Chicago-Kent Law Review

Volume 31 | Issue 4 Article 3

September 1953

Recent Illinois Decisions

Chicago-Kent Law Review

RECENT ILLINOIS DECISIONS

ADOPTION—JUDICIAL PROCEEDINGS—WHETHER OR NOT COURT MAY WAIVE STATUTORY REQUIREMENT THAT CHILD TO BE ADOPTED MUST ACKNOWLEDGE HIS CONSENT THERETO IN OPEN COURT—The holding of the Appellate Court for the First District in the recent case of *Noel* v. *Olszewski*[1] emphasizes the mandatory nature of the statutory requirement that a child over fourteen years of age who is to be adopted in an Illinois proceeding must appear in open court and there acknowledge his written consent[2] if the court is to have jurisdiction to enter a valid decree of adoption. The action was one to establish title to realty in which the incompetent on whose behalf the action was being prosecuted died before a decree could be entered. Claiming to be sole heir of the incompetent, the intervening petitioner sought to be allowed to be substituted as plaintiff. The issue of heirship thereby presented was complicated by the fact that the incompetent, prior to his incompetency and death, had purported to adopt three other persons as his children and two of these, represented by a guardian *ad litem,* actively opposed the petition. Evidence showed that the adoption decree on which they relied expressly waived the statutory requirement that they appear in open court for the purpose of consenting to the adoption inasmuch as they were then residing in Poland. The trial court held the adoption decree valid and dismissed the intervening petition for want of equity.

On appeal by the intervenor, directly placing the validity of the adoption decree in issue, the attention of the Appellate Court was focussed upon the absence of the allegedly adopted children from the proceeding, leading to the holding that the adoption decree was void. The opinion in the case, first of its kind since the enactment of the new statute regulating adoption proceedings, rests upon three points, to-wit: (1) the statutory language is clear, and there is nothing in Section 3—3 of the Adoption Act to permit or to justify a waiver of appearance in open court; (2) a proceeding in Illinois for the adoption of children is one of *in personam* character wherein, absent proper consent as required by statute, the court may not obtain jurisdiction by substituted service; and (3) the consent given by a guardian *ad litem* in an adoption proceeding will not provide the "substantial compliance" with statutory requirements called for by the decision in *Hopkins* v. *Gifford.*[3] The instant holding, therefore, goes a long way toward establishing the mandatory nature of the statutory

[1] 350 Ill. App. 264, 112 N. E. (2d) 727 (1953).

[2] Ill. Rev. Stat. 1951, Vol. 1, Ch. 4, § 3—3.

[3] 309 Ill. 363, 141 N. E. 178 (1923). In that case, the children to be adopted had actually appeared in open court.

provisions[4] and merits close attention for the effect it may have on other war-generated adoption decrees.

DIVORCE—CUSTODY AND SUPPORT OF CHILDREN—WHETHER JURISDICTION OF DIVORCE COURT TO MODIFY CUSTODY PROVISIONS OF DIVORCE DECREE CONTINUES AFTER DEATH OF PARENT TO WHOM CUSTODY WAS AWARDED—Increased flexibility in procedure in certain custody cases is very likely to result from the recent Illinois Supreme Court decision in the case of *Jarrett* v. *Jarrett*.[1] A decree of absolute divorce had there awarded custody of a minor child to the wife. On her death two years later, the father filed a motion to amend the decree so as to provide that custody should be awarded to him. The maternal grandparent, with whom the child had lived prior to the divorce, filed an intervening petition seeking to secure custody. The Appellate Court for the Third District reversed a decree in favor of the intervenor and directed that custody be granted to the father. After petition for leave to appeal had been granted, the intervenor argued before the Supreme Court that the custody jurisdiction of the divorce court had terminated upon the death of the parent to whom custody had been awarded,[2] hence the proper remedy of the father was by way of a petition for a writ of habeas corpus. The Supreme Court affirmed, rejecting the intervenor's argument, and holding that the custody jurisdiction of a divorce court survives the death of the parent, thereby permitting it to continue to deal with custody problems.

