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IV. CRIMINAL LAW AND PROCEDURE

Questions concerning the substance of criminal law are usually outnumbered by issues of procedure. The few cases which did involve substantive law produced no major changes. The defendant in *People* v. *Brown*,[1] charged with burglary, argued that the indictment should be quashed as the building which had been broken into and entered was a gasoline filling station rendering day and night service and was actually open for business at the time. The court did not agree that these facts, whether treated singly or taken together, would remove defendant's case from the scope of the statute.[2]

Another borderline situation arose in *People* v. *Berry*.[3] Defendant there was convicted of robbery for having pulled a gun on the players at a poker game and seizing the money stakes lying in the center of the playing table. It was contended that, at the moment of taking, the stakes were not the property of any one player and therefore could not possibly be stolen from any particular person. The court refused to undertake to define the ownership of the stakes in the uncompleted poker game as being unnecessary for the gist of the robbery lay in the use of force and intimidation in taking, from the presence of another person and against his will, property which belonged to him or was then in his care or custody.

The important issue before the Appellate Court in *City of Chicago* v. *Terminiello*,[4] as reported last year, had been whether the alleged breach of peace had actually occurred at a meeting which was public in character. Affirmation of the conviction[5] on further review by the Supreme Court now serves to empha-

1 397 Ill. 529, 74 N. E. (2d) 706 (1947).

2 Ill. Rev. Stat. 1947, Ch. 38, § 84.

3 399 Ill. 17, 76 N. E. (2d) 443 (1948), cert. den. 334 U. S. 821, 68 S. Ct. 1074, 92 L. Ed. 1043 (1948).

4 332 Ill. App. 17, 74 N. E. (2d) 45 (1947), noted in 26 CHICAGO-KENT LAW REVIEW 50.

5 400 Ill. 23, 79 N. E. (2d) 39 (1948), cert. granted — U. S. —, 69 S. Ct. 245, 93 L. Ed. 194 (1949).

size the importance of this element in any prosecution based on that particular section of the Chicago Municipal Code. A more controversial setting, found in *City of Chicago* v. *Murray*,[6] also throws light on this important characteristic element. Defendant there was charged with disorderly conduct growing out of an alleged breach of peace. It seemed that defendant's husband had become suspicious of her relationship with another man and had followed the two to a hotel room. Finding defendant and her paramour in a compromising position, the husband shot and killed the stranger but was acquitted. The wife was tried and convicted on the charge of disorderly conduct but asserted the judgment could not stand as the acts of the stranger and herself were attended by no publicity, no persons other than the actors themselves being present or affected. The Appellate Court could find no Illinois precedent for this situation but, persuaded by the interpretation given to similar ordinances in New York, Louisiana and Georgia, concluded that prosecution of defendant for disorderly conduct arising through breach of the peace was improper.[7]

No cases reported during the period of this survey raised any question concerning the procedure to be followed in connection with arrests, preliminary examinations or grand jury proceedings. There were, however, a few points of interest raised in connection with the sufficiency of indictments. In *People* v. *Henderson*,[8] the indictment for assault with intent to murder was drawn in the language of a local statute which prescribes the punishment but does not set forth the elements of the crime.[9] Defendant contended that the offense was not really a statutory

[6] 333 Ill. App. 233, 77 N. E. (2d) 452 (1947), construing Mun. Code 1939, Ch. 193, § 1(1).

[7] To reach this conclusion, the court had to reject the notion that the defendant's husband might be regarded as a third party disturbed by the acts in the hotel room. See 333 Ill. App. 233 at 237, 77 N. E. (2d) 452 at 454. The court also noted, in passing, that the same lack of the element of publicity would have made it impossible to prosecute for adultery or fornication: Ill. Rev. Stat. 1947, Ch. 38, § 46.

[8] 398 Ill. 348, 75 N. E. (2d) 847 (1947).

