 848 (1949), and cases therein cited.

³⁹⁵ ILL. CONST. art. VI, § 10; Ill. Rev. Stat. ch. 46, § 28 (1961).

³⁹⁶ ILL. REV. STAT. ch. 53, § 29 (1961).

³⁹⁷ ILL. REV. STAT. ch. 37, § 27 (1961).

which the Clerks will receive will be paid into the State Treasury.³⁹⁸

Clerks of the circuit courts are elected for a term of four years.³⁹⁹ Their salaries (in counties other than Cook) are fixed by the county boards and paid by the respective counties.⁴⁰⁰ Clerks of the county courts are elected for a term of four years⁴⁰¹ and their salaries (in counties other than Cook) are fixed by the county boards and paid by the respective counties.⁴⁰² Clerks of the probate courts are elected for a term of four years⁴⁰³ and their salaries (in counties other than Cook) are fixed by the county boards and paid by the respective counties.⁴⁰⁴

Clerks of city, village and town courts are elected for a term of six years and their salaries are fixed and paid by the respective municipalities in which the courts are situated.⁴⁰⁵ The Clerk of the Municipal Court of Chicago is elected for a term of six years. His salary is fixed by the City of Chicago. The salary may be increased by the City Council of the City of Chicago.⁴⁰⁶ Clerks of municipal courts are elected for a term of four years. Their salaries are fixed by statute and paid by the municipality wherein the court is located. The salary may be increased by the city council of the municipality.⁴⁰⁷

The Clerk of the Superior Court of Cook County is elected for a term of four years.⁴⁰⁸ The Clerk of the Criminal Court of Cook County is elected for a term of four years.⁴⁰⁹

As to the courts of Cook County, the salaries of the respective Clerks of the Circuit Court, Superior Court, Criminal Court, County Court and Probate Court are fixed by statute and paid by the County of Cook.⁴¹⁰

As to the clerks of courts of record of Cook County, Section 9 of Article X of the Illinois Constitution of 1870 provides:

³⁹⁸ ILL. REV. STAT. ch. 37, §§ 27,49 (1961).

³⁹⁹ ILL. CONST. art. X, § 8.

⁴⁰⁰ ILL. REV. STAT. ch. 53, § 37a (1961). It should be noted that Section 10 of Article X of the Illinois Constitution provides that "said compensation shall be paid only out of, and shall in no instance exceed, the fees actually collected."

⁴⁰¹ ILL. CONST. art. VI, § 18.

⁴⁰² ILL. REV. STAT. ch. 25, § 2; ch. 53, § 37a (1961).

⁴⁰³ ILL. REV. STAT. ch. 37, § 310 (1961).

⁴⁰⁴ ILL. REV. STAT. ch. 37, § 319; ch. 53, § 37a (1961).

⁴⁰⁵ ILL. REV. STAT. ch. 37, § 339 (1961).

⁴⁰⁸ ILL. CONST. art. VI, § 27.

⁴⁰⁶ ILL. REV. STAT. ch. 37, § 369 (1961).

⁴⁰⁹ ILL. REV. STAT. ch. 46, § 2-17 (1961).

⁴⁰⁷ ILL. REV. STAT. ch. 37, §§ 453-4 (1961).

⁴¹⁰ ILL. REV. STAT. ch. 53, § 49 (1961).

The clerks of all the courts of record, the treasurer, sheriff, coroner and recorder of deeds of Cook county, shall receive, as their only compensation for their services, salaries to be fixed by law, which shall in no case be as much as the lawful compensation of a judge of the circuit court of said county, and shall be paid, respectively, only out of the fees of the office actually collected. All fees, perquisites and emoluments (above the amount of said salaries) shall be paid into the county treasury. The number of the deputies and assistants of such officers shall be determined by rule of the circuit court, to be entered of record, and their compensation shall be determined by the county board.

Section 20 of the Judicial Article of 1961 provides:

The General Assembly shall provide by law for the selection by the judges or election, terms of office, removal for cause and salaries of clerks and other non-judicial officers of the various courts; provided that a clerk shall be selected or elected for each Appellate Court District.

