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Changes in Illinois Civil Practice - 1950-1960: C.P.A. 1-20,72,73, and Related Supreme Court Rules

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CIVIL PROCEDURE

Since it is Reason which shapes and regulates all other things, it ought not itself be left in disorder.—EPICETUS, *Discourses*, ch. 17.

CHANGES IN ILLINOIS CIVIL PRACTICE—1950—1960: C.P.A. §§1-20, 72, 73, AND RELATED SUPREME COURT RULES

BEN LISS

THE MOST SIGNIFICANT changes during the past decade in Illinois civil practice are reflected in the comprehensive revisions of 1955, effective January 1, 1956, of the Civil Practice Act.¹ Of those changes, only the more important are noted in order to accommodate the ambitious program of this symposium issue.

EXPANDED JURISDICTION OVER NONRESIDENTS

Section 17,² sometimes called the "long-arm statute," is for Illinois a new concept intended to expand *in personam* jurisdiction of its courts

¹ ILL. REV. STAT. ch. 110 (1959), referred to herein as "the act."

² ILL. REV. STAT. ch. 110, § 17 (1959): "(1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:

- (a) The transaction of any business within this State;
- (b) The commission of a tortious act within this State;
- (c) The ownership, use or possession of any real estate situated in this State;
- (d) Contracting to insure any person, property or risk located within this State at the time of contracting.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

(4) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law."

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over nonresident defendants. Its companion section³ provides for the manner of personal service of summons outside the state. The constitutionality of those sections has been established in *Nelson v. Miller*,⁴ where the court said: "Sections 16 and 17 of the Civil Practice Act reflect a conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by the due-process clause."⁵ This was the first consideration by the court of these sections and it noted the significant social, technological, and legal developments which had occurred since *Pennoyer v. Neff*,⁶ which founded jurisdiction of a court on physical power. The change was made most manifest by *International Shoe Co. v. Washington*,⁷ where the Court held that the limits on the exercise of jurisdiction were to be found only in the requirement that provisions made for this purpose must be fair and reasonable and must give to the defendant adequate notice of the claim against him and an adequate and realistic opportunity to appear and be heard in his defense. The court in the *Nelson* case quoted from *International Shoe*:

"[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"⁸

Section 17, being procedural in nature, was also held to apply retroactively to causes of action which arose prior to its effective date.⁹

Since *Nelson*, the extent of "minimum contacts" has begun to take shape, and every touching or contact in Illinois has not been sufficient to extend jurisdiction over nonresidents. It appears that there is required some physical presence of the defendant in addition to the statutory requirement¹⁰ that the cause of action arise from the specific transaction.¹¹ In *Orton v. Woods Oil & Gas Co.*,¹² an engineer and a

³ ILL. REV. STAT. ch. 110, § 16 (1959).

⁴ 11 Ill.2d 378, 143 N.E.2d 673 (1957).

⁵ *Id.* at 389, 143 N.E.2d at 679.

⁶ 95 U.S. 714 (1877).

⁷ 326 U.S. 310 (1945).

⁸ *Nelson v. Miller*, 11 Ill.2d 378, 384, 143 N.E.2d 673, 677 (1957) (quoting from *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

⁹ *Nelson v. Miller*, 11 Ill.2d 378, 143 N.E.2d 673 (1957); *Sunday v. Donovan*, 16 Ill. App.2d 116, 147 N.E.2d 401 (1958).

¹⁰ ILL. REV. STAT. ch. 110, § 17(3) (1959).

¹¹ On this point, consult Comment, 55 Nw. U. L. Rev. 238, 245 (1960).

¹² 249 F.2d 198 (7th Cir. 1957).

lawyer, employed by defendant in New Orleans, brought suit to recover fees for services which were rendered in Illinois. The services included the creation of a Delaware corporation out of a sole proprietorship and the registration of its stock so that it could engage in business outside Illinois. In holding that there were not the sufficient minimum contacts required by due process, the court said:

The fact that plaintiffs did most of their actual work in Chicago in accomplishing their assignments seems to us to be a slender thread on which to hang their claim for jurisdiction over defendant in Illinois. We do not believe that defendant had such "minimum contacts" with the territory of the forum chosen by plaintiffs to subject it to a judgment *in personam*. To do so, would "offend traditional notions of fair play and substantial justice."