[9] Ill. Rev. Stat. 1947, Ch. 38, §§ 58-9.

crime but was, rather, a common law offense, so the indictment should conform to the common law rule that all felonies must be charged to have been "feloniously" committed.[10] By way of answer, the court pointed out that the statute was intended to be a codification of the criminal law; that under it many of the common law technical words no longer applied; and further, the term "felonious" had ceased to be an indispensable technicality, it now being taken merely in its ordinary non-technical sense of referring to some criminal purpose. It seems reasonably clear that the court thought the principle it announced applied to all crimes, not simply to the one at issue.[11]

A second problem, raised in the case of *People* v. *Nelson*,[12] concerned the question of whether or not the second count of an indictment was fatally defective when it alleged the time and place of the offense by reference to allegations set forth in the first count.[13] Contending that this was a fatal defect, defendant relied not so much on the argument that any description by reference was improper as upon the proposition that reference back was permissible only when it was sufficiently full to incorporate the matter going before into the count in which the reference was made.[14] The Illinois Supreme Court declared that sufficient incorporation by reference had been achieved since only one reference had appeared previously in the indictment.

The Illinois Supreme Court also found it necessary, in two cases, to explain the application to be given to the rule that charges of separate and distinct felonies should not be included

[10] The former rule is illustrated by Ervington v. People, 181 Ill. 408, 54 N. E. 981 (1899).

[11] Statutory requirements for sufficiency laid down in Ill. Rev. Stat. 1947, Ch. 38, § 716, would be satisfied either by stating the offense in terms of the statute creating the offense or prescribing the punishment, or any other terms so plain that the nature of the offense could be easily understood by the jury: People v. Grigsby, 357 Ill. 141, 191 N. E. 264 (1934).

[12] 399 Ill. 132, 77 N. E. (2d) 171 (1948).

[13] Specifically, the second count charged that the offense it described had occurred on "the day and year aforesaid, and at and within the County and State aforesaid."

[14] See, for example, Crain v. United States, 162 U. S. 625, 16 S. Ct. 952, 40 L. Ed. 97 (1896), or Noe v. People, 39 Ill. 96 (1866).

in the same count nor in different counts in the same indictment. In *People* v. *McMullen*,[15] the defendant had apparently broken into a building and had stolen two guns therefrom. One count in the indictment charged a burglary and two other counts charged larceny, alleging the theft of property from two different persons. In *People* v. *Griffin*,[16] the defendant was charged with murder under an indictment which contained six counts, five of which alleged the facts of the same fatal assault in different ways. Both defendants claimed the inclusion of the several counts in the two indictments violated rules of criminal pleading against the use of multiple counts. In both cases, the answer of the court was that, so long as the several charges referred to the same transaction, that type of pleading was not only permissible but even desirable in order to meet the varying aspects of the evidence or to cover completely the criminality of the acts that had occurred.

Questions concerning pre-trial rights guaranteed to an accused have continued to attract attention, particularly as they bear on the right to be informed of the effect of pleas offered by the accused when acting *pro se* and on the right to be advised of the opportunity to have court-appointed counsel where desirable, necessary or otherwise unobtainable by the accused.[17] The first point arose only once, in the case of *People* v. *Harwell*,[18] and was there disposed of by reference to the test formulated earlier in *People* v. *Childers*.[19] On the right to have counsel, however, the Illinois Supreme Court entertained no less than eleven appeals,[20] while the United States Circuit Court of Ap-

15 400 Ill. 253, 79 N. E. (2d) 470 (1948).

16 397 Ill. 456, 74 N. E. (2d) 691 (1947).

17 In general, see 26 CHICAGO-KENT LAW REVIEW 53 and 15 U. of Chi. L. Rev. 107 at 118-131.

18 398 Ill. 369, 75 N. E. (2d) 889 (1947).

19 386 Ill. 312, 53 N. E. (2d) 878 (1944).

20 People v. Evans, 397 Ill. 430, 74 N. E. (2d) 708 (1947); People v. Simpson, 397 Ill. 518, 74 N. E. (2d) 687 (1947); People v. Price, 397 Ill. 613, 74 N. E. (2d) 794 (1947); People v. Harrison, 397 Ill. 618, 74 N. E. (2d) 882 (1947); People v. Carter, 398 Ill. 336, 75 N. E. (2d) 861 (1947); People v. Easter, 398 Ill. 430, 75 N. E. (2d) 688 (1947); People v. Wilson, 399 Ill. 437, 78 N. E. (2d) 514 (1948);

peals heard one[21] and the United States Supreme Court passed on another.[22]

