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SHOULD AN ERROR IN SEEKING THE WRONG WRIT BE FATAL?

By HARRY G. FINS*

By a series of legislative and judicial reforms, the Illinois legal system has ascended from a state of mediocrity in 1933 to a position responsive to the high standards which justice demands in 1971. This was accomplished in part through the adoption of the Illinois Judicial Article, effective January 1, 1964;[1] the promulgation of the new Supreme Court rules in 1966 and amended in 1969;[2] the passage of the Code of Criminal Procedure in 1963;[3] the passage of the Probate Act of 1939 and amended in 1965;[4] and most significantly, the passage of the Civil Practice Act in 1933 and its revision in 1955.[5]

The philosophy of the Civil Practice Act is set out in Section 4:

> This Act shall be *liberally construed*, to the end that controversies may be speedily and finally determined according to the substantive rights of the parties.[6]

In addition, Section 34 provides that one is not precluded from receiving relief for which he did not pray:

> Except in cases of default, *the prayer for relief does not limit the relief obtainable*, but where other relief is sought the court shall, by proper orders, and upon terms that may be just, protect the adverse party against prejudice by reason of surprise. In case of default, if relief beyond that prayed in the pleading to which the party is in default is sought, whether by amendment, counterclaim,

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[1] ILL. CONST. art. VI.

[2] ILL. REV. STAT. ch. 110A (1969).

[3] ILL. REV. STAT. ch. 38 (1969).

[4] ILL. REV. STAT. ch. 3 (1969).

[5] ILL. REV. STAT. ch. 110 (1969).

[6] ILL. REV. STAT. ch. 110, §4 (1969), (Emphasis added.); Skolnick v. Martin, 32 Ill. 2d 55, 203 N.E.2d 428 (1965); Scofield v. Behm, 63 Ill. App. 2d 140, 211 N.E.2d 127 (1965); Robbins v. Campbell, 65 Ill. App. 2d 478, 213 N.E.2d 641 (1965); Fitzgerald v. Van Buskirk, 96 Ill. App. 2d 432, 239 N.E.2d 330 (1968); Hemingway v. Skinner Engineering Company, 117 Ill. App. 2d 452, 254 N.E.2d 133 (1969); Tone and Eovaldi, *Separation of Trials and Appeals in Multiplicity Actions*, 1967 ILL. L.F. 224.

> or otherwise, notice shall be given the defaulted party as provided by rule.[7]

Further, Section 42(2) and (3) of the Act provides:

> No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he is called upon to meet.[8]
>
> All defects in pleading, either in form or substance, not objected to in the trial court are waived.[9]

Finally, Section 46(1) of the Act provides:

> At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, discontinuing as to any plaintiff or defendant, *changing the cause of action or defense or adding new causes of action or defenses*, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert cross demand.[10]

Although through the passage of the Civil Practice Act a liberal philosophy as to civil pleadings was stated, the legislature did not expressly include the extraordinary writs within the Act. Accordingly, Illinois courts apparently have not been compelled to apply this liberal philosophy to the application for writs of *injunction, mandamus, quo warranto,* and *habeas corpus.* The result has been a totally inconsistent treatment towards such writs, often to the prejudice of the plaintiff or petitioner.

I. NON-LIBERAL APPROACH

In *Graves Motor Co. v. Drainage District,*[11] the plaintiff filed a complaint to *enjoin* the Green River Drainage District Commissioners from levying taxes against land which was within the boundaries of another district. Defendant's mo-

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[7] ILL. REV. STAT. ch. 110, §34 (1969).

