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IV. CRIMINAL LAW AND PROCEDURE

As might be expected, little has been said during this period with respect to the substantive elements of a crime. One case, that of *People v. Jones*,¹ involved an alleged public nuisance in permitting a well drilled for oil or gas to remain unplugged after the abandonment thereof.² The defense was that the action was barred for failure to initiate proceedings within eighteen months after the cessation of production.³ In answer thereto, the court explained that the acts constituting the public nuisance were not consummated when the well was abandoned and the nuisance first appeared but rather continued as long as the well remained uncapped, for it was the conduct of permitting the well to remain uncapped rather than the original abandonment which was the real subject of the statutory prohibition. It also held that the law was not rendered invalid as being an *ex post facto* statute for each day of omission constituted a new occurrence hence there was no occasion to consider whether the statute made acts unlawful which were not unlawful at the time they originally took place. In cases of that character, however, the judgment is limited to the criminal penalty only and may not, according to *People v. Livingston*,⁴ also include an order that the defendant abate the nuisance. It was, therefore, there held error for a county court to impose an additional penalty for contempt of court for refusing to abate the nuisance in question.

Another case which gives content to the substantive definition of a breach of the peace is *City of Chicago v. Terminiello*⁵ wherein the defendant was arrested for aiding in the creation of a riot, disturbance and breach of peace, in violation of a city ordinance,⁶ by the use of insulting and abusive language in a speech

¹ 329 Ill. App. 503, 69 N. E. (2d) 522 (1946).

² The prosecution was based on Ill. Rev. Stat. 1947, Ch. 38, § 466.

³ *Ibid.*, § 631.

⁴ 331 Ill. App. 313, 73 N. E. (2d) 136 (1947).

⁵ 332 Ill. App. 17, 74 N. E. (2d) 45 (1947). Niemeyer, P.J., wrote a dissenting opinion.

⁶ Mun. Code 1939, Ch. 193, § 1(1).

given at an alleged public meeting held in the city.⁷ The defense argued that the meeting was not a public one; that defendant's speech was not addressed to the particular persons responsible for the acts of violence and disturbance; and that the remarks, even if overheard, could not be deemed the cause of the illegal disturbance because privileged by constitutional guarantees. These points were considered to be essential elements of the crime charged, but the court nevertheless held the evidence did not warrant dismissing the charge. With respect to the first point, *i.e.*, the public nature of the meeting, it was shown that while admission was by card only the mailing list used to publicize the meeting was considerably larger than the capacity of the hall and that each addressee was given several cards of admission with a request to distribute them among friends. The size and composition of the meeting, the circumstances surrounding admission, the form of the invitation, and the indiscriminate methods used for the distribution thereof all combined to give the meeting the characteristics of a public affair. The court also pointed to the familiar limitation upon the right of free speech to the effect that the right to speak is relative and does not extend to remarks known to have, as their natural and inevitable consequence, the creation of riots and disorder. It felt that the phrasing of the announcement and defendant's experience at prior meetings must have made him realize the atmosphere of tension and mob excitement which prevailed at the time so that his remarks not only had a tendency to capitalize on this atmosphere as an opportunity to incite others to create a disturbance, but actually constituted a disturbance *per se*.⁸

Most of the significant cases in this field deal with procedural matters and they are presented in roughly the same order in

⁷ The facts indicated that defendant, to attend the meeting in question, had to force his way through a milling crowd which was manifestly hostile; that during the meeting repeated acts of violence and disturbance occurred both inside and outside of the hall; and that the defendant replied to these occurrences, both through his prepared speech and his extemporaneous remarks, with inflammatory and exciting language which heightened the disturbance.

⁸ The dissenting opinion attempted to work out a solution from common-law definitions of public meetings and of indictable language to support defendant's claims concerning the private nature of the meeting and the non-inflammatory nature of his remarks.

which the problems concerned are likely to arise in the conduct of a criminal prosecution. For example, one who pleads to an indictment generally waives all right to question the validity of the grand jury which returned that indictment,⁹ but the court in *People v. Vincent*,¹⁰ despite that rule, nevertheless examined into the regularity of a petition for the recall of the grand jury¹¹ there concerned and determined that such a petition need not be verified by the state's attorney, signature alone being sufficient. It was also held that, upon recall, it was not necessary that the grand jury be resworn or reinstructed.¹²