Decisions in other jurisdictions formed the chief base for the intervenor's argument that death of a party to a divorce case terminates the proceeding altogether, both with regard to divorce and with regard to matters of custody and the like, since the latter are merely incidental to the former.[3] Looking to the Illinois statute, however, the Supreme Court found no express limitation upon the duration of the custody jurisdiction, but more nearly an implication that the jurisdiction should continue, for the statute states: "The court may, on application, from time to time, make such alterations in the . . . care, custody and support of the children, as shall appear reasonable and proper."[4] While no Illinois decision appears

[4] But see Dickholtz v. Littfin, 341 Ill. App. 400, 94 N. E. (2d) 89 (1950), noted in 29 CHICAGO-KENT LAW REVIEW 183, dealing with the right of the natural parent to withdraw a consent to adoption prior to entry of the decree.

[1] 415 Ill. 126, 112 N. E. (2d) 694 (1953), affirming 384 Ill. App. 1, 107 N. E. (2d) 622 (1952).

[2] Although the intervenor did not raise this question until the filing of a petition for rehearing in the Appellate Court, the point was not waived as it is permissible to attack jurisdiction of the subject matter at any time during the proceeding.

[3] See, for example, the cases of Stone v. Duffy, 219 Mass. 178, 106 N. E. 595 (1914), and Leclerc v. Leclerc, 85 N. H. 121, 155 A. 249 (1931).

[4] Ill. Rev. Stat. 1951, Vol. 1, Ch. 40, § 19.

to have limited this jurisdiction, there are persuasive statements in the case of *Stafford* v. *Stafford*[5] tending to support jurisdiction, and some cases exist in which the divorce court actually exercised jurisdiction to modify custody provisions after the death of one of the parties, although doing so without directly considering its power in that regard.[6] Indeed, although habeas corpus proceedings have been used under like circumstances,[7] two cases commenced in that form indicate that modification of custody arrangements ought to come from the court by which the decree was rendered.[8]

The Supreme Court has thus refused to follow the so-called "prevailing" view that custody jurisdiction must terminate along with divorce jurisdiction upon the death of one party to the proceedings.[9] In so doing, the decision seems entirely proper on principle for, while it would take a divorce action to invoke the custody jurisdiction of the court, the problem of determining what would be best for the welfare of the child is one which necessarily continues throughout the minority of the child and should not be made to depend upon the continued existence of both parents.[10] The instant decision, to say the least, possesses the virtue of giving an authoritative and definite declaration of law on the point.

PUBLIC SERVICE COMMISSIONS—HEARING AND REHEARING—WHETHER REHEARING PROVISION IN ILLINOIS PUBLIC UTILITIES ACT OPERATES TO CREATE A TWO-YEAR PERIOD OF REPOSE—Recently, in the case of *Illinois Bell Telephone Company* v. *Illinois Commerce Commission*,[1] the City of Chicago charged that the Illinois Commerce Commission lacked jurisdiction to consider certain rate schedules filed by the telephone company inasmuch as less than two years had elapsed since the granting of an earlier rate order in favor of the utility. The contention so advanced was based on the concluding sentence of Section 67 of the Illinois Public Utilities Act,[2]

5 299 Ill. 438, 132 N. E. 452 (1921).

6 Note particularly the cases of Lucchesi v. Lucchesi, 330 Ill. App. 506, 71 N. E. (2d) 920 (1947), and Price v. Price, 329 Ill. App. 176, 67 N. E. (2d) 311 (1946).

7 Smith v. Bruner, 312 Ill. App. 658, 39 N. E. (2d) 67 (1942); People ex rel. Good v. Hoxie, 175 Ill. App. 563 (1912).

8 People ex rel. Hanawalt v. Small, 237 Ill. 169, 86 N. E. 733 (1918), cited with approval in People ex rel. Burr v. Fahey, 230 Ill. App. 143 (1923).

9 See annotation in 74 A. L. R. 1352 at 1357.

10 This distinction was carefully made in the recent case of Cone v. Cone, — Fla. —, 62 So. (2d) 907 (1953).

1 Sub. nom. City of Chicago v. Ill. Commerce Commission ex rel. Ill. Bell Tel. Co., 414 Ill. 275, 111 N. E. (2d) 329 (1953).

