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Matrimonial Law in Illinois in the '50's

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FAMILY LAW

All happy families resemble one another; every unhappy family is unhappy in its own fashion.—LEV NIKOLAEVICH TOLSTOI, *Anna Karenina*, Part I, ch. I.

MATRIMONIAL LAW IN ILLINOIS IN THE '50's

IRVING S. FRIEDMAN AND MEYER WEINBERG

THE DECADE OF the 'fifties (1950–1960) ushered in the atomic and space era with its hopes and concomitant anxieties. That there has been a substantial effect on matrimonial law seems apparent. Yet a careful analysis of the changes and clarifications in the law, shows no consistent pattern or trend, except the constant valiant efforts by the Bench, Bar and Legislature to deal with the high divorce rate. The focal point of this activity did not, however, lead either to retrogression or to marked progress. As problems due to changing social "mores" have arisen, specific attempts have been made to solve them. Response to scientific procedures, such as blood tests and psychiatry, is evidenced in new procedures and statutes. It is to be noted that the statutes and case law are at best in "patchwork" form, and we here present a survey of the substantive changes and developments during the last ten years.

MARRIAGE AND ANNULMENT

Notwithstanding the continuous efforts to seek remedy or antidote to the social problem of divorce by reform in the Illinois Marriage Act, the only structural change in the statute was in section 2, which was amended to read: "No insane person or mentally ill person or

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idiot shall be capable of contracting marriage."[1] The Probate Act in 1957 was amended to provide that, unless expressly stated to the contrary in a will, the marriage of the testator after its execution revoked it.[2] This amendment merely clarified the law without making a genuine change.[3] However, the same amendment made a substantial change in the effect of divorce or annulment on a will antedating the divorce or annulment. This section now provides that divorce or annulment of the marriage of the testator revokes every beneficial devise, legacy, or interest given to the testator's former spouse in a will executed before the entry of the decree of divorce or annulment, and that the will shall take effect in the same manner as if the former spouse died before the testator. Prior to the enactment of this part of the amendment, divorce, and presumably annulment, had no effect on a will.[4]

Annulment remains a creature of chancery.[5] The first set of "cool-off statutes" requiring a waiting period before the filing of a complaint was applicable to annulment.[6] These acts were declared unconstitutional in *People ex rel. Christiansen v. Connell.*[7] New acts were passed in 1955 to cure the constitutional defects pointed out in the *Christiansen* case, but they did not contain any applicability to annulment of marriage.[8] Thus, Illinois remains without any major statute, in any respect, on the subject of annulment.

A case of substantial importance was decided in 1956, however, which case broke new ground in the field of annulment. In *Cardenas v. Cardenas,*[9] the parties had a child born to them after they had entered into a marriage which was later annulled. In the legal issues raised, the primary question was whether a court of equity which has entered a decree of annulment of a marriage has jurisdiction over matters relating to the care and custody of a minor child. On the counterclaim filed by the father, the marriage was annulled, but the mother did not desire support for the child, nor to have the father

[1] ILL. REV. STAT. ch. 89, § 2 (1959).

[2] ILL. REV. STAT. ch. 3, § 197 (1959).

[3] Kuhn v. Bartels, 374 Ill. 231, 29 N.E.2d 84 (1940).

[4] Speroni v. Speroni, 406 Ill. 28, 92 N.E.2d 63 (1950); Gartin v. Gartin, 371 Ill. 418, 21 N.E.2d 289 (1939).

[5] Arndt v. Arndt, 399 Ill. 490, 78 N.E.2d 272 (1948).

[6] Ill. Laws 1953, at 284–85.

[7] 2 Ill.2d 332, 118 N.E.2d 262 (1954).

[8] ILL. REV. STAT. ch. 40, § 7a (1959).

[9] 12 Ill. App.2d 497, 140 N.E.2d 377 (1956).

given any rights of visitation. Over her objection, the court ordered the father to pay child support and granted him visitation rights. On her appeal, the Appellate Court pointed out that courts of equity assume jurisdiction to grant annulments, and have power to provide for the care of the children involved.