[8] ILL. REV. STAT. ch. 110, §42(2) (1969); Davis v. Hoeffken Bros., 60 Ill. App. 2d 139, 208 N.E.2d 370 (1965); Haley v. Merit Chevrolet, Inc., 67 Ill. App. 2d 19, 215 N.E.2d 424 (1966); Brown v. County of Lake, 67 Ill. App. 2d 144, 213 N.E.2d 790 (1966); Fanning v. Lemay, 78 Ill. App. 2d 166, 222 N.E.2d 815 (1966); Edwards v. Chicago & N.W. Ry., 79 Ill. App. 2d 48, 223 N.E.2d 163 (1967); Fitzgerald v. Van Buskirk, 96 Ill. App. 2d 432, 239 N.E.2d 330 (1968); Hemingway v. Skinner Engineering Co., 117 Ill. App. 2d 452, 254 N.E.2d 133 (1969); County of Winnebago v. Willsey, 122 Ill. App. 2d 149, 258 N.E.2d 138 (1970); Wilson v. Wilson, 56 Ill. App. 2d 187, 205 N.E.2d 636 (1965); Chambers v. Palaggi, 88 Ill. App. 2d 221, 232 N.E.2d 69 (1967); Chicago v. Westphalen, 95 Ill. App. 2d 331, 238 N.E.2d 225 (1968); Chimerofsky v. School Dist. No. 63, 121 Ill. App. 2d 371, 257 N.E.2d 480 (1970).

[9] ILL. REV. STAT. ch. 110, §42(3) (1969).

[10] ILL. REV. STAT. ch. 110 §46(1) (1969), (Emphasis added.); Simmons v. Hendricks, 32 Ill. 2d 489, 207 N.E.2d 440 (1965); Anderson v. Gousset, 60 Ill. App. 2d 309, 208 N.E.2d 37 (1965); Scardina v. Colletti, 63 Ill. App. 2d 481, 211 N.E.2d 762 (1965); Moser Lumber, Inc. v. Morgan, 106 Ill. App. 2d 339, 245 N.E.2d 310 (1969); Cody v. Ladurini, 109 Ill. App. 2d 116, 249 N.E.2d 315 (1969); Jirik v. General Mills, Inc., 112 Ill. App. 2d 111, 251 N.E.2d 353 (1969); O'Leary v. Siegel, 120 Ill. App. 2d 12, 256 N.E.2d 127 (1970).

[11] 6 Ill. 2d 445, 129 N.E.2d 6 (1955).

tion to dismiss was sustained by the trial court which held that plaintiff had an adequate remedy at law by *quo warranto*. The Supreme Court affirmed the trial court and held that any objections to an annexation of territority cannot be brought by a suit for *injunction*, "but that the available remedy of *quo warranto* must be employed."[12] The court further found no independent grounds for equitable jurisdiction and held that an *injunction* was not an available remedy.[13] Even though petitioner's prayer for relief and the court's recommended relief were both extraordinary remedies, a determination of petitioner's substantive rights was sacrificed because of the absence of a clear mandate relating to the pleading for extraordinary writs.

In *Shaw v. Lorenz*[14] a plaintiff was again deprived of a speedy determination of his substantive rights because of praying for the wrong relief. However, the Civil Practice Act states that "the prayer for relief does not limit the relief obtainable"[15] and further that "no pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he is called upon to meet."[16] Here the Illinois Director of Highways had closed a highway which intersected with Route 66 thereby depriving plaintiffs of convenient access to the route. Plaintiffs conceded that they had an action for *mandamus* to compel defendants to institute proceedings to ascertain damages under the Eminent Domain Act.[17] However, they chose instead to pray for a temporary and permanent *injunction* to prevent defendants from closing access to the route without prior condemnation proceedings, and for a mandatory *injunction* to require the closed intersection to be restored. The action was dismissed by the trial court and plaintiffs appealed directly to the Supreme Court on the basis of a constitutional question.[18] On appeal defendants raised for the first time the defense that plaintiffs had an adequate remedy at law for *mandamus*. Plaintiffs urged that this defense was not raised in the trial court and must be regarded as waived; *i.e.* "All defects in pleading either in form or substance, not objected to in the trial court are waived."[19] Plaintiffs relied upon *Bryant v. Lakeside Galleries, Inc.*[20] which held "it has long been a rule of procedure that a defense not made in the court below will not be

[12] *Id.* at 447, 129 N.E.2d at 7.
[13] *Id.* at 448, 129 N.E.2d at 8.
[14] 42 Ill. 2d 246, 246 N.E.2d 285 (1969).
[15] ILL. REV. STAT. ch. 110, §34 (1969).
[16] ILL. REV. STAT. ch. 110, §42(2) (1969).
[17] ILL. REV. STAT. ch. 47 (1969).
[18] See note 14 *supra*.
[19] ILL. REV. STAT. ch. 110, §42(3) (1969).
[20] 402 Ill. 466, 84 N.E.2d 412 (1949).