♦♦♦
To rule otherwise would be to stretch the doctrine of the International Shoe case to the breaking point, and to expand the Illinois concept of state jurisdiction over nonresidents beyond the limit imposed by due process.¹³

In *Bluff Creek Oil Co. v. Green*,¹⁴ an interpleader suit brought in Texas, it was contended that the default judgment obtained in Illinois was void for want of jurisdiction. All of the negotiations for the purchase of a working interest in Texas oil leases took place in Illinois and the agreement was made there; though the papers were prepared in Oklahoma, they were returned to Chicago for final execution and delivery there. The court found no difficulty in finding the connection with Illinois to invest it with the power to make service of its process effective against nonresidents without violating the federal constitution.

"Minimum contacts," despite the appreciable value of the goods involved, were lacking in *Groback v. Addo Mach. Co.*,¹⁵ and defendant was found not to have submitted to the jurisdiction of the Illinois courts. A contract of exclusive distributorship was consummated in New York by a letter from defendant in New York to plaintiffs in Chicago after defendant's agent met with plaintiffs in Illinois for pre-contract negotiations. After two years of purchases for resale in Illinois, defendant cancelled the distributorship and used plaintiffs' customer list by giving it to the newly appointed distributor. In the suit under the contract, defendant contended that it had not transacted business within Illinois and did not submit to the jurisdiction of the Illinois courts. The court

¹³ *Id.* at 202-03.

¹⁴ 257 F.2d 83 (5th Cir. 1958).

¹⁵ 16 Ill.2d 426, 158 N.E.2d 73 (1959)

noted that defendant manufactured the machines outside Illinois, did not maintain any offices in Illinois, nor employ any officers, agents, employees, or other persons within the state; that sales were consummated when plaintiffs placed orders with defendant in New York and defendant accepted the orders, delivering its product to independent carriers in New York. The court held that plaintiffs were independent businessmen in Illinois selling their own merchandise, which had been manufactured by defendant, and that plaintiffs were not transacting business for the defendant in Illinois, but were transacting business for themselves. It distinguished *Nelson*, in which defendant's agent was in Illinois and his activity there gave rise to the injury for which the action was brought.

In *Kaye-Martin v. Brooks*,¹⁶ where a contract for the sale of stock had its origin in New York but was executed in its final form in Texas, it was held that the meeting of the broker, the New York buyer, and the Arkansas seller for discussing the terms of the sale, arranged to be held in Chicago for the convenience of the seller, who was attending a convention there, did not constitute transaction of business in Illinois such as would justify Illinois in asserting jurisdiction *in personam* over the seller in an action for breach of that contract.

The same result is obtained in the area of torts. In *Trippe Mfg. Co. v. Spencer Gifts, Inc.*,¹⁷ a suit charging unfair competition, defendant, a New Jersey corporation, engaged in the mail order business in New Jersey and mailed its catalogues to Illinois. To plaintiff's contention that defendant's activities in mailing the catalogues to Illinois came within the provisions of section 17, the court held "that under Illinois law, defendant did not have those 'minimal contacts' which are essential to the transaction of any business within the state of Illinois."¹⁸ Similarly, a foreign publishing corporation was held not to be transacting business in Illinois merely because it shipped its publications into the state to subscribers or to independent contractors for resale.¹⁹

¹⁶ 267 F.2d 394 (7th Cir. 1959), *cert. denied*, 361 U.S. 832 (1959). *But see* National Gas Appliance Corp. v. AB Electrolux, 270 F.2d 472 (7th Cir. 1959), *cert. denied*, 361 U.S. 959 (1960), where "... [the] acts of defendant's representatives, which occurred in Illinois, constitute at least such minimal contacts with that state that the maintenance of this suit there does not offend traditional notions of fair play and substantial justice." *Id.* at 475.

¹⁷ 270 F.2d 821 (7th Cir. 1959).

¹⁸ *Id.* at 823.

¹⁹ *Insull v. New York, World Telegram Corp.*, 273 F.2d 166 (7th Cir. 1959), *cert. denied*, 362 U.S. 942 (1960). See also *Hellriegel v. Sears Roebuck & Co.*, 157 F. Supp. 718 (N.D. Ill. 1957) (a products liability case where the damage only occurred in Illinois), and *Wing v. Challenge Mach. Co.*, 23 F.R.D. 669 (S.D. Ill. 1959).

