

Winter 1971

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### Recommended Citation

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# The John Marshall Journal Of Practice and Procedure

Volume 5

Winter Term, 1971

Number 1

## NEED FOR COORDINATION OF ILLINOIS STATUTES WITH NEW CONSTITUTION AND SUPREME COURT RULES EFFECTIVE JULY 1, 1971

by HARRY G. FINS\*

A number of statutes are in need of amendment as a result of the following changes brought about by the 1970 Constitution.<sup>1</sup>

(1) The subject matter contained in the Judicial Article of the 1970 Constitution<sup>2</sup> is sectionally arranged in different order than in the Judicial Article of 1962,<sup>3</sup> and, in several instances, the wording is also changed. Therefore, statutes which refer specifically to the numbered sections of the 1962 Judicial Article<sup>4</sup> or employ the precise wording of the 1962 Judicial Article,<sup>5</sup> are in need of amendment.

(2) The 1970 Constitution<sup>6</sup> changed the office of associate judge to circuit judges and changed the office of magistrate to associate judge. Consequently, the statutes dealing with these officials have to be amended.

(3) Section 8 of the 1962 Judicial Article<sup>7</sup> provided that "The General Assembly shall limit or define the matters to be

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<sup>1</sup> ILL. CONST. (1970).

<sup>2</sup> *Id.* art. VI.

<sup>3</sup> ILL. CONST. art. VI (1962 Revision) (1870).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> ILL. CONST. (1970).

<sup>7</sup> ILL. CONST. art. VI (1962 Revision), §8 (1870).

assigned to magistrates." On the other hand, Section 8 of the 1970 Judicial Article<sup>8</sup> provides that "The Supreme Court shall provide by rule for matters to be assigned to Associate Judges." This change in source of authority requires substantial amendments in a large number of statutes.

(4) The 1970 Constitution has relieved the Supreme Court of its former mandatory direct appellate jurisdiction in cases involving public revenue, constitutional questions and habeas corpus and has vested the Supreme Court with very broad authority to provide by rule which cases it will accept for direct review. This change requires statutory coordination with the new system.

Section 12 of Article VI of the Illinois Constitution of 1870 provided that the "circuit court shall have original jurisdiction of all causes in law and equity." This jurisdictional separation of law, on the one side, and equity, on the other, was abolished by Section 9 of the Judicial Article of 1962<sup>9</sup> and Section 9 of the Judicial Article of the 1970 Constitution<sup>10</sup> which provide that the Circuit Courts shall have "*original jurisdiction of all justiciable matters.*"

In *Chrysler Credit Corporation v. M.C.R.*,<sup>11</sup> Mr. Justice Davis<sup>12</sup> said: "The Illinois Constitution, Article VI, par. 9, grants unto our circuit courts unlimited original jurisdiction of all justiciable matters without distinction between chancery and law powers."<sup>13</sup> Similarly, Mr. Justice Leighton of the Appellate Court for the First District said that "jurisdictional distinctions between courts of law and courts of equity no longer exist in Illinois."<sup>14</sup> Likewise, in *Douglas v. Papierz*,<sup>15</sup> the Appellate Court for the First District said: "Jurisdictional differences between equity and law courts have been abolished, and today, Illinois circuit courts have original jurisdiction in all cases brought before them."<sup>16</sup>

In the Circuit Court of populous Cook County, which handles an extremely large number of cases per year, the chief judge

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<sup>8</sup> *Id.* art. VI, §8 (1870).

<sup>9</sup> *Id.* art. VI, (1962 Revision) §9 (1870).

<sup>10</sup> ILL. CONST. art VI, §9 (1970).

<sup>11</sup> 114 Ill. App. 2d 43, 251 N.E.2d 648 (1969).

<sup>12</sup> Then a Justice of the Appellate Court for the Second District and now a Justice of the Illinois Supreme Court.

<sup>13</sup> *Chrysler Credit Corporation v. M.C.R. Leasing Co.*, 114 Ill. App. 2d 43, 49, 251 N.E.2d 648, 651.

<sup>14</sup> 2 JOHN MAR. J. PRAC. & PROC. 231, 232-33 (1969).

<sup>15</sup> 121 Ill. App. 2d 242, 257 N.E.2d 570 (1970).

<sup>16</sup> *Id.* at 248-49, 257 N.E.2d at 573.

has established a "chancery" division, while the adjoining 18th judicial circuit (consisting of Du Page County with a population of close to one-half million) has no "chancery" division. Of the 101 counties outside of Cook County, more than one-third of the counties have no court divisions at all, and more than two-thirds of the 101 counties have no "chancery" division.<sup>17</sup>

In this connection, it is of interest to note that cases involving will contests, will construction, and contracts to make a will, which were, prior to January 7, 1964,<sup>18</sup> heard by chancery courts, are now heard in the Probate Division of the Circuit Court of Cook County.<sup>19</sup>

In 1971, the Illinois Legislature enacted 65 bills,<sup>20</sup> removing from various statutes the now obsolete references to "at law," "in chancery" or "in equity." However, these outmoded phrases are still found in a number of statutes and should be removed.

The new Illinois Constitution went into effect on July 1, 1971, and, in 1971, a bill was introduced in the Illinois Legislature to remove from the Civil Practice Act all appellate provisions,<sup>21</sup> in compliance with the Supreme Court's holding in *People ex rel. Stamos v. Jones*,<sup>22</sup> that "the constitution has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly."<sup>23</sup> In addition, the Supreme Court of Illinois has amended its rules effective July 1, 1971. As a result of these important developments, there is a grave need for the coordination of the statutes with the new Constitution and the Supreme Court rules.

Historically, the last order in an action at law was denominated a "judgment" and the last order in a suit in equity was denominated a "decree." The Federal Rules of Civil Procedure have adopted the designation of "judgment" for all cases and

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<sup>17</sup> The author expresses his gratitude to the office of the Illinois Courts Administrator for assistance in gathering this information.

<sup>18</sup> The effective date of the Judicial Article of 1962.

<sup>19</sup> Cook County Cir. Ct. 14.2.

<sup>20</sup> House Bills 410-413, 415-421, 423-427, 429, 431, 434-435, 438-439, 441-442, 444, 446, 448-449, 452, 455-456, 458-467, 469-470, 472-487, 489-492, 539, 541 (1971). Senate Bill 159 (1971).

<sup>21</sup> House Bill 564 (1971), which is Illinois State and Chicago Bar Associations Joint Project No. 3.

Most of the sections of the Civil Practice Act dealing with appellate procedure, *i.e.*, §§74-78, 80, 82-92, have been repealed during the period of 1963 through 1967, and the few remaining appellate provisions in the Civil Practice Act are now in the process of being removed by House Bill 564 (1971).

<sup>22</sup> 40 Ill. 2d 62, 69, 237 N.E.2d 495, 497 (1968).

<sup>23</sup> *Id.* at 66, 237 N.E.2d at 497.

have completely abandoned the designation of "decree."<sup>24</sup> The Illinois Judicial Article of 1962 and of the 1970 Constitution employ the designation of "judgment" for all cases and the use of the term "decree" is completely abandoned.<sup>25</sup> Likewise, the Illinois Supreme Court rules employ the designation of "order" and "judgment" and the use of the term "decree" is abandoned.<sup>26</sup> However, there are a number of Illinois statutes which employ the term "decree." This situation is in need of legislative correction so that statutory nomenclature is the same as that which is used in the Constitution and in the Supreme Court rules.

Prior to 1964, Illinois had numerous local courts with overlapping jurisdiction, namely, circuit courts, Superior Court of Cook County, Criminal Court of Cook County, county courts, probate courts, Municipal Court of Chicago, city, village and town courts, justices of the peace and police magistrates. Therefore, the draftsmen of statutes often provided that the statutory right created may be enforced in a "court of competent jurisdiction." Now that there is in each county of Illinois only one trial court, namely, the circuit court, which has "original jurisdiction of all justiciable matters",<sup>27</sup> the phrase "court of competent jurisdiction" should be deleted and "the circuit court" inserted in lieu thereof. There are, however, certain statutory rights which are enforceable in the Federal courts or in the courts of another State. For these limited number of situations, the phrase "court of competent jurisdiction" is appropriate and is left unchanged.

As a by-product of this research project, it became evident that there are in Illinois a number of statutes which still contain remnants of the pre-1934 practice, before the Civil Practice Act<sup>28</sup> went into effect. Glaring examples which are still found in the Illinois Statutes are: "jeofails," "confession nil dicit (or non sum informatus) or upon writ of inquiry of damages,"<sup>29</sup> the defense of "riens per descent," "demurrer or nihil dicit"<sup>30</sup> and "taken nil dicit."<sup>31</sup> There are also a number of statutes which contain remnants from the pre-1964 period, before the unified trial court was established in Illinois, such as master-in-

<sup>24</sup> FED. R. CIV. P. 54-60, 62, 68, 70.

<sup>25</sup> ILL. CONST. art. VI, (1962 Revision), §§5, 7 (1870); ILL. CONST. art. VI, §§4, 6 (1970).

<sup>26</sup> ILL. REV. STAT. ch. 110A, §§271, 272, 301-308, 366, 603, 604, 615, 651 (1971).

<sup>27</sup> ILL. CONST. art. VI, §9, (1970).

<sup>28</sup> ILL. REV. STAT. ch. 110 (1971).

<sup>29</sup> *Id.* ch. 7, Title and §6 (1970).

<sup>30</sup> *Id.* ch. 59, §13.

<sup>31</sup> *Id.* ch. 87, §2.

chancery,<sup>32</sup> justice of the peace,<sup>33</sup> constable,<sup>34</sup> county court,<sup>35</sup> county judge<sup>36</sup> and Superior Court of Cook County.<sup>37</sup> To bring about complete statutory coordination, the desirable changes in these spheres are included herein.

The following material is presented with the aim of aiding the Illinois Legislature in the preparation of the necessary bills to accomplish the needed objective. The headings designating chapters and paragraphs are references to the 1971 Illinois Revised Statutes.<sup>38</sup>

### CHAPTER 3. ADMINISTRATION OF ESTATES

§ 3a. Delete "judgment or decree" and insert "or judgment" in lieu thereof.

§ 74. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

§ 92. In the first sentence, delete "as in actions at law." In the second sentence, delete "at law."

§ 107. Delete "or decree."

§ 113a. Delete the sixth sentence, as it is an appellate provision in conflict with Rule 1 of the Supreme Court.<sup>39</sup>

§ 232. Delete "or decree."

§ 233. Delete "decree" and insert "order" in lieu thereof.

§ 238. Delete "A decree" and insert "An order" in lieu thereof.

§ 239. Delete "decree" and insert "order" in lieu thereof.

§ 240. Delete "decreed" and insert "ordered" in lieu thereof.

§ 245. Delete "decree" and insert "judgment" in lieu thereof. Delete the phrase "common law" as it is totally unnecessary.

§ 248. Delete "in law or equity."

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<sup>32</sup> *Id.* ch. 30, §11; ch. 77, §§17, 41; ch. 108½, §3-136.

<sup>33</sup> *Id.* ch. 54, §21; ch. 114, §86.

<sup>34</sup> *Id.* ch. 129, §§301, 303.

<sup>35</sup> *Id.* ch. 21, §21.3; ch. 24, §9-2-68; ch. 77, §41; ch. 121½, §13-36.

<sup>36</sup> *Id.* ch. 46, §24-18.

<sup>37</sup> *Id.* ch. 56½, §217.

<sup>38</sup> The material included herein was collected by an examination of the Illinois Revised Statutes (1971); and March, 1972, supplement to Illinois Annotated Statutes.

<sup>39</sup> ILL. REV. STAT. ch. 110A, §1 (1971).

§ 259 (P.A. 77-776). In paragraph (L) of the section, delete “decree” and insert “judgment” in lieu thereof.

§ 334. Repeal section in toto, as it is an appellate provision in conflict with Supreme Court Rule 305.<sup>40</sup>

§ 335. Repeal section in toto, as it is an appellate provision in conflict with Supreme Court Rule 305.<sup>41</sup>

#### CHAPTER 4. ADOPTION

§ 9.1-8. In paragraph (e), delete “or decree.” In paragraph (f) (2), delete “or decree.”

§ 9.1-12. Delete “decree” and insert “order” in lieu thereof.

§ 9.1-14. Delete the word “decree,” which appears five times in the section, and insert “order” in lieu thereof in each place.

§ 9.1-14a. Delete “decree,” which appears three times in the section, and insert “order” in lieu thereof in each place.

§ 9.1-15. Delete “a decree” and insert “an order” in lieu thereof.

§ 9.1-16. Delete “grant a decree” and insert “enter an order” in lieu thereof.

§ 9.1-17. Delete “a decree,” which appears twice in the section, and insert “an order” in lieu thereof in each place.

§ 9.1-19. Delete “decree,” which appears twice in the section, and insert “order” in lieu thereof in each place.

§ 9.1-20. Delete “decree,” which appears four times in the section, and insert “order” in lieu thereof in each place. In the third paragraph of the section, delete “provided that no appeal may be taken more than 30 days after the decree, or judgment appealed from has become final,” as the quoted matter is contrary to Supreme Court Rule 303 (e).<sup>42</sup>

#### CHAPTER 5. AGRICULTURE AND HORTICULTURE

§ 55.19 (P.A. 77-106). In paragraph (d), delete “a court of competent jurisdiction” and insert “the circuit court” in lieu thereof. In paragraph (e), delete “at law.”

§ 184. Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

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<sup>40</sup> *Id.* §305.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* §303(e).

§ 411 (P.A. 77-1332). Delete "a court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 413 (P.A. 77-1332). Delete "a court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 414 (P.A. 77-1332). Delete "Appeals from final administrative decisions of the Department may be taken and judicial review had thereof to" and insert in lieu thereof "Judicial review of final administrative decisions may be had in accordance with."

#### CHAPTER 6. ALIENS

§ 2. Delete "decree" and insert "order" in lieu thereof. Also delete "information," which appears four times in the section, and insert "complaint" in lieu thereof in each place. This is a civil proceeding, and Section 32 of the Civil Practice Act<sup>43</sup> provides that "The first pleading by the plaintiff shall be designated a complaint."

§ 3. Delete "decree" and insert "order" in lieu thereof.

#### CHAPTER 7. AMENDMENTS AND JEOfAILS

In the title of the Act, delete "and jeofails," as it is a vestige of common law pleading, which has not existed in Illinois for 37 years, since January 1, 1934. Insert in lieu thereof "of process, pleadings or proceedings."

§ 3. Delete "the supreme court" and insert "any reviewing court" in lieu thereof so that it will appropriately apply to the Appellate Court as well.

§ 6. Delete "or upon confession nil dicit (or non sum informatus) or upon any writ of inquiry of damages," as these are vestiges of common law pleading which has been out of existence in Illinois since 1934, a period in excess of 37 years. For the same reason, delete, from the "Fifth" paragraph of the section, "lack of color, miscontinuance, discontinuance". Also delete, from the "Eighth" paragraph of the section, "infant" and insert "minor" in lieu thereof. This will coordinate this section with the terminology of the Probate Act.<sup>44</sup>

§ 9. (P.A. 77-930). Delete "information in the nature of a" and insert instead "complaints for," as the Quo Warranto Act,<sup>45</sup> which was enacted in 1937, provides that "the first pleading by the plaintiff shall be designated a complaint."

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<sup>43</sup> *Id.* ch. 110, §32.

<sup>44</sup> *Id.* ch. 3.

<sup>45</sup> *Id.* ch. 112, §11.



§ 11. Delete "plea" and insert "defense" in lieu thereof. This will coordinate this section with Section 43(3) of the Civil Practice Act.<sup>46</sup>

#### CHAPTER 8. ANIMALS

§ 10.27 (P.A. 77-1720). Delete "any appropriate court of any county or municipality of this State" and insert "the circuit court of the county" in lieu thereof.

§ 55 (P.A. 77-1243). Delete "summons in the usual form" and insert "the filing of a complaint" in lieu thereof. Section 13 of the Civil Practice Act provides that an action "shall be commenced by the filing of a complaint."

§ 56. Repeal section in toto, as it is geared to former justice of the peace practice which no longer exists.

§ 57. Delete "such" and insert "the" in lieu thereof.

§ 421. This section was amended in 1971 by P.A. 77-778 and P.A. 77-932. P.A. 77-778 which contains the phrase "by statute for depositions in suits at law and in the courts of record of this State" should be repealed or corrected to eliminate the quoted language.

#### CHAPTER 10. ARBITRATION AND AWARDS

§ 102. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 114. Delete "or decree," which appears twice in the section.

§ 116. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

#### CHAPTER 10½. ARCHITECTS

§ 15.1 (P.A. 77-933). Delete "a decree" and insert "an order" in lieu thereof.

