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# Criminal Law and Procedure - Survey of Illinois Law for the Year 1955-56

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renewed effect to the old judgment[77] but he is also free to pursue the common-law remedy, by way of a writ of *scire facias* issued in the original proceeding, if this would serve his purpose.[78] A difference in the language of the applicable limitation statute as to the former,[79] when compared with common law concepts regulating the use of *scire facias*, had led the Appellate Court for the First District to conclude that, while the mere institution of the separate action in debt would be enough to prevent the bar of limitation from operating, it was essential, for this purpose, to carry the *scire facias* proceeding to completion before the dormant judgment had actually expired, otherwise the attempted revival would be ineffective. The Supreme Court, following the granting of leave to appeal, reached an opposite result when it concluded that there was no legitimate reason for differing rules in this respect and that the simple institution of either type of proceeding would be sufficient, if begun in ample time, to permit of the eventual revival of the judgment.

## IV. CRIMINAL LAW AND PROCEDURE

In the area of substantive criminal law, the only case of consequence is that of *People* v. *Riggins*[1] in which the Supreme Court was called upon to interpret a special statute relating to embezzlement.[2] Therein, the defendant, a collection agent, entered into an agreement to collect the delinquent accounts of the prosecuting witness and was given the right to deduct his commissions from the amounts collected. Upon being prosecuted for failure to remit the balance of the sums collected to the prosecuting witness, the defendant argued that he could not be convicted of embezzlement since he had an interest in the money. By way of

77 Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 55.

78 Ibid., Ch. 83, § 24b.

79 Ibid., Ch. 83, § 24b, states that a civil action "may be brought" upon the judgment "within twenty years next after the date of such judgment" and not after that time.

1 8 Ill. (2d) 78, 132 N. E. (2d) 519 (1956). Schaefer, J. filed a dissenting opinion in which Klingbeil and Maxwell, JJ. concurred, which appears at 8 Ill. (2d) 78, 132 N. E. (2d) 928.

2 Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 210.

answer, the court pointed out that the special statute comprehended that situation, and affirmed the defendant's conviction notwithstanding the rule of construction which requires criminal statutes to be strictly construed.

Turning to criminal procedure, it might be said that problems preliminary to prosecution for crime are relatively rare but mention could be made of the fact that, on questions relating to extradition, the power of a court in connection with a request for a writ of habeas corpus is not unlimited[3] but is nowhere near as narrow as that presumed by the trial judge concerned with the case entitled *People ex rel. Ponak* v. *Lohman*.[4] The trial judge there limited the extradition hearing to matters of good faith by the demanding state[5] and as to whether or not the petitioner was, in fact, a fugitive. By so doing, he denied the petitioner the right to question the validity of the requisition papers and also cut off all inquiry into the matter of identification, depriving the petitioner of all opportunity of showing that he was not the proper person needed by the demanding state. For these errors, the Supreme Court reversed the order remanding petitioner into custody and directed that further inquiry be made before the petitioner could be extradited.

Upon determination that prosecution should be instituted, the state's attorney has the further duty to decide whether to use an information or an indictment, the latter customarily being used in felony cases.[6] In the event the accused can be legitimately prevailed upon to waive indictment, it should prove to be comforting to learn that the Illinois Supreme Court, through the medium of the highly significant case of *People* v. *Bradley*,[7] has

3 Ill. Rev. Stat. 1955, Vol. 1, Ch. 60, § 2, specifies four points concerning which inquiry may be made.

4 7 Ill. (2d) 156, 130 N. E. (2d) 190 (1955).

5 This was error, as the matter of good faith cannot be inquired into by a court after the Governor's warrant has been issued: People ex rel. Goldstein v. Babb, 4 Ill. (2d) 483, 123 N. E. (2d) 639 (1955).

6 Ill. Const. 1870, Art. II, § 8, declares: "No person shall be held to answer . . . unless on indictment of a grand jury," but permits of an exception where the punishment is "by fine, or imprisonment otherwise than in the penitentiary."