The solicitation and securing of two purchase orders in Illinois, coupled with a promise to send an employee into the state to train the purchaser in the use of equipment purchased was held to be a transaction of "some business in Illinois" and thus within section 17(1)(e).²⁰

RELIEF FROM JUDGMENTS AND DECREES

Section 72 of the act, as greatly expanded by the 1955 revisions, "substitutes a simple remedy by petition²¹ for various forms of post-judgment relief theretofore available, [and] enables a party to bring before the court rendering a judgment matters of fact not appearing in the record which, if known to the court at the time the judgment was entered, would have prevented its rendition. . . ."²² It states that

writs of error *coram nobis* and *coram vobis*, writs of *audita querela*, bills of review and bills in the nature of bills of review are abolished, and that all relief previously obtainable and the grounds for relief previously available, either at law or in equity whether by any of the foregoing remedies or otherwise, continues to be available in every case, by proceedings under this section, regardless of the nature of the order, judgment or decree from which relief is sought or of the proceedings in which it was entered.²³

The petition for post-judgment relief under this section "is not available as a substitute for an appeal."²⁴ The statute was enacted for the purpose of reaching a judgment which would not have been rendered had matters of fact not appearing of record been known to the court at the time of the rendition of the judgment.²⁵ It is applicable in both suits at law and in equity,²⁶ and it has become an effective tool for setting aside a default judgment, the existence of which was concealed

²⁰ Berlemann v. Superior Distrib. Co., 17 Ill. App.2d 522, 151 N.E.2d 116 (1958). See also Haas v. Fancher Furniture Co., 156 F. Supp. 564 (N.D. Ill. 1957). (Transaction of business does not mean doing business.)

²¹ The petition may be filed after thirty days (§ 72(1)) but must be filed within two years after entry of the order, judgment, or decree (§ 72(3)).

²² Brockmeyer v. Duncan, 18 Ill.2d 502, 505, 165 N.E.2d 294, 295 (1960); Frederick v. Maggio, 23 Ill. App.2d 292, 162 N.E.2d 590 (1959).

²³ Collins v. Collins, 14 Ill.2d 178, 182, 151 N.E.2d 813, 815 (1958); see also Van Dam v. Van Dam, 21 Ill.2d 212, 171 N.E.2d 594 (1961) (*petition for rehearing not filed*).

²⁴ Van Dam v. Van Dam, *supra* note 23 at 218, 171 N.E.2d at 598 (citing Collins v. Collins, 14 Ill.2d 178, 151 N.E.2d 813 (1958)).

²⁵ United States *ex rel.* Barrigar v. Robinson, 189 F.2d 766, 767 (7th Cir. 1951); see also O'Connell v. Prudence Mut. Cas. Co., 23 Ill. App.2d 364, 163 N.E.2d 213 (1959).

²⁶ Ellman v. DeRuiter, 412 Ill. 285, 106 N.E.2d 350 (1952); Frederick v. Maggio, 23 Ill. App.2d 292, 162 N.E.2d 590 (1959).

and which was obtained by excusable mistake,²⁷ but it "is not intended to relieve a defendant from the consequences of his own negligence"²⁸ or the incompetence of his attorney.²⁹

SUPPLEMENTAL PROCEEDINGS TO ENFORCE JUDGMENTS

Section 73 of the act and Supreme Court Rule 24,³⁰ effective January 1, 1956, introduced a substantially new and comprehensive procedure to enable a judgment creditor to discover and have applied assets of the judgment debtor to the satisfaction of the judgment against him. The procedure does not supersede any other method of satisfying a judgment.³¹ It is commenced against the debtor or any other person by the service of a summons issued by the clerk of court³² and as to the discovered non-exempt assets or income of the judgment debtor, the court may: (a) compel the debtor to deliver property to which his title or right of possession is not substantially disputed, (b) compel the debtor to pay in installments a reasonable portion of his income, (c) compel any person cited, other than the debtor, to deliver any assets against which debtor could have proceeded, (d) enter any order against the person cited that could be entered in any garnishment proceeding, (e) compel any person cited to assign any property or chose in action to the same extent as could be done by a court of chancery, and (f) authorize the judgment creditor to sue any persons indebted to the debtor.³³