#### CHAPTER 11. ATTACHMENT

§ 1. Delete "any court having competent jurisdiction" and insert "the circuit court."

§ 6. Change "hath" to "has."

§ 15. Delete the word "final," as it is meaningless.

§ 18. Delete "except" and insert "object" in lieu thereof.

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<sup>46</sup> *Id.* ch. 110.

Delete also "exceptions" and insert "objections" in lieu thereof.

§ 22. Delete "give bail" and insert "post bond" in lieu thereof.

§ 26. Delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act, as all such provisions have been removed from the Civil Practice Act.

§ 27. Delete "traversing" and insert "denying" in lieu thereof. This will coordinate this section with the terminology of Section 40 of the Civil Practice Act.

§ 29. Add the following paragraph: "If no trial by jury is requested by any party in the manner provided by law, the matter shall be tried by the court without a jury."

§ 30. Delete "avail himself in his defense of any counterclaim properly pleadable by the laws of this State" and insert in lieu thereof "file a counterclaim as in other civil cases." This will coordinate this section with Section 38 of the Civil Practice Act.

§ 34. Delete "suits commenced by summons" and insert "civil actions where summons is served."

§ 36. Delete "hands" and insert "possession or custody."

§ 37. Delete "hands," which appears twice in the section, and insert "possession or custody" in each of the places.

§ 40. Delete "by law is provided."

#### CHAPTER 12. ATTACHMENT OF WATER CRAFT

§ 4. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 14. Delete "decree or."

§ 19. Delete "but such answer shall not have the effect of a sworn answer in chancery as evidence."

§ 21. Delete "or decree" and "decree or," both of which appear in the section. Also delete "pass" and insert "shall be entered" in lieu thereof.

§ 22. Delete "or decree."

§ 26. Delete "complainant," which appears twice in the section, and insert "plaintiff" in lieu thereof in each place. Delete also "or decree."

§ 27. Delete “decree or.” Delete also “at law, or decrees in chancery,” which appears in the “Fourth” paragraph of the section.

§ 29a. Delete the phrase “including the provisions for appeal,” which refers to the appellate provisions of the Civil Practice Act, as all such provisions have been removed from the Civil Practice Act.

#### CHAPTER 13. ATTORNEYS AND COUNSELORS

§ 1. Delete “information” and insert “complaint” in lieu thereof, as this is a civil case and Section 32 of the Civil Practice Act<sup>47</sup> provides that “The first pleading by the plaintiff shall be designated a complaint.”

§ 2. Delete “court of record of some county” and insert “circuit court” in lieu thereof.

§ 12. Delete “of law and equity.”

§ 14 (P.A. 77-934). Delete “decree” and insert “order” in lieu thereof. Delete also “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

§ 21. Delete “either at law or otherwise.”

§ 22 (P.A. 77-935). Delete “suit” and insert “action” in lieu thereof.

#### CHAPTER 14. ATTORNEY GENERAL AND STATE'S ATTORNEYS

§ 57. In paragraph (e), delete “degree” and insert “judgment” in lieu thereof. Also delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

§ 60. Delete “any court having jurisdiction of charitable trusts” and insert “the circuit court” in lieu thereof.

#### CHAPTER 15. AUDITOR OF PUBLIC ACCOUNTS AND AUDITOR GENERAL

§ 15. Delete “law and equity” and insert “the circuit courts” in lieu thereof.

§ 66. Delete the third sentence of the section, as it is geared to the Constitution of 1870 which no longer exists.

#### CHAPTER 15½. AVIATION

§ 22.42-O. Delete “action at law” and insert “civil action”

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<sup>47</sup> *Id.* ch. 110, §32.

in lieu thereof.

§ 22.69. Delete “within 60 days after the entry of the order or judgment of the circuit court” and delete “except that formal pleadings shall not be required,” as the quoted matter is contrary to Supreme Court Rule 303(a).<sup>48</sup> Delete also “to the Supreme Court” from the title of the section.

§ 22.71. Delete “or the court to which the appeal is taken, as the case may be,” as the circuit court is the only court involved. Delete also “an appeal” and insert “judicial review” in lieu thereof. Delete also “appeal” and insert “review” in lieu thereof.

§ 22.79a. Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

§ 48.109. Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

§ 68.18. In the first sentence of the sixth paragraph of the section, delete the following: “by the party appealing filing a notice of appeal within 30 days from the entry of such order, and thereafter perfecting such appeal as is provided under the Civil Practice Act for other civil cases,” as said quoted matter is contrary to Supreme Court Rule 303(e)<sup>49</sup> and all appellate provisions have been removed from the Civil Practice Act.

§ 82. Delete “court having jurisdiction in any proper action” and insert “circuit court” in lieu thereof.

#### CHAPTER 16. BAIL

§ 54. Delete, in paragraph (5) (e), “or decree.”

#### CHAPTER 16½. BANKS

§ 45.1a. Delete “bill” and insert “complaint,” as Section 32 of the Civil Practice Act<sup>50</sup> provides that “The first pleading by the plaintiff shall be designated a complaint.”

§ 56.2. Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

§ 98. Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

§ 129. Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

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<sup>48</sup> *Id.* ch. 110A, §303(a).

<sup>49</sup> *Id.* §303(e).

<sup>50</sup> *Id.* ch. 110, §32.

§ 267. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 310. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

#### CHAPTER 16<sup>3</sup>/<sub>4</sub>. BARBERS AND BEAUTY CULTURISTS

§ 14.80. (P.A. 77-375). Delete "a decree" and insert "an order" in lieu thereof.

§ 14.92. In paragraph (a) (11), delete "decree" and insert "order" in lieu thereof. Also delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 29a. Delete "a decree" and insert "an order" in lieu thereof. Also delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

#### CHAPTER 19. CANALS AND WATERWAYS IMPROVEMENTS

§ 120.6 (P.A. 77-163). Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 160.1. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 294. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 361. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 411. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 464. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 522. Delete "suits at law or proceedings in equity" and insert "civil actions" in lieu thereof.

§ 715. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

#### CHAPTER 21. CEMETERIES

§ 21.3. Delete "county court" and insert "circuit court." Delete also "a decree" and insert "an order" in lieu thereof.

§ 21.5. Delete "a decree," which appears three times in the section, and insert "an order" in lieu thereof in each place.

§ 21.7. Delete "a decree," which appears twice in the section, and insert "an order" in lieu thereof in each place.

§ 64.15a. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 64.20. Delete, in the last sentence of the section, "in accordance with the provisions of the Civil Practice Act relating to appeals and all existing and future amendments of said act and modifications thereof relating thereto and the rules now or hereafter adopted pursuant to said Act shall apply to all proceedings hereunder except as otherwise provided in this Act" and insert in lieu thereof "as in other civil cases."

## CHAPTER 22. CHANCERY

§ 5 (P.A. 77-941). Delete "infants" and insert "minors" in lieu thereof in order to conform with the terminology of the Probate Act.<sup>51</sup>

§ 6 (P.A. 77-941). Delete "or decree." Delete also "to any infant or insane" and insert in lieu thereof "for any minor or incompetent," in order to conform with the terminology of the provisions of the Probate Act.<sup>52</sup>

§ 41. Repeal the section in toto, as it is contrary to actual practice in Illinois courts and contrasts with Section 50(4) of the Civil Practice Act<sup>53</sup> which provides for the entry of a judgment by default "for want of an appearance, or for failure to plead."

§ 42 (P.A. 77-941). Delete "any complaint is taken for confessed" and insert "a defendant is defaulted" in lieu thereof. Delete also "make such decree thereon" and insert "enter such order" in lieu thereof. Delete also the two additional references in the section to "decree" and insert "order" in lieu thereof in each place. Delete also "as pertain to courts of chancery, and."

§ 44. Delete "A decree" and insert "An order" in lieu thereof. After the word "for" and before the word "money," insert the phrase "the payment of." Delete "at law" and insert in lieu thereof "for the payment of money."

§ 45 (P.A. 77-941). Delete "decrees" and insert "orders" in lieu thereof. Delete also "decree," which appears in three other places in the section, and insert "order" in lieu thereof in each

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<sup>51</sup> *Id.* ch. 3, §131 *et seq.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* ch. 110, §50(4).

of the three places. Delete the word "given" and insert "entered" in lieu thereof. Delete the word "each" and delete the word "order" which appears before the word "that" and insert "provide" in lieu thereof. Delete "at law" and insert "for the payment of money" in lieu thereof.

§ 46 (P.A. 77-941, 77-1250). Delete "suit in equity" and insert "civil action" in lieu thereof. Delete also "decree," which appears three times in the section, and insert "order" in lieu thereof in each place. Delete the word "made" and insert "entered" in lieu thereof.

§ 47. Delete "decree," which appears three times in the section, and insert "order" in lieu thereof in each. Delete "at law" where the phrase first appears and insert "for the payment of money" in lieu thereof. Delete also "at law" where it next appears and insert in lieu thereof "of judgments for the payment of money."

§ 48. Delete "decreed" and insert "ordered" in lieu thereof.

§ 49 (P.A. 77-941). Delete "decree" and insert "order" in lieu thereof.

§ 50. Delete "decree" and insert "order" in lieu thereof.

§ 52a. Delete "or decree of any court of competent jurisdiction" and insert "of a circuit court" in lieu thereof.

§ 53 (P.A. 77-494). Delete "suit in equity." Delete also "in the nature of suits in equity" and insert "seeking equitable relief" in lieu thereof. Also amend title of Act accordingly.

§ 53.1 (P.A. 77-494). Delete "decree" and insert "order" in lieu thereof.

#### CHAPTER 23. CHARITIES AND PUBLIC WELFARE

§ 3-10.8. Delete "or decree."

§ 3-10.9. Delete "decree" and "decrees" and insert "judgment" and "judgments" in lieu thereof.

§ 3-10.9a (P.A. 77-713). Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each place.

§ 10-16. Delete "at law" and insert "for the payment of money" in lieu thereof.

§ 11-22. Delete "judgment or decree" and insert "or judgment" in lieu thereof.

§ 5005.7. Delete "at law" and insert "for the payment of money" in lieu thereof.

## CHAPTER 24. CITIES AND VILLAGES

§ 2-2-8. Delete the last sentence of the section, as it is in conflict with Supreme Court Rule 305.<sup>54</sup>

§ 4-9-1. Delete "or decrees."

§ 4-9-2. Delete all of section, as all appellate provisions have been removed from the Civil Practice Act. Insert instead: "Appeals may be taken as in other civil cases."

§ 5-5-3. Delete "by a decree, as in chancery, to be recorded in the proper court." Also delete "decree," which appears three times in the section, and insert "judgment" in lieu thereof in each of the three places.

§ 5-5-4. Delete "decree" and insert "declare" in lieu thereof. Also delete the word "decree," which appears a second time in the section, and insert "judgment" in lieu thereof.

§ 8-6-6. Delete "an appropriate action at law" and insert "a civil action" in lieu thereof. Delete also "at law or in equity."

§ 8-7-6. Delete "an appropriate action at law" and insert "a civil action" in lieu thereof. Delete also "at law or in equity."

§ 9-2-21. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 9-2-31. Delete "judgment, or decree" and insert "or judgment" in lieu thereof.

§ 9-2-35. Delete the last sentence of the section, as it is in conflict with Supreme Court Rules 1 and 303.<sup>55</sup>

§ 9-2-55. Delete the second sentence in the first paragraph, as it is geared to common law pleading which has not existed in Illinois since January 1, 1934.

§ 9-2-58. Delete "cases at law" and insert "civil cases."

§ 9-2-66. Delete "county court" and insert "circuit court" in lieu thereof.

§ 9-2-68. Delete "county court" and insert "circuit court" in lieu thereof.

§ 9-2-69. Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each place.

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<sup>54</sup> *Id.* ch. 110A, §305.

<sup>55</sup> *Id.* §§1, 303.



§ 9-2-115. Delete the last sentence of the section, as it is in direct conflict with Section 6 of Article VI of the Illinois Constitution, which provides for appeal as a matter of right.<sup>56</sup>

§ 9-2-123. Delete the first sentence of the second paragraph in the section, as it is in direct conflict with Section 6 of Article VI of the Illinois Constitution,<sup>57</sup> which provides for appeal as a matter of right.

§ 11-29.1-11. Delete "at law" and insert "for the payment of money" in lieu thereof.

§ 11-31-2. Delete "court of competent jurisdiction," which appears twice in the section, and insert "circuit court" in lieu thereof in each place.

§ 11-71-6. Delete "in law or in equity, by suit," and insert "by an ordinary civil" in lieu thereof.

§ 11-89-1. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 11-103-15. Delete "court having jurisdiction" and insert "circuit court" in lieu thereof.

§ 11-123-8. Delete "decree" and insert "judgment" in lieu thereof.

§ 11-123-9. Delete "decree," which appears three times in the section, and insert "judgment" in lieu thereof in each of the three places.

§ 11-130-7. Delete "court having jurisdiction" and insert "circuit court" in lieu thereof.

§ 11-138-3. Delete "in any court having jurisdiction of the offense."

§ 808.15. Delete, in first paragraph of section, "provided in this Act, and not otherwise" and insert in lieu thereof "in other civil cases."

#### CHAPTER 25. CLERKS OF COURTS

§ 14. In the first paragraph, delete "decrees." In the second paragraph, delete "decree," which appears three times in the paragraph, and insert "judgment" in lieu thereof in each place.

§ 15. Delete "order, judgment or decree" and insert "or-

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<sup>56</sup> ILL. CONST. art. VI, §6 (1970).

<sup>57</sup> *Id.*

der or judgment" in lieu thereof. Delete "decree" and insert "judgment" in lieu thereof.

§ 16. In paragraph "Fourth," delete "and decree." Delete "or decree," which appears three times in the paragraph. In paragraph "Fifth," delete "or decree," which appears twice in the paragraph.

#### CHAPTER 29. CONTRACTS

§ 6. Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each place.

§ 12. Delete "suit in equity in any court of competent jurisdiction" and insert "civil action in the circuit court" in lieu thereof.

§ 21. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 24e. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 39. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

#### CHAPTER 30. CONVEYANCES

§ 11. Delete "masters in chancery." Also delete "proceeding or decree," which appears twice in the section, and insert "or proceeding" in lieu thereof in each place. Delete "or term of court," as terms of court have been abolished in Illinois. Delete "order or decree" and insert "or order" in lieu thereof.

§ 19. Delete "in law or in equity."

§ 31. Delete "decree" and insert "judgment" in lieu thereof.

§ 37 $\frac{1}{4}$ . Delete "action at law or suit in equity" and insert "civil action" in lieu thereof.

§ 41. Delete "cause in law or equity" and insert "civil action" in lieu thereof.

§ 55. In paragraph "g," delete "in law or equity."

§ 57. Delete "in chancery sitting." Delete, in paragraph "(6th)," "in law or equity." Also delete, in paragraph "(8th)," the word "decree" and insert "order" in lieu thereof. Delete also "equity" and insert "law" in lieu thereof.

§ 59. Delete "court having chancery jurisdiction" and in-

sert "circuit court" in lieu thereof. Also delete "orders, judgments or decrees" and insert "orders or judgments" in lieu thereof.

§ 61. Delete "orders, judgments and decrees" and insert "orders and judgments" in lieu thereof. Also, delete "decree" and insert "judgment" in lieu thereof.

§ 64. Delete "the same will be taken as confessed, and a decree" and insert "and a judgment" in lieu thereof.

§ 67. Delete "and the application taken as confessed." Delete also "decree" and insert "judgment" in lieu thereof.

§ 69. Delete "decree" and insert "order" in lieu thereof. Delete "decrees" and insert "judgments" in lieu thereof. Delete also "equity" and insert "law" in lieu thereof.

§ 70. Delete "decree," which appears three times in the section, and insert "judgment" in lieu thereof in each place. Delete "equity and insert "law" in lieu thereof. Delete the last sentence and insert in lieu thereof: "Appeals may be taken as in other civil cases."

§ 71. Delete "action at law or in equity" and insert "civil action" in lieu thereof. Delete "or decreed" and delete "or decree," which appears twice in the section.

§ 72. Delete "or decree."

§ 73. Delete "or decree," which appears three times in the section.

§ 82. Delete "or decree," which appears twice in the section.

§ 83. Delete "or decree."

§ 88. Delete "or decree."

§ 116. Delete "decrees" and insert "orders" in lieu thereof.

§ 120. Delete "as provided in proceedings in chancery."

§ 122 (P.A. 77-1291). Delete "or decree." Delete "decree," which appears twice in the section.

§ 124. Delete "judgment or decree" and insert "or judgment" in lieu thereof.

§ 125. Delete "decree."

§ 128. Delete "or decree." Delete "bill," which appears twice in the section, and insert "complaint" in lieu thereof in

each place. Delete "decree," which appears twice in the section.

