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hearing, or even a suggestion of a hearing on the serious charge that he had made."[53] Believing that due process of law, as guaranteed by the Fourteenth Amendment, had been denied and that the conviction and sentence was void, it ordered the prisoner discharged. The court warned that to "condone the methods evidenced in this case, is to invite grave injustice. There is one way to stop a practice that has become altogether too common—and that is to bring it to a conscious level where the public can scrutinize it and take such steps as are necessary to insure a true rendition of justice to all, regardless of race, color or creed."[54] The legal profession should be especially conscious of the validity of these remarks.

V. FAMILY LAW

The usual large array of interesting cases was lacking, this year, in the field of family law, but a few decisions are worthy of attention. Among such is the case of *LaRue* v. *LaRue*,[1] for it serves to reemphasize a distinction which should be remembered. The decree for divorce there granted to the wife directed payment to the plaintiff of a sum found due her on an unpaid loan between the parties. The defendant did not pay as ordered, so the ex-wife sought a rule to show cause why he should not be punished for contempt. The ex-husband answered by admitting his failure to pay but pleaded that, by reason of a prior adjudication in bankruptcy in which proceedings he had listed the debt, the divorce court lacked jurisdiction over the matter.[2] The lower court rejected the contention and found defendant to be in contempt. On appeal, the Appellate Court for the Second District ruled the contempt order improper.

It pointed out that certain money payments called for by divorce decrees are not dischargeable in bankruptcy, but it distinguished between the payment here provided for and one calling for the payment of alimony. Obligations of the latter kind are

53 86 F. Supp. 382 at 387.
54 86 F. Supp. 382 at 387.
1 341 Ill. App. 411, 93 N. E. (2d) 823 (1950).
2 Jones v. Alton & S. R. Co., 5 F. Supp. 532 (1934).

not subject to discharge except by payment,[3] but a provision in a divorce decree for the payment of a loan does not, by that fact, change the character of the obligation from that of an ordinary civil debt nor effect a change in the ordinary creditor-debtor status of the parties. Such being the case, a contempt order directing the incarceration of the defendant would be violative of the constitutional provision against imprisonment for debt.[4] While it is true that, under special circumstances, an equity court may imprison a person who refuses to abide by its decree,[5] even when the contempt is civil in character, that power is seldom used to force compliance with a decree calling for the payment of money.[6] There is even less reason for considering the use of the contempt power after a discharge in bankruptcy, as the equity court is then wholly without power to adjudge the defendant guilty.[7]

The much-litigated case of *Riddlesbarger* v. *Riddlesbarger*[8] again invites attention. The point presently at issue concerned the power of a divorce court to entertain a petition by the former wife for an allowance to cover attorney's fees for services rendered subsequent to the entry of the decree. The lower court dismissed the petition for an alleged want of jurisdiction, but the Appellate Court reversed. Statutory authority does exist to warrant trial court action in making an allowance to cover fees and expenses incurred in order to defend a decree as well as to enforce the payment of amounts covered thereby.[9] This the

[3] Audubon v. Shufeldt, 181 U. S. 575, 21 S. Ct. 735, 45 L. Ed. 1009 (1901); Welty v. Welty, 195 Ill. 335, 63 N. E. 161, 88 Am. St. Rep. 208 (1902); Barclay v. Barclay, 184 Ill. 375, 56 N. E. 636, 51 L. R. A. 351 (1900).

[4] Ill. Const. 1870, Art. 2, § 12.

[5] Ill. Rev. Stat. 1949, Vol. 1, Ch. 22, § 42. See also People v. LaMothe, 331 Ill. 351, 163 N. E. 3, 60 A. L. R. 316 (1928); People v. Zimmer, 238 Ill. 607, 87 N. E. 845 (1909).

[6] Tudor v. Firebaugh, 364 Ill. 283, 4 N. E. (2d) 393 (1936); Goodwillie v. Millimann, 56 Ill. 523 (1870).

[7] The effect of a bankruptcy adjudication on the power of an equity court to imprison for failure to pay a civil debt is discussed in Parker v. United States, 153 F. (2d) 66, 163 A. L. R. 379 (1946).

[8] 341 Ill. App. 107, 93 N. E. (2d) 380 (1950). The original decree granted to the husband, defendant herein, was set aside in 324 Ill. App. 176, 57 N. E. (2d) 901 (1944). A decree in favor of the plaintiff was upheld in 336 Ill. App. 226, 83 N. E. (2d) 382 (1948), abst. opin., and leave to appeal was denied.