Apparently, these cases could be said to reflect a hope or expectation that some change in the law was about to occur, either from within the conscience of the Illinois court or, perhaps, imposed by a shift in the alignment of the members of the national supreme court on questions concerning this phase of due process. Such hopes, however, proved false because in none of the cases did the reviewing tribunals forsake the formulae laid down in *Betts* v. *Brady*[23] and in *Foster* v. *Illinois*.[24] It was still regarded to be no violation of due process, at least in non-capital cases, to require that a specific request for appointment of counsel should be made, accompanied by a statement on oath of the inability of the accused to procure such counsel for himself, as a necessary preliminary to any duty on the part of the trial court to provide counsel.[25]

A minority of the judges of the United States Supreme Court had pointed out that, although the State of Illinois allowed representation by counsel to everyone charged with a criminal offense and provided that representation if necessary, it was a prerequisite to the granting thereof that the accused should specifically ask for counsel in any case where he was unable to obtain representation for himself, the trial judge being excused of all duty to inform the accused of this right or the methods to be pursued for the perfection thereof. The assumption that the average accused person knew of such a right or could furnish the oath prescribed by law was, to them, an unrealistic assumption wholly at odds with the liberal tradition of the law. One

People v. Williams, 399 Ill. 453, 78 N. E. (2d) 512 (1948); People v. Saxton, 400 Ill. 257, 79 N. E. (2d) 601 (1948); People v. Ross, 400 Ill. 237, 79 N. E. (2d) 200 (1948); People v. Shoffner, 400 Ill. 174, 79 N. E. (2d) 200 (1948).

21 United States ex rel. Judd v. Ragen, 167 F. (2d) 802 (1948).

22 People v. Bute, 333 U. S. 640, 68 S. Ct. 763, 92 L. Ed. 735 (1948).

23 316 U. S. 455, 62 S. Ct. 252, 86 L. Ed. 1595 (1942).

24 332 U. S. 134, 67 S. Ct. 1716, 91 L. Ed. 1955 (1947).

25 Ill. Rev. Stat. 1947, Ch. 38, § 730.

month before the decision in the Bute case, the Illinois Supreme Court had delivered a lengthy review of the entire subject and, supported by the Foster case,[26] had reaffirmed its original position.[27] The vigor of the dissent in the Bute case, however, was not without some actual effect on the Illinois Supreme Court.

As is so often the case with legal reforms, changes frequently come immediately upon the heels of the most thorough and positive restatement of older views. It was not too surprising, therefore, to receive announcement from the Illinois Supreme Court that the rules of practice had been amended so as to require that in all non-capital criminal cases, wherein the accused was not at the time of arraignment represented by counsel, the court should, before receiving, entering or allowing the change of any plea to the indictment, advise the accused that he had a right to be defended by counsel; that, if he desired counsel and would state under oath that he was unable to employ such counsel, the court should appoint competent counsel to represent him; and further, that the court should not permit waiver of counsel or a plea of guilty by the accused until it found, from proceedings held in open court, that the accused (1) understood the nature of the charge against him, (2) was aware of the consequences of being found guilty thereon, (3) was cognizant of the fact that he had a right to counsel, and (4) that he understandingly waived such right. The judicial inquiry and the answers of the accused thereto must hereafter be included as part of the common law record of the case.[28]

Certain points concerning the actual trial of the issues in criminal cases might also be noted. It is, of course, well settled that an allegation of the value of the stolen property is a material item in an indictment charging the receiving of stolen property and the proof thereof is necessary in order to determine whether

[26] See note 24, ante.

[27] People v. Wilson, 399 Ill. 437, 78 N. E. (2d) 514 (1948).

[28] Rule 27a of the Rules of the Illinois Supreme Court. The amendment did not become effective until September 1, 1948.

the crime committed is a felony or a misdemeanor.[29] For this purpose, it has been held in Illinois that evidence of the "fair cash market value at the time and place of the theft" is proper.[30] In *People* v. *George*,[31] however, it was questioned whether testimony as to the original purchase price of the article, which testimony did not reveal the condition, quality, nor state of obsolescence at time of theft or receipt, was sufficient. It was held that original purchase price alone provided no criterion of actual fair cash market value and, no other testimony being available, the conviction had to be reversed.