§ 129a. Delete "order or decree," and insert "or order" in lieu thereof.

§ 130. Delete "equity" and insert "law" in lieu thereof. Also delete "decree" and insert "judgment" in lieu thereof.

§ 130a. Delete "equity" and insert "law" in lieu thereof.

§ 131 (P.A. 77-944). Delete "decree" and insert "judgment" in lieu thereof. Delete "equity" and insert "law" in lieu thereof. Also delete "any court of competent jurisdiction" and insert "the circuit court." Also delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act, as all such provisions have been removed from the Civil Practice Act.

§ 138. Delete "an action at law" and insert "a civil action" in lieu thereof.

§ 139. Delete "court of competent jurisdiction," which appears twice in the section, and insert "circuit court" in lieu thereof in each place.

§ 143. Delete "at law or in equity."

§ 154. Delete "in law and equity."

## CHAPTER 32. CORPORATIONS

§ 157.80. Delete, in paragraph (e), "judgment, or decree" and insert "judgment or order" in lieu thereof.

§ 157.82. Delete "court of equity" and insert "circuit court" in lieu thereof.

§ 157.83. Delete "equity" and insert "the circuit court" in lieu thereof.

§ 157.91. Delete "decree" and insert "order" in lieu thereof.

§ 157.92. Delete "a court of equity" and insert "the circuit court" in lieu thereof. Delete also "decree" and insert "order" in lieu thereof.

§ 157.94. Delete "decree of a court of equity" and insert "order of a court" in lieu thereof.

§ 157.142. Delete "action at law or suit in equity" and insert "civil action" in lieu thereof.

§ 157.148. Delete, in the last paragraph of the section, "within 60 days after service on such party of a copy of the order or judgment of the circuit court except that formal pleadings shall not be required," as said quoted matter is contrary to Supreme Court Rule 303(a).<sup>58</sup>

§ 163a47. Delete, in paragraph (f), "judgment, order or decree" and insert "judgment or order" in lieu thereof.

§ 163a49. Delete "a decree" and insert "an order." Delete "equity" and insert "the circuit court" in lieu thereof.

§ 163a53 (P.A. 77-946). In title of section, delete "court of equity" and insert "circuit court" in lieu thereof. Delete also, in paragraph (d) of the section, "a decree" and insert "an order" in lieu thereof.

§ 163a54. In title of section, delete "by court of equity." Delete also, in first sentence of section, "courts shall have all the ordinary powers of a court of equity" and insert "court has power" in lieu thereof.

§ 163a58. Delete "decree," which appears twice in the section, and insert "order" in lieu thereof in each place.

§ 163a59. Delete "decree," which appears three times in the section, and insert "order" in lieu thereof in each place.

§ 163a61. Delete "decree of a court of equity" and insert "order of a court" in lieu thereof.

§ 188i. Delete, in the second paragraph, "at law" and insert "for the payment of money" in lieu thereof.

§ 191. Delete "an information in the nature of a complaint in a suit in equity" and insert "a complaint" in lieu thereof.

§ 192. Delete "such information" and insert in lieu thereof "the complaint," as it is a civil action and Section 32 of the Civil Practice Act<sup>59</sup> provides that "The first pleading by the plaintiff shall be designated a complaint."

§ 196. Delete "decree," which appears twice in the section, and insert "order" in lieu thereof in each place. Delete also "information" and insert "complaint" in lieu thereof.

§ 212. Delete "information" and insert "complaint" in lieu thereof.

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<sup>58</sup> ILL. REV. STAT. ch. 110A, §303(a) (1971).

<sup>59</sup> *Id.* ch. 110, §32.

§ 864. Delete "in accordance with the provisions of the 'Civil Practice Act' relating to appeals, and all existing and future amendments and modifications thereof and the rules adopted thereto," as all appellate provisions have been removed from the Civil Practice Act. Insert in lieu thereof "as in other civil cases."

### CHAPTER 33. COSTS

§ 8. Delete "be given for him, and he be non-pros'd or suffer a discontinuance or be non-suited after the appearance of the defendant, or a verdict pass against him," as the nomenclature employed is a vestige of old common law practice and is not in accord with the terminology of Sections 50.1 and 52 of the Civil Practice Act.<sup>60</sup> Insert instead "is rendered in his favor and the action is voluntarily dismissed by the plaintiff or is dismissed for want of prosecution or judgment is rendered against the plaintiff."

§ 10. Delete "or demandant," which appears three times in the section, as it is a vestige of common law pleading in an action of ejectment. This was abolished by the adoption of the Civil Practice Act<sup>61</sup> to the action of ejectment. Section 21(1) of the Civil Practice Act<sup>62</sup> has established uniform terminology for all civil cases which are governed by the Act.

§ 11. Delete "a verdict shall be found" and insert in lieu thereof "judgment is rendered," as the law pertaining to the right to recover costs should be the same whether the case is tried with or without a jury, and the word "verdict" is applicable only to trial by jury. Furthermore, the mere rendition of a "verdict" does not necessarily represent the final result, as the jury's verdict may be set aside by the judge. Delete also "or demandant," as it is a vestige of common law pleading in an action of ejectment.

§ 12. Delete "verdict" and insert in lieu thereof "judgment" to represent finality in both jury and non-jury cases. Delete also "found" and insert in lieu thereof "rendered."

§ 13. Delete all of the text in the section following the word "and." Insert in lieu thereof the following: "judgment is rendered in favor of any one or more of the defendants, each defendant shall recover his costs in the action."

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<sup>60</sup> *Id.* §§50.1, 52.

<sup>61</sup> *Id.* ch. 110.

<sup>62</sup> *Id.* §21(1).

§ 14. Delete the second sentence and insert in lieu thereof: "If the action is voluntarily dismissed by the plaintiff or is dismissed for want of prosecution or judgment is rendered against the plaintiff, the defendant shall recover his costs." This change will bring the section in accord with the terminology of Sections 50.1 and 52 of the Civil Practice Act.<sup>63</sup>

§ 16. Delete "shall be dismissed for irregularity, or be non-pros'd or non-suited," as the terminology is not in accord with Sections 50.1 and 52 of the Civil Practice Act.<sup>64</sup> Insert, in lieu thereof, "is voluntarily dismissed by the plaintiff or is dismissed for want of prosecution."

§ 17. Delete "such plaintiff suffer a discontinuance, or be non-suited or non-pros'd or verdict pass against such plaintiff." Insert, in lieu thereof, "the action is voluntarily dismissed by the plaintiff or is dismissed for want of prosecution or judgment is rendered against the plaintiff." This change will bring the section in accord with the terminology of Sections 50.1 and 52 of the Civil Practice Act.<sup>65</sup>

§ 18 (P.A. 77-950). Delete "defendant dismissing the same" and insert "suit being dismissed" in lieu thereof. Delete also "compelled" and insert "enforced" in lieu thereof.

§ 22. Delete "appellant be non-suited" and insert "appeal be dismissed" in lieu thereof.

§§ 23 and 24. Repeal sections in toto, as the provisions are in conflict with Supreme Court Rules 1 and 366(a)(5),<sup>66</sup> and with the Supreme Court's decision in *People ex rel. Stamos v. Jones*,<sup>67</sup> that "the constitution has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly."<sup>68</sup>

§ 28. Delete "a non-suit, default or non-pros" and insert, in lieu thereof, "a voluntary dismissal, a dismissal for want of prosecution or a default." This change will bring the section in accord with the terminology of Sections 50.1 and 52 of the Civil Practice Act.<sup>69</sup>

§ 33. Delete "to be recovered in any court of competent jurisdiction," as it is totally unnecessary.

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<sup>63</sup> *Id.* §§50.1, 52.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* ch. 110A, §§1, 366(a)(5).

<sup>67</sup> *People ex rel. Stamos v. Jones*, 40 Ill. 2d 62, 237 N.E.2d 495 (1968).

<sup>68</sup> *Id.* at 66, 237 N.E.2d at 497.

<sup>69</sup> ILL. REV. STAT. ch. 110, §§50.1, 52 (1971).

## CHAPTER 34. COUNTIES

§ 438 (P.A. 77-1292). Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 607. Delete "cases of appeals" and insert "civil cases" in lieu thereof.

§ 959. Delete "at law" and delete "at law or in equity."

§ 2056. Delete "at law" and delete "at law or in equity."

§ 2062. Delete "at law" and delete "at law or in equity."

§ 2076. Delete "at law" and delete "at law or in equity."

§ 3156. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

§ 3160. Delete "equity" and insert "the circuit court" in lieu thereof.

## CHAPTER 37. COURTS

§ 18. Delete "decrees" and insert "orders" in lieu thereof.

§ 21. Repeal section in toto, as it is in conflict with Supreme Court Rules 1 and 302<sup>70</sup> and also with *People ex rel. Stamos v. Jones*.<sup>71</sup>

§ 25. Delete "with the consent of a majority of the judges of the district to which such assignment is made," as this requirement has been removed by the 1970 Constitution.<sup>72</sup>

§ 32.1 The designation of "Section 5" is a reference to the 1962 Judicial Article<sup>73</sup> and should be changed to "Section 4," which is the proper reference to the 1970 Judicial Article.<sup>74</sup>

§ 32.2. To coordinate the last sentence with Section 4 (a) of the Judicial Article,<sup>75</sup> the last sentence in the statute should be deleted and the following sentence inserted in lieu thereof: "The Supreme Court may provide by rule for appeals from the Appellate Court in other cases."

§ 41. Repeal the section in toto, as it is in conflict with

<sup>70</sup> *Id.* ch. 110A, §§1, 302.

<sup>71</sup> *People ex rel. Stamos v. Jones*, 40 Ill. 2d 62, 66, 237 N.E.2d 495, 497 (1968).

<sup>72</sup> ILL. CONST. art. VI, §§5, 16 (1970).

<sup>73</sup> *Id.* (1962 Revision) (1870).

<sup>74</sup> *Id.* (1970).

<sup>75</sup> *Id.*



Supreme Court Rules 1 and 23<sup>76</sup> and also with *People ex rel. Stamos v. Jones*.<sup>77</sup>

§ 72.39. Repeal the section, as it is obsolete.

§ 72.42. Change is necessary in view of the fact that "associate judges" did, on July 1, 1971, become automatically "circuit judges."

§§ 160.1 through 160.5. This act is in need of substantial change in order to coordinate it with the 1970 Judicial Article.<sup>78</sup>

§ 439.8. This section was amended by P.A. 77-953 and P.A. 77-1777. In P.A. 77-953, in paragraph (d), the phrase "at law or in chancery" was removed, whereas in P.A. 77-1777, in paragraph (d), the phrase "at law or in chancery" was not removed. These two acts should be coordinated, and the phrase, in (d), "at law or in chancery" should be removed.

§ 439.24-5 (P.A. 77-1777). Delete "legal or equitable" and insert "or judicial" in lieu thereof.

§ 704-4. Delete "order, judgment or decree," which appears twice in the section, and insert "order or judgment" in lieu thereof in each place.

§ 704-8. Delete paragraph (3) of the section, as it deals with an appeal from an interlocutory order which is, by virtue of Section 6 of the 1970 Judicial Article,<sup>79</sup> within the exclusive rule-making power of the Supreme Court, and over which subject the Legislature has no authority whatsoever.<sup>80</sup>

§ 759 (P.A. 77-373). In paragraph "10" of the section, delete "decree" and insert "order" in lieu thereof.

<sup>76</sup> ILL. REV. STAT. ch. 110A, §§1, 23 (1971).

<sup>77</sup> *People ex rel. Stamos v. Jones*, 40 Ill. 2d 62, 66, 237 N.E.2d 495, 497 (1968).

<sup>78</sup> ILL. CONST. art. VI (1970).

<sup>79</sup> *Id.*

<sup>80</sup> The Juvenile Court Act provides for (1) a "Detention hearing," which is parallel to the "preliminary examination" in an adult criminal prosecution, (2) an "Adjudicatory hearing," which is parallel to the "trial" in an adult criminal prosecution, and (3) a "Dispositional hearing," which is parallel to a "hearing on aggravation and mitigation" in an adult criminal prosecution. An "adjudication of wardship" after an "adjudicatory hearing" is parallel to a finding of guilty in an adult criminal prosecution. Such adjudication is (the same as a finding of guilty without imposition of sentence) an interlocutory order which is not appealable. *People ex rel. Filkin v. Flessner*, 48 Ill. 2d 54, 268 N.E.2d 376 (1971). The Supreme Court of Illinois has *exclusive* authority to provide for appeals from interlocutory orders and it is beyond the power of the Legislature to act in this sphere. *Whiley Estates Corporation v. Cappelletti*, 112 Ill. App. 2d 157, 251 N.E.2d 397 (1969); *South Chicago Community Hospital v. Industrial Commission*, 44 Ill. 2d 119, 254 N.E.2d 448 (1969); *People v. Taylor*, 50 Ill. 2d 136, 277 N.E.2d 878 (1971); *People v. Marotta*, 278 N.E.2d 256, rehearing denied Feb. 3, 1972; *People v. Gaddis*, No. 54828, Ill. App. 1st Dist., decided March 10, 1972.

## CHAPTER 38. CRIMINAL LAW AND PROCEDURE

§ 1-3. Delete "order, civil judgment or decree" and insert "order or civil judgment" in lieu thereof.

§ 13-3. In 1971, two bills — P.A. 77-954 and P.A. 77-955 were enacted. Repeal P.A. 77-955 in toto and amend P.A. 77-954 as follows:

In subsection (b), delete "an action at law in any court of competent jurisdiction" and insert "a civil action in the circuit court" in lieu thereof.

In subsection (c), delete "petition," which appears three times in the subsection, and insert "complaint" in lieu thereof in each of the three places. Section 32 of the Civil Practice Act<sup>81</sup> provides that "The first pleading by the plaintiff shall be designated a complaint." Delete "chancery proceedings" and insert "civil actions" in lieu thereof.

In subsection (d) (1), delete "Petition" from the sub-heading and insert "Complaint" in lieu thereof. In the first sentence, delete "petition" and insert "complaint" in lieu thereof. In the second sentence, delete "respondents" and insert "defendants" in lieu thereof. In the fourth sentence, delete "complainant" and insert "plaintiff" in lieu thereof. Section 21(1) of the Civil Practice Act<sup>82</sup> provides: "The party commencing an action shall be called the plaintiff. The adverse party shall be called the defendant."

§ 13-4. Delete "or vacation," as Illinois courts have no terms of court.

§ 14-6. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 28-3. Delete "court having jurisdiction" and insert "circuit court" in lieu thereof.

§ 28-5. In paragraph (d), delete "court having jurisdiction" and insert "circuit court" in lieu thereof.

§ 28-8. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 32-10. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

§ 37-4 (P.A. 77-772). Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof. Delete also "a decree" and insert "an order" in lieu thereof.

§ 60-7 (P.A. 77-1675). In Paragraph (1), delete "or de-

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<sup>81</sup> ILL. REV. STAT. ch. 110 (1971).

<sup>82</sup> *Id.* §21(1).

cree." Delete also "equitable." In Paragraph (3), delete "a court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 60-8. Delete "or decree" and delete "or decrees."

§ 105-3.01. Delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act, as all such provisions have been removed from the Civil Practice Act.<sup>83</sup>

§ 106-1. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

§ 109-1. In paragraph (3), delete "where the judge is without jurisdiction to try the offense" and insert in lieu thereof the following: "in which the maximum punishment authorized by law does not exceed a fine of \$1000.00 or imprisonment for one year in an institution other than a penitentiary, or both."

§ 109-3. In paragraph (e), delete the second sentence because the Illinois Supreme and Appellate Courts have held same unconstitutional, as it deals with the appealability of "nonfinal" orders which sphere is within the exclusive authority of the Supreme Court and is not within the power of the Legislature to act therein. *People v. Taylor*,<sup>84</sup> and *People v. Marotta*.<sup>85</sup>

§ 114-12. In paragraph (b), in the third sentence, change the semicolon to a period and delete the rest of the sentence beginning with the word "except." This is unconstitutional for the reason shown above, as it refers to and relies upon the unconstitutional provision of Section 109-3 pertaining to "nonfinal" orders, which is discussed above.

§ 114-6. In paragraph (c), delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 117-1 (P.A. 77-768, 77-1425). Delete paragraph (d) of the section, as it is superseded by Supreme Court Rule 604(b).<sup>86</sup>

§ 117-3. Delete paragraph (e) from the section, as it is superseded by Supreme Court Rule 604(b).<sup>87</sup>

§ 122-7. Repeal the section in toto, as it is in direct conflict with Supreme Court Rule 651.<sup>88</sup>

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<sup>83</sup> *Id.* ch. 110.