DIVORCE AND SEPARATE MAINTENANCE

The jurisdiction of divorce and separate maintenance was extended by the following important amendments: "Waiting" or "Cool-Off" Laws;[10] Removal of Child from Jurisdiction;[11] Wage Assignments to Enforce Support.[12] In relation thereto, must be considered the changes in the Civil Practice Act and Supreme Court Rules.[13] Specifically, those of substance are section 16, section 17, and rule 17–1.[14]

"WAITING" OR "COOL-OFF" LAWS

There were two series of "waiting" or "cool-off" laws passed from 1951 to date. The first series, also applying to annulment, were held unconstitutional.[15] The current, and second series, excluding annulment, were held constitutional.[16] The "cool-off" procedure, which has been amended from time to time,[17] is well delineated in the Divorce Act.[18] Essentially, these laws were a socio-juridical experiment to solve the divorce problem by a temporary delay, now sixty days, of the name-calling complaint or marriage-dissolving decree; the interim time was to be used for reconciliation or conference. The procedure permitted a "waiver" of the delay for emergency cause, *i.e.*, nonsupport, injunction, etc. On paper, these laws, well-intentioned, showed theoretical promise. In practice, as appeared from a series of polls of judges and lawyers throughout Illinois by the Illinois State Bar Association, the laws were ineffectual and a failure. Most of the

[10] ILL. REV. STAT. ch. 40, § 7b (1959).

[11] ILL. REV. STAT. ch. 68, § 22.1 (1959).

[12] ILL. REV. STAT. ch. 68, §23.1 (1959).

[13] ILL. REV. STAT. ch. 110 (1959).

[14] ILL. REV. STAT. ch. 110, §§ 16, 17, 101.17–1 (1959).

[15] People *ex rel.* Christiansen v. Connell, 2 Ill.2d 332, 118 N.E.2d 262 (1954).

[16] People *ex rel.* Doty v. Connell, 9 Ill.2d 390, 137 N.E.2d 849 (1956).

[17] For a fully detailed discussion see WEINBERG, ILLINOIS DIVORCE, SEPARATE MAINTENANCE & ANNULMENT § 22(a) (Supp. 1960).

[18] ILL. REV. STAT. ch. 40, §§ 7a–e (1959).

cases, to a ninety-five per cent degree, had a built-in base for "waiver," and these were properly allowed. The "cool-off" laws became a burden and detriment to justice. Adding to these burdens, the Illinois Appellate Court, First District, in *Van Dam v. Van Dam*[19] decided in effect that the "waiver" was jurisdictional. This put thousands of prior decrees with waivers in jeopardy by making them reviewable at any time, even years hence. Fortunately, the Illinois Supreme Court reversed the *Van Dam* case,[20] and held the waiver discretionary; at least *this* legal quagmire was avoided.

There is a strong movement to repeal the "cool-off" laws outright; another view advocates repealing them but would add an optional praecipe procedure. In any event, the "cool-off" laws will hardly survive the 1961 Legislative Session.

EXPANSION OF JURISDICTION OVER CHILDREN

In *Solomon v. Solomon*,[21] it was held for the first time in Illinois that the courts have jurisdiction to entertain a petition for the change of a child's name. In 1957, in the case of *Strom v. Strom*[22] the court upheld the right of a child of divorced parents to have a college education provided by the father. In arriving at this conclusion, the Appellate Court found that the word "children" in the statute is not qualified by any word or phrase limiting its application to minor children. It pointed out that in the days when the Divorce Act was passed children went to work long before they reached their majority, but even then, education beyond the high school level for children of average or better scholarship was the common aspiration of American parents. Today, it is regarded as a necessity. The Appellate Court of Illinois sustained this position in the case of *Maitzen v. Maitzen*;[23] therefore, it can now be regarded as well established that the court may order a father to furnish a college education to his children, under proper circumstances.