[9] Ill. Rev. Stat. 1949, Vol. 1, Ch. 40, § 16.

defendant was willing to concede, but he claimed that, as he had paid the judgment prior to the wife's petition, the judgment had passed "beyond review, for the satisfaction thereof is the last act and end of the proceeding."[10] The higher court, in rejecting this contention, viewed the petition as a supplementary proceeding to be governed by general chancery rules,[11] even though filed in a divorce action. Under such rules, bills or petitions may be filed, after final decree, to enforce rights originally omitted or not put in issue, so long as the purpose thereof is not to avoid the original decree.[12] Support for that holding exists in certain other Illinois non-divorce cases.[13]

The divorce attorney may, at times, whistle for his supper with disappointing results, according to the case of *Hefner* v. *Hefner*.[14] It was there held that an unpaid attorney who had acted for the plaintiff in a divorce action, which suit had later been dismissed on stipulation by the parties without notice to the attorney, could not reinstate the case for the purpose of securing a determination as to his fees. The Appellate Court for the First District ruled that Section 16 of the Divorce Act[15] could not be construed as authorizing the court to order a client to pay his or her own attorney nor serve to support an order intended to bind both parties.[16] The attorney was left to an action at law predicated on the employment contract, for the

10 See In re Baby's Estate, 87 Cal. 200 at 202, 25 P. 405, 22 Am. St. Rep. 239 (1890).

11 Ill. Rev. Stat. 1949, Vol. 1, Ch. 40, § 16. See also Bowman v. Bowman, 64 Ill. 75 (1872).

12 Root v. Woolworth, 150 U. S. 401, 14 S. Ct. 136, 37 L. Ed. 1123 (1893).

13 Chicago Artesian Well Co. v. Connecticut Mut. Life Assur. Co., 57 Ill. 424 (1870); Eggers v. Adler, 248 Ill. App. 118 (1928); Prindeville v. Curran, 156 Ill. App. 278 (1910). In Eggers v. Adler, 248 Ill. App. 118 at 125, the court said: "The jurisdiction of a court of chancery over undisposed of matters does not end at the expiration of the term at which a particular final decree may be entered."

14 338 Ill. App. 179, 86 N. E. (2d) 885 (1949), noted in 27 CHICAGO-KENT LAW REVIEW 337.

15 Ill. Rev. Stat. 1949, Vol. 1, Ch. 40, § 16.

16 The court also termed the action an attempt to interfere, contrary to public policy, with a reconciliation of the parties: Watson v. Watson, 335 Ill. App. 637, 82 N. E. (2d) 671 (1948); Mayer v. Mayer, 320 Ill. App. 588, 51 N. E. (2d) 804 (1943); Labanauskas v. Labanauskas, 228 Ill. App. 273 (1923).

recent amendment to Section 16 was said not to aid in the situation.[17]

Legislative attempts to produce administrative reforms in the handling of divorce cases,[18] while still meeting the constitutional requirements emphasized by the Supreme Court in *Hunt* v. *County of Cook*,[19] were declared to be a failure in the case of *People ex rel. Bernat* v. *Bicek*.[20] The first statute had been stricken down because the contemplated reforms were limited to use in Cook County. The more recent act made the proposed reforms optional in any judicial circuit according to the vote of a majority of the judges thereof. While this change removed the statute from the category of special legislation, it foundered on the rock of unconstitutional delegation of legislative power. The Supreme Court expressed agreement with the social philosophy which had moved the legislature to act, but the existence of other constitutional faults[21] makes it doubtful whether any statute designed to effect those ends could be validly framed.

Only one case produced any development in the law relating to the rights of children. The present Adoption Act does not countenance the adoption of an adult person in Illinois,[22] but the lawful adoption elsewhere of a person who has reached his majority will, according to *McLaughlin* v. *People*,[23] permit the one so adopted to have the benefit of a child's exemption under the local inheritance tax act.[24] The facts there appeared to be that, some six months prior to her death, the testatrix had adopted

[17] Ill. Laws 1947, p. 818, S. B. No. 417, gave to the court a discretionary power to make the allowance as to fees payable directly to the attorney, on which allowance execution could issue as on any judgment.

[18] Ill. Rev. Stat. 1949, Vol. 1, Ch. 37, § 105.19, et seq.

[19] 398 Ill. 412, 76 N. E. (2d) 48 (1947), noted in 27 CHICAGO-KENT LAW REVIEW 62.

[20] 405 Ill. 510, 91 N. E. (2d) 588 (1950), noted in 38 Ill. B. J. 585.