<sup>84</sup> 50 Ill. 2d 136, 277 N.E.2d 878 (1971).

<sup>85</sup> No. 55249 (Ill. App., 1st Dist., decided Dec. 28, 1971).

<sup>86</sup> ILL. REV. STAT. ch. 110A §604(b).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* 651.

§ 161-5. Delete “made as provided by the ‘Civil Practice Act’ and the rules issued thereunder,” as all appellate provisions have been removed from the Civil Practice Act. Insert, in lieu thereof, “taken as in other civil cases.”

§ 202-24. Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

#### CHAPTER 40. DIVORCE

§ 9. Delete “the complaint is taken as confessed” and insert “the defendant is defaulted” in lieu thereof.

§ 9a. Delete “decree of.”

§ 11. Delete “decreed” and insert “granted” in lieu thereof.

§ 14. Delete “decree” and insert “judgment” in lieu thereof.

§ 16. In the first sentence, delete “or decree.” In the fourth sentence, delete “decree of.”

Delete the third sentence in the first paragraph of the section which reads as follows: “In case of appeal by the husband or wife, the court in which the decree or order is rendered may grant and enforce the payment of such money for her or his defense and such equitable alimony during the pendency of the appeal as to such court shall seem reasonable and proper.” This statutory provision is in conflict with Supreme Court Rule 1<sup>89</sup> and with the Supreme Court’s decision in *People ex rel. Stamos v. Jones*,<sup>90</sup> that “the constitution has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly.”<sup>91</sup>

§ 17b. Delete “decree” and insert “judgment” in lieu thereof.

§ 19. In the first paragraph, delete “decreed” and insert “ordered” in lieu thereof. In the third paragraph, delete “decree,” which appears five times in the paragraph, and insert “judgment” in lieu thereof in each of the five places. In the fourth paragraph, delete “decree” and insert “judgment” in lieu thereof.

§ 19a. Delete “or decree,” which appears four times in the section.

<sup>89</sup> *Id.* ch. 110A, §1 (1971).

<sup>90</sup> *People ex rel. Stamos v. Jones*, 40 Ill. 2d 62, 237 N.E.2d 495 (1968).

<sup>91</sup> *Id.* at 66, 237 N.E.2d at 497.

§ 21. Delete “a decree” and insert “an order” in lieu thereof.

§ 21.1. Delete “or decree” in the first paragraph of the section.

§ 21.3. In the first sentence, delete “decreed or.” In the second sentence, delete “decree or.” In the fourth sentence, delete “decree” and insert “judgment” in lieu thereof. In the fifth sentence, delete “decree is made or” and insert “judgment is” in lieu thereof.

## CHAPTER 42. DRAINAGE

§ 5-25. In the third paragraph, delete “decree” and insert “judgment” in lieu thereof. Delete also “decrees and.” Delete also “decree,” which appears several times in the paragraph, and insert “judgment” in lieu thereof in each place.

§ 5-26. Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

§ 11-10. Delete “at law.”

§ 270. Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

§ 284. Delete “or decree.”

§ 285. Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

§ 319.9. Delete “either in law or in equity.”

§ 326bb (P.A. 77-1606). In paragraph (13), delete “upon its suit, as debts are recoverable at law” and insert “in a civil action” in lieu thereof.

§ 326f (P.A. 77-1607). In the second paragraph, delete “upon its suit, as debts are recoverable at law” and insert “in a civil action” in lieu thereof.

§ 342. Delete “order, judgment or decree” and insert “order or judgment” in lieu thereof.

§ 349 (P.A. 77-957). Delete “court of competent jurisdiction” and insert “circuit court” in lieu thereof.

§ 469. Delete “and decree.”

§ 470. Delete “orders, judgments and decrees” and insert “orders and judgments” in lieu thereof.

## CHAPTER 43. DRAM SHOPS

§ 135 (P.A. 77-1186). Delete "any of the courts of the State having competent jurisdiction" and insert "a circuit court" in lieu thereof.

§ 163c. In the fifth paragraph, delete "complainant" and insert "plaintiff" in lieu thereof.

§ 190. Delete "any court having cognizance of criminal offenses" and insert "a circuit court" in lieu thereof.

## CHAPTER 44. DROVERS

§ 5. Delete "before any court having jurisdiction" and insert "by a circuit court" in lieu thereof.

## CHAPTER 45. EJECTMENT

§ 2. Delete ":1st in the same cases in which a writ of right may now be brought by law."

§ 9. Delete "the action of ejectment shall be commenced by summons, which shall be in like form and" and insert "Summons shall" in lieu thereof, as a civil action is commenced by the filing of a complaint, not by the issuance of summons. This will coordinate the section with the rest of the Ejectment Act.<sup>92</sup>

§§ 15 and 16. Delete these sections in toto, as they are completely out of harmony with the practice of law in Illinois. The provisions in these sections also constitute special legislation and are probably unconstitutional.

§ 17. Delete "in any court having cognizance thereof."

§ 24. Delete "confess" and insert "admit" in lieu thereof.

§ 25. Delete "will state on oath, upon the trial" and insert in lieu thereof "states under oath." Delete also "will swear."

§ 30. In the first paragraph of the section, insert after the phrase "following cases," the phrase, "if tried by a jury." In paragraph "Fifth," delete "declaration" and insert "complaint." This will coordinate the section with the rest of the Ejectment Act.<sup>93</sup>

§ 31. After the word "verdict," insert the phrase "if tried by a jury." Delete "go hence without day" and insert "shall be dismissed." This will coordinate the section with the Civil Practice Act.

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<sup>92</sup> ILL. REV. STAT. ch. 45 (1971).

<sup>93</sup> *Id.* §§10, 11, 12.

§ 37. Delete "by law is provided."

§ 44. Delete "make and file a suggestion of such claim which shall be entered, with the proceedings thereon, upon the record of such judgment, or be attached thereto, as a continuation of the same" and insert, in lieu thereof, "file suggestions in the ejectment action."

§ 45. Delete "summoned in the same manner as in other civil cases" and insert, in lieu thereof, "served with a copy thereof." This practice will be similar to suggestions of damages in connection with the dissolution of an injunction.<sup>94</sup> There is no reason for imposing the cost and trouble of service of summons in view of the fact that the parties are already in the case and represented by counsel who are familiar with the facts.

§ 46. Delete "summoned in the same manner as in other civil cases" and insert "served with a copy thereof" in lieu thereof.

§ 47. After the word "verdict," insert "of the jury if tried by a jury or by the finding of the court if tried without a jury."

§ 48. Delete "the same jury shall" and insert, in lieu thereof, "if demand for trial by jury is made in accordance with law, a jury may"

§ 50. Delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act,<sup>95</sup> as all such provisions have been removed from the Civil Practice Act.<sup>96</sup>

§ 53. Delete "in law or equity."

§ 54. Delete "either in law or equity."

§ 56. The amendments which are needed in this section are covered by House Bill 443, which bill was passed by the House on May 13, 1971, and is now in the Committee on the Judiciary of the Senate.

§ 58. Delete "up," which appears twice in the section.

§ 62. Delete "issuing a precept" and insert "entering an order" in lieu thereof. Delete "ruling" and insert "ordering" in lieu thereof. Delete also "think right" and insert "deem appropriate" in lieu thereof.

#### CHAPTER 46. ELECTIONS

§ 6-47. Delete all of the text in the section following the

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<sup>94</sup> *Id.* ch. 69, §12.

<sup>95</sup> *Id.* ch. 110.

<sup>96</sup> *Id.*

phrase "for the purpose aforesaid," as it is in conflict with Supreme Court Rules 1, 303 and 305.<sup>97</sup> Insert the following in lieu of the deleted matter: "Appeals may be taken as in other civil cases."

§ 6-52. Delete, in the second sentence of the section, "appeal shall be allowed in the manner provided by Section 6-47 of this Article," as it is in conflict with Supreme Court Rules 1, 303 and 305.<sup>98</sup> Insert in lieu thereof: "Appeals may be taken as in other civil cases."

§§ 9-1 through 9-6. Repeal the section in toto, because nomination of judges by party convention is not permitted by the 1970 Constitution.<sup>99</sup>

§ 10-9. Delete "associate judge," which appears in section a number of times, and revise the material accordingly.

§ 10-10 (P.A. 77-40). Delete, in second paragraph, "equity" and insert "civil" in lieu thereof.

§ 18-3 (P.A. 77-6). Delete "judge or magistrate" and insert "court" in lieu thereof.

§ 23-14. Delete "magistrate."

§ 23-15. Delete "courts of law and equity" and insert "the circuit courts" in lieu thereof.

§ 24-18. Delete "county judge," which appears a number of times in the section, and insert "circuit court" in lieu thereof. Delete also "county clerk," which appears several times in the section, and insert "circuit clerk" in lieu thereof in each place.

#### CHAPTER 47. EMINENT DOMAIN

§ 2.2. In the second sentence of paragraph (b), the phrase "shall be a final order" is contrary to fact and contrary to law. It is an interlocutory order in fact because basic issues remain undetermined at the time of the entry of the order. That it is an interlocutory order as a matter of law is clear from an examination of Supreme Court Rule 307 (a) (7),<sup>100</sup> which expressly makes the order appealable as "an interlocutory order of court." Therefore, the above-quoted phrase "shall be a final order," which appears in the second sentence of the section, should be

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<sup>97</sup> *Id.* ch. 110A, §§1, 303, 305.

<sup>98</sup> *Id.*

<sup>99</sup> ILL. CONST. art. VI, §12, (1970).

<sup>100</sup> ILL. REV. STAT. ch. 110A, §307(a) (7) (1971).



deleted and the phrase "is appealable" should be inserted in lieu thereof.

§ 9. Delete "or the judge, as the case may be."

§ 11. Delete "cross" and insert "intervening." This will coordinate this section with the terminology of Section 26.1 of the Civil Practice Act.

§ 12. Delete all of the text in the section and insert in lieu thereof: "Appeals may be taken as in other civil cases."

§ 13. Repeal section in toto, as it is in conflict with Supreme Court Rule 1.<sup>101</sup>

#### CHAPTER 48. EMPLOYMENT

§ 36. Delete "any court of competent jurisdiction" and insert "the circuit courts" in lieu thereof.

§ 39ul. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 59.2 (P.A. 77-1801). In paragraph (d)2 (fifth paragraph), delete "petition" and insert "complaint" in lieu thereof, as the first pleading as denominated by the Administrative Review Act is a "complaint."<sup>102</sup> In paragraph (d)3, delete "petition a court of competent jurisdiction" and insert "file a complaint in the circuit court." This will coordinate the statute with Section 32 of the Illinois Civil Practice Act which provides that "The first pleading by the plaintiff shall be designated a complaint." In paragraph (f)5, delete "petitions a court of competent jurisdiction" and insert "file a complaint in the circuit court." This will coordinate the statute with Section 32 of the Civil Practice Act.

§ 137.7-16. The section is in need of amendment, as the designation of "Sections 5 and 7 of Article VI" in the statute refers to the 1962 Judicial Article.<sup>103</sup> It is suggested that the section be redrafted to read as follows: "Appeals from all final orders and judgments entered by the court in review of the decision, rule or rules of the Industrial Commission may be taken as appeals in other civil cases."

§ 138.5 (P.A. 77-1659). In the last paragraph of the section, delete "at law."

§ 138.19 (P.A. 77-80, 77-1659). Delete, in paragraph

<sup>101</sup> *Id.* §1.

<sup>102</sup> ILL. REV. STAT. ch. 110, §272 (1971).

<sup>103</sup> ILL. CONST. art VI (1962 Revision) (1870).

(f) (2) of the section, the fourth and the fifth subparagraphs, as they are in conflict with Supreme Court Rules 1, 303 and 305.<sup>104</sup> Insert the following in lieu thereof: "Appeals may be taken as in other civil cases." In *Brady v. Industrial Commission*,<sup>105</sup> the Supreme Court held that "workmen compensation cases are now considered in the same category as other civil cases for appeal purposes and the provisions of Rule 303(a) apply."<sup>106</sup>

§ 172.40 (P.A. 77-1660). In the last paragraph of the section, delete "at law."

§ 172.54 (P.A. 77-1660). Delete, in paragraph (f) (2) of the section, the fourth and fifth subparagraphs, as they are in conflict with Supreme Court Rules 1, 303 and 305.<sup>107</sup> Insert the following in lieu thereof: "Appeals may be taken as in other civil cases."

§ 1971 (P.A. 77-1750). Delete, in the last sentence of the section, "before any court of competent jurisdiction" and insert "in the circuit court" in lieu thereof.

§ 198.13. Delete all of the text in the section, as it is meaningless for failure to provide a period within which review is to be sought, and it is also in conflict with Supreme Court Rules 1 and 366(b) (1) (ii).<sup>108</sup> Insert the following in lieu of the deleted material: "All final administrative decisions of the Department hereunder shall be subject to judicial review pursuant to the provisions of the 'Administrative Review Act,' approved May 9, 1945, and all amendments and modifications thereof and the rules adopted pursuant thereto. The term 'administrative decision' is defined as in Section 1 of the 'Administrative Review Act.'"

§ 266. Delete "any court of competent jurisdiction" and insert "the circuit courts" in lieu thereof.

§ 503. Delete "chancery matters in the courts of this State" and insert "civil cases in the circuit courts" in lieu thereof. In the second sentence, insert "circuit" before the phrase "courts of this State."

§ 723. Delete "in equity." Delete also "decree" and insert "judgment" in lieu thereof.

§ 858. In paragraph (e), delete "court of record" and insert "the circuit courts" in lieu thereof.

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<sup>104</sup> ILL. REV. STAT. ch. 110A, §§1, 303, 305 (1971).

<sup>105</sup> *Brady v. Industrial Commission*, 45 Ill. 2d 469, 259 N.E.2d 272 (1970).

<sup>106</sup> *Id.* at 472, 259 N.E.2d at 273.

<sup>107</sup> ILL. REV. STAT. ch. 110A, §§1, 303, 305 (1971).

<sup>108</sup> *Id.* §§1, 366(b) (1) (ii).

§ 859. In paragraph (b), delete "in an Act in regard to evidence and depositions in civil cases approved March 29, 1872, as hereto or hereafter amended," as the deposition provisions of that Act were repealed in 1955. Insert in lieu thereof "the taking of depositions in civil cases in circuit courts." This refers to Rules 202 through 212<sup>109</sup> of the Supreme Court of Illinois pertaining to depositions.

#### CHAPTER 48½. ENGINEERS AND ENGINEERING

§ 49 (P.A. 77-392). In paragraph 4 of the section, delete "decree" and insert "order" in lieu thereof.

§ 51. Delete "courts of record" and insert "circuit courts" in lieu thereof.

#### CHAPTER 49. ESCHEATS

§ 3. Delete "an information" and insert "a complaint." Delete "such information," which appears twice in section, and insert in lieu thereof "the complaint" in both places, as it involves a civil action, and Section 32 of the Civil Practice Act<sup>110</sup> provides that "The first pleading by the plaintiff shall be designated a complaint."

§ 4. Delete "information," which appears five times in the section, and insert "complaint" in each of the five places.

§ 7 (P.A. 77-1485). In second sentence, delete "put in" and insert "file" in lieu thereof. In the fourth sentence, delete "put in" and insert "file an" in lieu thereof. In the fifth sentence, delete "decree" and insert "enter an order" in lieu thereof. In the sixth sentence, delete "infants and persons of unsound mind" and insert "minors and incompetents" in lieu thereof. This will bring about conformity with the terminology employed in the Probate Act.<sup>111</sup> In the seventh sentence, delete "decree" and insert "judgment" in lieu thereof.

#### CHAPTER 50. ESTRAYS AND LOST PROPERTY

§ 35. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

#### CHAPTER 51. EVIDENCE AND DEPOSITIONS

§ 2. Delete "habitual drunkard, or person who is mentally ill or mentally deficient," and insert "incompetent" in lieu

<sup>109</sup> *Id.* §§202-212.

<sup>110</sup> *Id.* ch. 110, §32.

<sup>111</sup> *Id.* ch. 3.

thereof. This will coordinate the terminology with the Probate Act.<sup>112</sup>

§ 8. Delete "infants, persons who are mentally ill or mentally deficient, or habitual drunkards" and insert "minors, incompetents" in lieu thereof. This will coordinate the terminology with the Probate Act.

§ 9. Delete "several" and insert "circuit" in lieu thereof.

§ 48a. In paragraph "First," delete "city, county" and delete also "city, county or," as there are no city or county courts in Illinois other than the circuit courts.

In paragraph "Second," delete, in the second line, "county" and delete also "county or" before the phrase "judicial circuit," as there are no county courts in Illinois other than the circuit courts.