considered when the record is reviewed here."[21] The Supreme Court, in accordance with the philosophy that all pleadings should "be liberally construed to the end that controversies may be speedily and finally determined according to the substantive rights of the parties"[22] held that "the appellee may urge any point in support of the judgment on appeal, even though not directly ruled on by the trial court, so long as the factual basis for such point was before the trial court."[23] The court then concluded its opinion by taking a non-liberal approach against the appellant and held: "The availability of *mandamus* is an adequate defense against the granting of the *injunctive* relief sought here."[24] Such inconsistent liberal treatment of the rights of one party as opposed to the non-liberal treatment of the other can hardly result in a fair and impartial determination of one's substantive rights, or as shown here, any trial of those rights.

A non-liberal approach was again employed in the case of *People ex rel. Shelly v. Frye.*[25] A prisoner in a State penitentiary corresponded with a woman who was separated from her husband. There was nothing in the opinion to suggest any illicit relationship between the prisoner and the woman. The warden, who censored the incoming and outgoing mail of all prisoners, refused to allow the prisoner to correspond with the woman. The prisoner, asserting his constitutional right of free speech under the First and Fourteenth Amendments,[26] filed in an Illinois Circuit Court a *habeas corpus* petition against the warden to determine whether the warden had authority to interfere with the prisoner's correspondence. The Circuit Court of Randolph County dismissed the petition because:

> The remedy of *habeas corpus* is available only to obtain the release of a prisoner who has been incarcerated under a judgment of an original trial court which lacked jurisdiction of the subject matter or the person of the defendant, or where there has been some occurrence subsequent to the prisoner's conviction which entitles the prisoner to release.[27]

Had the court employed a liberal approach to the pleading of *habeas corpus,* the substantive rights of the prisoner could have been speedily determined. Instead, petitioner's prayer for relief was denied. The Supreme Court of Illinois affirmed, without advising the prisoner (who appeared *pro se* in the circuit and Supreme courts) what the right remedy was. Our judicial system

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[21] *Id.* at 473-74, 84 N.E.2d at 418; Bittner v. Field, 354 Ill. 215, 188 N.E. 342 (1933); Hill v. Siffermann, 230 Ill. 19, 82 N.E. 338 (1907); City of Mattoon v. Noyes, 218 Ill. 594, 75 N.E. 1065 (1905).

[22] ILL. REV. STAT. ch. 110, §4 (1969).

[23] See note 14 *supra.*

[24] *Id.*

[25] 42 Ill. 2d 263, 246 N.E.2d 251 (1969).

[26] U.S. CONST. amend. I; U.S. CONST. amend. XIV.

[27] See note 25 *supra.*

should no longer tolerate such gross inconsideration for the substantive rights of those before the courts.

The Supreme Court of Illinois remained consistent in its non-liberal approach to extraordinary legal remedies in *People ex rel. St. George v. Woods.*[28] Here an alleged felon, who was unable to post bail as a result of indigency, was confined to the Cook County jail while awaiting a preliminary hearing on the charge of aggravated battery. He petitioned for a writ of *habeas corpus* to establish his right to vote in a public election during his period of imprisonment for lack of bail. The Supreme Court recognized that serious constitutional questions were involved, but refused to pass upon the merits of the case and sustained the trial court's dismissal of the petition on the ground that "a review of claims which are non-jurisdictional in nature is not available by means of *habeas corpus,* even though a denial of constitutional rights is claimed."[29] Quite unadbashedly, the Illinois Supreme Court found justice and the substantive rights of the petitioner, secondary to a defect in pleading which, as easily as was preyed upon, could have been treated in accordance with the philosophy that "pleadings shall be liberally construed with a view to doing substantive justice between the parties."[30]