In 1959, both the Divorce Act and Separate Maintenance Acts were

[19] 25 Ill. App.2d 72, 165 N.E.2d 720 (1960).

[20] Van Dam v. Van Dam, 21 Ill.2d 212, 171 N.E.2d 594 (1961).

[21] 5 Ill. App.2d 297, 125 N.E.2d 675 (1955).

[22] 13 Ill. App.2d 354, 142 N.E.2d 172 (1957).

[23] 24 Ill. App.2d 32, 163 N.E.2d 840 (1959), *petition for leave to appeal denied by Illinois Supreme Court.*

amended to give courts jurisdiction to allow the removal of children from Illinois.[24] These amendments made provisions for the giving of bond to guarantee the return of children should the court deem it for their best interests that they be returned.

EFFECT OF CIVIL PRACTICE ACT AND SUPREME COURT RULES AND EXTENSION OF JURISDICTION THEREFROM

By the 1956 amendments the Legislature made sweeping revisions in the Illinois Civil Practice Act and SUPREME COURT RULES.[25] The applicability of these to matrimonial law also involved sweeping changes. Of particular import are expansion of divorce and separate maintenance jurisdiction by sections 16 and 17, and rule 17–1.

Section 17 of the Civil Practice Act provides in part "that a person who commits a tortious act within this state thereby submits his person to the jurisdiction of our courts."[26] In *Hanson v. Hanson*,[27] in the Superior Court of Cook County, Illinois, the plaintiff had obtained a divorce from her husband on the grounds of desertion in Illinois. Service of summons had been by publication in 1948. In 1957, the wife sought an "in personam" order against the defendant and secured personal service of a summons upon him in Wisconsin, where he resided. She contended that the desertion was a tortious act which was committed in Illinois, and therefore, the Superior Court had jurisdiction over the defendant's person. The trial court upheld this contention. One view of this holding is that it is farfetched and erroneous, that section 17 cannot be tortured into this shape, and that desertion is not a tort.

Section 16 of the Civil Practice Act provides in effect that personal service, though outside the State of Illinois, if upon a citizen or resident of this state or a person who has submitted to its jurisdiction, shall have the effect of personal service.[28] This was added January 1, 1956, to extend the jurisdiction of Illinois, and is consistent with the legal debalkanization of the states.[29]

[24] ILL. REV. STAT. ch. 40, § 14 (1959); ILL. REV. STAT. ch. 68, § 22.1 (1959).

[25] ILL. REV. STAT. ch. 110 (1959).

[26] ILL. REV. STAT. ch. 110, § 17 (1959).

[27] 47 S 18731, Super. Ct., Cook County, Nov. 20, 1947.

[28] ILL. REV. STAT. ch. 110, § 16 (1959).

[29] See Milliken v. Meyer, 311 U.S. 457 (1940).

SCOPE OF REFERENCE TO MASTER IN CHANCERY

Stark v. Stark[30] held that questions relative to the custody of children could be properly referred to a Master in Chancery. The practice of making such references had been common before this decision, but it was salutary to have the authority for the practice thus clearly sanctioned. This authority to refer matters of custody no doubt exists despite the provision in the Supreme Court Rules that a reference to a Master shall be the exception rather than the rule.[31]

GROUNDS OR CAUSES FOR DIVORCE

In general, despite constant efforts, the heretofore established grounds for divorce show no significant structural change.[32] This is so despite their anachronistic incongruence with modern times. The best example of the latter is the absence of statutory provision for divorce from insane defendants.

ARTIFICIAL INSEMINATION AS CONSTITUTING ADULTERY

A problem which has attracted a great deal of attention is whether artificial insemination without the consent of the husband constitutes adultery. There has been no Illinois reviewing court decision on this subject, but the trial court in *Doornbos v. Doornbos* so held.[33] It is expected that this subject will receive legislative attention in the near future.