§ 48b. Delete "judgment, order or decree," which appears three times in the section, and insert "judgment or order" in lieu thereof in each place. Delete also "inferior court," which appears three times in the section, and insert "circuit court" in lieu thereof in each place. Delete also "court of original jurisdiction," which appears twice in the section, and insert "circuit court" in lieu thereof in each place.

## CHAPTER 52. EXEMPTIONS

§ 8. Delete "of equity."

## CHAPTER 53. FEES AND SALARIES

§ 3.2. Delete "magistrate," which appears five times in the section, and insert "associate judge" in lieu thereof in each place.

§§ 3.9, 3.11 and 3.12. Repeal these sections in toto, as they are obsolete.

§ 31 (P.A. 77-1767). In paragraph (A) (13), insert after the word "When" the phrase "an application for." In paragraph (H), delete "decree." In paragraph (K), delete "decree." In paragraph (U), delete "or magistrate." In the same paragraph, in the third sentence, delete "review" and insert "change" in lieu thereof.

§ 31.1. In paragraph (7) of the section, delete "decree."

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<sup>112</sup> ILL. REV. STAT. ch. 3 (1971).

§ 37 (P.A. 77-922). Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each of the places.

§ 51 (P.A. 77-963). In the second paragraph, delete "equitable action" and insert "action for equitable relief" in lieu thereof.

§ 71 (P.A. 77-923). Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each of the places.

#### CHAPTER 54. FENCES

§ 21. Delete "any court of competent jurisdiction" and insert "a circuit court" in lieu thereof. Delete also "before any justice of the peace" and insert "in the circuit court" in lieu thereof.

#### CHAPTER 55. FERRIES

§ 22. Delete "before any court in" and insert "in the circuit court of" in lieu thereof.

#### CHAPTER 56. FISH

§ 1.23 (P.A. 77-1780). In the second paragraph of the section, delete "or review of a court of appellate jurisdiction" and insert "as in other cases" in lieu thereof.

#### CHAPTER 56½. FOODS

§ 66.12 (P.A. 77-964). In paragraph (c), delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof. In paragraph (d), delete "at law." In paragraph (e), delete "orders, judgments or decrees" and insert "orders or judgments" in lieu thereof.

§ 217. In the ninth paragraph of the section, delete "or Superior." Delete also "either in term time or vacation."

§ 230. Insert "the circuit" before the word "courts."

§ 504. Delete "whether or not there exists an adequate remedy at law."

§ 709 (P.A. 77-758). In paragraph (d) of the section, de-

lete "any court" and insert "any circuit court" in lieu thereof.

§ 712 (P.A. 77-758). In paragraph (b) (1) of the section, delete "a criminal." In paragraph (d) of the section, delete "decrees" and insert "judgments" in lieu thereof.

§ 713 (P.A. 77-758). In paragraph (a) of the section, delete "an adequate remedy at law" and insert in lieu thereof "another remedy."

§ 1305 (P.A. 77-757). In paragraphs (b) and (c) of the section, delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof in each place.

§ 1405 (P.A. 77-757). In paragraph (d) of the section, delete "any court" and insert "circuit courts."

§ 1502 (P.A. 77-757). In paragraph (a) (1) of the section, delete "within the jurisdiction." In Paragraph (a) (4) of the section, delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof. Delete "an adequate remedy at law" and insert "another remedy" in lieu thereof.

§ 1503. Delete "an adequate remedy at law" and insert in lieu thereof "another remedy."

§ 1505. In paragraph (b) (2) of the section, delete "a criminal." In paragraph (d) of the section, delete "decrees" and insert "judgments" in lieu thereof.

#### CHAPTER 57. FORCIBLE ENTRY AND DETAINER

§ 2. In paragraph "Sixth," delete "decree" which appears twice in the paragraph, and insert "order" in lieu thereof in each place.

§ 12. Delete "the intervention of."

§ 13 (P.A. 77-965). In the last sentence of the first paragraph, delete "files a civil action seeking to affect or restrain the enforcement of such judgment within said period of stay" and insert "is otherwise stayed" in lieu thereof. By virtue of the fact that the circuit courts have "*original jurisdiction of all justiciable matters*,"<sup>113</sup> the pre-1964 practice of a court of equity staying proceedings of a court of law no longer exists. In *Pepin v. City of Chicago*,<sup>114</sup> it was held that the chancery Division of the County Department of the Circuit Court of Cook County could not enjoin an action commenced in the Municipal Department of the Circuit Court of Cook County.

<sup>113</sup> ILL. CONST. art. VI, §9 (1970).

<sup>114</sup> 79 Ill. App. 2d 295, 224 N.E.2d 587 (1967).

However, there is the possibility that a reviewing court may stay the judgment under Supreme Court Rule 305.

§ 13.1 (P.A. 77-1759). Delete "files an action seeking to affect or restrain the enforcement of such judgment within said period of stay" and insert "is otherwise stayed" in lieu thereof. In view of the fact that there is only one trial court in Illinois, namely, the Circuit Court, the judgment could not be stayed by another judge of the same court. See *Pepin v. City of Chicago*, cited above. However, there is the possibility that a reviewing court may stay the judgment under Supreme Court Rule 305.

§ 16. Delete "is non-suited" and insert "voluntarily dismisses his action" in lieu thereof.

§ 19. Delete "cases except that notice of appeal and bond must be filed within 5 days from rendition of the judgment" and insert "civil cases" in lieu thereof. In view of the fact that the Supreme Court of Illinois held, on January 28, 1972, in the case of *Jack Spring, Inc. v. Little*,<sup>115</sup> that the five-day ap-

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<sup>115</sup> 50 Ill. 2d \_\_\_, 278 N.E.2d \_\_\_ (1972). The Illinois Supreme Court said:

Section 7 of article VI of the constitution of Illinois (1870) and section 6, article VI of the constitution of Illinois (1970) provide for an appeal, as a matter of right, from all final judgments of the circuit court. Having created the right of appeal, the statutes adopted and the rules promulgated in implementation of that right may not serve to discriminate against appellants by reason of the inability to furnish an appeal bond. (*Griffin v. Illinois*, 351 U.S. 12, 100 L. Ed. 891, 76 S. Ct. 585; *Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780; *Mayer v. City of Chicago*, 40 L.W. 4055.) We hold, therefore, that insofar as section 18 of the Forcible Entry and Detainer Act requires the furnishing of bond as a prerequisite to prosecuting an appeal, it is violative of the fourteenth amendment to the constitution of the United States, of article II, section 2, and article VI, section 7, of the Illinois constitution of 1870, and article I, section 2, and article VI, section 6, of the Illinois constitution of 1970.

Defendants contend that the effect of the trial court's orders denying their motions for waiver of appeal bond and requiring them to furnish bonds conditioned as prescribed by section 19 of the Forcible Entry and Detainer Act (Ill. Rev. Stat. 1969, ch. 57, par. 20) is to make "the tenant's right to an appeal turn on his wealth." They argue that if the statutes and rule (ch. 57, pars. 19 and 20; Supreme Court Rule 305) permit the requirement of such bonds, "they are unconstitutional on their face," and in any event are unconstitutional as applied in these cases.

We find it unnecessary to decide whether section 19 of the Forcible Entry and Detainer Act is unconstitutional. The Civil Practice Act (Ill. Rev. Stat. 1969, ch. 110) governs actions brought under the Forcible Entry and Detainer Act (Ill. Rev. Stat. 1969, ch. 57, par. 11) and our rules govern appeals in those actions. Our Rule 303(b) provides: "(1) *Forcible Entry and Detainer*. The time and method of appeal in forcible entry and detainer cases shall be as provided by statute (Ill. Rev. Stat., ch. 57, par. 19 *et seq.*), and paragraph (e) of this rule is inapplicable to those cases," and in view of our holding section 18 invalid, to the extent that the rule purports to embody the provisions of that section, it is no longer operative. The stay of judgments pending appeal is governed by our Rule 305 and its provisions supersede those contained in section 19 of the Forcible Entry and Detainer Act. The right to an

peal bond provision is unconstitutional, it is ludicrous to retain the five-day notice of appeal provision. Furthermore, the five-day notice of appeal provision is probably unconstitutional, being special legislation, and in violation of "equal protection of the law" of the Federal Constitution, in view of the fact that the appellate provision in forcible entry and detainer is the only five-day provision, whereas in all other cases (even interlocutory injunctions) a minimum of 30 days is allowed for the filing of a notice of appeal.<sup>116</sup>

§ 20. Repeal the section in toto, as the Supreme Court of Illinois has held that the provisions of the section are superseded by Supreme Court Rule 305, which covers the subject of stay of enforcement of judgments. *Jack Spring, Inc. v. Little*, cited and discussed above.

§ 21. Repeal the section in toto, as it is meaningless, because a losing plaintiff has nothing to supersede or to stay.

§ 22. Delete "decree" and insert "order" in lieu thereof.

#### CHAPTER 57 $\frac{1}{4}$ . FOREIGN EXCHANGE

§ 5. Insert "the circuit" before the word "courts."

#### CHAPTER 57 $\frac{1}{2}$ . FORESTRY

§ 78 (P.A. 77-1254). Delete "court having jurisdiction" and insert "circuit court" in lieu thereof.

§ 115.8. Delete "either in law or in equity" and insert "by a civil action" in lieu thereof.

#### CHAPTER 59. FRAUD AND PERJURIES

§ 2. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

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appeal is a matter separate and apart from the right to *supersedeas* during the pendency of the appeal, and in being required to furnish a bond as a condition to staying the judgment, an appellant in an action in Forcible Entry and Detainer is in no different situation than an appellant who seeks a stay of the judgment in any other type of appeal.

This court, upon application of the defendants, granted *supersedeas* conditioned, *inter alia*, upon the payment of rental installments as they became due. *Amicus curiae* Chicago Real Estate Board and plaintiffs argue that this type of 'use and occupancy bonds' in many cases, cannot protect the landlord's interests, and the additional coverage provided by a bond of the type contemplated by section 19 of the Forcible Entry and Detainer Act is essential to protect the premises occupied, the landlord and other tenants. In our opinion this type of bond is within the contemplation of Rule 305, and the motions to dismiss the appeals are denied.

<sup>116</sup> The imposition upon a defendant in an eviction proceeding of appeal bond requirements which are more burdensome than in other civil cases is invalid, as it violates the "equal protection of the laws" guarantee of the Fourteenth Amendment to the Constitution of the United States. *Lindsey v. Normet*, 40 U.S.L.W. 4184, decided February 23, 1972.



§ 4. Delete "decree or." Also delete "suffered" and insert "entered" in lieu thereof.

§§ 13 and 16. Repeal the sections in toto, as they are vestiges of common law pleading which was abolished in Illinois more than 37 years ago by the enactment of the Civil Practice Act,<sup>117</sup> which went into effect on January 1, 1934.

§ 17. Delete "suit or action in law or equity" and insert "civil action" in lieu thereof. Delete also "infant" and insert "minor" in lieu thereof, to coordinate the terminology with the Probate Act.

#### CHAPTER 61. GAME

§ 1.25 (P.A. 77-1781). In the second paragraph of the section, delete "or review of a court of appellate jurisdiction" and insert "as in other cases" in lieu thereof.

#### CHAPTER 65. HABEAS CORPUS

§ 3. Delete "decree."

§ 21. Delete "or decree," which appears twice in the section. Delete also "competent court of civil or criminal jurisdiction" and insert "circuit court" in lieu thereof.

§ 22. In paragraph 7, delete "judgment, order or decree" and insert "judgment or order" in lieu thereof. Delete also, in same paragraph, "decree" and insert "order" in lieu thereof.

§ 31. Delete "information" and insert "complaint" in lieu thereof.

§ 32. Delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act,<sup>118</sup> as all such provisions have been removed from the Civil Practice Act.<sup>119</sup>

§ 36. Delete "decree," which appears three times in the section, and insert "judgment" in lieu thereof in each place.

#### CHAPTER 66. HORSESHOERS

§ 7 (P.A. 77-967). Repeal section in toto, as it is geared former justice of the peace practice which no longer exists.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* ch. 110.

<sup>119</sup> *Id.*

§ 8. Delete "such" and insert "the" in lieu thereof.

§ 11. Delete "judge in whose court" and insert "court where" in lieu thereof.

#### CHAPTER 67½. HOUSING AND REDEVELOPMENT

§ 23. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 179. Delete all of the text in the section, as all appellate provisions have been removed from the Civil Practice Act.<sup>120</sup> Insert the following in lieu thereof: "Appeals from final orders in an action brought pursuant to section 178 may be taken as in other civil cases."

§ 183 (P.A. 77-1698). Delete all of the text in this section, as all appellate provisions have been removed from the Civil Practice Act.<sup>121</sup> Insert the following in lieu thereof: "Appeals from final orders of the circuit court in review of a final administrative decision of the Illinois Housing Development Authority may be taken as in other civil cases."

§ 279. In the third paragraph, insert "circuit" before the word "courts."

§ 283. In paragraph (2), delete "Supreme Court" and insert "reviewing court" in lieu thereof.

§ 285. Delete all of the text in the section, as all appellate provisions have been removed from the Civil Practice Act.<sup>122</sup> Insert the following in lieu thereof: "Appeals from final orders of the circuit court in an action brought pursuant to Section 184 of this Act may be taken as in other civil cases."

#### CHAPTER 68. HUSBAND AND WIFE

§ 17 (P.A. 77-438). Insert "circuit" before the word "court."

§ 18. Delete "proper" and insert "circuit" in lieu thereof.

§ 19. Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each place.

§ 22.1. Delete "decree" and insert "judgment" in lieu thereof.

§ 23a. Delete "decree," which appears seven times in the section, and insert "judgment" in lieu thereof in each place.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

§ 23.1b. Delete "decree" and insert "order or judgment" in lieu thereof.

#### CHAPTER 69. INJUNCTIONS

§§ 4, 5, 7 and 8. Repeal sections in toto. By virtue of the fact that the circuit courts have "*original jurisdiction of all justiciable matters*,"<sup>123</sup> the pre-1964 practice of a court of equity staying proceedings of a court of law no longer exists. In *Pepin v. City of Chicago*,<sup>124</sup> it was held that the Chancery Division of the County Department of the Circuit Court of Cook County could not enjoin an action commenced in the Municipal Department of the Circuit Court of Cook County.

§ 9. Delete "In all other cases" in view of the repeal of Sections 4, 5, 7 and 8 of the Act, as shown above.

#### CHAPTER 73. INSURANCE

§ 204.17. Delete "suit at law," which appears twice in the section, and insert "civil action" in lieu thereof in each place.

§ 479. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 482. Delete "judicial determination of any court of general jurisdiction" and insert "circuit court" in lieu thereof.

§ 733-4. Delete "at law or in equity."

§ 733-13 (P.A. 77-1565). In paragraph (a) of the section, delete "decrees or orders in equity" and insert "judgments or orders" in lieu thereof. In paragraph (b) of the section, delete "decree" in the phrase "Foreign decree" and insert "judgment" in lieu thereof. Delete also "in equity."

§ 733-15 (P.A. 77-1565). Delete "decree," which appears eight times in the section, and insert "judgment" in lieu thereof in each of the eight places.

§ 733-16 (P.A. 77-1565). Delete "decree," which appears six times in the section, and insert "judgment" in lieu thereof in each of the six places.

§ 733-17 (P.A. 77-1565). Delete "decree," which appears six times in the section, and insert "judgment" in lieu thereof in each of the six places.

§ 733-18 (P.A. 77-1565). In the first sentence, delete "de-

<sup>123</sup> ILL. CONST. art. VI, §9 (1970).

<sup>124</sup> 79 Ill. App. 2d 295, 224 N.E.2d 587 (1967).

cree" and insert "judgment" in lieu thereof. In the second sentence, delete "decrees" and insert "judgments" in lieu thereof.

§ 743.27 (P.A. 77-673). Delete, in paragraph (4) of the section, the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act, as all such provisions have been removed from the Civil Practice Act.

§ 759.2. Delete, in paragraph (A), "sue either at law or in equity" and insert "bring a civil action" in lieu thereof. Delete also, in paragraph (G), "at law or in equity."

§ 802. Delete all of the text of paragraph (6) of the section, as the first sentence of the paragraph is surplusage, and the second sentence of the paragraph is in direct conflict with Supreme Court Rule 307(a)(5). Insert in lieu thereof: "Appeals may be taken as in other civil cases."

§ 813. Delete "order, judgment or decree" and insert "order or judgment" in lieu thereof.

§ 833.11. Delete in the middle of the section, the following: "and the course and method of appeal from the decision and orders of the circuit court" and add at the end of the section: "Appeals may be taken as in other civil cases."

§ 924. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 969.12. Delete "action at law or in equity" and insert "civil action" in lieu thereof.