A precise description of the money stolen is a desirable allegation in every indictment for larceny but it is not always possible to provide an accurate one, hence an allegation that a better description was to the grand jurors unknown is tolerated by reason of the necessities of the case.¹³ The decision in *People v. Finch*,¹⁴ however, seems to go further than most cases on the point for the court there held that an allegation that "\$400 good and legal money of the United States of the value of \$400" was stolen was sufficient, inasmuch as none of the witnesses could give any exact description of the denomination of the currency taken, even though the customary recital that a better description was to the jurors unknown was omitted from the charge. The use of abbreviations in criminal pleadings is not desirable since confusion is likely to result. In *People v. O'Campo*,¹⁵ the information charged the larceny of "Eighty Cents—(50¢—25¢—05¢) U. S. Currency." It was claimed that such a description was meaningless as the term "U. S." might refer to any of three well-known countries beside the United States of America, while the word "currency"

⁹ *Stone v. People*, 3 Ill. (2 Scam.) 326 (1840).

¹⁰ 394 Ill. 165, 68 N. E. (2d) 275 (1946).

¹¹ Ill. Rev. Stat. 1947, Ch. 38, § 713.

¹² See also *People v. McCauley*, 256 Ill. 504, 100 N. E. 182 (1912). In that case, however, the issue as to whether any new instruction was necessary was not raised.

¹³ See annotation in 36 L. R. A. (N.S.) 933, particularly pp. 943-4. The making of such an allegation when the grand jury was, in fact, furnished with an accurate description constitutes reversible error according to *People v. Hunt*, 251 Ill. 446, 96 N. E. 220 (1911).

¹⁴ 394 Ill. 183, 68 N. E. (2d) 283 (1946).

¹⁵ 330 Ill. App. 401, 71 N. E. (2d) 375 (1947).

was said to refer to paper money only. The court, however, applying the test of whether the language tended to confuse as to the nature of the crime, held there was no merit to the objection. An obvious mistake in substituting the victim's name in place of that of the defendant, in that part of an indictment for receiving stolen property which charges the possession of guilty knowledge, was regarded as reversible error in *People v. Harris*¹⁶ since, after deleting the mistaken statement, the indictment then lacked an essential allegation to the charge. Unchallenged inaccuracy in an indictment may not be enough, but unchallenged inadequacy would seem to be sufficient to support reversal.

Although the Criminal Code recognizes the right of an accused person to be represented by counsel,¹⁷ the standard practice in this state, except in capital cases, has been for the trial court to take no action with regard thereto unless the defendant requests such assistance and states on oath that he is unable to procure counsel, whereupon it becomes the duty of the court to provide the indigent defendant with competent legal representation. If, after being duly admonished, an intelligent defendant insists on pleading guilty, there is no occasion for legal representation except, perhaps, in connection with a hearing as to mitigating factors which may have bearing on the nature of the punishment to be imposed.¹⁸ For these reasons, many a writ of error has been denied and many a conviction affirmed so long as the common-law record contains proper recitals and the accuracy thereof is not disputed by a proper bill of exceptions showing a denial of any fundamental right. There would seem to be an attitude on the part of certain of the justices of the United States Supreme Court, however, to insist upon a requirement that no plea of guilty shall ever be received unless the defendant is represented by, or supplied with, legal counsel and that, in the absence thereof, every such conviction should be reversed for denial of due process. So far, a majority of the justices of that court have refused to recede

¹⁶ 394 Ill. 325, 68 N. E. (2d) 728 (1946).

¹⁷ Ill. Rev. Stat. 1947, Ch. 38, § 730.

¹⁸ *Ibid.*, § 732.

from the holding in *Betts v. Brady*,¹⁹ but the dissenting minority in two cases coming from Illinois²⁰ has now reached sufficient size that a change in the law may be imminent and the time may yet come when trial judges will owe something more than the "negative duty to sit silent and blind while men go on their way to prison . . . for want of any hint of their rights."²¹