DESERTION—REFUSAL OF SEXUAL INTERCOURSE AS A FACTOR

Notwithstanding the prominence of sex in human and marital relations, Illinois, unlike most other States, has followed an unpalatable and contrary view, *i.e.*, that refusal of cohabitation is not desertion.[34] However, in *Karman v. Karman*,[35] the wife sued for divorce based on desertion. The husband counterclaimed and defended on the wife's refusal to cohabit, and on her ejecting him from the marital home.

[30] 7 Ill. App.2d 442, 129 N.E.2d 776 (1955).

[31] ILL. SUP. CT. R. 14-1; Strom v. Strom, 13 Ill. App.2d 354, 142 N.E.2d 172 (1957). For a full discussion of chancery proceedings see Goldberg, *Developments in Chancery Proceedings—1950-1960*, 10 DE PAUL L. REV. 413 (1961).

[32] ILL. REV. STAT. ch. 40, § 1 (1959).

[33] 54 S 14981, Super. Ct., Cook County, Sept. 20, 1954.

[34] Fritz v. Fritz, 138 Ill. 436, 28 N.E. 1958 (1891).

[35] 24 Ill. App.2d 123, 164 N.E.2d 521 (1960).

The husband-appellant testified that the wife refused to cohabit with him. The parties had lived together only twenty-eight days. The wife was granted a divorce. The Illinois Appellate Court, First District, reversed and stated in part:

When she refused to cohabit with her husband in a reasonable manner and ordered him to leave, Appellee became the deserter, and in order to correct this desertion it became incumbent upon her to make efforts to resume the marital relationship. She made no attempt to do so.[36]

In this regard there must be considered *Moyer v. Moyer*[37] wherein the wife was granted a decree of separate maintenance on January 3, 1956, and on April 26, 1957, sued for divorce charging that desertion had occurred on November 30, 1954, when the husband was willing to return to the wife, but without sexual relations. The court held that this refusal of the husband of sexual relations constituted desertion by him.

DESERTION—ILLEGAL INJUNCTION BARRING SPOUSE FROM MARITAL HOME

Baumgartner v. Baumgartner[38] involved a case in which the wife obtained an injunction illegally which barred the husband from entering the marital home. The court held that this action of the wife constituted desertion on her part, and that the husband was entitled to a divorce on this ground.

DESERTION—AFTER DECREE OF SEPARATE MAINTENANCE

In *Hilliard v. Hilliard*,[39] the wife was granted a decree of separate maintenance based on desertion in 1947. The husband made bona fide attempts to reconcile in 1955, but they were spurned. In 1957, the husband sued for divorce based on refusal of offer of reconciliation. A divorce was granted. The court reversed and stated:

In the present case the separate maintenance decree of October 1952, established that the wife, as of that date, was living apart from her husband without her fault. This judicial determination of itself (apart from the finding in the decree, which we need not consider, that the husband's desertion was willful and had dated from 1947) gave her grounds for divorce for reason of desertion, if the desertion persisted for a year after the entry of the decree. . . . [Citations omitted.] It continued for more than two years thereafter; it was

[36] *Id.* at 129, 164 N.E.2d at 524.

[37] 17 Ill. App.2d 404, 150 N.E.2d 394 (1958).

[38] 16 Ill. App.2d 286, 148 N.E.2d 327 (1958).

[39] 25 Ill. App.2d 468, 167 N.E.2d 451 (1960).

not until February, 1955, that the husband made his initial overture for the resumption of the marital relationship. By this time it was too late; the desertion, being for over one year, had ripened into the statutory ground for divorce. At this point the wife, as the aggrieved party, had the right to decide if she wanted to forgive the wrong she had suffered. Her refusal to accept her husband's belated offers of reconciliation, even though they were made in good faith, did not make her the deserter nor cure his desertion. While a deserted spouse must keep open the door for the possible return of a penitent deserter, it is not necessary that this be done forever.[40]