[21] These were: (1) an invasion of the rule-making power of the Supreme Court as well as that vested in courts entitled to try divorce cases; (2) the granting of aid to religious groups to spread their faiths through the use of a tax-supported instrumentality; (3) the denial of substantive due process; and (4) the denial of adjective due process by reason of an absence of provisions for evidentiary safeguards.

[22] Ill. Rev. Stat. 1949, Vol. 1, Ch. 4, § 1—1 et seq.

[23] 403 Ill. 493, 87 N. E. (2d) 637 (1949), noted in 28 CHICAGO-KENT LAW REVIEW 174, 38 Ill. B. J. 292, and 1950 Ill. L. Forum 122.

[24] Ill. Rev. Stat. 1949, Vol. 2, Ch. 120, § 375.

the appellant, then forty-six years old, in accordance with Connecticut law. When it appeared that valuable Illinois real estate had passed to the adopted child, the state claimed an inheritance tax based on rates and exemptions applicable to a stranger to the blood.

While Illinois will, pursuant to the federal constitution,[25] give full faith and credit to an adoption decree of a sister state, treating it in the same manner as a local decree when determining rights of inheritance,[26] provided the status of the adopted child has not been acquired in violation of any express provision of the positive law of Illinois, that fact alone does not settle the question of tax liability. It is within the power of the state where realty is located to determine what restrictions, whether in the form of taxation or otherwise, are to be imposed on the right of inheritance, provided the tax so imposed is uniform as to the class upon which it operates.[27] It became necessary, therefore, to construe the phrase "a child or children legally adopted" as the same appears in the Illinois Inheritance Tax Act.[28]

The state contended that, adoption of an adult being impossible under Illinois law, the phrase necessarily referred only to those persons who had been legally adopted while still minors. The court, reviewing the history of inheritance tax laws in this state, ruled otherwise. At one time, the child's favorable exemption and lower tax rate had been limited to natural children or "any child or children adopted as such in conformity with the laws of Illinois."[29] The statute was amended, in 1919, so as to delete the last-quoted phrase and, in place thereof, the present words "any child or children legally adopted" were substituted. That change, said the court, was not the result of an oversight

[25] U. S. Const., Art. IV, § 1.

[26] McNamara v. McNamara, 303 Ill. 191, 135 N. E. 410 (1922), cert. den. 260 U. S. 734, 43 S. Ct. 95, 67 L. Ed. 487 (1922); VanMatre v. Sankey, 148 Ill. 536, 36 N. E. 628, 39 Am. St. Rep. 196, 23 L. R. A. 665 (1893); Keegan v. Geraghty, 101 Ill. 26 (1881).

[27] Hood v. McGehee, 237 U. S. 611, 35 S. Ct. 718, 59 L. Ed. 1144 (1915); Olmstead v. Olmstead, 216 U. S. 386, 30 S. Ct. 292, 54 L. Ed. 530 (1910); In re Estate of Speed, 216 Ill. 23, 74 N. E. 809, 108 Am. St. Rep. 189 (1905).

[28] Ill. Rev. Stat. 1949, Vol. 2, Ch. 120, § 375.

[29] Laws 1909, p. 312.

but represented a deliberate act of the legislature to extend the benefit of the section to any person, minor or adult, who had been validly adopted under the laws of a sister state.

VI. PROPERTY

REAL AND PERSONAL PROPERTY.

There is little of truly startling news to report concerning developments in the law of real property, but some new points have been made. Scientific progress which has been made in extracting crude oil from the earth produced one new problem. The practice of using re-pressuring methods to increase production from wells where the natural flow of oil has declined because of the exhaustion of original gas pressures is common enough to be recognized as conforming with reasonably prudent and competent operating procedures, but the right to the lessor of an oil interest to oppose such activities remained undecided until raised in the case of *Carter Oil Company* v. *Dees*.[1] The plaintiff-lessee there desired to convert an offset well on the defendant's property into a gas input well so as to restore pressure. Defendant had objected on the ground that the proposed action would cause a migration of oil underlying his property to the land of others. It was true that the oil driven off would be replaced by a return flow which could then be captured at a large profit to himself, but the lessor preferred, perhaps for tax reasons, to continue the traditional mode of production without the proposed re-pressuring.[2] The oil lease was silent as to methods of production, but the Appellate Court for the Fourth District found for the plaintiff in a declaratory judgment proceeding, stating that the conversion would not deprive the lessor of any portion of his royalty and

[1] 340 Ill. App. 449, 92 N. E. (2d) 519 (1950). Culbertson, J., wrote a dissenting opinion.

[2] It more frequently happens that it is the lessor who seeks to compel more intensive and diligent operation by the lessee. It would appear to be a rare case in which it is the lessee who is faced with the owner's objection to the use of modern techniques.