II INCONSISTENT TREATMENT IN ILLINOIS

In complete juxtaposition to the non-liberal approach heretofore examined, the Illinois courts have, upon occasion, adhered to the liberal philosophy of pleadings as promulgated in the Civil Practice Act. In *Jarrett v. Jarrett*[31] a post-divorce petition was filed where the jurisdiction of the circuit court to modify the custody provisions of a divorce decree after the death of the custodial spouse was at issue. The Supreme Court pointed out that the remedy of *habeas corpus* was properly employed to determine this same issue in *People ex rel. Good v. Hoxie*[32] and in *Smith v. Bruner.*[33] However, the court concluded that the circuit court had jurisdiction whether the application for change in child custody "bore the title of the divorce case or the caption of an in-

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[28] 47 Ill. 2d 261, 265 N.E.2d 164 (1970).

[29] *Id.* at 263, 265 N.E.2d at 165; People *ex rel.* Lewis v. Frye, 42 Ill. 2d 58, 245 N.E.2d 483 (1969); People *ex rel.* Shelly v. Frye, 42 Ill. 2d 263, 246 N.E.2d 251 (1969).

[30] ILL. REV. STAT. ch. 110, §33(3) (1969).

[31] 415 Ill. 126, 112 N.E.2d 694 (1953).

[32] 175 Ill. App. 563 (1912); in People v. Clark, Illinois Supreme Court Docket No. 43603, decided May 27, 1971, the defendant filed a petition under the Post-Conviction Hearing Act. The Supreme Court found that the issue involved "only a question of statutory interpretation," not one "of constitutional magnitude" and therefore the procedure by petition under the Post-Conviction Hearing Act, which is limited to constitutional issues, was improper. The Court said: "However, to avoid the necessity of the defendant's filing a separate action under the Habeas Corpus Act, (ILL. REV. STAT. 1969, ch. 65, par. 1 *et seq.*) we shall consider the merits of defendant's argument."

[33] 312 Ill. App. 658, 39 N.E.2d 78 (1942).

dependent *habeas corpus* proceeding."[34] The substantive rights of the parties were not to be sacrificed for a strict and technical adherence to the appropriateness of nomenclature.

With great reluctance, the Illinois courts have also followed a liberal approach when more than a single extraordinary remedy is sought in the same suit. In *Hamer v. Jones*[35] taxpayers sought a *declaratory judgment, injunction* and *mandamus* against the Illinois Director of Revenue for his alleged failure to assess all taxable property at its full cash value in accordance with Article IX of the Illinois constitution.[36] Plaintiff's complaint was dismissed with the court holding that it could:

> in the exercise of its judicial discretion deny the request for the writ of *mandamus*, the request for a *declaratory judgment* and the request for a writ of *injunction*, where to issue the writs and declarations prayed for would cause chaos and confusion.[37]

It was further held "that to order the Department of Revenue to assess all property in Lake County at its full, fair cash value, as required by statute, would cause chaos and confusion."[38] On appeal the Supreme Court affirmed.[39] Not to be so easily denied a determination of their substantive rights, the taxpayers again sought the same relief in a suit against the new Illinois Director of Revenue in *Hamer v. Mahin*.[40] Although the trial court dismissed the action on the grounds that the State Supreme Court alone retained the power to determine when, and to what extent, compliance with Article IX will be required, there was no mention of denying plaintiff's relief due to the nature of the remedies sought. The Supreme Court held that it did not alone retain the power to determine whether there was compliance with the constitutional command for tax uniformity, and directed the trial court to hear the case on the merits.[41] Finally after four years and a change in the office of the Illinois Director of Revenue, plaintiffs were provided an opportunity to receive an adjudication of their substantive rights. Such is not a speedy determination of those rights, but does exhibit a reluctant trend toward giving top priority to the substantive rights of the litigant.