The citation may be given the same holding effect as the service of a garnishment summons, for it may on its face provide for a prohibition against the party to whom it is directed from transferring or permitting the transfer of any property belonging to the judgment debtor or to which he may be entitled.³⁴ Though it has been argued that the provision is unconstitutional because the prohibition against such transfer is injunctive, and thus in effect gives the clerk of court the right to issue an injunction, probably the better reasoning is to liken the effect

²⁷ Ellman v. DeRuiter, *supra* note 26.

²⁸ Till v. Kara, 22 Ill. App.2d 502, 509, 161 N.E.2d 363, 366 (1959).

²⁹ Brockmeyer v. Duncan, 18 Ill.2d 502, 165 N.E.2d 294 (1960).

³⁰ ILL. REV. STAT. ch. 110, § 101.24 (1959).

³¹ ILL. REV. STAT. ch. 110, § 73(8) (1959).

³² ILL. REV. STAT. ch. 110, § 73(1) (1959).

³³ ILL. REV. STAT. ch. 110, § 73(2) (a)-(f) (1959).

³⁴ ILL. REV. STAT. ch. 110, § 73(4) (a) (1959).

of the restraining provision here with the effect of a garnishment summons or attachment writ,³⁵ as to which there is no question.³⁶

A significant change in practice is the effect of a continuing garnishment obtained by this procedure. Such an effect cannot be obtained under the provisions of the Garnishment Act,³⁷ and it has been held that a garnishment brought under that act cannot be converted into a supplementary proceeding to obtain the benefit of a continuing garnishment.³⁸

To dispel all doubt as to the power of the court to enforce the citation, order, or other directive of the court, Supreme Court Rule 24(8)³⁹ provides for punishment for contempt as well as for execution against property.

IMPROPER VENUE

Improper venue may now be raised only as provided in section 8(2) of the act. The practice previously had been for the defendant to raise the point by a motion to dismiss the action for lack of venue or by motion to transfer or by answer;⁴⁰ now the question is raised exclusively by a motion to transfer to a proper venue. The motion must be made by the date on which defendant is required to appear or within any further time granted to him to plead, and unless the question is raised as provided in this section, all objections of improper venue are waived.⁴¹

JURISDICTION AND VENUE OF CITY COURTS

There have been some significant decisions involving the jurisdiction and venue of city, village, and town courts created and established pursuant to the City Court Act.⁴² "There has been much confusion in

³⁵ Fins, Tone & Liss, *May a Clerk of Court by Citation Under Section 73 of the Civil Practice Act Without an Order of a Judge Prohibit the Transfer of Assets?* 44 ILL. B. J. 818 (1956).

³⁶ *Id.* at 820. (See cases cited.)

³⁷ ILL. REV. STAT. ch. 62, §§ 39(b), (c) (1959).

³⁸ *National Home, Inc. v. American Nat'l Bank & Trust Co.*, 16 Ill. App.2d 111, 147 N.E.2d 412 (1958).

³⁹ ILL. REV. STAT. ch. 110, § 101.24(8) (1959).

⁴⁰ *Dever v. Bowers*, 341 Ill. App. 444, 94 N.E.2d 518 (1950).

⁴¹ Except that if a defendant upon whose residence venue depends is dismissed upon motion of plaintiff, a remaining defendant may promptly move for transfer as though the dismissed defendant had not been a party. ILL. REV. STAT. ch. 110, § 8(2) (1959).

⁴² ILL. REV. STAT. ch. 37, § 333 (1959).

the cases, due to undue restrictions, from a narrow interpretation of the constitutional provisions, to the confounding of the questions of territorial jurisdiction and venue, and to unnecessary and inaccurate dicta."⁴³ The statute, insofar as relevant, provides: "The several courts of record . . . in and for any city, . . . shall be courts of general jurisdiction in and for the cities . . . wherein they are respectively established, . . . concurrently with the Circuit Court."⁴⁴ It also provides that for the purpose of determining venue in civil cases the provisions of the venue statutes shall be construed as if the city wherein the city court is established was a county of which such city court was the circuit court.