7 7 Ill. (2d) 619, 131 N. E. (2d) 538 (1956), noted in 34 CHICAGO-KENT LAW REVIEW 255.

now upheld the validity of a statute authorizing the waiver of an indictment in a felony case[8] so as to permit the prosecutor to utilize the more expeditious method of proceeding under an information. In case an indictment is essential, however, the prosecutor must resort to the grand jury for its affirmative action and may then run into problems with regard to the constitutional rights of witnesses,[9] particularly those witnesses who assert that their right to be immune from possible self-incrimination be respected. An attempt by the legislature, in 1953, to obviate such claims led to the enactment of the so-called "Witness Immunity Act,"[10] but the holding in the case of *People* v. *Burkert*[11] would indicate that the hoped-for reform in this connection has failed to materialize. It was there said that, despite a recent trend to the effect that the inability of a state to provide immunity against prosecution elsewhere should not be enough to support a witness' refusal to testify if assured protection against prosecution in the state making the inquiry,[12] the legislature had voted for total immunity, hence the mere possibility of prosecution in another jurisdiction would be enough to justify a refusal to answer, upon constitutional grounds, to grand jury questioning.

The sufficiency of the indictment or information on which prosecution was based became the subject of concern in four cases, none of which could be said to be of particular significance except to the person charged. In the case of *People* v. *Lamphear*,[13] the defendant seized upon misgivings expressed by the court in an earlier case,[14] to the effect that a possible prejudice might arise from the fact of the introduction of proof tending to disclose that the defendant was an habitual criminal, as reason for

[8] Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 702, as amended by S. B. No. 809, Laws 1955, p. 1740.

[9] Ill. Const. 1870, Art. II, § 10.

[10] Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 580a. The section was added by Laws 1953, p. 31.

[11] 7 Ill. (2d) 506, 131 N. E. (2d) 495 (1955), noted in 44 Ill. B. J. 711. Schaefer, J., wrote a dissenting opinion, concurred in by Hershey, Ch. J.

[12] See annotation on this point in 38 A. L. R. (2d) 257, particularly p. 267.

[13] 6 Ill. (2d) 346, 128 N. E. (2d) 892 (1955).

[14] See People v. Manning, 397 Ill. 358 at 361, 74 N. E. (2d) 494 at 496 (1947).

an argument that, in cases of this character, two separate counts should be used, one to charge the recent offense and the other to state the facts as to the earlier criminal record. The Supreme Court refused to accept this contention, preferring to follow the traditional concept that the so-called "Habitual Criminal Act" did not create a new and distinct crime but merely served to aggravate the punishment for the most recent offense.[15] The court did, however, again comment that the correction of defects in the statute "which experience has brought to light" could well be a matter for the attention of the General Assembly.[16]

The defendant in *People* v. *Williams*,[17] took the quibbling position that the words "did kill and murder" were not the same as the single charge that he had "murdered" inasmuch as the act of killing might have been no more than manslaughter or even a justifiable homicide. His argument was refuted with the brief comment that the indictment was in substantially the same words as those used in the statute,[18] hence was sufficient for the purpose.[19] In *People* v. *Lobb*,[20] on the other hand, the Appellate Court for the Third District concluded that an information which charged the defendant with contributing to the delinquency of a minor child was subject to a motion to quash for the reason it did not specify one or more of the specific statutory acts which the minor would have to perform in order to be classed as a delinquent child[21] even though it did state that the defendant had procured intoxicating liquor for the child and had permitted the minor to consume the same while riding in an automobile after dark with certain male companions at a time when no parent or guardian was present or consenting thereto. The court distin-

15 Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 602, directs that the "former conviction, or convictions . . . shall be set forth in apt words in *the* indictment." Italics added.

16 6 Ill. (2d) 346 at 351, 128 N. E. (2d) 892 at 894.

17 7 Ill. (2d) 271, 130 N. E. (2d) 194 (1955).

18 Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 358.

19 An indictment framed in statutory language is sufficient if the words used so far particularize the offense as to inform the defendant, with reasonable certainty, of the precise offense on which he stands charged: People v. Hamm, 415 Ill. 224, 112 N. E. (2d) 485 (1953).

20 10 Ill. App. (2d) 125, 134 N. E. (2d) 353 (1956).

21 Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 103.

guished the case before it from earlier holdings to the contrary[22] on the ground it was not possible to assume that the defendant's conduct would "directly tend" to cause the minor to become a delinquent, hence the information was said not to be precise enough.