A rare factual situation, evoking a decision of first impression in Illinois, was presented in *People v. Harrison*²² where the defendant, acquitted on a charge of assault with a deadly weapon, was nevertheless successfully convicted on a charge of murder provoked by the subsequent death of the victim of the assault at a time after the defendant's acquittal on the original charge but within a year and a day from the date of the attack.²³ Defendant's reliance on the plea of double jeopardy was held unwarranted on the theory that, as the victim was still alive at the time of the first trial, defendant could in no way have been exposed to the risk of conviction for murder, hence jeopardy with respect thereto had never arisen. The case, however, appears to overlook the possibility that the defendant might have relied on a claim of res adjudicata or estoppel by judgment rather than that of double jeopardy for the former trial, if it established anything, certainly fixed the fact that defendant either did not engage in the required criminal act or else was lacking in the requisite criminal intent. Such a finding would necessarily seem to negative at least one aspect of the state's case at the later prosecution and, had the issue been presented, might well have led to a reversal.²⁴

Civil cases have established the rule that a plaintiff who takes a voluntary nonsuit may not move to reinstate his case unless

¹⁹ 316 U. S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595 (1942), noted in 21 CHICAGO-KENT LAW REVIEW 107.

²⁰ *Carter v. Illinois*, 329 U. S. 173, 67 S. Ct. 216, 91 L. Ed. (adv.) 157 (1946); *Foster v. Illinois*, 332 U. S. 134, 67 S. Ct. 1716, 91 L. Ed. (adv.) 1542 (1947).

²¹ See dissent by Rutledge, J., concurred in by Black, Douglas and Murphy, JJ., in *Foster v. Illinois*, 332 U. S. 134 at , 67 S. Ct. 1716 at 1722, 91 L. Ed. (adv.) 1542 at 1549.

²² 395 Ill. 463, 70 N. E. (2d) 596 (1947), noted in 25 CHICAGO-KENT LAW REVIEW 243, 47 Col. L. Rev. 679.

²³ Ill. Rev. Stat. 1947, Ch. 38, § 365, reiterates the common-law requirement. That provision has been criticized in 19 CHICAGO-KENT LAW REVIEW 181.

²⁴ See a discussion of this point in 25 CHICAGO-KENT LAW REVIEW 243 at 245-6.

suitable reservation is made at the time of dismissal.²⁵ Entry of a nolle prosequi on a criminal charge should, logically, be bound by the same rule, but the Supreme Court held otherwise in *People v. Watson*²⁶ when it allowed the prosecution, during the term, to reinstate a count which had been nolleed six days prior thereto even though the case had proceeded in the meantime to judgment on the other count.²⁷ Again, an impelling factor in that result may have been the failure of the defendant to protest, for the count did note that while the procedure was deemed legal it was not to be commended.

Two small points with respect to the trial of criminal cases might be noticed. Confessions obtained by coercion have been universally condemned, at least in democratic countries, as improper evidence on which to base a conviction. A new wrinkle was tried in *People v. Sims*²⁸ where the accused, a seventeen-year old girl, was induced to give a statement to the prosecuting authorities while harnessed to a lie-detector machine but which apparatus was not then in operation. It appeared to have been the contention of the prosecution that, as no lie-detector test was in progress, the statement was freely and voluntarily made. Admission thereof was treated as error when the Supreme Court expressed the belief that it was impossible to say that the girl was not influenced to some degree by the fact that the apparatus was attached to her body. The decision was further strengthened by the fact that the accused had protested against being subjected to any test whatever without first consulting counsel. Alibi witnesses who testify on behalf of the defendant, like any other witnesses, may be impeached by proof of bad reputation. The case of *People v. Boulhanis*,²⁹ however, would indicate that such impeachment may not be attempted by asking such witnesses, on cross-examination, if they had been subpoenaed before the grand

²⁵ See *Fulton v. Yondorf*, 324 Ill. App. 452, 58 N. E. (2d) 640 (1944), noted in 23 CHICAGO-KENT LAW REVIEW 327.

²⁶ 394 Ill. 177, 68 N. E. (2d) 265 (1946), noted in 25 CHICAGO-KENT LAW REVIEW 246.

²⁷ In *People v. Caponetto*, 359 Ill. 41, 194 N. E. 231 (1934), the reinstatement occurred during the course of the trial on the other counts.

²⁸ 395 Ill. 69, 69 N. E. (2d) 336 (1946).

²⁹ 394 Ill. 255, 68 N. E. (2d) 467 (1946).

jury but had refused to answer questions propounded to them by the grand jury. Such a line of interrogation would seem designed to develop little more than immaterial matter but the court regarded the questioning as prejudicial enough to warrant reversal.