50. *State's Attorneys*

The Judicial Article of the Constitution of 1870 provides for a State's Attorney to be elected in each county every four years.⁴¹¹ The Judicial Article of 1961 provides likewise and further specifies that the State's Attorney shall be a "licensed attorney-at-law of this State."⁴¹² This express requirement, however, is merely declaratory of the case law on the subject, as the Supreme Court of Illinois has decided that a State's Attorney must be a licensed attorney-at-law of this State.⁴¹³

51. *Formalism in Writs and in Indictments and Informations Not Required*

The Judicial Article of the Constitution of 1870 provides that:

All process shall run: *In the name of the People of the State of Illinois*; and all prosecutions shall be carried on: *In the name and by the authority of the People of the State of Illinois*; and conclude: *Against the peace and dignity of the same.*⁴¹⁴

As a result of these requirements, many writs, indictments and informations have been held invalid.⁴¹⁵ The Judicial Article of 1961 has

⁴¹¹ ILL. CONST. art. VI, § 22.

⁴¹² Judicial Article of 1961, § 21.

⁴¹³ *People v. Benefiel*, 405 Ill. 500, 91 N.E.2d 427 (1950); *People v. Munson*, 319 Ill. 596, 150 N.E. 280 (1925).

⁴¹⁴ ILL. CONST. art. VI, § 33. The italics are in the text of the Constitution. Similar provisions were contained in Section 7 of Article IV of the Constitution of 1818 and in Section 26 of Article V of the Constitution of 1848.

⁴¹⁵ *People v. Wleklinski*, 25 Ill. App. 2d 233, 166 N.E.2d 469 (1960); *People v. Neal*, 9 Ill. App.2d 562, 133 N.E.2d 771 (1956); *People v. Whitmer*, 243 Ill. App. 244 (1927); *People v. Martin*, 180 Ill. App. 578 (1913); *Wallahan v. Ingersoll*, 117 Ill. 123, 7 N.E. 519

completely omitted the above provision, thus making the use of formal language in process and in pleadings in criminal cases unnecessary.

52. *Inconsistent Statutes and Rules Invalid*

The Judicial Article of 1961 provides:⁴¹⁶

After the adoption of this Article the General Assembly shall enact such laws and make such appropriations and the Supreme Court shall make such rules as may be necessary or proper to give effect to its provisions.

It is expected that prior to January 1, 1964, the Illinois statutes and rules of the Supreme Court will be harmonized with the Judicial Article of 1961.

The Judicial Article of 1961 further provides:⁴¹⁷

Except to the extent inconsistent with the provisions of this Article, all provisions of law and rules of court in force on the Effective Date of this Article shall continue in effect until superseded in a manner authorized by the Constitution.

Therefore, the "provisions of law and rules of court in force on" January 1, 1964, will be invalid to the extent that they are "inconsistent with the provisions of this Article."⁴¹⁸ This is a safety valve to take care of any oversight in the process of harmonization prior to January 1, 1964.

53. *Alleviating the Backlog in the Trial Courts of Cook County*

In recent years the Circuit and Superior Courts of Cook County and the Municipal Court of Chicago have had large backlogs. Will the Judicial Article of 1961 alleviate this problem? To attempt to answer this question, the following factors must be taken into consideration.

1. At present, the Appellate Court for the First District, which handles appeals from decisions of the various trial courts of Cook County, is presided over by nine judges of the Circuit and Superior

(1886); *Sidwell v. Schumacher*, 99 Ill. 426 (1881); *People v. Gould*, 89 Ill. 216 (1878); *Parris v. People*, 76 Ill. 274 (1875); *Hay v. People*, 59 Ill. 94 (1871); *Illinois C. R.R. v. Herr*, 54 Ill. 356 (1870); *Boyd v. Cudderback*, 31 Ill. 113 (1863); *McFadden v. Fortier*, 20 Ill. 509 (1858); *Wight v. People*, 15 Ill. 417 (1854); *People v. Mississippi & Atl. R.R.*, 13 Ill. 67 (1851); *Donnelly v. People ex. rel. Bush*, 11 Ill. 552 (1850); *Ferris v. Crow*, 10 Ill. 96 (1848); *Reddick v. Cloud's Adm'rs*, 7 Ill. 670 (1845); *Whitesides v. People*, 1 Ill. 21 (1819).