The nature of the necessary proof of the corpus delicti in homicide cases was discussed in *People* v. *Manske*.[32] The prosecution is, of course, not permitted to rely solely upon extra-jural confessions made by the accused, even though they acknowledge guilt, for such confessions cannot be said to bear on the proof of any particular fact connected with the case. Defendant there contended that complete proof of the corpus delicti had not been made out as the prosecution was forced to rely solely on defendant's own incriminating testimony given at the trial to raise an inference that the death had occurred by criminal means. The conviction was affirmed when the court held that admissions made during the course of the trial were not to be placed in the same category with extra-jural confessions.

Issues concerning the sanity of the accused at the time of trial are not usually involved for most cases proceed on a presumption that the accused is sane. It was urged, in two cases,[33] that error had occurred in not ascertaining the sanity of the defendant before accepting his plea. The suggestion was rejected in each case for the court pointed out that the responsibility of raising the question of the sanity of the accused rested entirely

29 Ill. Rev. Stat. 1947, Ch. 38, § 492.

30 People v. Fagnini, 374 Ill. 161, 28 N. E. (2d) 95 (1940); People v. Butman, 357 Ill. 506, 192 N. E. 564 (1934).

31 398 Ill. 318, 76 N. E. (2d) 60 (1947).

32 399 Ill. 176, 77 N. E. (2d) 164 (1948).

33 People v. Putnam, 398 Ill. 421, 76 N. E. (2d) 183 (1947); People v. Shaffer, 400 Ill. 332, 79 N. E. (2d) 477 (1948).

with him or his counsel, it being the privilege of the accused and not a duty of the trial court to question the presumption.[34]

The danger of prejudice always provides a fertile source for appeal. Noteworthy, therefore, are four cases in which prejudicial error was claimed to have arisen by permitting bias to enter the mind of either the judge or jury. The proper procedure to be followed in substituting judges when the presiding judge of a criminal court is unable to continue to hear cases was concerned in *People* v. *Thompson.*[35] It was there claimed that only the clerk of the court had the power to redistribute the work of an inactive judge among his colleagues of concurrent jurisdiction, hence putting defendant on trial before a judge who was presiding only because of the request of the inactive judge was asserted to be erroneous. It was decided that the statute in question[36] contained language sufficiently flexible to permit judges to "interchange with each other" whenever they found it necessary or convenient.

Whether the trial court may refuse to permit exhibits used as an aid to testimony to be taken into the jury room is generally a matter of discretion for the trial judge. It may be prejudicial error to refuse such permission when exhibits possessing clear evidentiary value are offered. In *People* v. *Young,*[37] a trial for abortion, surgical instruments of a certain type admittedly incapable of accomplishing an abortion were used as an aid in describing instruments of another type which the accused was said to have actually used. When, at the end of the testimony, the instruments were offered in evidence and a request was made to send the same to the jury room, the trial court refused permission on the ground that the exhibits had already served all their evi-

34 Attention might also be called to the holding in People v. Cornelius, 332 Ill. App. 271, 74 N. E. (2d) 900 (1947), wherein it was pointed out that, if the accused does have his sanity determined prior to pleading, he must abide by the finding of the court in which the ruling was obtained, there being no right to a separate appeal or other review of such proceeding.

35 398 Ill. 114, 75 N. E. (2d) 345 (1947).

36 Ill. Rev. Stat. 1947, Ch. 37, §§ 338 and 338a.

37 398 Ill. 117, 75 N. E. (2d) 349 (1947).

dentiary purpose. The ruling was upheld as being with the discretionary power of the trial judge.

Perhaps no more obvious threat of prejudice exists than that which is contained in a trial or an investigation of a secret nature. Because of this, the defendant in *People* v. *Cooper*[38] very naturally contended her conviction for murder was improper when, after waiving jury trial and pleading not guilty, it was discovered that the trial judge had visited the scene of the crime, had privately interrogated witnesses, and had consulted notes made in connection with other trials. The conviction was reversed when the Illinois Supreme Court noted that the conduct of the trial judge had placed him in the dual position of judge and witness in the same case and had thereby violated the right of the accused to be confronted by the witnesses against her.[39]

Witnesses offered to support alibi defenses continue to provide surprise and embarrassment for the prosecution. The principal method presently utilized in this state to neutralize defenses of that character lies in the endeavor to impeach or discredit the alibi witnesses by exposure of a bad reputation through cross-examination. The distinction between permissible and prejudicial cross-examination lies in the fact that alibi witnesses, like other witnesses, may be asked about prior conviction for infamous crime but may not be asked about prior arrest, indictment, or conviction for non-infamous crime.[40] Violation of this principle was said to require a new trial, in *People* v. *Hoffman*,[41] even though the alibi witness, when answering other proper questions, had volunteered the facts which became the basis for improper questioning.