Since *Hamer v. Mahin*[42] has not yet been decided on remand by the Supreme Court, it is hoped the trial court will not revert to its non-liberal approach in derrogation of the substantive rights of the parties, but will follow the trend toward a more

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[34] See note 31 *supra*.
[35] 39 Ill. 2d 360, 235 N.E.2d 589 (1968).
[36] ILL. CONST. art. IX (1870).
[37] See note 35 *supra*.
[38] *Id.*
[39] *Id.* at 373, 235 N.E.2d at 596.
[40] 47 Ill. 2d 252, 265 N.E.2d 151 (1970).
[41] *Id.* at 254, 265 N.E.2d at 152.
[42] See note 40 *supra*.

liberal approach much like that followed in *Kipperman v. City of Markham.*[43] In this case plaintiff challenged the city's denial of application for a real estate broker's license. Plaintiff sought a *declaration* of the invalidity of an ordinance restricting the number of real estate broker licenses issued;[44] an *injunction* against the enforcement of the ordinance, and alternatively, a writ of *mandamus* to compel the issuance of a license to plaintiff. The trial court dismissed the action,[45] but the Supreme Court reversed and remanded for further proceedings not inconsistent with its opinion which stated that the city may impose non-prohibitive license fees for regulation and revenue, but the city must show cause as to why the applicant's request for a license was denied.[46] The application for relief by *injunction, mandamus* and a *declaratory judgment* in the same suit was not denied in derrogation of the plaintiff's substantive rights.

III. Pronouncing Liberal Principle but Rendering Non-Liberal Decision

Adding to the confusion in construing prayers for relief through extraordinary remedies, the Illinois courts have occasionally pronounced a liberal principle much like that provided for in the Civil Practice Act, but have rendered a non-liberal decision. In *People ex rel. Haven v. Macieiski*[47] a petition was filed for *habeas corpus* by one imprisoned for aggravated battery. Petitioner allegedly was informed that he would be denied bail unless he made a confession. He signed a statement in which he thought he admitted fault as to an accident which was the direct cause of the victim's injuries. The statement, in fact, admitted guilt to the crime of aggravated battery. His *habeas corpus* petition was denied without an evidentiary hearing and without appointment of counsel. Although this procedure allowed by the court was in itself unconstitutional,[48] the Circuit Court of Macon County added insult to petitioner's injury by dismissing the petition because the appropriate remedy was by petition under the Post Conviction Hearing Act.[49] The Supreme Court pronounced the liberal principle that " . . . the trial court could properly have disregarded the *habeas corpus* label, and treated the document as a post-conviction petition . . . ,"[50] however it decided the trial court " . . . was not required to do so, and its judgment dis-

[43] 47 Ill. 2d 285, 265 N.E.2d 166 (1970).
[44] Ill. Rev. Stat. ch. 24, par. 11-42-1 (1965).
[45] See note 43 *supra.*
[46] 47 Ill. 2d 285, 288, 265 N.E.2d 166, 167 (1970).
[47] 38 Ill. 2d 396, 231 N.E.2d 433 (1967).
[48] *Id.* at 397, 231 N.E.2d at 433.
[49] See note 47 *supra.*
[50] 38 Ill. 2d 396, 398, 231 N.E.2d 433, 434 (1967).

missing the *habeas corpus* petition was not erroneous."[51] Thus the court pronounced a liberal principle, but any significance to be attached thereto was mitigated, if not totally destroyed.

A similar pronouncement for a liberal interpretation of a pleading for extraordinary relief was made in *People ex rel. Lewis v. Frye*,[52] however the court again rendered a non-liberal decision. A petition was filed for *habeas corpus* in the Circuit Court of Union County by one who had pleaded guilty to the crime of incest. Later he contended that he was insane at the time of his plea and the State's attorney knew of said insanity. The circuit court dismissed the petition because the proper remedy again was under the Post Conviction Hearing Act. On appeal the Supreme Court cited the liberal pronouncement of *Macieiski* but then went on to affirm the decision of the circuit court.[53] Plaintiff then filed a petition for *habeas corpus* with the Circuit Court of Randolph County. This time he contended that he was improperly denied an evidentiary hearing at the previous proceeding. The circuit court denied his petition. On appeal, the Supreme Court affirmed, holding that *habeas corpus*

> . . . is *not available* to review errors which *only* render the judgment voidable and are of a non-jurisdictional nature, even though a claim of a denial of constitutional rights is involved.[54]

Thus the Illinois courts seem to be in a hopeless quandary as to a proper approach to extraordinary relief. At times the courts have failed to see any problem in construing the application for extraordinary writs and the result has been a denial of the litigant's substantive rights. At other times the courts have recognized the existence of the problem, but lacking direction, have also sacrificed the substantive rights of the petitioner for an archaic non-liberal construction of pleadings. Only less than occasionally have the substantive rights of a petitioner for an extraordinary writ been viewed as the primary issue for determination by the court. Such inconsistencies are employed at the expense of justice. They cannot be so tolerated by the high standards which justice demands today.