⁴¹⁶ Judicial Article of 1961, Schedule, para. 1.

⁴¹⁷ *Id.* para. 2.

⁴¹⁸ *Ibid.*

Courts of Cook County. Under the Judicial Article of 1961, the Appellate Court for the First District will have twelve judges, all of whom will be elected as judges of the Appellate Court.⁴¹⁹ This will give the integrated Circuit Court of Cook County an automatic increase of nine judges.

2. At present, appeals from decisions of the Probate Court of Cook County, in cases involving less than \$3,000, are taken to the Circuit or Superior Court of Cook County for trial *de novo*.⁴²⁰ Under the Judicial Article of 1961, no such trials *de novo* will exist and to this extent additional judicial manpower will be available.

3. At present, appeals from decisions of justices of the peace and from police magistrates are taken to courts of record for trial *de novo*.⁴²¹ Under the Judicial Article of 1961, no such trials *de novo* will exist and to this extent additional judicial manpower will be available.

4. The county judge now has numerous non-judicial duties, such as the supervision of the election machinery of the county⁴²² and the organization of municipal corporations.⁴²³ The Judicial Article of 1961 provides that "until otherwise provided by law non-judicial functions vested by law in county courts or the judges thereof are transferred to the circuit courts."⁴²⁴ These non-judicial functions should be promptly removed from the judicial system, and to this extent, judicial manpower will be increased.

5. There are in Cook County 56 Masters in Chancery who work on a part-time basis and render valuable services in the taking of evidence and in the submission of findings of fact. These officers, who are paid for their services by the litigants, are abolished by the Judicial Article of 1961.⁴²⁵ The work which these Masters in Chancery now perform will fall upon the judges of the integrated Circuit Court of Cook County. To this extent the work of the court will be increased.

6. At present, decisions of administrative agencies are reviewable by the Circuit and Superior Courts of Cook County. Under the Judicial Article of 1961, the Legislature may provide for review of administrative decisions either by the circuit courts or Appellate Court.⁴²⁶

⁴¹⁹ Judicial Article of 1961, §§ 6,10,11. ⁴²⁰ ILL. REV. STAT. ch. 3, § 330 (1961).

⁴²¹ ILL. REV. STAT. ch. 79, §§ 116,173 (1961).

⁴²² ILL. REV. STAT. ch. 46 (1961).

⁴²³ ILL. REV. STAT. ch. 24; ch. 42; ch. 127½ (1961).

⁴²⁴ Judicial Article of 1961, Schedule, para. 5(a).

⁴²⁵ *Id.* § 8.

⁴²⁶ *Id.* §§ 7,9.

It is to be expected that the Illinois Legislature will provide for review by the Appellate Court of decisions of a number of administrative agencies, as the Congress of the United States has done with regard to decisions of the National Labor Relations Board, the Federal Trade Commission, the Securities and Exchange Commission, and many others.⁴²⁷ If the Illinois Legislature does so, additional judicial manpower will be available in the integrated Circuit Court of Cook County.

7. Under the Judicial Article of 1961, magistrates will have authority to hear cases which are now within the jurisdiction of justices of the peace and police magistrates, until otherwise prescribed by the General Assembly.⁴²⁸ The Legislature may wish to give magistrates authority to hear the following matters:

- (1) Uncontested matters in the probate of wills and the administration of decedent's estates.
- (2) Uncontested matters in the administration of minor's estates.
- (3) Uncontested matters in the administration of incompetent's estates.
- (4) Adoption of children.
- (5) Change of name.
- (6) Uncontested Torrens' cases.
- (7) Default or uncontested divorce and separate maintenance cases.⁴²⁹
- (8) Assessment of damages in defaulted cases.⁴³⁰
- (9) Prove-ups in uncontested condemnation cases.⁴³¹ Two judges in the Circuit Court of Cook County and two judges in the Superior Court of Cook County devote full time to condemnation cases, more than 95% of which cases are uncontested at the time of trial because the attorneys for the plaintiff and defendant have agreed on a price.
- (10) Prove-ups of tort cases against the City of Chicago.⁴³²
- (11) Pre-trial conferences, which now take the full time of three judges in the Superior Court of Cook County and of three judges in the Circuit Court of Cook County.
- (12) Assignment call.