It is fundamental law that a defendant may be charged, under separate counts in the same indictment or information, with a series of separate crimes provided his acts, although but parts of one common transaction, involve distinct violations of separate statutes or result in harms to different victims,[23] but a degree of care should be exercised, in this respect, to make certain that separate offenses have in fact occurred. It was necessary, therefore, for the Supreme Court, in the case of *People* v. *Boyden*,[24] to point out that the statute relating to unlawful practice of dentistry,[25] while listing a series of forbidden acts by unlicensed persons, describes only one offense by an unlicensed person who is the "manager, proprietor, operator or conductor of a place where dental operations are performed," hence would not support separate convictions of such a person even though his employees might commit a series of separate and distinct offenses in the performance of varied dental operations at that place. An information charging such a person with separate crimes, each count being predicated upon a separate type of dental service performed by an unlicensed employee, was there held to be duplicitous and the separate sentences based thereon were ordered reversed.

Conduct of the trial of a criminal case may call into account a number of legal doctrines all directed to the end that the trial may be a fair and orderly one without involving sacrifice of any constitutional guarantees designed for the protection of the accused. Uppermost, of course, is the defendant's right to be

[22] See, for example, the holding of the Appellate Court for the First District in People v. Ostrowski, 334 Ill. App. 494, 80 N. E. (2d) 89 (1948).

[23] People v. Dougherty, 246 Ill. 458, 92 N. E. 929 (1910).

[24] 8 Ill. (2d) 264, 133 N. E. (2d) 31 (1956), in part reversing 7 Ill. App. (2d) 87, 129 N. E. (2d) 37 (1955).

[25] Ill. Rev. Stat. 1955, Vol. 2, Ch. 91, § 60 et seq., particularly § 70.

present at the trial[26] but this right, like many others, may be waived either expressly or by implication. It became a matter of concern, therefore, for the Supreme Court to decide, in the case of *People* v. *Smith,*[27] whether or not, when the record affirmatively showed the defendant's absence at a part of the trial, such absence was a voluntary one on his part or was occasioned by circumstances beyond his control. Noting that, in earlier cases, the record disclosed not only the defendant's absence but also that such absence was a deliberate one on his part,[28] the court took the position that, for lack of an affirmative statement in the record showing the absence to be a voluntary one, it had to be presumed that the defendant's absence was one of involuntary character, hence required reversal of the conviction.

A limited degree of control over the disposition of the criminal case has been vested in the local state's attorney by virtue of his power to enter a *nolle prosequi,* but it has been noted that his authority in this connection is subject to a degree of discretion on the part of the trial judge.[29] The authority of the Attorney General, on the other hand, at least with respect to proceedings instituted by him, is not so limited.[30] The act of a state's attorney in calling on the Attorney General for assistance,[31] however, generated a problem as to whether or not the limited or the unlimited right to *nolle prosequi* a criminal case should control. A majority of the judges of the Supreme Court, in the case entitled *People ex rel. Castle* v. *Daniels,*[32] took the position that, upon entering the case, the Attorney General did so with the full authority attaching to his office and not simply as an assistant to the local state's attorney so could direct that

26 Ill. Const. 1870, Art. II, § 9.

27 6 Ill. (2d) 414, 129 N. E. (2d) 164 (1955).

28 See, for example, People v. Connors, 413 Ill. 386, 108 N. E. (2d) 774 (1952); People v. Weinstein, 298 Ill. 264, 131 N. E. 631 (1921); Sahlinger v. People, 102 Ill. 241 (1882).

29 People ex rel. Hoyne v. Newcomer, 284 Ill. 315, 120 N. E. 244 (1918).

30 People ex rel. Elliott v. Covelli, 415 Ill. 79, 112 N. E. (2d) 156 (1953).

31 Ill. Rev. Stat. 1955, Vol. 1, Ch. 14, § 4, specifies the duties of the Attorney General, which duties include consultation with and advice to the several state's attorneys and also, in unusual situations, to "attend the trial of any party accused of crime, and assist in the prosecution."