§ 1019 (P.A. 77-1563). Delete, in paragraph (e) of the section, the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act, as all such provisions have been removed from the Civil Practice Act.

§ 1065.93-1. Delete "a court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

#### CHAPTER 74. INTEREST

§ 3. Delete "or magistrate." Delete also "writ of error," as all review in Illinois is by appeal, not by writ of error. In the third sentence, delete "that" after the word "However."

§ 11. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

**CHAPTER 77. JUDGMENTS, DECREES AND EXECUTIONS**

In the title of the Act, delete "and decrees." Delete also the word "decree," which appears thereafter in the title of the Act, and insert "judgment" in lieu thereof.

§ 10. Delete "of record," as all Illinois courts are courts of record.

§ 15.1. Delete "decree" and insert "judgment" in lieu thereof.

§ 15.2. Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each place.

§ 16. Delete "decree" and insert "judgment" in lieu thereof.

§ 17. Delete "master in chancery," as no such office exists.

§ 18. Delete "decree" which appears twice in the section, and insert "judgment" in lieu thereof in each place.

§ 18a. Delete "decree or," which appears twice in the section, and also delete "or decree," which appears three times in the section.

§ 18b. Delete "decree or," which appears twice in the section, and also delete "or decree," which appears twice in the section. Delete "master in chancery or other."

§ 18c. Delete "decree, which appears seven times in the section, and insert "judgment" in lieu thereof in each place. Also delete "order or decree" and insert "judgment" in lieu thereof. Delete "master in chancery."

§ 18d. Delete "decree," which appears eight times in the section, and insert "judgment" in lieu thereof in each of the eight places. Delete "or a master in chancery."

§ 18e. In the first sentence, delete "adjudge and decree" and delete the next "decree" and substitute "judgment" therefor. In the second sentence, delete "decree," which appears four times therein, and insert "judgment" in lieu thereof in each place.

§ 19. Delete "judgment, order or decree" and insert "judgment or order" in lieu thereof. Delete also "master in chancery."

§ 20. Delete "or decree," which appears numerous times in the section. Delete also the word "decree," which appears

several times in the section, and insert "judgment" in lieu thereof in each place.

§ 22. Delete "decree or."

§ 24. Delete "decree or" and "or decree," which appear in the section several times.

§ 24a. Delete "decree or," which appears in the section several times. Delete also "decree" and insert "judgment" in lieu thereof.

§ 26. Delete "or decree," which appears twice in the section.

§ 28. Delete "or decree."

§ 32. Delete "decrees" and insert "judgment" in lieu thereof. Delete also "and decrees" and "or decree."

§ 33. Delete "decrees" and insert "judgments" in lieu thereof. Delete also "or decree," which appears twice in the section.

§ 34. Delete "(or decree)."

§ 36. Delete "or decree," which appears twice in the section.

§ 37. Delete "judgment, order or decree" and insert "judgment or order" in lieu thereof.

§ 40. Delete "or decree," which appears three times in the section. Also delete "of record" from phrase "court of record," as all Illinois courts are courts of record.

§ 41. Delete "or decree" and "master in chancery." Delete also "county court" and insert "circuit court" in lieu thereof.

§ 42. Delete "or decree," which appears numerous times in the section. Delete also "of record" from the phrase "court of record," as all Illinois courts are courts of record. Also delete "decree," which appears several times in the section, and insert "judgment" in lieu thereof in each place.

§ 69.<sup>125</sup> Delete "and decrees," which appears twice in the section.

§ 69a.<sup>126</sup> Delete "or decree," which appears three times in the section. Delete also "and decrees."

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<sup>125</sup> Sections 69 and 69a refer to orders of the United States District Court and the term "decree" has been abolished in federal practice many years ago. See Rules 54, 55, 56, 57, 58, 59, 60, 62, 68 and 70 of the Federal Rules of Civil Procedure.

<sup>126</sup> See note 121 *supra*.

§ 86. Delete "or decree," which appears three times in the section.

#### CHAPTER 78. JURORS

§ 19. In the second sentence, delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

#### CHAPTER 80. LANDLORD AND TENANT

§ 1. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof. Also delete "or decree," which appears twice in the section.

§ 2. Delete "proper" and insert "circuit" in lieu thereof.

§ 4 (P.A. 77-971). Delete "complaint" and insert "petition" in lieu thereof, as the circuit court has "original jurisdiction of justiciable matters,"<sup>127</sup> and no new complaint is necessary. Also delete "discontinued" and insert "dismissed" in lieu thereof.

§ 40. Delete "decreeing" and insert "ordering" in lieu thereof. Delete also "decreed" and insert "ordered" in lieu thereof.

#### CHAPTER 81. LIBRARIES

§ 1002-3. Delete "order and decree" and insert "judgment" in lieu thereof.

§ 1002-11. Delete "order and decree" and insert "judgment" in lieu thereof.

#### CHAPTER 82. LIENS

§ 9. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof. Delete "or petition" and "or petitioner," which appears numerous times.

§ 11. Delete "or decree." Delete also "legal or equitable" and insert "valid" in lieu thereof. Delete also "named" and insert "designated" in lieu thereof. Delete also "or petition" and "or petitioner," which appear numerous times. Delete "cross-petitioners" and insert "counter-claimants" in lieu thereof.

§ 13 (P.A. 77-972). Delete "of law" and insert "for the payment of money" in lieu thereof.

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<sup>127</sup> ILL. CONST. art. VI, §9 (1970).

§ 14. Delete "decree or."

§ 18. Delete "decrees in chancery," and insert "orders of court" in lieu thereof.

§ 19. Delete "in chancery." Delete also "decree," which appears three times in the section, and insert "judgment" in lieu thereof in each place. Delete also "at law" and insert "for the payment of money" in lieu thereof.

§ 20. Delete "at law" and insert "for the payment of money" in lieu thereof.

§ 23. Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each place. Delete also "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 28. Delete "any court having jurisdiction of the amount claimed to be due" and insert "the circuit court" in lieu thereof. Delete also "at law," which appears twice in the section. Delete "decree or." Delete also "in all courts." Delete "his petition" and insert "a complaint" in lieu thereof.

§ 45. Delete "in chancery." Delete also "or decree." Delete "of record" in phrase "court of record," as all Illinois courts are courts of record. Delete "and decree." Delete also "decree," which appears several times in the last sentence of the section, and insert "judgment" in lieu thereof in each place.

§ 46. Delete "complainant" and insert "plaintiff" in lieu thereof, as it is a civil action and Section 21 (1) of the Civil Practice Act<sup>128</sup> provides that "The party commencing an action shall be called the plaintiff."

§ 53. Delete "in any court having jurisdiction of the amount claimed to be due" and insert "circuit court" in lieu thereof, as the only trial court available in Illinois is the circuit court, which has "original jurisdiction of all justiciable matters."<sup>129</sup>

§ 55. Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each place. Delete also "decrees" and insert "judgments" in lieu thereof. Delete "petition," which appears twice, and insert "complaint" in lieu thereof in each place. Delete "court of record" and insert "the circuit court."

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<sup>128</sup> ILL. REV. STAT. ch. 110, §21(1) (1971).

<sup>129</sup> ILL. CONST. art. VI, §9 (1970).



§ 56. Delete "decree" and insert "judgment" in lieu thereof.

§ 63. Delete "before some court having jurisdiction thereof" and insert "in a circuit court" in lieu thereof.

§ 83. Delete "decree" and insert "order" in lieu thereof. Delete also "decreeing" and insert "ordering" in lieu thereof.

§ 101. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 101.2. Delete "decree," which appears twice in the section, and insert "order" in lieu thereof in each place.

§ 101.6. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 122. Delete "decree," which appears twice in the section, and insert "order" in lieu thereof in each place.

§ 126. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

#### CHAPTER 83. LIMITATIONS

§ 4. Delete "in law or equity." Delete also "or decree." In the phrase "court of record," delete "of record."

§ 10a. Delete "decree." Delete also "at law or in equity." Delete "legal or equitable."

§ 12.1 (P.A. 77-973). Delete "decree" and insert "judgment" in lieu thereof. Delete "legal or equitable."

§ 22 (P.A. 77-1740). Delete "insane, or mentally ill" and insert "incompetent" in lieu thereof. This will coordinate the section with the terminology of the Probate Act.<sup>180</sup>

§ 24a. Delete the phrase "the plaintiff is nonsuited," which appears twice in the section, and insert "the action is voluntarily dismissed by the plaintiff" in lieu thereof. This change will coordinate the section with Section 52 of the Civil Practice Act.<sup>181</sup>

§ 24c. In the phrase "All actions at law," which appears twice in the section, delete "at law" in each place.

#### CHAPTER 85. LOCAL GOVERNMENT

§ 1356. Delete "suit in equity in any court of competent

<sup>180</sup> ILL. REV. STAT. ch. 3, §112 (1971).

<sup>181</sup> ILL. REV. STAT. ch. 110, §52 (1971).

jurisdiction" and insert "civil action in the circuit court" in lieu thereof.

§ 1386. Delete "suit in equity in any court of competent jurisdiction" and insert "civil action in the circuit court" in lieu thereof.

§ 1705 (P.A. 77-1605). Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

#### CHAPTER 87. MANDAMUS

§ 1. Delete "and show cause why a writ of mandamus should not be issued against him," as the burden of proof in a mandamus action is, as in other civil cases, on the plaintiff, not on the defendant.

§ 2. Delete "may be taken nil dicit" and insert "by default may be entered" in lieu thereof.

§ 5. Delete "given," which appears twice in the section, and insert "entered" in lieu thereof in each place.

§ 11. Delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act,<sup>132</sup> as all such provisions have been removed from the Civil Practice Act.<sup>133</sup>

#### CHAPTER 89. MARRIAGES

§ 4. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

§ 14. Delete "an action of debt, in any court of competent jurisdiction" and insert "a civil action" in lieu thereof.

§ 16 (P.A. 77-1263). Delete "an action of debt, in any court of competent jurisdiction" and insert "a civil action" in lieu thereof.

#### CHAPTER 91. MEDICINE AND SURGERY

§ 16a (P.A. 77-393, 77-468, 77-546). In the last paragraph, delete "decree" and insert "order" in lieu thereof.

§ 16u.1. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 22.15 (P.A. 77-394). In the last paragraph, delete "decree" and insert "order" in lieu thereof.

<sup>132</sup> *Id.* ch. 110.

<sup>133</sup> *Id.*

§ 35.55. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 55.22. Delete "any court having jurisdiction" and insert "the circuit court" in lieu thereof.

§ 55.23. Delete "a court having competent jurisdiction over the parties and subject matter" and insert "the circuit" in lieu thereof.

§ 81 (P.A. 77-220, 77-397). In the last paragraph, delete "decree" and insert "order" in lieu thereof.

§ 105.29. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

#### CHAPTER 91½. MENTAL HEALTH

§ 12-12 (P.A. 77-1622). In the tenth paragraph of the section, delete "judgment at law" and insert "judgments for the payment of money" in lieu thereof.

§ 415 (P.A. 77-378). In the last paragraph, delete "decree" and insert "order" in lieu thereof.

§ 426 (P.A. 77-977). Delete "decree" and insert "an order" in lieu thereof.

#### CHAPTER 93. MINERS AND MINERALS

§ 4.30. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 4.33. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 35.02. Delete "some court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 84. Delete "decreeing" and insert "ordering" in lieu thereof. Delete also "decreed" and insert "ordered" in lieu thereof.

§ 103. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

#### CHAPTER 94. MINES

§ 5. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

## CHAPTER 95. MORTGAGES

§ 22b. Delete "or decree."

§ 22b.56 (P.A. 77-978). Repeal section in toto, as the subject matter is covered by Supreme Court Rule 307(a) (4)<sup>184</sup> and the Legislature has no authority to deal with this subject, as Section 6 of Article VI of the 1970 Constitution has vested this power exclusively in the Supreme Court.

§ 23. Delete "or decree of a court of competent jurisdiction" and insert "of a circuit court" in lieu thereof.

§ 23.2. Delete, in the form, "judgment, order or decree" and insert "judgment or order" in lieu thereof.

§ 23.6. Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each place.

§ 23.6-3. Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof.

§ 23.6-4. Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof.

§ 56. Delete "decrees" and insert "judgment" in lieu thereof. Delete also "suits in equity" and insert "action" in lieu thereof. Delete also "complainant" and insert "plaintiff" in lieu thereof. Delete also "decree," which appears several times in the section, and insert "judgment" in lieu thereof in each place.

§ 57. Delete "decree" and insert "judgment" in lieu thereof.

## CHAPTER 95½. MOTOR VEHICLES

§ 2-117. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 3-831 (P.A. 77-1541). Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 3-914. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 7-303. In paragraph (d) (2), in the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

§ 18-901. Portions of this section are in conflict with

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<sup>184</sup> *Id.* ch. 110A, §307(a) (4) (1971).

Supreme Court Rule 305<sup>135</sup> and also in conflict with the 1971 change in Supreme Court Rule 302.<sup>136</sup> Therefore, the section needs to be amended accordingly.

#### CHAPTER 97. NE EXEAT

§ 1. Delete "and only cognizable before a court of equity."

§ 8. Delete "or decree" in the first sentence, and, in the second sentence, delete "judgment, order or decree" and insert "judgment or order" in lieu thereof.

§ 12. Delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act,<sup>137</sup> as all such provisions have been removed from the Civil Practice Act.<sup>138</sup>

#### CHAPTER 99. NOTARIES PUBLIC

§ 18. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

#### CHAPTER 100. NOTICES

§ 7. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

§ 9. Delete "suits at law or in chancery" and insert "civil actions" in lieu thereof.

#### CHAPTER 100½. NUISANCES

§ 2. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 4. Delete "decree pro confesso" and insert "final judgment" in lieu thereof. Delete also the word "criminate" and insert "incriminate" in lieu thereof.

§ 5. Delete "decree," which appears four times in the section, and insert "judgment" in lieu thereof in each place.

§ 8. Delete "decree" and insert "judgment" in lieu thereof.

§ 16 (P.A. 77-766, 77-981). In the third paragraph of the section, delete "court of competent jurisdiction, the court in term time, or a judge in vacation" and insert "circuit court, the court," in lieu thereof.

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<sup>135</sup> *Id.* §305.

<sup>136</sup> ILL. REV. STAT. ch. 110A, §302 (1971).

<sup>137</sup> ILL. REV. STAT. ch. 110 (1971).

<sup>138</sup> *Id.*

§ 18. Delete "default and a decree pro confesso" and insert "an order of default and final judgment" in lieu thereof.

§ 19 (P.A. 77-766, 77-781). Delete "decree," which appears four times in the section, and insert "judgment" in lieu thereof in each of the four places.

#### CHAPTER 102. OFFICERS

§ 9. Delete "an action of debt" and insert "a civil action" in lieu thereof.

§ 13 (P.A. 77-982). Delete the last sentence of the section, as the clerk issues summons upon request of the plaintiff, without a court order, in accordance with Section 13 of the Civil Practice Act.<sup>139</sup>

§ 15. Delete "such information or."

§ 16. Delete all of the text in the section, as it is in conflict with Supreme Court Rules 1, 303, 305 and 326,<sup>140</sup> and is also in conflict with the 1971 change in Supreme Court Rule 302.<sup>141</sup> Insert in lieu thereof: "Appeals may be taken as in other civil cases."

#### CHAPTER 104. OIL AND GAS

§ 31. Delete "decree" and insert "judgment" in lieu thereof.

§ 33. Delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act,<sup>142</sup> as all such provisions have been removed from the Civil Practice Act.<sup>143</sup>

§ 102. Delete "any court having jurisdiction to hear and decide equity cases" and insert "the circuit court" in lieu thereof.

§ 108. Delete "decree," which appears twice in the section, and insert "judgment" in lieu thereof in each place.

#### CHAPTER 105. PARKS

§ 94. Delete "chancery on the chancery side of." Delete also "decree or" and delete "decree" which appears three times in the section and insert "judgment" in lieu thereof in each place.

<sup>139</sup> *Id.* §13.

<sup>140</sup> *Id.* ch. 110A, §§1, 303, 305, 326.

<sup>141</sup> *Id.* §302.

<sup>142</sup> *Id.* ch. 110.

<sup>143</sup> *Id.*

§ 333.23g. Delete "either in law or in equity."

§ 333.28. Delete "at law or in equity."

#### CHAPTER 106. PARTITION

§ 57. Delete "decree" and insert "judgment" in lieu thereof.

§ 61. Delete "decree" and insert "judgment" in lieu thereof. Delete "decreeing" and insert "ordering" in lieu thereof.

§ 67 (P.A. 77-441). Delete "infants" and insert "minors" in lieu thereof.

§ 69. Delete "decree," which appears three times in the section, and insert "judgment" in lieu thereof in each place.