⁴²⁷ See FINS, FEDERAL JURISDICTION AND PROCEDURE 176-7 (1960).

⁴²⁸ Judicial Article of 1961, Schedule, para. 9.

⁴²⁹ See ILL. REV. STAT. ch. 40, §§ 9,10 (1961).

⁴³⁰ See Section 71 of the Illinois Civil Practice Act, ILL. REV. STAT. ch. 110, § 71 (1961).

⁴³¹ See ILL. CONST. art. II, § 13. In condemnation cases the parties may waive a jury and consent to have the case tried by the court. *Chicago, M. & S.P. Ry. v. Hock*, 118 Ill. 587, 9 N.E. 205 (1886). In a condemnation case, the trial court has authority to enter a remittitur and to proceed therein as in any other civil case. *Department of Pub. Works & Bldg. v. Huff*, 15 Ill.2d 517, 155 N.E.2d 563 (1959).

⁴³² About 25 years ago a scandal took place involving the settlement of tort cases against the City of Chicago. As a result thereof, it has been established as a practice that all tort cases against the City of Chicago which are settled must be proved up and judgment entered thereon.

- (13) Arraignment in criminal cases.
- (14) Bail forfeiture in criminal cases.

The handling of these matters by magistrates would result in a substantial increase in judicial manpower in the integrated Circuit Court of Cook County.

On the whole, the Judicial Article of 1961, with cooperative implementation by the Legislature, could alleviate considerably the backlog in the trial courts of Cook County.

During the special session of the Illinois Legislature, which was held in October and November, 1961, seventeen new Superior Court judgeships were created, which judges will be chosen at the general election to be held on November 6, 1962.⁴³³ These new judges will definitely help to reduce the backlog. It is hoped that this increase in Cook County judgeships may be an indication of the Illinois Legislature's conscious realization of the shortage in judicial personnel which Cook County is facing as a result of a general increase in population and the growth and expansion of commerce and industry.

CONCLUSION

Much work lies ahead in the implementation of the Judicial Article of 1961:

On behalf of the General Assembly every section of the Illinois Statute book will have to be carefully examined to determine its applicability in the light of the new constitutional provisions. In the Civil Practice Act, literally every word will have to be reconsidered, a number of sections will have to be repealed and the phraseology in many other sections changed. The same is true of the Administrative Review Act. The many statutes now dealing with review of administrative agency decisions will have to be given careful consideration and revision. In the Probate Act there are many phrases, such as "probate court," "court of record," "trial de novo" and others, which will have to be deleted. The same is true of many other statutes. In the Election Code, the Municipal Code, and the School Code, references to the "county court" and "county judge" will have to be deleted and substitutions made. In the Criminal Code, references to "justices of the peace," "police magistrates" and "writs of error" will have to be deleted and revised. The Court Administrator Act will require re-examination and revision and so will the Costs Act.

⁴³³ ILL. REV. STAT. ch. 46, § 2-10 (1961 Supp.).

On behalf of the Supreme Court, it will be necessary to re-examine literally every word in the present Rules of the Court, to abrogate some, to amend some, and to draft some new rules, particularly with regard to interlocutory appeals and appeal periods in all cases.

The Uniform Appellate Court Rules, which are now geared to the present Supreme Court Rules, will require attention and amendment.

The task ahead is stupendous. It requires the assistance of the most able lawyers available, and it is the sacred duty of each member of the Bench and Bar to render services to the best of his ability so that this gigantic undertaking may be accomplished with the utmost of accuracy and in due time.

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