Care should be exercised in recording the judgment for while there is no doubt that the record of conviction in a criminal case may be amended by a nunc pro tunc order to correct a clerical error,³⁰ any such amendment should occur only after notice to the defendant.³¹ It was urged, in *People v. Wos*,³² that notice of an application for such an order served on the counsel who had represented the defendant at the original trial was sufficient to satisfy the requirements of the law. The Supreme Court, however, following the general rule that an attorney's relation with his client generally ceases upon rendition of the judgment and the satisfaction thereof,³³ regarded such notice as invalid and any amendment based thereon equally a nullity. It would seem, therefore that if notice is to be given to the defendant in person, especially while undergoing incarceration, the trial court should also cause a writ of habeas corpus *ad testificandum* to issue in order that the defendant may appear and contest the application.

The nature of the proper sentence to be imposed has been made the subject of several decisions for the changes made in the Habitual Criminal Act³⁴ seem to have produced considerable confusion. In *People v. Perkins*,³⁵ for example, the defendant successfully contended that a sentence to confinement in the reformatory rather than the penitentiary,³⁶ pronounced prior to the consolidation of all such institutions into one penitentiary system,³⁷ could not be relied upon to support a sentence as an

³⁰ *Kennedy v. People*, 44 Ill. 283 (1867).

³¹ *People v. Friedman*, 223 Ill. App. 149 (1921).

³² 395 Ill. 172, 69 N. E. (2d) 858 (1946).

³³ See 7 C. J. S., Attorney and Client, § 108; 5 Am. Jur., Attorneys at Law, § 102.

³⁴ The present statute is to be found in Ill. Rev. Stat. 1947, Ch. 38, § 602 et seq. There have been three revisions since the statute was first adopted in 1883.

³⁵ 395 Ill. 553, 70 N. E. (2d) 622 (1947). Stone, J., and Thompson, J., concurred in the result but not in the interpretation given to Ill. Rev. Stat. 1947, Ch. 38, § 602.

³⁶ Such sentence was proper, under Ill. Rev. Stat. 1947, Ch. 38, § 803, because of the age of the offender.

³⁷ Laws 1933, p. 780; Ill. Rev. Stat. 1947, Ch. 108, § 105.

habitual offender. The court distinguished between the situation before it and that presented where the defendant was sentenced to the penitentiary but admitted to probation,³⁸ although it noted, by way of dictum, that since 1941 actual imprisonment was essential.³⁹ The dictum referred to was translated into decision when the court was called upon to review the conviction in *People v. Hall*⁴⁰ for it there held that, under present law, an averment of imprisonment in the penitentiary is an essential allegation to support a charge of being an habitual criminal.

Absence of any specific statement in the Habitual Criminal Act that the former conviction had to be one pronounced by this state did not prevent the court, in *People v. Poppe*,⁴¹ from drawing an inference that the legislature intended the severer penalty to apply to the recidivist regardless where the earlier conviction was obtained, whether in or out of the state. That inference was believed aided by the fact that proof of the prior conviction must be made by a "duly authenticated copy" thereof⁴² whereas a simple certified copy would have been sufficient to establish the existence of any local judgment.⁴³ Whether rightly or wrongly decided,⁴⁴ the doctrine of that case was followed in *People v. Gavalis*⁴⁵ where the prior conviction was secured in a federal court, although the opinion therein does not disclose whether the federal court in question was sitting in Illinois or not. There must not only be an adequate charge and adequate proof of the prior conviction but, according to *People v. Berger*,⁴⁶ the prosecution must also obtain a verdict expressly finding the existence of the precise prior conviction charged to support the judgment that

³⁸ Heretofore, the last mentioned fact did not prevent a subsequent charge as an habitual criminal: *People v. Andrae*, 295 Ill. 445, 129 N. E. 178 (1920); *People v. Tierney*, 250 Ill. 515, 95 N. E. 447 (1911).

³⁹ Laws 1941, p. 573; Ill. Rev. Stat. 1947, Ch. 38, § 602.

⁴⁰ 397 Ill. 134, 73 N. E. (2d) 405 (1947).

⁴¹ 394 Ill. 216, 68 N. E. (2d) 254 (1946), noted in 25 CHICAGO-KENT LAW REVIEW 157.

⁴² Ill. Rev. Stat. 1947, Ch. 38, § 603.

⁴³ *Ibid.*, Ch. 51, § 13.