32 8 Ill. (2d) 43, 132 N. E. (2d) 507 (1956). Davis, J., wrote a dissenting opinion.

a *nolle prosequi* be taken, even without the discretionary approval of the trial judge. The latter, by means of an original writ of mandamus,[33] was there ordered to vacate all proceedings subsequent to the motion so made in the pending criminal case and to permit the entry of a judgment dismissing the proceedings.

One further point with respect to the proper constitution of the criminal tribunal might be noted. The defendant in the case of *People* v. *Noel*[34] had been placed on trial with two others. After a jury had been impanelled but prior to the introduction of any testimony, the prosecution moved to withdraw a juror and thereafter sought leave to strike the indictment as to all those accused except for the defendant. This was done and no objection was made by the defendant or his counsel. A trial was had before the same twelve jurors as had been selected originally and, following a verdict against him, defendant was sentenced to the penitentiary. He sought reversal of his conviction on the ground the trial jury was improperly constituted, arguing it had been composed of eleven qualified individuals and one stranger, hence violated his constitutional right[35] without any agreement on his part to accept a jury composed of less than the normal number.[36] His argument proceeded on the line that, since one juror had been withdrawn, the jury which heard his case necessarily included one unauthorized added person. The Supreme Court, however, held otherwise when it noted that, unless one juror had actually been called by name and had been ordered discharged, the practice of withdrawing a juror was no more than a fictional procedure necessarily designed to permit the striking of an indictment without having jeopardy attach in favor of those dismissed from the trial.

33 Issued pursuant to Ill. Const. 1870, Art. VI, § 2. The power so granted is, however, a discretionary one and only exercised in important cases. See Stanley and Severns, "The Original Jurisdiction of the Illinois Supreme Court," 22 CHICAGO-KENT LAW REVIEW 169-96 (1944), particularly pp. 180 et seq.

34 6 Ill. (2d) 391, 128 N. E. (2d) 908 (1955).

35 Ill. Const. 1870, Art. II, § 9.

36 A lesser number may serve if both the defendant and the prosecution consent thereto: People v. Scudieri, 363 Ill. 84, 1 N. E. (2d) 225 (1936), noted in 15 CHICAGO-KENT LAW REVIEW 65.

The nature of the required and the permissible proof at the trial of a criminal case is generally well understood but a year never goes by without some new points being made. Proof as to venue may sometimes be difficult to obtain, but the prosecutor concerned with the case of *People* v. *Jones*[37] solved his difficulty by having the infant victims point out the precise spot where the offense had occurred and by having older and more-informed persons, then present, testify that the scene of the crime so designated was well within the county boundary. The Supreme Court held the testimony so offered was not hearsay. In *People* v. *Walker,*[38] however, it was said that a charge that the premises of Anthony Wright had been burglarized with intent to steal personal property belonging to him and to Ophelia S. Wright had not been made out when the sole witness to the point, who said her name was Mrs. Octavia Wright, referred to the fact that the apartment in question was occupied by her husband, without naming him or in any way coupling Ophelia S. Wright with the case. An argument to the effect that proof of a Christian name is unnecessary[39] was rejected as being inappropriate where, as in a burglary case, the ownership of the building is an essential element.

Endeavoring to overcome the rule that evidence obtained by an illegal search and seizure may not be used, over proper objection, to sustain a conviction,[40] the prosecutor argued, in *City of Chicago* v. *Lord,*[41] that the ground for such rule had disappeared by reason of the holding of the United States Supreme Court in the case of *Wolf* v. *Colorado.*[42] The Illinois Supreme Court, however, while recognizing the fact that the rule followed in this state is the minority view on the point, refused to retreat from the previously established position, saying that while

37 6 Ill. (2d) 252, 128 N. E. (2d) 739 (1955).

38 7 Ill. (2d) 158, 130 N. E. (2d) 182 (1955).

39 People v. Smith, 341 Ill. 649, 173 N. E. 814 (1930).

40 People v. Brocamp, 307 Ill. 448, 138 N. E. 728 (1923).

41 7 Ill. (2d) 379, 130 N. E. (2d) 504 (1955), affirming 3 Ill. App. (2d) 410, 122 N. E. (2d) 439 (1954).