Efforts to improve the average juror's understanding of his duties and to enhance his ability to perform them have received attention, but the problem continues to be an unsolved one because,

[38] 398 Ill. 468, 75 N. E. (2d) 885 (1947).

[39] Ill. Const. 1870, Art. II, § 9.

[40] The credibility of a witness is not presumed to be affected by anything less than a conviction for an infamous crime: People v. Halkins, 386 Ill. 167, 53 N. E. (2d) 923 (1944).

[41] 399 Ill. 57, 77 N. E. (2d) 195 (1948).

to a certain extent, any solution is hampered by an obligation to avoid any type of indoctrination, either before or during the trial, which would implant bias or prejudice in the juror's mind. In this setting, the experiment discussed in *People* v. *Schoos*[42] deserves some attention for it concerned the use of a specially prepared instruction pamphlet, designated as a "jury primer," which was distributed to prospective jurors at the time of their call. The pamphlet contained definitions and other orientational material which could prove useful to the layman endeavoring to follow the trial of a criminal charge. It was distributed, and an introductory "lecture" was delivered by the presiding judge and the state's attorney, to the jurors when the panel was first assembled and before any of its members were selected for service in any given case.[43] The practice was objected to, however, on the ground that the instructional materials contained statements which, although commonplace to lawyers, would be likely to confuse and prejudice laymen. The objection was held sufficient to warrant reversal as the practice was said to impair the defendant's right to an impartial trial by jury.[44]

The judgment and sentence following upon a verdict of guilty should be specific and precise and beyond doubt insofar as the limitations of language will permit. Two situations arose illustrating the danger to be found in imprecise language. In *People* v. *Jackson*,[45] the defendant had been found guilty of robbery and, under the statute, the court had the discretion to fix a sentence ranging from one to twenty years.[46] The trial court stated that its "sentence" was that punishment should be from one to twenty years and that its "judgment" was that punishment should be from ten to twenty years. This, obviously, tended to confuse rather than elucidate the decision of the court. In the other case,

[42] 399 Ill. 527, 78 N. E. (2d) 245 (1948).

[43] A more complete description of the experiment is set forth in an article by the Hon. Julius Miner entitled "The Jury Problem," 37 Journ. Crim. Law & Criminology 1 or 41 Ill. L. Rev. 187 (1947).

[44] Ill. Const. 1870, Art. II, § 5.

[45] 399 Ill. 488, 78 N. E. (2d) 211 (1948).

[46] Ill. Rev. Stat. 1947, Ch. 38, § 802.

that of *People* v. *Dennison*,[47] the defendant stood convicted under two charges. A distinct sentence was fixed for each and it was stated that the two punishments should be "separate and in addition and not concurrently." It was held that the prisoner had a further right to know which punishment should precede and which should follow.

One final problem might be noted in connection with the sentence and it concerned the proper application of the Habitual Criminal Act.[48] The defendant in *People* v. *Kirkrand*[49] contended that the act had been improperly applied to him, his theory being that, as the statute was penal in character it should be strictly construed, and, being intended to apply only after a "first" conviction, should have no application to his case. The court, admitting that strict construction was called for, thought the obvious intention of the legislature was to increase punishment no matter how many prior convictions had occurred and resolved the appeal accordingly.

The nature and proper use for the petition in the nature of a writ of error coram nobis, as applied to criminal proceedings, has been a source of doubt and disagreement for years. Ostensibly all such petitions are now based on Section 72 of the Civil Practice Act[50]and should point out facts which were not properly presented at the time of the trial because of fraud, duress or excusable mistake, and which, if known at the time, would have prevented rendition or entry of judgment.[51] In application, however, it has remained unclear just exactly what the Illinois Supreme Court considers to be a standard for measuring diligence in discovering and presenting the full extent of the available defenses at the trial.[52] Much has been said to indicate that where the facts are

47 399 Ill. 484, 78 N. E. (2d) 232 (1948).