In *Turnbaugh v. Dunlop*,⁴⁵ our court expressly overruled whatever statements it had previously made contrary to its expression in that case. After stating the general rule that transitory actions "may be brought whenever the wrongdoer may be found within the territory for which the court exists, or whenever jurisdiction over his person is otherwise obtained,"⁴⁶ the court held that the words "in and for" did not bar a city court from assuming jurisdiction of a transitory cause of action arising outside the territorial limits of the city, and declared that "if he [defendant] resides in a city or is found within its borders and is properly before the court, jurisdictional requirements have been satisfied regardless of where the acts were performed giving rise to liability."⁴⁷ It noted, however, that this jurisdictional right may be asserted subject only to statutes pertaining to venue limiting it.

In a similar overruling mood, our court, in *Chappelle v. Sorenson*,⁴⁸ held that under the City Court Act⁴⁹ "a city court may send its original process beyond the corporate limits of the city, the same as a circuit court,"⁵⁰ and in doing so recognized the problem essentially to be one of venue.⁵¹

⁴³ *Turnbaugh v. Dunlop*, 406 Ill. 573, 574-75, 94 N.E.2d 438, 439 (1950).

⁴⁴ ILL. REV. STAT. ch. 37, § 333 (1959).

⁴⁵ 406 Ill. 573, 94 N.E.2d 438 (1950). Followed in *United Biscuit Co. v. Voss*, 407 Ill. 488, 95 N.E.2d 439 (1950), under the Municipal Court Act of Chicago, ILL. REV. STAT. ch. 37, §§ 356-426 (1959); *Starck v. Chicago & N. W. Ry.*, 4 Ill.2d 616, 123 N.E.2d 826 (1954).

⁴⁶ *Turnbaugh v. Dunlop*, *supra* note 45 at 585, 94 N.E.2d at 443.

⁴⁷ *Ibid.*

⁴⁸ 11 Ill.2d 472, 143 N.E.2d 18 (1957).

⁴⁹ ILL. REV. STAT. ch. 37, § 333 (1959).

⁵⁰ *Chappelle v. Sorenson*, 11 Ill.2d 472, 474, 143 N.E.2d 18, 19 (1957).

⁵¹ *Ibid.*

The court's most recent consideration of the venue aspect of the problem was in *People ex rel. Norwegian-American Hosp. v. Sandusky*.⁵² The initial cause of action arose outside of the town of Cicero and the defendant neither resided in nor did business within the town. In awarding the writ of mandamus directing the judge to vacate the order denying defendant's motion for transfer and to transfer the cause to the Circuit Court of Cook County, the court said:

The venue provisions of the Civil Practice Act (Ill. Rev. Stat. 1959, chap. 110, pars. 5-12) contain mandatory venue requirements. When a proper motion to transfer is presented, the facts being admitted, the trial court has no discretion but must transfer the cause.⁵³

After quoting the applicable portion of section 5⁵⁴ of the act, the court said:

Thus to bring an action in a town court, it must be commenced (a) in the town of residence⁵⁵ of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him and not solely for the purpose of fixing venue in that town, or (b) in the town in which the transaction or some part thereof occurred out of which the cause of action arose.⁵⁶

These decisions may take on added importance because of the recent increase in the number of city and town courts established⁵⁷ and contemplated in the periphery of Chicago.

⁵² 21 Ill.2d 296, 171 N.E.2d 640 (1961).

⁵³ *Id.* at 299, 171 N.E.2d at 642.

⁵⁴ ILL. REV. STAT. ch. 110, § 5 (1959): "Except as otherwise provided in this Act, every action must be commenced (a) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him and not solely for the purpose of fixing venue in that county, or (b) in the county in which the transaction or some part thereof occurred out of which the cause of action arose."

⁵⁵ For "residence" of corporations and partnerships, see ILL. REV. STAT. ch. 110, § 6 (1959). Section 6(2) (which provides that "A partnership sued in its firm name is a resident of any county in which any partner resides or in which the partnership has an office or is doing business," and is a nonresident if no partners are residents of this state) is new and should be read with § 13.4, providing for service of process on a partnership sued in its firm name, and § 27.1 providing that a partnership may be sued in the firm name; both are new. See also ILL. REV. STAT. ch. 77, § 1b (1959): "A judgment rendered against a partnership in its firm name shall support execution only against property of the partnership and shall not constitute a lien upon real estate other than that held in the firm name."