JURY DEMAND

Section 64 of the Civil Practice Act requires that a party desirous of a trial by jury must file a demand at the time the action is commenced.[41] The defendant must file a demand not later than the filing of his answer. Prior to this enactment, a jury demand in a divorce action could be filed at any time as a matter of right.[42]

DISCOVERY PROCEDURES

Discovery procedures, added to our judicial process in comparatively recent times, are of ever increasing importance. Names and addresses of all persons having knowledge of relevant facts may be secured.[43]

PHYSICAL AND MENTAL EXAMINATION

Illinois Supreme Court rule 17-1 provides that in actions in which the physical or mental condition of a party or of a person in his custody is in controversy, the court may order that party to submit to an examination by a physician suggested by the party requesting the examination.[44] This rule can be of inestimable value in its application to custody and marital controversies, where very often the mental status of a party is in question.

BLOOD TESTS TO DETERMINE PATERNITY

The determination of paternity is a common problem in matrimonial law. Blood tests, although capable of excluding a man from paternity, are not so scientifically accurate as to identify the parent.

[40] *Id.* at 490, 167 N.E.2d at 453.

[41] ILL. REV. STAT. ch. 110, § 64 (1959).

[42] *Compare* Fox v. Fox, 9 Ill.2d 509, 138 N.E.2d 547 (1956), *with* Caplow v. Caplow, 255 Ill. App. 389 (1930).

[43] ILL. SUP. CT. R. 17, 19-1.

[44] ILL. SUP. CT. R. 17-1.

The Illinois statutes provide for blood tests in civil actions in which paternity is a relevant fact; the court may order the blood tests.[45] Procedure is specific and detailed in these statutes.

POLYGRAPHIC OR "LIE DETECTING" TESTS TO ESTABLISH PATERNITY

The courts, in seeking to discover the true paternity of a child, cannot invoke the aid of either truth serums or polygraphic detection tests. The Legislature has specifically denied them the use of such methods by the following provision of the Civil Practice Act:

> In the course of any *civil trial* or *pre-trial proceeding* the court shall *not* require that the plaintiff or defendant submit to a polygraphic deception detection test, commonly known as a lie detector test or require, suggest or request that the plaintiff or defendant submit to questioning under the effect of sodium pentothal or to any other test or questioning by means of any chemical substance.[46]

EVIDENCE—PRIVILEGE BETWEEN PHYSICIAN AND PATIENT

The physician-patient privilege, added to Illinois law by section 5.1 of the Evidence Act, is a recent development. It should be noted that it does not, however, affect the operation of the abovementioned Supreme Court rule by which mental examination of a spouse can be obtained where mental status is involved, since it provides:

> No physician or surgeon shall be permitted to disclose any information he may have acquired in attending any patron in a professional character, necessary to enable him professionally to serve such patient, *except* only . . . (2) *in all mental illness inquiries. . . .*[47]

USE OF PRE-TRIAL PROCEDURE

Illinois Supreme Court rule 22 provides in part: "In any civil action, the court may hold a pretrial conference."[48] This furnishes a functional and salubrious procedure for matrimonial litigation. Pre-trial conference could be the situs of many reconciliations, if expert attention were given. In the alternative, related problems of support and property rights could be adjusted with much saving in court time. Un-

[45] ILL. REV. STAT. ch. 106¾, §§ 1–5 (1959).

[46] ILL. REV. STAT. ch. 110, § 54.1 (1951). (Emphasis added.)

[47] ILL. REV. STAT. ch. 51, § 5.1 (1959). (Emphasis added.) For a full discussion of the physician-patent privilege see Cleary, *Development in Evidence—1950-1960,* 10 DE PAUL L. REV. 422 (1961).

[48] ILL. SUP. CT. R. 22.

fortunately, this rule is practically in disuse. Only a handful of judges have time or make time for pre-trial conference on an established basis. In Cook County, Judge Harry G. Hershenson of the Superior Court has an established afternoon pre-trial schedule of two to five cases, including set contested motions. Regular motions take up his morning call. In pre-trial proceedings, plus sensible auxiliary legislation, there is great promise for litigating spouses.