48 Ill. Rev. Stat. 1947, Ch. 38, § 602.

49 397 Ill. 588, 74 N. E. (2d) 813 (1947).

50 Ill. Rev. Stat. 1947, Ch. 110, § 196. See also People ex rel. Courtney v. Green, 355 Ill. 468, 189 N. E. 500 (1934).

51 People v. Ogbin, 368 Ill. 173, 13 N. E. (2d) 162 (1938); People v. Long, 346 Ill. 646, 178 N. E. 918 (1931).

52 See "A Study of the Illinois Supreme Court," 15 U. of Chi. L. Rev. 107, at 127-8.

known but have been withheld through the misjudgment of the defendant or his counsel, it is useless to seek relief in that form,[53] but the feeling persists that one can never be sure of the court's real attitude.

During the period of this survey, the gradual definition of the scope of coram nobis has been carried on in three more cases. In *Hawks* v. *People*,[54] the petitioner relied on an alleged improper admission of a confession given under duress but the court held that such fact, if true, was insufficient to necessarily prevent the entry of any judgment against the defendant as other evidence had been presented by the prosecution upon which the judgment might have been based. To be sufficient, the court said, the petition should not merely cast doubt on the propriety of the judgment that was passed but should show that it was improper to enter any judgment. In *Thompson* v. *People*,[55] the petition was rejected because the petitioner had not positively stated either that the facts were not known to him at the time of the trial or else that he had been prevented from asserting them by reason of fear or other cause imposed upon him.

Still another step was taken in *Schroers* v. *People*[56] toward completing, though perhaps not elucidating, the court's view as to the diligence required in the assertion of matters known at the time of trial. The defendant there had, some years before the murder for which he was convicted, received a serious brain injury which, according to the evidence, had tended to unbalance his mind although not enough to require a formal adjudication of insanity. After conviction, the State Medical Advisor discovered that the defendant was not mentally normal and, on the basis of this and

53 In People v. Dabbs, 372 Ill. 160, 23 N. E. (2d) 343 (1939), there was a failure to assert the presence of a mental defect of which there was constructive notice. The claim advanced in People v. Burns, 346 Ill. 449, 179 N. E. 129 (1931), was that the defendant did not understand the nature of the plea. The petition was denied in People v. McArthur, 283 Ill. App. 467 (1936), for the reason that the defendant did not see fit to call an available witness.

54 398 Ill. 281, 75 N. E. (2d) 686 (1947).

55 398 Ill. 366, 75 N. E. (2d) 767 (1947).

56 399 Ill. 428, 78 N. E. (2d) 219 (1948).

other medical statements, a motion in the nature of a writ of error coram nobis was presented to the court wherein the sentence was imposed. A reversal of the denial of this motion was ordered by the Supreme Court when it took the position that it was "conceivable" that the defendant's mental condition was present but unknown at the time of trial and, it being clearly a matter which would have prevented an informed court from accepting any plea from the defendant, the motion should have been granted. When compared with language to be found in the case of *People* v. *Dabbs,*[57] this attitude may seem difficult to understand. It is possible, however, that the factor which induced the court to reject the petition in the Dabbs case was the public character of the acts forming the basis for the evidence of mental incompetency disclosed therein. It would seem, then, that where there is evidence of mental deficiency in the form of a court record, the presence of that record should serve as constructive notice to all concerned but that no such constructive notice exists if the record is silent.[58]

Closely related to the problems posed in endeavoring to secure relief through a petition in the nature of coram nobis is the confusion that has arisen over the relationship this type of relief bears to the remedies of habeas corpus and writ of error. The past year disclosed what is probably the culmination of the confusion which has surrounded the availability of post-conviction hearings on matters of error occurring in the trial court.[59] Most prisoners, seeking post-conviction hearings, have directed their efforts toward obtaining writs of habeas corpus in the federal courts, before allowance of which they have been obliged to show that all available state remedies have been exhausted. The difficulty for them has been the fact that, in recent years, there has

[57] 372 Ill. 160, 23 N. E. (2d) 343 (1939).

[58] It is not easy, however, to bring about a reconciliation between the Schroers case and the holding in Thompson v. People, 398 Ill. 366, 75 N. E. (2d) 767 (1947), over the requirement of certainty of allegation concerning the defendant's ignorance of the facts in question.