⁵⁶ *People ex rel. Norwegian-American Hosp. v. Sandusky*, 21 Ill.2d 296, 301, 171 N.E.2d 640, 643 (1961).

⁵⁷ Town Court of Cicero, Municipal Court of Elmwood Park, Village Court of Maywood, and Village Court of Skokie.

UNIFORM COURT RULES

Section 2(2) of the act⁵⁸ provides: "Subject to rules [of the Supreme Court] the city, town, circuit, superior and Appellate Courts may make rules regulating their dockets, calendars, and business." In the promulgation of their rules, the trial courts acted with complete independence and without regard to the rules of the courts in neighboring circuits and counties. In some circuits, comprising several sparse counties, the rules sometimes varied in each county, though they were in the same circuit. In some circuit courts, there were no complete rules, and in others where rules were said to exist, only the oldest practitioners had ever seen them.

A significant development in civil practice was the adoption of uniform trial court rules⁵⁹ by the circuit and superior courts of Cook County, effective March 1, 1959, and their adoption in whole or in part by most of the judicial circuits throughout the state thereafter.⁶⁰ The Supreme Court of Illinois, acting through the executive committee of the Judicial Conference of Illinois, after the adoption in 1958 of a resolution approving in principal uniform rules for the superior and circuit courts of Illinois, appointed a committee of judges (Committee on Uniform Court Rules) to present uniform rules to the courts. That committee had before it the final draft of rules proposed by the Chicago Bar Association Committee on Revision of Rules.⁶¹ After some modification to make the proposed rules adaptable to state-wide practice, the Judicial Conference recommended the adoption of the uniform rules of practice.⁶²

As a result of the adoption of the uniform rules, for the first time an Illinois lawyer participating in litigation outside his own local circuit court can be reasonably certain that he knows the basic rules of the trial court. In addition to serving to crystallize practice uniformly, the rules also introduce some new practical concepts worthy of special

⁵⁸ "Rules of court are adopted to facilitate the work of the court and they have the force of law. They are binding on . . . [the] court the same as on litigants." *People v. Miller*, 17 Ill. App.2d 274, 277, 149 N.E.2d 784, 786 (1958).

⁵⁹ ILL. REV. STAT. ch. 110, §§ 301.1-312.4 (1959).

⁶⁰ Consult ILL. ANN. STAT. ch. 110, §§ 301.1-312.4 (Smith-Hurd 1959), for circuits which have adopted the rules in whole or in part.

⁶¹ Appointed at the joint request of the executive committees of both the circuit and superior courts of Cook County.

⁶² COMMITTEE ON UNIFORM COURT RULES OF THE JUDICIAL CONFERENCE OF ILLINOIS, RULES OF PRACTICE FOR THE CIRCUIT COURTS OF ILLINOIS, Foreword (1958).

mention. A party now is entitled to only one continuance on the ground that his attorney is engaged in another trial or hearing,⁶³ and a continuance is not to be granted upon the ground of substitution or addition of attorneys.⁶⁴ Service of a rule or order upon a party may be made by mail instead of by actual personal service.⁶⁵ For the first time there is set out the mechanics for satisfaction of a money judgment if the judgment creditor cannot be found or refuses, after a tender, to satisfy the judgment.⁶⁶ To dispel existing doubt concerning the power of a master in chancery to rule on a motion to dismiss at the close of the plaintiff's case, express authority is given so to do.⁶⁷

⁶³ ILL. REV. STAT. ch. 110, § 306.1 (a) (1959).

⁶⁴ ILL. REV. STAT. ch. 110, § 306.1(b) (1959). See comment in ILL. ANN. STAT. ch. 110, § 306(1) (b) (Smith-Hurd 1959).

⁶⁵ ILL. REV. STAT. ch. 110, § 307.2 (a) (1959).

⁶⁶ ILL. REV. STAT. ch. 110, § 307.3 (1959).

⁶⁷ ILL. REV. STAT. ch. 110, § 309.4 (e) (1959).