ENFORCEMENT BY WAGE ASSIGNMENTS

The Divorce Act was amended in 1959 to give the court power to compel a party to execute an assignment of wages to secure the payment of child support.[49]

POST-DECRETAL RELIEF UNDER SECTION 72 OF THE CIVIL PRACTICE ACT, AND PROPERTY AGREEMENTS

Section 72 of the amended Civil Practice Act abolished bills of review and bills in the nature of bills of review, and provided that all relief previously obtainable by these and similar actions can be granted on a petition filed more than thirty days after the entry of an erroneous order or decree.[50] To obtain such relief, the error must be apparent from an examination of the record.[51] This section of the Civil Practice Act received attention in the important case of *James v. James*.[52] There a petition was filed under section 50 (6) of the Civil Practice Act. The plaintiff sought to vacate a decree of divorce which embodied the settlement of property rights. She alleged that fraud and duress were practiced on her to obtain her agreement to an unfair settlement. It was contended that the plaintiff was not within the terms of section 72 of the Civil Practice Act, because her petition was filed less than thirty days from the time the decree was entered. The Supreme Court said in that regard:

> Were we to hold in this case that the consent feature of the decree precluded relief by means of a motion filed within 30 days after the entry of the decree, we would by virtue of Section 72, be telling the plaintiff in effect that she must wait until the expiration of the 30 days at which time a petition seeking the same relief in the same cause, would be heard.[53]

[49] ILL. REV. STAT. ch. 40, § 21.1 (1959). For Separate Maintenance see ILL. REV. STAT. ch. 68, § 23.1 (1959).

[50] ILL. REV. STAT. ch. 110, § 72 (1959).

[51] Collins v. Collins, 14 Ill.2d 178, 151 N.E.2d 813 (1958).

[52] 14 Ill.2d 295, 152 N.E.2d 582 (1958).

[53] *Id.* at 300, 152 N.E.2d at 584.

The court held that such delay and incongruity is inconsistent with the liberal aims of the Civil Practice Act. The *James* case is also important for the reason that it is the first case which set aside a property settlement in a divorce action in Illinois because it was unfair and inequitable.

A recent case in which the point of fairness of a property settlement was raised is *Guyton v. Guyton.*[54] There, the parties entered into an oral agreement settling their property rights on the day the case came up for trial. Plaintiff-wife proceeded to hearing and, in the course of the hearing, the terms of the agreement were specified and assented to by the defendant and his attorney. Subsequently, the defendant sought to prevent the entry of the decree on an unsupported assertion that the agreement was unfair. The court entered the decree despite this contention. Thereafter, the defendant filed a petition to vacate the decree, alleging among other reasons, the fact that the agreement involved the transfer of real estate, and that not having been in writing, it was in violation of the Statute of Frauds. The Supreme Court held that where parties to a divorce proceeding orally contract in respect to alimony and property rights arising out of the marriage relationship, and the provisions agreed to are incorporated in the decree, the contract becomes merged in the decree, and the rights of the parties are thereafter based upon the decree; and where the decree orders the defendant to convey the family home to the plaintiff pursuant to such agreement, the requirement of the Statute of Frauds that contracts concerning real estate be in writing has no application.

INTER-STATE ENFORCEMENT OF SUPPORT ORDERS

In 1957, the Supreme Court of Illinois decided the landmark case of *Light v. Light.*[55] This case dealt with the modification and enforcement of a decree of divorce entered in Missouri. Prior to the decision in this case, there was some doubt as to the extent of the power and duty of Illinois courts when confronted by foreign decrees. Although the case of *Rule v. Rule*[56] held that such decrees were entitled to enforcement in the same manner as local decrees, it seemed to indicate that the Illinois courts lacked the power to modify such decrees. *Tailby v. Tailby*[57] subsequently held that an out of state decree

[54] 17 Ill.2d 439, 161 N.E.2d 832 (1959).