2 Ill. Rev. Stat. 1951, Vol. 2, Ch. 111-2/3, § 71.

which reads: "Only one rehearing shall be granted by the Commission; but this shall not be construed to prevent any party from filing a petition setting up a new and different state of facts after two years, and invoking the action of the Commission thereon." The city had moved the commission to cancel certain rate schedules filed by the utility but its motion was denied.[3] On appeal from such denial, the city was successful in the trial court[4] but lost on further direct appeal to the Illinois Supreme Court[5] when that court, considering the spirit and purpose of the Illinois Public Utilities Act as a whole, concluded that the language in question did not constitute a two-year limitation on the right of a utility to seek revision of its rate structure.[6]

The Supreme Court, in arriving at that decision, while recognizing that no precise decision had previously been attained on the point, took into consideration the fact that objections of the type in question had been consistently overruled by the commission throughout a period of over thirty years and that the commission had never been directly reversed on that ground by any court. This pattern of conduct was deemed persuasive of an indication of the legislative intent in the matter since the legislature, although aware of these repeated rulings, had revised the Public Utilities Act once, and had amended it several times, without changing the language of the disputed sentence. The court also pointed out that this question had been passed upon, at least inferentially, in the case of *Chicago Railways Company* v. *City of Chicago,*[7] where it must have been considered as rejected, even though not discussed, since it involved a jurisdictional question.[8]

Despite this, the court, seeking for the legislative intent, approached the problem from a two-fold aspect. The first involved an analysis of the particular sentence when viewed in the light of the spirit and primary pur-

[3] The commission did, however, suspend the proposed new rates on other grounds, and the utility appealed from such holding.

[4] Ill. Rev. Stat. 1951, Vol. 2, Ch. 111-2/3. § 72 authorizes judicial review of any commission order at the instance of any party affected thereby.

[5] Ibid., § 73, provides for direct appeal.

[6] Actually, the court decided the city had no right to seek review of a favorable order even though such order passed on other grounds than those urged by the city. This aspect of the decision was more than mere dictum, however, since the same issue came before the court on an appeal taken by the utility, progressing through other trial stages but consolidated with the city's appeal when the matter reached the Supreme Court. The case also deals with important aspects of public utility law concerning the applicable base for rate-making purposes. Treatment thereof has been reserved for discussion elsewhere in this publication.

[7] 292 Ill. 190, 126 N. E. 585 (1920).

[8] At 414 Ill. 275, p. 280, 111 N. E. (2d) 329, p. 332, the court stated: "It was the rule then, as now, that it is the duty of this court to rule on a jurisdictional defect at any stage of the proceeding that such a defect became apparent."

pose of the Act itself. Since one such purpose was "to set up machinery for continuous regulation as changes in conditions require,"[9] it would seem obvious that a restrictive sentence such as the one in issue, if extended literally, would be directly opposed to the general purpose of maintaining a flexible system of regulation capable of coping with possible rapid and radical changes in conditions having bearing on a rate structure. The second aspect of approach had been utilized in the case of *American Steel Foundries* v. *Gordon*,[10] where it was pointed out that any particular clause of a statute ought to be construed in the light of the entire statute.[11] Accordingly, the court examined the whole statute, giving particular attention to two other sections thereof,[12] leading to the conclusion that if the sentence in issue was to be construed in the manner contended for by the city it would then be in conflict therewith. Reasoning of the character under consideration well illustrates the paramount importance of considering and resolving statutory ambiguities with a breadth of vision capable of permitting an unbiased comparative analysis of the relative importance of particular statutory provisions observed in their proper perspective.