⁴⁴ See comment in 25 CHICAGO-KENT LAW REVIEW 157, particularly pp. 161-2.

⁴⁵ 395 Ill. 409, 70 N. E. (2d) 589 (1947).

⁴⁶ 396 Ill. 97, 71 N. E. (2d) 6 (1947).

the accused, as an habitual criminal, should serve the more severe penalty. Thus an indictment charging a prior conviction for grand larceny is not sustained by a verdict finding that the defendant had previously been convicted simply of "larceny"⁴⁷ since the statute does not contemplate that an earlier conviction for petit larceny will be enough. There does, however, seem to be some misnomer in the term "habitual criminal," judging by the holding in *People v. Flaherty*,⁴⁸ for it was there deemed proper for the state to rely on an earlier conviction as support for its claim that defendant was an habitual offender even though such prior conviction had been secured twenty-three years before the present offense. Defendant's argument that the absence of criminal tendencies throughout so long a period hardly justified treating him as a regular or frequent criminal was rejected on the basis that the statute possesses mandatory character and does not require that the defendant be, in fact, a confirmed recidivist.⁴⁹

The scope and nature of the review available in criminal cases also received consideration. Two points of interest were determined in *Jablonski v. People*⁵⁰ wherein a petition in the nature of a writ of error coram nobis was presented nearly sixteen years after judgment by a sister of the convicted person, acting as his next friend. She sought vacation of the sentence on the ground that the defendant, at the time of the trial, was and had been adjudged to be a feeble-minded person which fact had not been disclosed to the trial court.⁵¹ The trial court dismissed the petition on the ground that (a) only the convicted person could apply for relief,⁵² and (b) the time for presentation thereof had long

⁴⁷ A distinction was drawn as to the holding in *People v. Tierney*, 250 Ill. 515, 95 N. E. 447 (1911), by pointing out that in that case the jury found the fact of prior conviction for robbery but failed to specify the date thereof. The omission was deemed cured by reference to the charge.

⁴⁸ 393 Ill. 304, 71 N. E. (2d) 779 (1947).

⁴⁹ The term "habitual criminal" does not appear in the text of Ill. Rev. Stat. 1947, Ch. 38, § 602, and is merely added by the publishers of the statute book as a convenient catch-word title.

⁵⁰ 330 Ill. App. 422, 71 N. E. (2d) 361 (1947).

⁵¹ The justifiable grounds for such a petition are set out in *People v. Ogden*, 368 Ill. 173, 13 N. E. (2d) 162 (1938).

⁵² Such was the holding in *People v. Nakielny*, 279 Ill. App. 387 (1935), but it does not appear that the defendant there concerned was mentally incompetent.

since expired.⁵³ The decision was reversed when the Appellate Court for the First District concluded first that, in the absence of a duly appointed conservator or guardian, the petition could properly come from either a self-appointed next friend or some court appointed representative, and second, that the limitation period does not run during the continuance of a defendant's mental disability.⁵⁴ Any doubt that proceedings of this character are constitutional when applied to criminal cases⁵⁵ has been removed by the decision in *People v. Touhy*⁵⁶ which case also provides a complete account of the historical developments underlying the present statute. The fact that it is too late to present such a petition may, according to *United States v. Ragen*,⁵⁷ be an excuse for seeking habeas corpus in the federal tribunals without first exhausting state remedies.

The clear language of the Probation Act directs that review of an order revoking or terminating a probation order shall be granted by the appropriate Appellate Court⁵⁸ even though the original conviction be for a felony and reviewable, if at all, by the state Supreme Court.⁵⁹ The writ of error issued by the Supreme Court in *People v. Bruno*⁶⁰ to review an order revoking probation was, accordingly, transferred to the proper Appellate Court because the court issuing the writ was entirely without jurisdiction to pass on the question. Care should be taken to avoid confusion, for the review granted by the Supreme Court in *People v. Catcott*,⁶¹ while not requested until after probation was revoked, actually constituted a review of the original judgment and not of the order revoking probation.

Further proceedings in the trial court may become necessary after review has been given and mandate issued. The unfortunate

⁵³ Ill. Rev. Stat. 1947, Ch. 110, § 196, places a five-year limitation on proceedings of this character.

⁵⁴ *Ibid.*, Ch. 83, § 22.

⁵⁵ See 25 CHICAGO-KENT LAW REVIEW 45-6, particularly note 31.

