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Family Law - Survey of Illinois Law for the Year 1955-56

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some convictions, to see to it that full review was, in some way, made open to all. The Illinois Supreme Court acted promptly to effectuate the decision so attained,\textsuperscript{64} has now provided a reasonable opportunity within which all persons convicted prior to the date of the federal court holding may secure the benefit thereof,\textsuperscript{65} and has also indicated that it will not automatically apply doctrines relating to waiver and \textit{res adjudicata} to those whose convictions have heretofore been reviewed under the common law form of record.\textsuperscript{66} It is to be expected, therefore, that the work of the court in connection with reviewing convictions in criminal cases will, for a time at least, become an onerous responsibility unless the legislature acts to review the statute law on the subject.\textsuperscript{67}

\section*{V. FAMILY LAW}

The year's most celebrated decision in the area of domestic relations was that of \textit{Nudd v. Matsoukas},\textsuperscript{1} wherein suit was instituted by an unemancipated minor against his father to recover for injuries suffered in an automobile collision between a vehicle operated by the father and that of another. Although the father's actions were alleged to have been wilful and wanton in character, the trial court sustained a motion to dismiss on the ground that a minor could not maintain an action against his parent, which decision was affirmed by the Appellate Court for the First District.\textsuperscript{2} On appeal, the Supreme Court acknowledged the fact that the only justification for refusing an infant a right of action against his parent is that such litigation creates family strife. However, it took the position that the social benefit derived thereby was not sufficient to deprive a minor of redress for in-

\textsuperscript{64} On June 19, 1956, the court adopted Rule 65-1; S. H. A., Ch. 110, § 101.65-1.

\textsuperscript{65} Such persons have until March 1, 1957, to procure relief.

\textsuperscript{66} See, in particular, the holding in People v. Griffin, 9 Ill. (2d) 164, 137 N. E. (2d) 485 (1956), not in the period of this survey.


\textsuperscript{2} 6 Ill. App. (2d) 504, 128 N. E. (2d) 609 (1955).
juries flowing from the wilful and wanton misconduct of the parent. It is also worth noting that the court distinguished, but did not overrule, two prior decisions of the Appellate Courts on the ground that they involved simple negligence rather than wilful and wanton conduct.

The court did, however, reverse a position of long standing in the case of Laleman v. Crombez, wherein it appeared that a husband and wife had entered into a separation agreement waiving their respective interests in each other’s property. In a separate covenant, the latter released the former from his obligation to support her. In a subsequent suit by the husband to establish an interest in his wife’s property, the Supreme Court concluded that, while the waiver of support was invalid as contrary to public policy, the entire agreement was not thereby rendered void. This conclusion is in direct conflict with prior decisions of the court wherein the presence of a clause waiving support was held to invalidate the whole instrument.

Problems involving the welfare and custody of children required judicial attention in three cases. In the first, that of Fountaine v. Fountaine, the children in question were the offspring of a Caucasian mother and a Negro father. As the result of a divorce, the children were placed in the custody of the father; thereafter, the mother, having remarried, filed a petition requesting custody of the children. Although the mother was found to be a fit person by the trial court, it nevertheless denied her petition, apparently for the reason that the children possessed the physical characteristics of the Negro race and it felt that they should therefore be raised in a colored household. Upon appeal to the Appellate Court for the First District, the decision was reversed, that tribunal stating that the question of

4 6 Ill. (2d) 194, 127 N. E. (2d) 489 (1955), noted in 34 CHICAGO-KENT LAW REVIEW 185.
5 Lagow v. Snapp, 400 Ill. 414, 81 N. E. (2d) 144 (1948); and Lyons v. Schaneacher, 316 Ill. 569, 147 N. E. 440 (1925).
6 9 Ill. App. (2d) 482, 133 N. E. (2d) 532 (1956).
race cannot be controlling in custody matters. However, a somewhat different position was taken by the Appellate Court for the Second District in an adoption proceeding entitled Cooper v. Hinrichs.\(^7\) Therein, the Protestant petitioners sought to adopt children who had been reared in the Catholic faith. The trial court denied the petition despite the fact that the natural father of the children was a Protestant and had consented to the adoption. On appeal, the Appellate Court affirmed principally because of a statute\(^8\) which provides that, where possible in an adoption proceeding, custody of children should be awarded to individuals of the same religious faith. It appears that this is the first judicial interpretation accorded this statute by the reviewing courts of Illinois.

However, irrespective of the nature of the facts that influence the trial court in making its decision in such matters, it may be said that such facts must appear in the record as was decided in the case of Williams v. Williams.\(^9\) Therein, the Appellate Court for the First District held that error had been committed where the trial judge based his decision, at least in part, on the confidential report of a public welfare agency which did not become a part of the record.

Another interesting decision this last year was that of Hallett v. Hallett,\(^10\) wherein a wife had earlier obtained an Illinois divorce decree providing for alimony and support for her two children. Both parties then moved to California and the wife temporarily relinquished custody of the children to her ex-husband. Upon his refusal to return the children, a California court, at her instance, entered a temporary order awarding her the children and support for them at a rate less than was included in the original Illinois decree. The wife accepted payment under this order for approximately five years and then, upon re-

\(^7\) 8 Ill. App. (2d) 144, 130 N. E. (2d) 678 (1955), noted in 34 CHICAGO-KENT LAW REVIEW 248.
\(^9\) 8 Ill. App. (2d) 1, 130 N. E. (2d) 291 (1955), noted in 44 Ill. B. J. 571.
turning to Illinois, filed her petition in the original divorce action alleging that her ex-husband was in default in an amount equal to the difference between the payments provided for in the Illinois order and those incorporated in the California award. The Appellate Court for the Second District held that, inasmuch as the California order did not purport by its terms to affect the Illinois decree, it did not supersede it and, furthermore, the mere acceptance of payments did not evidence the fact that the wife had abandoned the provisions made for her by the Illinois court.

VI. PROPERTY

REAL AND PERSONAL PROPERTY

Although there are no cases of significance involving interests in personal property, there are several decisions of consequence concerning proprietary interests in real estate. In the case of Bradley v. Fox,1 the Illinois Supreme Court found it necessary to reconsider the rights of a surviving joint tenant who had murdered his co-tenant. This problem had initially been presented to the court some four years earlier in the case of Welsh v. James2 where it was decided that, inasmuch as the survivor took the whole interest by virtue of the original contract, constitutional proscription prevented a denial of his right of survivorship.3 Though confronted with this precedent, the court nevertheless concluded that one of the implied conditions of a joint tenancy is that neither party will acquire the interest of the other by murder. Hence, it was able to say that the survivor had destroyed the joint tenancy as well as the right of survivorship incident thereto and retained only an undivided one-half interest in the property as a tenant in common with the heir at law of the deceased.

2 2408 Ill. 18, 95 N. E. (2d) 872 (1951), noted in 29 Chicago-Kent Law Review 260.
3 Forfeiture of property as a penalty for the commission of crimes is prohibited by Ill. Const. 1870, Art. II, § 11.