42 338 U. S. 25, 69 S. Ct. 1359, 93 L. Ed. 1782 (1949).

the Wolf case did not forbid the admission of evidence obtained under an illegal search and seizure it did not require that such evidence should be admitted. Brief mention could also be made of the case of *People* v. *Mikka*[43] for the reason it supplies still another instance of the several exceptions which exist to the general rule that evidence of the commission of another crime, unconnected with the one on which the defendant stands charged, would usually be improper proof.

Proper trial procedure became concerned in three other cases, two dealing with instructions and one relating to the motion for new trial. In *People* v. *Galloway*,[44] a Negro defendant asked that the jury be instructed, in the manner prescribed as early as 1854 in this state,[45] that there should be no distinction made in law because of color. The prosecution sought to uphold a refusal to give such an instruction on the ground that the principal witness for the prosecution as well as the police officers were also Negroes but the Supreme Court, adverting to the fact that the jury was composed entirely of white persons, very properly said that the color of the principal parties in the case did not minimize the fundamental legal principle involved, hence it reversed the conviction.

On the basis of the problem presented in the case of *People* v. *Labiak*,[46] however, the court was able to say that no error had occurred by a refusal to give a requested instruction which would have permitted the jury to find the defendant guilty of a lesser offense for the reason that the two crimes originally charged[47]

[43] 7 Ill. (2d) 454, 131 N. E. (2d) 79 (1956), noted in 31 Notre Dame Law, 717. Certiorari has been denied: 350 U. S. 1009, 76 S. Ct. 656, 100 L. Ed. (adv.) 471 (1956).

[44] 7 Ill. (2d) 527, 131 N. E. (2d) 474 (1956).

[45] Campbell v. People, 16 Ill. 17 (1854).

[46] 7 Ill. (2d) 583, 131 N. E. (2d) 633 (1956).

[47] The indictment there contained two counts, one charging indecent liberty with a child, a felony, and the other charging the misdemeanor of contributing to the delinquency of a child. The second count was withdrawn at the close of the evidence.

were not merely degrees of the same unlawful act[48] but were, in fact, separate although related offenses.[49]

The Criminal Code of the state has, for a number of years, contained a provision which declares that "all motions for new trial and in arrest of judgment shall be made in writing."[50] On the strength thereof, the Supreme Court said, in *People* v. *Jankowski*,[51] that an oral motion, particularly one which failed to specify any precise ground, could not serve to preserve errors which may have been committed and, in the event no written motion had been presented, resulted in a waiver of such errors, precluding the higher court from giving attention thereto when review of the conviction was later sought. It was on this ground, therefore, that the prosecutor in *People* v. *Flynn*[52] relied when he argued that, as the defendant's motions for new trial and in arrest of judgment had been orally made and were lacking in specification, there was nothing before the Supreme Court which could justify it giving attention to the case. Despite this, the court did grant review; first, because it noted that the prosecutor had made no objection with respect to the defendant's failure to comply with the statute, but second, because it took the position that, if the legislature had intended to penalize such failure by precluding further review, it should have so stated. The court did, therefore, expressly declare that it was overruling the holding in the *Jankowski* case in this respect.

Procedures exist, at the time of sentencing, whereby the defendant may secure consideration of a request for probation,[53] which procedures contemplate an investigation into the defendant's background and the exercise of a degree of discretion on

[48] See, in that connection, People v. Cox, 340 Ill. 111, 174 N. E. 64, 69 A. L. R. 1215 (1930).

[49] Differences between the two crimes exist in that the offense of taking an indecent liberty with a child is necessarily confined to sexual acts while that of contributing to the delinquency of a minor might involve even non-sexual conduct. Compare Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 109, with ibid., §§ 103-4.

[50] Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 747.

[51] 391 Ill. 298, 63 N. E. (2d) 362 (1945).

[52] 8 Ill. (2d) 116, 133 N. E. (2d) 257 (1956).

[53] Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 784 et seq.

the part of the trial judge after a consideration of the report made on such investigation.[54] It was, therefore, urged as a ground for reversal of the conviction obtained in the case of *People* v. *Hamby*[55] that the trial judge had erred when he refused to delay action until a proper investigation had been made and had summarily announced that persons who were found guilty of selling narcotics were "certainly never entitled to probation or any consideration from the court".[56] The Supreme Court, however, took the position that, while a less summary disposition of the matter would have been more consistent with proper judicial administration, no error had occurred as the trial judge had given regard to the serious nature of the offense and had ascertained that the defendant had lied at the trial, hence it was not unreasonable that the defendant should suffer the penalty imposed by law.