⁵⁶ 397 Ill. 19, 72 N. E. (2d) 827 (1947).

⁵⁷ 158 F. (2d) 346 (1947).

⁵⁸ Ill. Rev. Stat. 1947, Ch. 38, § 798.

⁵⁹ *Ibid.*, Ch. 38, § 780½.

⁶⁰ 395 Ill. 382, 69 N. E. (2d) 898 (1946).

⁶¹ 393 Ill. 582, 67 N. E. (2d) 175 (1946).

amendments made in 1941 to the Sentence and Parole Act purporting to authorize an advisory recommendation as to the length of incarceration⁶² were declared unconstitutional in *People v. Montana*⁶³ but not soon enough to prevent the rendition of many sentences containing advisory recommendations. Upon writ of error, many such sentences have been reversed and cases have been remanded with direction to enter sentence in conformity with law, the defendant being given an election to apply for sentence under the statute as it existed prior to the attempted reform⁶⁴ or as amended by changes adopted in 1943.⁶⁵ The result of such reversal, according to *People ex rel. Barrett v. Bardens*,⁶⁶ is not to reopen the case to the point where the defendant might apply for probation but is confined to the single purpose of entering a new and valid judgment. For that reason, an original proceeding in mandamus was entertained and a peremptory writ was granted to compel the trial judge to expunge an order granting probation after reversal on the ground that such action was contrary to the mandate issued under the writ of error.

There has been very little modification of statutory law, perhaps against the possibility that the legislature may yet undertake to revise the whole Criminal Code. The section dealing with burning of lands, fields and crops has been recast;⁶⁷ the duplication produced by two statutes dealing with conspiracy to boycott and blacklist has been eliminated;⁶⁸ the section concerning derogatory remarks reflecting upon the financial condition of banks has been enlarged to cover federal savings and loan associations as

⁶² Laws 1941, p. 560; Ill. Rev. Stat. 1941, Ch. 38, § 801 et seq.

⁶³ 380 Ill. 596, 44 N. E. (2d) 569 (1942).

⁶⁴ Ill. Rev. Stat. 1939, Ch. 38, § 801 et seq.

⁶⁵ Laws 1943, Vol. 1, p. 591; Ill. Rev. Stat. 1947, Ch. 38, § 801 et seq. The 1943 amendments were again held constitutional in *People v. Burnett*, 394 Ill. 420, 68 N. E. (2d) 733 (1946), against the contention that they improperly modified the express provisions of the Criminal Code prescribing specific punishments for enumerated crimes. See also *People v. Roche*, 389 Ill. 361, 59 N. E. (2d) 866 (1945). If the defendant chooses the benefit of the 1943 amendments, he loses credit for the time already spent in the penitentiary: *People v. Wilson*, 391 Ill. 463, 63 N. E. (2d) 488 (1945).

⁶⁶ 394 Ill. 511, 68 N. E. (2d) 710 (1946).

⁶⁷ Laws 1947, p. 798, H. B. 273; Ill. Rev. Stat. 1947, Ch. 38, § 53.

⁶⁸ Laws 1947, p. 799, H. B. 221; Ill. Rev. Stat. 1947, Ch. 38, § 139.

well;⁶⁹ and the language declaring it to be disorderly conduct to "carry concealed weapons" has been deleted⁷⁰ apparently in order to insure prosecution under another provision which carries higher penalties.⁷¹ In addition thereto, certain barbiturate compounds having hypnotic or somnifacient action have been added to the list of drugs which may not be sold except on proper prescription;⁷² and it is now criminal to solicit funds under a false name or by using the true name of another without first obtaining written permission,⁷³ to make improper use of the insignia of still another veterans' organization,⁷⁴ or to become involved in bribery over sporting events particularly with a view to limiting a player's own, or his team's, scoring ability or the margin by which victory is achieved.⁷⁵ The only change in procedural matters has been to finally delete the one-hundred rod provision relating to jurisdiction over offenses committed on county lines, a clause that has remained in the statute book although declared unconstitutional over sixty years ago,⁷⁶ and to remove the provision from the extradition statute which purported to allow the court to inquire into the good faith of the demanding state.⁷⁷ There has, however, been some amelioration in the law both with respect to the means by which habitual offenders may be paroled⁷⁸ and also concerning the possibility of probation for persons who would not otherwise be entitled thereto.⁷⁹

⁶⁹ Laws 1947, p. 801, H. B. 566; Ill. Rev. Stat. 1947, Ch. 38, § 405.