§ 70. Delete all of the text in the section and insert in lieu thereof: "Proceedings for partition shall be solely in accordance with the provisions of this Act."

#### CHAPTER 106½. PARTNERSHIP

§ 28. Delete "order or decree" and insert "or order" in lieu thereof.

§ 32. Delete "decree" and insert "order" in lieu thereof.

§ 68. Delete "decree" and insert "judgment" in lieu thereof.

#### CHAPTER 108. PENITENTIARIES

§ 112. Delete, in the fourth paragraph of the section, the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act,<sup>144</sup> as all such provisions have been removed from the Civil Practice Act.<sup>145</sup>

#### CHAPTER 108½. PENSIONS

§ 3-136. Delete "masters in chancery" and insert "circuit courts" in lieu thereof.

§ 14-108. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

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<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

§ 22-230. Delete "or decree."

CHAPTER 109. PLATS

§ 9. In the last sentence, delete "before" and insert "by an action in."

CHAPTER 110. PRACTICE<sup>146</sup>

§ 1. In the first sentence, delete the phrase of "both at law and in equity." In the last sentence, delete "and in equity."

§ 7. Delete subsection (4) which reads: "Actions for injunctions to stay proceedings at law must be brought in the county in which the proceedings at law are had." In view of the fact that the circuit courts have "*original jurisdiction of all justiciable matters*,"<sup>147</sup> the pre-1964 practice of a court of equity staying proceedings of a court of law no longer exists. In *Pepin v. City of Chicago*,<sup>148</sup> it was held that the Chancery Division of the County Department of the Circuit Court of Cook County could not enjoin an action commenced in the Municipal Department of the Circuit Court of Cook County.

§ 8. In paragraph (1), delete "order, judgment and decree" and insert "order or judgment" in lieu thereof. Delete "or court of competent jurisdiction."

§ 10. Delete paragraph (2), as it is obsolete by virtue of the fact that, since 1964, Illinois has had a unified trial court,

<sup>146</sup> House Bill 564, which was passed by the House on June 10, 1971, and is now in the Committee on the Judiciary of the Senate, is and must be treated as part of this project. House Bill 564 coordinates the Civil Practice Act with the Illinois Supreme Court Rules and amends §§ 21, 64, 67, 68.1, 68.3, 72, 73, 81 and 83 of the Civil Practice Act for the following reasons:

§21(2) is superseded by Rules 303(c)(1)(ii) and 341(c).

§64(3) and (4) are superseded by Rule 366(b)(3)(i).

§64(5) (second paragraph) is superseded by Rule 366(b)(3)(iii).

§67(2) The provision that "on appeal only the copies need be incorporated in the record on appeal" is in conflict with Rule 324.

§67(3) (sixth sentence) is superseded by Rule 366(b)(2)(i).

§68.1(2) (last sentence) is superseded by Rule 366(b)(2)(iii).

§68.1(4) The provision that "the time for appeal does not begin to run until the court rules upon the motion" is superseded by Rule 303(a).

§68.1(6) (last two sentences in paragraph) is superseded by Rule 366(b)(2)(iv).

§68.1(7) is superseded by Rule 366(b)(ii).

§68.3(1) (second sentence) is superseded by Rule 366(b)(3)(ii).

§68.3(2) The provision that "the time for appeal does not begin to run until the court rules upon the motion" is superseded by Rule 303(a).

§72(6) is superseded by Rule 304(b)(3).

§73(7) is superseded by Rule 304(b)(4).

§§81 and 83 are superseded by Rule 1.

<sup>147</sup> ILL. REV. STAT. ch. 110, §9 (1971).

<sup>148</sup> 79 Ill. App. 2d 295, 224 N.E.2d 587 (1967).



namely, the Circuit Court,<sup>149</sup> and paragraph (2) could only apply to a "splintered" trial court system which existed in Illinois prior to 1964.

§ 14. Delete "or decree."

§ 26.1. In paragraph (1), delete "decree." In paragraph (6), delete "orders, judgments or decrees" and insert "orders or judgments" in lieu thereof.

§ 30. Delete the phrase of "general equity."

§ 31. Common law and equity pleading have not been in existence in Illinois since 1934, a period of 37 years. When the Civil Practice Act was enacted in 1933, Section 45<sup>150</sup> provided: "All objections to pleadings heretofore raised by demurrer shall be raised by motion." In 1955, when the Civil Practice Act was revised, the phrase "heretofore raised by demurrer" was dropped from Section 45 because the demurrer had, by that time, not been in use in Illinois for 21 years.<sup>151</sup> Similarly, Section 31 of the Civil Practice Act<sup>152</sup> is in need of revision in view of the fact that it refers to a practice which had not been in use for 37 years. It is, therefore, suggested that the section be recast into the following simple language:

In all civil actions, pleadings shall be as specified in this Act and the rules. This does not affect in any way the substantial averments of fact necessary to state any cause of action.

§ 38. In paragraph (1), delete the phrase "cross-bill in equity" as obsolete, and, in any event, the phrase "cross demand or otherwise," which appears in that subsection, is all-inclusive and fully covers the subject.

§ 43. In paragraph (2), delete the phrase "whether legal or equitable."

§ 44 (P.A. 77-1322). In paragraph (1), delete the phrase "whether legal or equitable or both," also delete "cross bill in equity." The phrase "all cross demands whatever," which appears in that subsection, is all-inclusive and fully covers the subject.

§ 48. In paragraph (1) (h), delete the word "infancy" and insert "minority" in lieu thereof in order to coordinate it with the terminology of the Probate Act.<sup>153</sup>

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<sup>149</sup> For the background and objective of the statutory provision, see *Werner v. Illinois C.R.R.*, 379 Ill. 559, 52 N.E.2d 82 (1942), and *Herb. v. Pitcairn*, 392 Ill. 138, 64 N.E.2d 519 (1946).

<sup>150</sup> ILL. REV. STAT. ch. 110, §45 (1933).

<sup>151</sup> ILL. REV. STAT. ch. 110, §45 (1955).

<sup>152</sup> ILL. REV. STAT. ch. 110, §31 (1971).

<sup>153</sup> *Id.* ch. 3, §131 *et seq.*

In the second sentence of paragraph (3), delete the phrase "at law" and insert, in lieu thereof, "in which a party is entitled to a trial by jury." It must not be overlooked that in Illinois the right of trial by jury is not limited to actions "at law." For example, a divorce action is not an action "at law," nevertheless a litigant is entitled to a trial by jury.<sup>154</sup> Likewise, a will contest is a statutory proceeding and not an action "at law," nevertheless a litigant is entitled to a trial by jury.<sup>155</sup>

§ 50. In paragraph (1), delete "and decrees," and also delete "or decree," which appears twice in the subsection. In paragraph (4), delete the phrase "or a decree pro confesso," as the Illinois Constitution and Supreme Court Rules employ the term "judgment" only, and the practice of entering a decree of pro confesso has become obsolete. In paragraph (5), delete "order, judgment or decree," which appears twice in the subsection, and insert "order or judgment" in lieu thereof in each place. In paragraph (6), delete "order, judgment or decree" and insert "order or judgment" in lieu thereof. In paragraph (7), delete "or decree," which appears six times in the subsection.

§ 57. Delete "or decree," which appears in the section four times.

§ 57.1. In paragraph (1), delete "decree," which appears in the subsection four times. In paragraph (5), delete the phrase "followed in ordinary actions at law or in equity" and insert in lieu thereof "in other civil actions."

§ 63. In the title of the section, delete "Equity Cases" and insert "Cases Seeking Equitable Relief." In the first sentence, delete the phrase "case in equity pending therein" and insert, in lieu thereof, "action seeking equitable relief." Delete the second sentence, which reads: "In all other cases in equity, the mode of trial shall be as has been heretofore practiced in courts of chancery," as the subject is covered by Section 38 of "An Act in regard to evidence and depositions," which, as amended in 1971<sup>156</sup> reads: "On the trial of every action seeking equitable relief, oral testimony shall be taken when desired by either party."

§ 64. (P.A. 77-1322). In the first sentence of paragraph (5), delete "judgment or decree" and insert "or judgment" in lieu thereof. In the second sentence, delete "or decree."

<sup>154</sup> *Id.* ch. 40, §8.

<sup>155</sup> *Id.* ch. 3, §92.

<sup>156</sup> P.A. 77-962 (1971).

§ 68.3. Delete “decree or,” which appears in the section three times.

§ 72. In paragraph (1), delete “orders, judgments and decrees” and insert “orders or judgments” in lieu thereof. Delete also “order, judgment or decree” and insert, in lieu thereof, “order or judgment.” In the third sentence of paragraph (1), delete the phrase, “either at law or in equity,” and in the last sentence, delete the phrase “at law, suits in equity.” In paragraph (2), delete “order, judgment or decree” and insert “order or judgment” in lieu thereof. In paragraph (3), delete “order, judgment or decree” and insert “order or judgment.” In paragraph (4), delete “order, judgment or decree” and insert “order or judgment” in lieu thereof. In paragraph (5), delete “order, judgment or decree,” which appears three times therein, and insert “order or judgment” in lieu thereof in each of the three places. In paragraph (7), delete “order, judgment or decree” and insert “order or judgment” in lieu thereof.

§ 73. In paragraph (1), delete “or decree.” In paragraph (2) delete “order, judgment or decree” and insert “order or judgment” in lieu thereof. In paragraph (e), delete the phrase “of chancery.” In paragraph (4), delete “or decree.” In paragraph (7) delete “or decrees.” In paragraph (8), delete “or decrees.” In paragraph (10), delete “decree.”

§ 276. Delete “judgment or decree” and insert “or judgment” in lieu thereof. Delete also “in accordance with Sections 5 and 7 of Article VI of the Constitution of the State of Illinois<sup>157</sup> (which is geared to the Judicial Article of 1962) and insert, in lieu thereof, “as appeals in other civil cases.”

§ 277. Delete the phrase “including the provisions for appeal,” which refers to the appellate provisions of the Civil Practice Act,<sup>158</sup> as all such provisions have been removed from the Civil Practice Act.<sup>159</sup>

#### CHAPTER 111½. PUBLIC HEALTH

§ 35.120 (P.A. 77-1038). Delete “decree” and insert “order” in lieu thereof.

§ 73-17 (P.A. 77-1395). Delete “decree,” which appears several times, and insert “order in lieu thereof in each place. Delete also “decreeing,” which appears several times therein,

<sup>157</sup> ILL. CONST. art. VI, §§5, 7 (1970).

<sup>158</sup> ILL. REV. STAT. ch. 110 (1971).

<sup>159</sup> *Id.*

and insert "ordering" in lieu thereof in each place. Delete "court of competent jurisdiction," which appears several times, and insert "the circuit court" in lieu thereof in each place.

§ 73.24c. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof. Delete also "decree" and insert "order" in lieu thereof.

§ 116.75-2 (P.A. 77-1775). In paragraph (2), delete "a court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 116.101. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof. Delete also "decree" and insert "order" in lieu thereof. Delete also "or decree."

§ 116.214. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof. Delete also "decree" and insert "order" in lieu thereof.

§ 218.3. Delete "court of competent jurisdiction," and insert "circuit court" in lieu thereof.

§ 1046. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

#### CHAPTER 111 $\frac{2}{3}$ . PUBLIC UTILITIES

§ 18. Delete "court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 73. Delete all of the text in the section after the phrase "may be taken," as it is in conflict with Supreme Court Rules 1 and 303, and it is also in conflict with the 1971 change in Supreme Court Rule 302.<sup>160</sup> Insert in lieu thereof "as in other civil cases."

§ 75. Delete "Supreme Court," which appears several times in the section, and insert "reviewing court" in lieu thereof in each place, as the appeal is normally to be taken to the Appellate Court, not to the Supreme Court. This change was brought about by the Supreme Court Rules which went into effect on July 1, 1971.<sup>161</sup>

§ 77. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 79. In the last sentence of the section, delete "subject to the provisions of this act," as the right of appeal is provided

<sup>160</sup> *Id.* ch. 110A, §§1, 302, 303.

<sup>161</sup> *Id.* ch. 110A.

by the Constitution and "the constitution has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly."<sup>162</sup>

§ 191. In 1971 this section was amended by P.A. 77-14 and P.A. 77-693. P.A. 77-14, which has numerous references to "associate judge," should be repealed.

§ 228. In paragraph 10 of the section, delete "in any court of competent jurisdiction" and insert "by the circuit court" in lieu thereof.

#### CHAPTER 112. QUO WARRANTO

§ 10. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 14. In the first paragraph of the section, delete "give," which appears twice in the section, and insert "render" in lieu thereof in each place. Delete also "given" and insert "rendered" in lieu thereof.

Delete in toto the second paragraph of the section, as it is in conflict with Supreme Court Rule 305.<sup>163</sup>

§ 15. Delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act,<sup>164</sup> as all such provisions have been removed from the Civil Practice Act.<sup>165</sup>

#### CHAPTER 114. RAILROADS AND WAREHOUSES

§ 57. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 80. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 84. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 85. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 86. Delete "justice of the peace" and insert "the circuit court" in lieu thereof.

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<sup>162</sup> *People ex rel. Stamos v. Jones*, 40 Ill. 2d 62, 66, 237 N.E.2d 495, 497 (1968).

<sup>163</sup> ILL. REV. STAT. ch. 110A, §305 (1971).

<sup>164</sup> *Id.* ch. 110.

<sup>165</sup> *Id.*

§ 93. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 149. Delete "information," which appears twice in the section, and insert "complaint" in lieu thereof in each place.

#### CHAPTER 115. RECORDERS

§ 13. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

#### CHAPTER 116. RECORDS

§ 1. Delete "decree" and insert "order" in lieu thereof.

§ 3. Delete "having probate jurisdiction," as the "circuit courts" have, by virtue of the Illinois Constitution, "original jurisdiction of all justiciable matters."<sup>166</sup> Delete also "decrees" and insert "judgment" in lieu thereof.

§ 4. Delete "Supreme Court," which appears twice in the section, and insert "reviewing court" in lieu thereof in each place. This is necessary because the great majority of appeals will go to the Appellate Court and only a small number will go to the Supreme Court.

§ 8. Delete "information," which appears twice in the section, and insert "complaint" in lieu thereof. Delete "and decrees."

§ 13. Delete "decrees" and insert "orders" in lieu thereof. Delete also "decree," which appears three times in the section, and insert "order" in lieu thereof in each place.

§ 14. Delete "any and all courts in such county having chancery jurisdiction" and insert "the circuit court in the county" in lieu thereof. Delete also "judgments and decrees" and insert "and judgments" in lieu thereof.

§ 15 (P.A. 77-988). Delete "decree" and insert "judgment" in lieu thereof. At the end of the section, delete "any court having jurisdiction thereof" and insert "the circuit court" in lieu thereof.

§ 17. Delete "confess or avoid," as it is a remnant of common law pleading which has been abolished by the Civil Practice Act<sup>167</sup> since January 1, 1934.

§ 18. Delete "be taken for confessed, and a decree" and

<sup>166</sup> ILL. CONST. art. VI, §9 (1970).

<sup>167</sup> ILL. REV. STAT. ch. 110 (1971).

insert "stand as admitted, and a judgment" in lieu thereof. Delete "decree pro confesso" and insert "judgment" in lieu thereof.

§ 19. Delete "decrees, whether pro confesso or otherwise" and insert "judgment" in lieu thereof. Delete also "and decree" and insert "order" in lieu thereof. Delete also the word "decree" and insert "judgment" in lieu thereof.

§ 20. Delete "decree," which appears in the section numerous times, and insert "judgment" in lieu thereof in each place. Delete also "and, provided further, that the period of time within which an appeal must be taken or supersedeas secured, in cases of appeal by insane persons and minors, shall be the same as in other civil cases," as "the constitution has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly."<sup>168</sup>

§ 26. Delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act, as all such provisions have been removed from the Civil Practice Act.

§ 27. Delete "any court having jurisdiction thereof" and insert "the circuit court" in lieu thereof. Delete also "on the case or other proper form of action or suit."

#### CHAPTER 119. REPLEVIN

§ 1. Delete "in any court of competent jurisdiction."

§ 8. Delete "suggestion" and insert "request" in lieu thereof.

§ 9. Delete "application" and insert "request" in lieu thereof.

§ 10. Delete "a rule nisi" and insert "an order" in lieu thereof.

§ 12. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 21. Delete all of the text of the section and insert in lieu thereof: "Appeals may be taken as in other civil cases."

§ 21a. Delete the phrase "including the provisions for appeal," which refers to the appellate provisions of the Civil Practice Act,<sup>169</sup> as all such provisions have been removed from the Civil Practice Act.<sup>170</sup>

<sup>168</sup> People *ex rel.* Stamos v. Jones, 40 Ill. 2d 62, 66, 237 N.E.2d 495, 497 (1968).