FEDERAL SOLUTION TO THE PROBLEM

The Supreme Court of the United States in dealing with review by appeal and review by petition for certiorari has long protected the substantive rights of a litigant who applied for the

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[51] *Id.*

[52] 42 Ill. 2d 58, 245 N.E.2d 483 (1969). Petitioner relied on ILL. REV. STAT. ch. 110A, §302(a)(3) which provides for direct appeals to the Supreme Court from final judgments of circuit courts in cases of *habeas corpus*.

[53] 42 Ill. 2d 311, 247 N.E.2d 410 (1969). Petitioner relied on ILL. REV. STAT. ch. 110A, §302(a)(3) (1969).

[54] *Id.* at 313, 247 N.E.2d at 411, (Emphasis added). People *ex rel.* Haven v. Macieiski, 38 Ill. 2d 396, 231 N.E.2d 433 (1967); People *ex rel.* Skinner v. Randolph, 35 Ill. 2d 589, 221 N.E.2d 279 (1966).

wrong remedy as redress for his grievances. Federal law provides that if an appeal to the Supreme Court of the United States is taken in a case where the proper mode of review is by petition for certiorari, this alone shall not be ground for dismissal. The papers whereby the appeal was taken shall be regarded as a petition for certiorari and acted on as if duly presented to the Supreme Court of the United States at the proper time.[55] The substantive rights of a litigant are of primary importance and will not be sacrificed for a non-liberal approach to nomenclature.

In *Johnson v. Avery*[56] a petitioner was in the Tennessee State penitentiary serving a life sentence. He was transferred to maximum security for violating a prison regulation which forbid inmates from assisting other prisoners in preparation of petitions for post-conviction relief. Petitioner filed in the United States District Court a "motion for law books and a typewriter in which he sought relief from his confinement in the maximum security building."[57] The District Court treated his motion as a petition for a writ of *habeas corpus,* heard the case on its merits and ordered him released from disciplinary confinement. He was restored to the status of an ordinary prisoner, and the prison regulation was held void because in effect it barred illiterate prisoners from access to federal *habeas corpus.* All of this was accomplished on a "motion for law books and a typewriter."[58]

An error in application of appropriate nomenclature was again considered trivial in relation to the substantive rights of the plaintiff in *Smith v. Resor.*[59] The United States District Court had denied a petition for *habeas corpus* by a member of an army reserve unit who was called for active duty and sought to be restored to his reserve status. The United States Court of Appeals remanded the case to the District Court "with the suggestion that it treat this action as a *mandamus* proceeding"[60] to compel the military to follow its own appeal procedures regarding petitioner's long hair and allegedly unjust call to active duty. The label placed upon the relief was properly considered secondary to the substantive rights of the plaintiff.

SUGGESTED CURE

The competition for judicial power in England resulted in a "splintered" court system, consisting of a variety of tribunals, each with limited authority.[61] The American colonists blindly

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[55] 28 U.S.C. §2103 (1948).
[56] 393 U.S. 483 (1969).
[57] *Id.* at 484.
[58] *Id.*
[59] 406 F.2d 141 (2d Cir. 1969).
[60] *Id.* at 147. (Emphasis added.)
[61] Blackstone, in Book III of his Commentaries on the Laws of England, discusses the following courts in the judicial system of England: Courts

followed the model of the mother country and the "splintered" court system continued after the American Revolution. The result was that available remedies and the jurisdiction of the courts were set forth in unalterable rules. Through judicial reform, Illinois has broken the shackles of a "splintered" court system. A most significant reform was accomplished by the judicial article whereby the circuit courts have "original jurisdiction of all justiciable matters."[62] There is no reason today to stifle the right of a litigant who has merely erred in the application of appropriate nomenclature. It is therefore suggested that the Illinois Injunction Act,[63] the Mandamus Act,[64] Quo Warranto Act,[65] and Habeas Corpus Act[66] be amended by adding to each Act a section reading as follows:

> Where an action or proceeding is brought and the court determines that the party has stated facts which would entitle him to relief but has sought the wrong remedy, the court shall not dismiss the action or proceeding but shall grant the appropriate relief to which the party is entitled as if he so requested.