⁷⁰ Laws 1947, p. 799, H. B. 222; Ill. Rev. Stat. 1947, Ch. 38, § 160.

⁷¹ Ill. Rev. Stat. 1947, Ch. 38, § 155.

⁷² Laws 1947, p. 802, H. B. 67; Ill. Rev. Stat. 1947, Ch. 38, § 186c.

⁷³ Laws 1947, p. 811, S. B. 118; Ill. Rev. Stat. 1947, Ch. 38, § 254.1.

⁷⁴ Laws 1947, p. 813, H. B. 817; Ill. Rev. Stat. 1947, Ch. 38, § 269c.

⁷⁵ Laws 1947, p. 811, S. B. 18; Ill. Rev. Stat. 1947, Ch. 38, §§ 83a-83c.

⁷⁶ Laws 1947, p. 798, H. B. 220; Ill. Rev. Stat. 1947, Ch. 38, § 704. See *Buckrice v. People*, 110 Ill. 29 (1884).

⁷⁷ Laws 1947, p. 1038, H. B. 213 Ill. Rev. Stat. 1947, Ch. 60, § 2. See also *People ex rel. Carr v. Murray*, 357 Ill. 326, 192 N. E. 198, 94 A. L. R. 1487 (1934), noted in 13 CHICAGO-KENT REVIEW 86.

⁷⁸ Laws 1947, p. 808, S. B. 350; Ill. Rev. Stat. 1947, Ch. 38, § 801.1.

⁷⁹ Laws 1947, p. 806, H. B. 867; Ill. Rev. Stat. 1947, Ch. 38, § 785.

V. FAMILY LAW

Final nullification of the so-called "Heart Balm" Act¹ occurred during the past year through the decision in *Heck v. Schupp*,² an action for alienation of affections.³ The primary ground relied upon was the same one previously pointed out, to-wit: the content of the statute was not fairly revealed in the title,⁴ but the court also adverted to the fact that the statute would serve to put a premium on violations of moral law for offenders would be free to pursue a course of conduct without fear of punishment, hence also violated that part of the Bill of Rights guaranteeing a "certain remedy" in the laws for all injuries and wrongs.⁵ Legislature response to the decision may be observed in three new statutes restricting damages in civil actions for alienation of affections,⁶ for breach of promise to marry,⁷ and for criminal conversation⁸ to the actual damages sustained. No punitive, exemplary or aggravated damages are hereafter to be allowed. In the case of suits for breach of promise to marry, the plaintiff must also serve notice of intention to sue within three months of the alleged breach and then bring the action within one year.⁹

Paralleling the decision in the case last mentioned is the holding of the Appellate Court for the Second District in *Johnson v. Luhman*¹⁰ wherein a complaint by a minor to recover damages for alienation of the parent's affections was held to state a cause of action despite the objection that the infant's claim was a novel

¹ Ill. Rev. Stat. 1945, Ch. 38, § 246.1 et seq.

² 394 Ill. 296, 68 N. E. (2d) 464 (1946), noted in 47 Col. L. Rev. 503, 42 Ill. L. Rev. 233.

³ See also *Zaremba v. Skurdialis*, 395 Ill. 437, 70 N. E. (2d) 617 (1947). Other portions of the statute had been declared unconstitutional in *People v. Mahumed*, 381 Ill. 81, 44 N. E. (2d) 911 (1942).

⁴ Ill. Const. 1870, Art. IV, § 13.

⁵ *Ibid.*, Art. II, § 19.

⁶ Laws 1947, p. 796, S. B. 562; Ill. Rev. Stat. 1947, Ch. 68, § 34 et seq.

⁷ Laws 1947, p. 1181, S. B. 563; Ill. Rev. Stat. 1947, Ch. 89, § 25 et seq.

⁸ Laws 1947, p. 800, S. B. 552; Ill. Rev. Stat. 1947, Ch. 68, § 41 et seq.

⁹ The contents of the notice are specified in Ill. Rev. Stat. 1947, Ch. 89, § 28.

¹⁰ 330 Ill. App. 598, 71 N. E. (2d) 810 (1947), noted in 25 CHICAGO-KENT LAW REVIEW 260 and 36 Ill. B. J. 84.