SOCIAL SECURITY AND PUBLIC WELFARE—UNEMPLOYMENT COMPENSATION—WHETHER PERSONS FORCED INTO UNEMPLOYMENT BECAUSE OF A LABOR DISPUTE ARE ENTITLED TO UNEMPLOYMENT COMPENSATION BENEFITS WHEN THEIR EMPLOYER REPLACES THEM AT TIME OF RESUMPTION OF PRODUCTION—In the case of *Robert S. Abbott Publishing Company* v. *Annunzio*,[1] certain composing room employees in a publishing plant left their jobs because of a labor dispute with their employer. Without any settlement of that dispute, the employer began hiring other workers, and, within a period of several months, had the composing room fully staffed with normal production resumed. The replaced employees then made claim to unemployment compensation benefits, but relief was denied by a deputy administrator on the ground the unemployment existed because of a labor dispute.[2] Claimants then appealed to the Director of Labor who found that the circumstance of their continued unemployment had changed, that they were no longer unemployed due to a stoppage of work which existed

[9] 414 Ill. 275 at 281, 111 N. E. (2d) 329 at 333.

[10] 404 Ill. 174, 88 N. E. (2d) 465 (1949).

[11] See, in particular, 404 Ill. 174 at 180, 88 N. E. (2d) 465 at 468.

[12] Ill. Rev. Stat. 1951, Vol. 2, Ch. 111-2/3, § 36, prescribing the only method by which a utility may change its rates, contains no time limitation as to when rate schedules may be filed. Ibid., § 75, impliedly permits a utility to file a rate schedule within one year or less after rates have gone into effect.

[1] 414 Ill. 559, 112 N. E. (2d) 101 (1953).

[2] The decision rested on Ill. Rev. Stat. 1949, Vol. 1, Ch. 48, §223(d). A comparable provision appears in Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 434.

because of a labor dispute at the premises at which they were last employed, and were, therefore, entitled to the unemployment compensation benefits sought. This decision was affirmed on judicial review before a trial court and, on appeal by the employer to the Illinois Supreme Court,[3] that court also affirmed when it held that on replacement of the former employees and resumption of normal operations, a work stoppage because of a labor dispute could be regarded as at an end even though the dispute had not been settled in the normal fashion.

The problem in the instant case, arising under former Section 7(d) of the Unemployment Compensation Act,[4] appears to be one which has never before been passed upon by the Supreme Court of this state, although it has arisen elsewhere,[5] and the view adopted accords with the majority view on the point. In only one case, that of *Board of Review* v. *Mid-Continent Petroleum Corporation,*[6] has a different result been achieved, and the holding therein may be said to be discredited by the fact that the claimants there concerned were not represented by counsel, that two judges dissented from the holding therein, and because the statute involved was subsequently modified.[7]

It should be noted, however, that previously, when construing the statutory phrase "stoppage of work which exists because of a labor dispute," the Illinois court has placed emphasis on the presence of a "labor dispute" as the ground for denial of benefits,[8] particularly since it once expressed the belief that the legislature did not intend "to finance strikes out of unemployment compensation funds."[9] The instant holding reflects a change, for the emphasis has now been placed on the presence, or

[3] Ibid., Vol. 1, Ch. 48, § 230. See also Ill. Rev. Stat. 1951, Vol. 1, Ch. 48, § 520.

[4] See note 2, ante.

[5] Sakrison v. Pierce, 66 Ariz. 162, 185 P. (2d) 528, 173 A.L.R. 480 (1947); M. A. Ferst Limited v. Huiet, 78 Ga. App. 855, 52 S.E. (2d) 336 (1949); Carnegie-Illinois Steel Corporation v. Review Board, 117 Ind. App. 379, 72 N.E. (2d) 662 (1947); Saunders v. Maryland Unemployment Compensation Board, 188 Md. 677, 53 A. (2d) 579 (1947); Lawrence Baking Company v. Michigan Unemployment Compensation Commission, 308 Mich. 198, 13 N.W. (2d) 260, 154 A.L.R. 660 (1944); Magner v. Kinney, 141 Neb. 122, 2 N.W. (2d) 689 (1942); Deshler Broom Factory v. Kinney, 140 Neb. 889, 2 N.W. (2d) 332 (1942); In re Steelman, 219 N.C. 306, 13 S.E. (2d) 544 (1941). Contra: Board of Review v. Mid-Continent Petroleum Corporation, 193 Okla. 36, 141 P. (2d) 69 (1943).