In two cases arising under the Post-Conviction Act[57] the court experienced little difficulty in finding a violation of the rights of the person accused so as to require a reopening of convictions which had earlier been obtained. Thus, in *Brown* v. *People*,[58] the court was able to say that it was the trial judge's responsibility, in the event there was reasonable ground to believe the accused was insane at the time of trial,[59] to make inquiry into the point and his refusal to do this amounted to a denial of due process. Similarly, in *McKeag* v. *People*,[60] it was held proper, for this purpose, to take into consideration the fact that a promise had been made, but had not been fulfilled, to make a recommendation as to the sentence if the defendant would plead guilty. The fact that the recommendation, if made, would not have been binding

54 People v. Donovan, 376 Ill. 602, 35 N. E. (2d) 54 (1941).

55 6 Ill. (2d) 559, 129 N. E. (2d) 746 (1955).

56 6 Ill. (2d) 559 at 563, 129 N. E. (2d) 746 at 749.

57 Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 826 et seq.

58 8 Ill. (2d) 540, 134 N. E. (2d) 760 (1956).

59 The fact of probable insanity was brought to the attention of the trial judge, after trial had begun, when defendant's court-appointed counsel stated that his observation of his client led him to believe the defendant was not in his right mind and was unable to co-operate with counsel. A motion to adjourn the trial so that defendant could be examined by a psychiatrist was denied.

60 7 Ill. (2d) 586, 131 N. E. (2d) 517 (1956).

was said to be a matter of no consequence in determining the fairness of the trial leading to the earlier conviction.

By far the most significant of the decisions in the field of criminal law achieved during the year, one which had and will have important repercussions not only in Illinois but in other states, springs from the problem considered by the Supreme Court of the United States in the post-conviction proceeding entitled *Griffin* v. *Illinois*.[61] The matter arose because Griffin and another defendant, following conviction, sought review and, for this purpose, being indigent persons, asked the trial judge to see to it that they were furnished with a stenographic record of the trial proceedings.[62] The request was denied, so they did nothing further to secure review by the ordinary writ of error, under which review would have been confined to the common law record. Instead, they then proceeded under the Post-Conviction Act, charging a denial of constitutional rights, which petition was dismissed without hearing. Following the affirmance of this dismissal by the Illinois Supreme Court, the defendants then obtained a writ of certiorari and thereby put the federal court in a position to decide whether all defendants, those who were financially able and those who were not, were entitled to have a full review of their convictions and, for this purpose, were also entitled to have the benefit of a publicly provided transcript in the event they were too poor to provide the same at their own expense.

A majority of the United States Supreme Court,[63] seeming to rely on an argument drawn from the right of defendants to the equal protection of the laws, reached the conclusion that it was the obligation of a state, if it permitted full review as to

[61] 351 U. S. 12, 76 S. Ct. 585, 100 L. Ed. (adv.) 483 (1956), noted in 30 Temple L. Q. 61, and 34 Texas L. R. 1083.

[62] As they had not been convicted for murder and sentenced to death, they were not entitled to the benefits of Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 769a.

[63] The majority opinion, written by Mr. Justice Black, was concurred in by Chief Justice Warren, and by Justices Douglas and Clark. Justice Frankfurter wrote a separate concurring opinion. Mr. Justice Burton, with Mr. Justice Minton, wrote a dissenting opinion, concurred in by Justices Reed and Harlan. Mr. Justice Harlan also wrote a separate dissenting opinion.

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

## V. FAMILY LAW

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

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

65 Such persons have until March 1, 1957, to procure relief.

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

67 See Ill. Rev. Stat. 1955, Vol. 1, Ch. 38, § 780½.

1 7 Ill. (2d) 106, 129 N. E. (2d) 699 (1955), noted in 34 CHICAGO-KENT LAW REVIEW 333, 5 DePaul L. R. 302, 44 Ill. B. J. 840, 1956 Ill. L. Forum 147, 10 Southwestern L. J. 91, and 42 Va. L. R. 687.

2 6 Ill. App. (2d) 504, 128 N. E. (2d) 609 (1955).