[59] A review and an analysis of the recent decisions is contained in "A Study of the Illinois Supreme Court," 15 U. of Chi. L. Rev. 120-6. See also Katz, "An Open Letter to the Attorney General of Illinois," ibid., pp. 251-5.

been no consistent pattern of argument or decision as to what amounts to an exhaustion of state remedies but instead there has been what three justices of the United States Supreme Court saw fit to label a "merry-go-round" and a "procedural labyrinth made up entirely of blind alleys."[60]

As a result of this castigation, there are signs that the Attorney General has dropped the inconsistent position of urging that writs of error and motions in the nature of the common law writ of coram nobis compose parts of the available state remedies in situations where the petitioner seeks habeas corpus for an alleged denial of due process. In *United States ex rel. Mills* v. *Ragen*[61] and in *United States ex rel. Feeley* v. *Ragen,*[62] for example, no attempt was made to divert the court with arguments that clearly useless remedies should have been pursued before seeking habeas corpus from a federal tribunal. Less than two months after the Marino case, however, a federal court served notice, in *United States ex rel. Hanson* v. *Ragen,*[63] that any leniency in requiring pursuit of all available state remedies would not excuse laxity in applying for actual remedies within the appropriate period of limitation. The petitioner there had waited thirty-nine years to sue out his writ of habeas corpus. He claimed that relief by way of writ of error or by coram nobis was unavailable because of the lapse of time. The court simply announced that the rule of the Marino case was not to be applied in cases where the petitioner had waived his rights by not taking advantage of them when they were available.[64]

One final case merits notice as it presented an unusual situa-

60 See Marino v. Ragen, 332 U. S. 561 at 567, 68 S. Ct. 240 at 244, 92 L. Ed. 203 at 207 (1947).

61 77 F. Supp. 15 (1948).

62 166 F. (2d) 976 (1948).

63 166 F. (2d) 608 (1948).

64 Use of a motion to vacate judgment in lieu of a motion in the nature of a writ of error coram nobis was attempted in United States v. Moore, 166 F. (2d) 102 (1948), but relief was also denied because of a delay of eighteen years. While there is no limitation placed on the filing of this motion, the court felt that the long delay refuted any claim of reasonable diligence on the part of the petitioner.

tion calling for a construction of the Parole Act.[65] In *People ex rel. Richardson* v. *Ragen*,[66] a paroled prisoner had been inducted into military service shortly before the time when a recommendation for his final discharge was made to the State Division of Paroles. Pursuant to this recommendation, a certificate of discharge was issued and approved by the Governor but before it could be delivered to the prisoner he was rearrested for being absent without leave, for driving a stolen car, and for carrying a loaded revolver. He was surrendered to the state authorities under a parole violation warrant and was recommitted to the state penitentiary upon revocation of the order granting him his final discharge. The prisoner contended that his recommittment as a parole violator was improper as he had, upon his induction into service, been promised his final discharge within six weeks thereafter and further that, with the issuance of his discharge certificate, the parole authorities ceased to have any jurisdiction. The court, however, construed the statute to require actual delivery and receipt of the certificate by the parolee before jurisdiction would cease.

V. FAMILY LAW

Efforts made at a prior session of the Illinois legislature to halt the growing divorce rate, as evidenced by passage of Senate Bill 415 and other measures similarly designed,[1] have gone largely for naught for the Illinois Supreme Court, in the case of *Hunt* v. *County of Cook*,[2] declared the bills unconstitutional because contrary to the prohibition against special or local laws.[3] If wholesale reform is still believed necessary, it is apparent that any act passed must be state-wide in application and not limited in scope to Cook County.

At decidedly increasing intervals of time, a case comes up for appellate review which requires an interpretation of that para-

65 The case particularly concerned Ill. Rev. Stat. 1947, Ch. 38, § 807.
66 400 Ill. 191, 79 N. E. (2d) 479 (1948).
1 Laws 1947, p. 813; Ill. Rev. Stat. 1947, Ch. 37, § 105.1 et seq.
2 398 Ill. 412, 76 N. E. (2d) 48 (1947).
3 Ill. Const. 1870, Art. IV, § 22.