[6] Board of Review v. Mid-Continent Petroleum Corporation, 193 Okla. 36, 141 P.(2d) 69 (1943).

[7] Okla. Laws 1936, Ch. 52, § 5 (c) (2) (d). Compare with Okla. Stat. Ann. 1937, 1952 Supp., Tit. 40, § 215 (c) (2) (d).

[8] American Steel Foundries v. Gordon, 404 Ill. 174, 88 N.E. (2d) 465 (1949); Fash v. Gordon, 398 Ill. 210, 75 N.E. (2d) 294; Local Union v. Gordon, 396 Ill. 293, 71 N.E. (2d) 637 (1947); Walgreen Company v. Murphy, 386 Ill. 32, 53 N.E. (2d) 390 (1944).

[9] Walgreen Company v. Murphy, 386 Ill. 32 at 36, 53 N.E. (2d) 390 at 393 (1944).

absence, of a "stoppage of work," without regard to the fundamental cause thereof, so as to make the claimant "unemployed" if the plant or department is back in normal production. If the test of ineligibility for benefits lies in some "fault" on the part of the employee,[10] it is rather strange to find that test being reversed merely because the employer has been able to resume production without the aid of the recalcitrant striking employee and where the strike continues, or has been abated, without an actual settlement.

WATER AND WATER COURSES—NATURAL WATER COURSES—WHETHER LESSOR OF LAND LEASED FOR PURPOSES OF DRILLING FOR OIL MAY RECOVER FOR CORRUPTION OF WATER SUPPLY WITHOUT PROOF OF NEGLIGENCE ON PART OF LESSEE—In the recent case of *Phoenix* v. *Graham*,[1] plaintiff was the owner of a farm, part of which had been leased to the defendants for the purpose of mining oil and gas contained therein. After termination of the lease, accompanied by a plugging and abandonment of the oil wells drilled on the leased premises, plaintiff sued at law to recover damages allegedly caused by the contamination of the farm water supply by reason of the permeation thereof with salt water produced in connection with the drilling operations.[2] Plaintiff relied principally upon a statute which declared it to be a public nuisance to permit salt water to escape into any underground fresh water supply[3] and, on the basis thereof, recovered damages in the trial court for the injury done to the entire premises. On appeal by defendants to the Appellate Court for the Fourth District, that court reversed and remanded the cause for further proceedings on the ground that, at least as between lessor and lessee, the plaintiff was obliged to prove actionable negligence on the part of the defendants and could not recover simply upon a showing of a violation of the statute.[4]

[10] Bankston Creek Collieries v. Gordon, 399 Ill. 291, 77 N.E. (2d) 670 (1948). Fash v. Gordon, 398 Ill. 210, 75 N.E. (2d) 294 (1947).

[1] 349 Ill. App. 326, 110 N. E. (2d) 669 (1953).

[2] Salt water had first appeared within one year after the oil wells were brought in, but it had been run off into settling pits which occasionally overflowed. As the volume of salt water increased, defendants dug a large pit in a location approved by the lessor, but there was some dispute as to whether this excavation went down to sand or other porous material. As the farm water supply came from shallow wells filled with percolating surface waters, and not from artesian wells, the pollution may have been produced by either the overflow, by seepage from the larger pit, or by both.

[3] Ill. Rev. Stat. 1951, Vol. 1, Ch. 38, § 466(13).

[4] The court, while agreeing that the correct measure of damage had been utilized, held the proof with regard to damages to be inadequate, since all tests for contamination had been conducted on the leased portion of the premises and did not to-wit: the difference between market value before and after the injury, also extend over the entire area of the farm.