This would insure that the philosophy of the Civil Practice Act and the judicial article will be extended to protect the substantive rights of parties applying for extraordinary relief.

PROPOSED LEGISLATION

In the hope of being of assistance to the Legislature in the improvement of the Illinois procedural law, the following proposed four bills are submitted:

I Injunction

AN ACT to add Section 24 to "An Act to revise the law in relation to injunction," approved March 25, 1874, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 24 is added to "An Act to revise the law in relation to injunction," approved March 25, 1874, as amended, the added Section to read as follows:

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piepoudre (p. 32), court baron (p. 33), hundred court (p. 34), county court (p. 35), court of common pleas (p. 37), court of King's bench (p. 41), court of exchequer (p. 42), court of equity (p. 45), the high court of chancery (p. 46), court of exchequer chamber (p. 55), house of peers (p. 56), courts of assize and nisi prius (p. 57), the archdeacon's court (p. 64), the consistory court (p. 64), the court of arches (p. 64), the court of peculiars (p. 65), the prerogative court (p. 66), military courts (p. 68), forest courts (p. 71), commissioner of sewers (p. 73), court of policies of assurance (p. 74), court of marchaleca and the palace court (p. 76), courts of Wales (p. 77), courts of Lancaster (p. 78), courts of Palatine (p. 80), municipal courts of London (p. 81) and the courts of the universities (p. 83).

[62] ILL. CONST., art. VI §9 (1870).

[63] ILL. REV. STAT. ch. 69 (1969).

[64] ILL. REV. STAT. ch. 87 (1969).

[65] ILL. REV. STAT. ch. 112 (1969).

[66] ILL. REV. STAT. ch. 65 (1969).

Sec. 24. Where an action or proceeding is brought and the court determines that the party has stated facts which would entitle him to relief but has sought the wrong remedy, the court shall not dismiss the action or proceeding but shall grant the appropriate relief to which the party is entitled as if he so requested.

II Mandamus

AN ACT to add Section 12 to "An Act to revise the law in relation to mandamus," approved February 25, 1874, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 12 is added to "An Act to revise the law in relation to mandamus," approved February 25, 1874, as amended, the added Section to read as follows:

Sec. 12. Where an action or proceeding is brought and the court determines that the party has stated facts which would entitle him to relief but has sought the wrong remedy, the court shall not dismiss the action or proceeding but shall grant the appropriate relief to which the party is entitled as if he so requested.

III Quo Warranto

AN ACT to add Section 9 to "An Act in relation to practice and procedure in cases of quo warranto," approved July 2, 1937, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 9 is added to "An Act in relation to practice and procedure in cases of quo warranto," approved July 2, 1937, as amended, the added Section to read as follows:

Sec. 9. Where an action or proceeding is brought and the court determines that the party has stated facts which would entitle him to relief but has sought the wrong remedy, the court shall not dismiss the action or proceeding but shall grant the appropriate relief to which the party is entitled as if he so requested.

IV Habeas Corpus

AN ACT to add Section 37 to "An Act to revise the law in relation to habeas corpus," approved March 2, 1874, as amended.

Be is enacted by the People of the State of Illinois represented in the General Assembly:

Section 1. Section 37 is added to "An Act to revise the law in relation to habeas corpus," approved March 2, 1874, as amended, the added Section to read as follows:

Sec. 37. Where an action or proceeding is brought and the court determines that the party has stated facts which would entitle him to relief but has sought the wrong remedy, the court shall not dismiss the action or proceeding but shall grant the appropriate relief to which the party is entitled as if he so requested.