<sup>169</sup> ILL. REV. STAT. ch. 110 (1971).

<sup>170</sup> *Id.*

§ 24. Delete "makes default" and insert "suffers a voluntary or involuntary dismissal" in lieu thereof. This will coordinate this section with Section 22 of the Replevin Act.<sup>171</sup> Delete also "given" and insert "entered" in lieu thereof.

#### CHAPTER 120. REVENUE

§ 11-1108. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 11-1109. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

§ 372.4b. Delete all the references of appeal to the "Supreme Court" in accordance with the 1971 change in Supreme Court Rule 302.<sup>172</sup>

§ 382 (P.A. 77-1287). In paragraph (a) of the section, delete "decree" and insert "judgment" in lieu thereof. In paragraph (d), delete "the Supreme Court" and insert "a reviewing court" in lieu thereof, as cases involving revenue are, by virtue of Supreme Court Rule 302(a), effective July 1, 1971, no longer appealable directly to the Supreme Court.

§ 385 (P.A. 77-1287). In the fourth and fifth paragraphs of the section, delete "or associate," as all other references in the section to "associate judges" have been properly removed in 1971. Delete also, in the fifth paragraph of the section, "either in term time or vacation."

§ 386 (P.A. 77-1287). Delete "at law," which appears three times in the section. Delete also "the Supreme Court" and insert "a reviewing court" in lieu thereof, as cases involving revenue are, by virtue of Supreme Court Rule 302(a), effective July 1, 1971, no longer appealable directly to the Supreme Court.

§ 393. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 400. Delete "infant," which appears twice in the section, and insert "minor" in lieu thereof in each place. This will coordinate the terminology with the Probate Act.

§ 432. In the last paragraph of each of the three sections, delete "application to" and insert in lieu thereof "complaint filed in" in each place. Section 32 of the Civil Practice Act<sup>173</sup>

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<sup>171</sup> *Id.* ch. 119, §22 (1971).

<sup>172</sup> *Id.* ch. 110A, §302 (1971).

<sup>173</sup> *Id.* ch. 110, §32 (1971).



provides that "The first pleading by the plaintiff shall be designated a complaint."

§ 432a. In the fourth paragraph, delete all of the text in the paragraph after the word "taken" and insert "as in other civil cases" in lieu thereof. By virtue of Supreme Court Rule 302(a), effective July 1, 1971, cases involving revenue are no longer appealable directly to the Supreme Court.

§ 439.21. Delete "judgment, order or decree" and insert "judgment or order" in lieu thereof.

§ 439.49 (P.A. 77-1029). Delete "judgment, order or decree" and insert "judgment or order" in lieu thereof.

§ 439.119 (P.A. 77-1030). Delete "judgment, order or decree" and insert "judgment or order" in lieu thereof.

§ 444e (P.A. 77-990). Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 444g. Delete "decree" and insert "judgment" in lieu thereof.

§ 444h. Delete "decree," which appears four times in the section, and insert "judgment" in lieu thereof in each place.

§ 453.4a. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 453.6. In the third paragraph, delete "upon application to" and insert "by filing a complaint" in lieu thereof.

§ 453.35. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 453.36. In the third paragraph, delete "upon application to" and insert "by filing a complaint in" in lieu thereof.

§ 619. In the second paragraph, delete all of the text in the paragraph after the word "taken" and insert "as in other civil cases" in lieu thereof. By virtue of Supreme Court Rule 302(a), effective July 1, 1971, cases involving revenue are no longer appealable directly to the Supreme Court.

§ 697 (P.A. 77-993). Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof. Delete also "decrees," which appears several times, and insert "judgments" in lieu thereof in each place.

§ 718. Repeal the section in toto, as it is in conflict with

Supreme Court Rules 303 and 305 and is also in conflict with the 1971 change in Supreme Court Rule 302.<sup>174</sup>

§ 744 (P.A. 77-136). Delete "County Court House," which appears twice in the section, as there has been no county court in existence in Illinois since 1964.<sup>175</sup>

§ 747. Delete "orders, judgments and decrees" and insert "orders and judgments" in lieu thereof.

§ 747a. Delete "decree" and insert "judgment" in lieu thereof.

§ 751 (P.A. 77-993). Delete "or decree," which appears three times in the section.

§ 752 (P.A. 77-993). Delete "or decree," which appears in the fourth and fifth paragraphs of the section.

§ 756. Delete "any court of competent jurisdiction," which appears three times in the section, and insert "the circuit court" in lieu thereof in each of the three places.

§ 780. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 783. Delete "having jurisdiction of the amount," as the circuit court has "original jurisdiction of all justiciable matters." Delete also "in law or equity."

§ 786. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 791. This section should be amended to provide for the action to be brought in the circuit court or the Supreme Court, as the Supreme Court may deny leave to do so.<sup>176</sup>

#### CHAPTER 121. ROADS AND BRIDGES

§ 6-310. Delete "any court having jurisdiction" and insert "the circuit court" in lieu thereof.

§ 10-711 (P.A. 77-994). Delete "either at law or in equity" and insert "in the circuit court" in lieu thereof. Delete also "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 10-807. Delete "either at law or in equity" and insert "in the circuit court" in lieu thereof. Delete also "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

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<sup>174</sup> *Id.* ch. 110A, §§302, 303, 305 (1971).

<sup>175</sup> ILL. CONST. art. VI (1962 Revision) (1870).

<sup>176</sup> ILL. REV. STAT. ch. 110A, §381 (1971).

§ 100-31. Delete "suits at law or proceedings in equity" and insert "civil actions" in lieu thereof. Delete also "suits at law" and insert "a civil action" in lieu thereof.

§§ 101-1 through 101-18. Repeal Highway Trust Authority Act, as the Illinois Supreme Court has held the act unconstitutional in its entirety.<sup>177</sup>

#### CHAPTER 121½. SALES

§ 137.10. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 137.11. In paragraph (k), delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 157.34. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

#### CHAPTER 122. SCHOOLS

§ 7-7. "Petition for such review," which appears six times in the section, should be changed to "complaint for such review," as, under the Administrative Review Act, the first pleading is a "complaint," not a "petition."<sup>178</sup>

§ 12-6. Delete "an action of debt" and insert "civil action" in lieu thereof.

§ 13-36. Delete "County Court" and insert "circuit court" in lieu thereof.

§ 20-6. Delete "action at law" and insert "civil action" in lieu thereof. Delete also "at law or in equity."

§ 22-3. Delete "or other court," as there is no trial court in Illinois other than the circuit court.

§ 22-7. Delete "any court having jurisdiction thereof" and insert "the circuit court" in lieu thereof.

§ 34-18 (P.A. 77-1719). In paragraph 3, delete "juvenile court" and insert "courts" in lieu thereof, as the juvenile court is not a separate tribunal but is merely a division of the circuit court, and, as a matter of public policy, it is the duty of a school board, which is a public agency, to cooperate with all courts.

<sup>177</sup> *Rosemont Building Supply, Inc. v. Illinois Highway Trust*, 45 Ill. 2d 243, 258 N.E.2d 569 (1970).

<sup>178</sup> ILL. REV. STAT. ch. 110, §267 (1971).

§ 107-17. Delete "action at law" and insert "civil action" in lieu thereof. Delete also "at law or in equity."

#### CHAPTER 126½. SOLDIERS AND SAILORS

§ 34 (P.A. 77-1002). Delete "motion or petition or other appropriate pleading." Section 32 of the Civil Practice Act<sup>179</sup> provides that "The first pleading by the plaintiff shall be designated a complaint."

#### CHAPTER 127. STATE GOVERNMENT

§ 172 (P.A. 77-996). Delete "decree" and insert "judgment" in lieu thereof.

#### CHAPTER 127½. STATE FIRE MARSHAL

§ 35. Delete "decree" and insert "judgment" in lieu thereof.

§ 37 (P.A. 77-1106). At the end of the fourth paragraph, delete "be spread at length upon its record," and insert in lieu thereof, "become a part of the court record in the case."

#### CHAPTER 128. STATE LIBRARY

§ 12.11. Delete "court having jurisdiction of same" and insert "circuit court" in lieu thereof.

§ 113 (P.A. 77-1690). Delete "before any court having jurisdiction of same" and insert "in the circuit court" in lieu thereof.

#### CHAPTER 129. STATE MILITIA

§ 249. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

§ 280. In the phrase "court of record," delete "of record," as all Illinois courts are courts of record.

§ 301. Delete "or any constable" and "or constable," as this office was abolished in Illinois in 1965.

§ 303. Delete "or constable."

#### CHAPTER 131. STATUTES

§ 1.22. Delete, at the end of the section, the phrase "all

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<sup>179</sup> *Id.* §32.

rules now or hereafter adopted pursuant thereto" and insert, in lieu thereof, "Supreme Court rules now or hereafter adopted." The Supreme Court rules pertaining to appeal are not adopted pursuant to the Civil Practice Act but by virtue of the Illinois Constitution.<sup>180</sup> In *People ex rel. Stamos v. Jones*,<sup>181</sup> the Supreme Court held that "the constitution has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly."<sup>182</sup>

#### CHAPTER 133. SURVEYORS AND SURVEYS

§ 14. Delete "if not appealed from within thirty days," as it is in conflict with Supreme Court Rule 303 (e)<sup>183</sup> and "the constitution has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly."<sup>184</sup>

#### CHAPTER 134. TELEGRAPH AND TELEPHONE COMPANIES

§ 6 (P.A. 77-997). Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 19. Delete "before any court of competent jurisdiction" and insert "in the circuit court" in lieu thereof.

#### CHAPTER 139. TOWNSHIP ORGANIZATION

§ 44. Delete "either at law or equity" and insert "in civil actions" in lieu thereof. Delete also "decree" and insert "order" in lieu thereof.

§ 48. Delete "decree" and insert "judgment" in lieu thereof.

§ 80 (P.A. 77-1272). Delete "before any judge or magistrate" and insert "in the circuit court" in lieu thereof.

§ 160.44-1. Delete "a court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 310. Delete "a court of record" and insert "the circuit court" in lieu thereof.

§ 314. Delete "in equity."

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<sup>180</sup> ILL. CONST. art. VI, §4 (1970).

<sup>181</sup> *People ex rel. Stamos v. Jones*, 40 Ill. 2d 62, 237 N.E.2d 495 (1968).

<sup>182</sup> *Id.* at 66, 237 N.E.2d at 497.

<sup>183</sup> ILL. REV. STAT. ch. 110A, §303 (e) (1971).

<sup>184</sup> *People ex rel. Stamos v. Jones*, 40 Ill. 2d 62, 66, 237 N.E.2d 495, 497, (1968).

## CHAPTER 140. TRADE MARKS, ETC.

§ 16. Delete, in paragraph (A), subparagraphs (4) and (5), "court of competent jurisdiction," and insert "circuit court" in lieu thereof in each place. Delete, in paragraph (D), "decreeing" and insert "ordering" in lieu thereof. Also delete "decree" and insert "judgment" in lieu thereof.

§ 18. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 20. Delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 22. Delete "all courts having jurisdiction thereof" and insert "the circuit courts" in lieu thereof.

§ 28 (P.A. 77-998). Delete "in any court having jurisdiction over the parties, under the rules and procedures applicable thereto."

§ 112 (P.A. 77-1273). Delete "him" and insert "the court" in lieu thereof.

## CHAPTER 141. UNCLAIMED PROPERTY

§ 124. Delete "a court of appropriate jurisdiction" and insert "the circuit court" in lieu thereof.

## CHAPTER 142. UNDERWRITERS' PATROL

§ 2. Delete "any court of law in the State of Illinois having jurisdiction" and insert "the circuit court" in lieu thereof.

§ 4. Delete "any court of law within the State of Illinois, having jurisdiction" and insert "the circuit court" in lieu thereof.

## CHAPTER 143. UNITED STATES

§ 9. Delete "an action on the case in any court of competent jurisdiction" and insert "a civil action in the circuit court" in lieu thereof.

## CHAPTER 144. UNIVERSITIES, COLLEGES, ACADEMIES, ETC.

§ 48.5. Delete "either in law or in equity, by suit, action" and insert "by civil action," in lieu thereof.

§ 356. Delete "either in law or in equity, by suit, action" and insert "by civil action" in lieu thereof. Also delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 645 (P.A. 77-1716). Delete "any court of competent jurisdiction" and insert "the circuit courts" in lieu thereof.

§ 676 (P.A. 77-1717). Delete "any court of competent jurisdiction" and insert "the circuit courts" in lieu thereof.

§ 1206. Delete "either in law or in equity, by suit, action" and insert "by civil action," in lieu thereof. Also delete "any court of competent jurisdiction" and insert "the circuit court" in lieu thereof.

§ 1314. Delete "a court having jurisdiction of the cause" and insert "the circuit court" in lieu thereof. Also delete "in general equity cases."

#### CHAPTER 146. VENUE

§ 34. Delete "or decree," which appears twice in the section. Also delete "and decree."

#### CHAPTER 147. WEIGHTS AND MEASURES

§ 158. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

#### CHAPTER 148. WILLS AND TRUSTS

§ 32.1b. Delete "court of competent jurisdiction" and insert "circuit court" in lieu thereof.

§ 34. Delete "by decree has heretofore or may" and insert in lieu thereof "has heretofore appointed or a circuit court of this State may." Delete "decree," which appears seven times in the section, and insert "order" in lieu thereof in each place.

§ 35. Delete "or decree."

§ 42. Delete "any court having jurisdiction to appoint a successor trustee" and insert "the circuit court" in lieu thereof.

§ 44. In paragraph (c), delete "Decree" and insert "Order" in lieu thereof.

§ 51 (P.A. 77-61). Delete, in paragraph (1), "decree" and insert "order" in lieu thereof.

## COMPLETION OF TRANSITION

The 1962 Judicial Article<sup>185</sup> was adopted by the Illinois General Assembly in 1961, approved by the electorate in 1962, and became effective in 1964.<sup>186</sup> In 1963, the Illinois General Assembly, in anticipation of the forthcoming change, enacted 68 implementation bills.<sup>187</sup> In 1965, the General Assembly enacted 369 bills.<sup>188</sup> In 1967, the General Assembly enacted 139 implementation bills, and in 1968 were enacted 9 additional bills.<sup>189</sup> In 1969, the General Assembly enacted 48 bills.<sup>190</sup> The 1970 Illinois Constitution was approved by the electorate on December 15, 1970, to go into effect on July 1, 1971. During the year of 1971, the Illinois General Assembly enacted 117 implementation bills,<sup>191</sup> but there is still a considerable task ahead. It is our duty to bring about a prompt and efficient completion of the transition. We must not allow the Illinois Statute Book to remain a graveyard of obsolescence.

## EPILOGUE

The material contained in this project was made available to certain Illinois legislators during the period of its preparation, and, as a result — and with the excellent and efficient cooperation of the Legislative Reference Bureau — there were introduced in the Illinois House of Representatives, on January 13, 1972, 268 bills, numbered 3806 through 4073, and additional bills are in the process of preparation to complete the needed transaction.\*

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<sup>185</sup> ILL. CONST. art. VI (1962 Revision) (1870).

<sup>186</sup> Fins, *Analysis of Illinois Judicial Article of 1961 and Its Legislative and Judicial Implements*, XI DEPAUL L.R., 185-255 (1962).

<sup>187</sup> Fins, *Legislative Amendments Needed in 1965 to Coordinate Illinois Statutes with the New Judicial Article*, 3 Illinois Continuing Legal Education 61-107 (1965).

<sup>188</sup> Fins, *Guide to Illinois Revised Statutes 1965 — Need for Coordination with New Judicial Article*, 4 Illinois Continuing Legal Education, 51-71 (1966).

<sup>189</sup> Fins, *Need for Completion of Illinois Judicial Article Implementation Program in Legislative Session of 1969*, 6 Illinois Continuing Legal Education, 155-163 (1968).

<sup>190</sup> Fins, *Need for Coordination of Illinois Statutes with Unified Trial Court under the Judicial Article*, 3 JOHN MAR. J. PRAC. & PROC. 17-43 (1969).

<sup>191</sup> House Bills 34, 410-21, 423-36, 438-39, 441-42, 444-56, 458-92, 535, 539, 541, 2014, 2088, 2090, 2097, 2099, 2104, 2922, 2951, 2953-54, 2956-59, 2961-62, 2964, 2966, 2968-69, 2972, 2974, 2976, 2981-82, 2985, 2991, 2993-96, 2998, 3001, 3008-10; Senate Bill 159.

\* The author acknowledges gratitude for assistance rendered to him by Jordan H. Peters, Editor-in-Chief of *The John Marshall Journal of Practice and Procedure*.