In this case, the first of its type to reach a reviewing court in Illinois, the court relied primarily on six decisions achieved elsewhere to support the view that civil recovery could not rest simply on the statute in question, but an examination of these decisions raises an issue as to their applicability to the problem of negligence, rather than nuisance, in the lessor-lessee relationship. In one of the decisions relied on, the plaintiff was a stranger to the demised premises and no claim was advanced that a statute applied or could be made to apply,[5] so it is of doubtful authority. In two other cases, originating in Texas, there is also no mention of any controlling statute and the debatable issue was one of causation rather than the basis for liability.[6] The remaining three cases, all arising in Oklahoma, are similarly of doubtful value, one because it dealt with the matter of causation,[7] another because there was a failure to show an escape of salt water from the pit in which it was confined,[8] and the third because the lease was construed to grant to the lessee all those rights which might be deemed necessary to the extraction of oil and the court failed to find any proof to the effect that the pollution of the water supply was unnecessary to such production.[9] The only Illinois case even closely approximating the instant situation, that of *Benefiel* v. *Pure Oil Company*,[10] is likewise of little value since the plaintiff therein, who was denied recovery against the oil-well operator, had been an agricultural tenant whose estate had been created subsequent to the oil lease granted to the defendant and the alleged harm had arisen from the trespass of the injured cattle upon that part of the area used for oil-drilling purposes. It is plain, then, that the law is far from clear on the subject.

If the instant case may be said to be an expression, by the court, of what it believes to be a desirable public policy, to-wit: that there should be no liability without fault, then such policy would seem to be contradictory to the one expressed by the legislature, for the statute in question affords no exception by its language.[11] The adoption of a policy compar-

[5] Wheeler v. Fisher Oil Co., 6 Ohio N. P. 309 (1899).

[6] Texas Pacific Coal & Oil Co. v. Truesdell, 187 S. W. (2d) 418 (Tex. Civ. App., 1945); Carter v. Simmons Co., 178 S. W. (2d) 743 (Tex. Civ. App., 1944).

[7] Walters v. Prairie Oil & Gas Co., 85 Okla. 77, 204 P. 906 (1922).

[8] Pure Oil Co. v. Gear, 183 Okla. 489, 83 P. (2d) 389 (1934).

[9] Marland Oil Co. v. Hubbard, 168 Okla. 518, 34 P. (2d) 278 (1934).

[10] 322 Ill. App. 5, 53 N. E. (2d) 726 (1944).

[11] The Appellate Court for the Fourth District, in People v. Hensley, 325 Ill. App. 291, 60 N. E. (2d) 114 (1945), acted to engraft an exception on the statute, at least with regard to criminal prosecutions, for it there required a showing of fault on the part of the defendant, charged with polluting a water supply by permitting oil to escape from a pipe-line, in order to sustain a conviction.

able to one which might justifiably exist in the more prominent oil states[12] would hardly seem to befit this state, where present favorable agricultural and water conditions should be given protection.

WITNESSES—CREDIBILITY, IMPEACHMENT, CONTRADICTION, AND CORROBORATION—WHETHER OR NOT EVIDENCE OF CONVICTION OF A CRIME, INFAMOUS WHERE COMMITTED BUT NOT INFAMOUS UNDER LAW OF FORUM, MAY BE ADMITTED TO IMPEACH CREDIBILITY—During the course of a trial in an Illinois state court on a charge of burglary, the prosecution, in the case of *People* v. *Kirkpatrick*,[1] over objection, was permitted to impeach the defendant's credibility by introducing the record of his conviction in a federal court for a violation of the Dyer Act.[2] Following upon defendant's conviction, this ruling was made the basis of a writ of error to the Illinois Supreme Court, the defendant urging on that court that only evidence regarding the conviction of those crimes declared to be infamous by an Illinois statute[3] could lawfully be used to impeach credibility.[4] The Illinois Supreme Court, agreeing with the defendant's contention, held the admission of the federal criminal record amounted to a prejudicial error which required the remanding of the case for a new trial.[5]

Under a common-law rule which had rendered a person convicted and sentenced for an infamous crime incompetent to testify, numerous cases arose wherein witnesses, convicted of crime in other jurisdictions, sought to testify despite laws which would have disqualified them had the prior offenses occurred within the boundaries of the forum.[6] A majority of these cases held that these witnesses could testify since the denial of that privilege would, in effect, require the enforcement of the penal judgments of sister states,[7] but a few courts did take an opposing position,

12 See Tidal Oil Co. v. Pease, 153 Okla. 137, 5 P. (2d) 389 (1931), but note that the lease referred to therein permitted the passage of salt water over the surface of the leased premises.

1 413 Ill. 595, 110 N. E. (2d) 519 (1953).

2 18 U. S. C. §§ 10, 2311-3, prohibiting interstate transportation of stolen motor vehicles.

3 Ill. Rev. Stat. 1951, Vol. 1, Ch. 38, § 587, lists the offenses regarded as being infamous in Illinois.

4 Ibid., Vol. 1, Ch. 38, § 734, provides that no person shall be disqualified as a witness by reason of his having been convicted of any crime but adds "such . . . conviction may be shown for the purpose of affecting his credibility."

5 The court also held that it was prejudicial error to select the trial jury from the same panel which had, on a separate occasion, tried and convicted an alleged accomplice involved in the same offense.

6 An exhaustive treatment of this topic appears in an annotation in 2 A. L. R. (2d) 579. See also 58 Am. Jur., Witnesses, §§ 137-40.

7 A leading case for this view may be found in Commonwealth v. Green, 17 Mass. 515 (1822).

reasoning that the objective of the rule was not to penalize the convict so much as it was intended to protect the courts of the forum from the possibility of perjury.[8]

Numerous statutes have been enacted with a design to modify the common-law rule regarding incompetency of witnesses. They usually provide that no person may be excluded as a witness because of a criminal conviction but do allow the conviction to be shown so as to affect credibility.[9] As a consequence, earlier problems regarding disqualification have become almost obsolete[10] but there has been a shift in interest centering around the possibility of impeachment of credibility upon proof of a conviction obtained in another jurisdiction. While many courts have refused to allow the foreign record to operate to disqualify a witness, cases do exist in which the foreign record has been utilized to support a right to impeach credibility,[11] particularly where the earlier conviction could be regarded as being infamous in both of the jurisdictions. Even so, courts still reserve the right to apply their own local law in determining whether or not the particular crime relied on is infamous in nature.[12] As the Illinois legislature has specified the offenses it considers to be infamous,[13] the strict application of the statute given by the Supreme Court in the instant case makes possible a uniform treatment of the problem throughout the state, without taking into consideration possible variations existing elsewhere. It remains to be determined, however, whether the converse of the problem would produce a similar result.[14]

8 The leading case taking the opposite view may be noted in the holding in Chase v. Blodgett, 10 N. H. 22 (1838). No criminal case has been located where a witness expressly declared competent under the law of the forum, but incompetent at the place of conviction, has been denied the right to testify. As to the view with regard to civil cases, see Bowers v. Southern Ry. Co., 10 Ga. App. 367, 73 S. E. 677 (1912), and Day v. Lusk, 219 S. W. 597 (Mo. App., 1920).

9 See, for example, Ill. Rev. Stat. 1851, Vol. 1, Ch. 38, § 734. For statutes in other states, see Wigmore, Evidence, 3d Ed., § 987.

10 The problem still remains in a few states which have retained the element of disqualification as to those witnesses convicted of perjury or related crimes: 58 Am. Jur., Witnesses, § 140.

11 Impeachment of credibility has been allowed in Nelson v. State, 35 Ala. App. 168, 44 So. (2d) 802 (1950); State v. Foxton, 166 Iowa 181, 147 N. W. 347 (1914); City of Boston v. Santosuosso, 307 Mass. 302, 30 N. E. (2d) 278 (1940).

12 See State v. Witsil, 7 W. W. Harr. 553, 187 A. 112 (Del., 1936).

13 Ill. Rev. Stat. 1951, Vol. 1, Ch. 38, § 587. The inflexibility of the statute has not gone without criticism: Wigmore, Evidence, 3d Ed., § 987, at p. 583.

14 If fear of perjury is the basis for decision, it would seem that one convicted elsewhere for an offense not infamous where committed, but classified as such by the Illinois legislature, should be exposed to impeachment in Illinois, for the conduct demonstrating probable testimonial unworthiness would be the same, regardless where committed.