[55] 12 Ill.2d 502, 147 N.E.2d 34 (1957).

[56] 313 Ill. App. 108, 39 N.E.2d 379 (1942).

[57] 1 Ill. App.2d 17, 116 N.E.2d 83 (1953).

was not entitled to enforcement. All doubts were laid to rest by the forthright holding in the *Light* case. The Supreme Court decided that the Missouri decree was entitled to full faith and credit as to future installments of alimony, and that the Illinois court had the power to modify that decree.

DIVISIBLE DIVORCE

In 1954, the Supreme Court decided the case of *Pope v. Pope*.[58] In this case, the wife had obtained a decree for separate maintenance in Illinois against her husband, whose counterclaim for divorce in the same proceedings was dismissed for want of equity. Thereafter, the husband obtained a decree of divorce in Nevada on constructive service. The husband did not inform the Nevada court of the prior litigation in Illinois, and the Nevada court granted him a divorce. This decree contained no reference to the Illinois decree and did not award the wife any alimony. After the entry of the Nevada decree, the plaintiff, in the separate maintenance proceedings in Illinois, filed a petition to recover past due support payments plus interest. The defendant challenged the plaintiff's right to interest, and her right to payments which accrued after the entry of his divorce decree. The trial court sustained the defendant's contentions; on appeal, however, the Supreme Court reversed and for the first time in Illinois enunciated the doctrine of divisible divorce. The court held that although the defendant's divorce decree enabled him to contract a new marriage, it did not relieve him of the obligations of the old marriage, such as the right to alimony accruing before and even after the entry of the decree. The court pointed out that under the holding in *Estin v. Estin*,[59] even if the ex parte Nevada decree must be regarded as a valid determination of the marital status, it cannot be treated as destroying the right to support payments, without the violation of due process. The court also pointed out that there had been no decision in Illinois to the effect that a separate maintenance decree is automatically terminated by a decree of divorce entered by a court which lacks personal jurisdiction over both spouses. In arriving at this conclusion, the court considered its prior opinion in *Knowlton v. Knowlton*,[60] which had held that the wife did not have a right to commence

[58] 2 Ill.2d 152, 117 N.E.2d 65 (1954).

[59] 334 U.S. 541 (1948).

[60] 155 Ill. 158, 39 N.E. 595 (1895).

an action for separate maintenance following a foreign divorce obtained by the husband. This decision, the court in the *Pope* case held, was not based on Illinois law, but on a supposed requirement of the full faith and credit clause which may no longer exist.

TAX CONSIDERATIONS

In 1954, the Internal Revenue Code made important changes with respect to alimony and separate maintenance. Under sections 71 (a) (2) and 215 of the 1954 Code, payments under a written separation agreement, even though not incident to a court decree, are taxable to the receiving spouse and deductible by the paying spouse, providing the parties are actually separated, and do not file a joint return.[61] Under section 71 (a) (3) of this Code, it is thought that payments of temporary alimony would be income to the recipient spouse and deductible by the payor.[62]

With reference to deductibility of attorney's fees, attention is drawn to *Bowers v. Commissioner*.[63] This case allows, in a proper case, the allocation of attorney's fees to services rendered relative to a change of status or domestic controversy, and to services performed with respect to conservation of property. Fees attributable to the latter are tax deductible, whereas those attributable to the former are not, even though the same attorney has performed both services.

PERISCOPING THE FUTURE

Regarding the long-range future, attention is drawn to the Joint Committee on the Codification of Family Law; this committee, composed of members of both the Chicago Bar Association and the Illinois State Bar Association, has been active for more than a year, and is under the co-chairmanship of Aaron H. Cohn of Chicago and Professor James M. Forkins of Loyola University College of Law.

On a current, short-range basis, the following legislation has been submitted to the 1961 Illinois Legislature by the abovementioned Bar Associations. The acts involve:

A. Reconciliation Statute (Allows courts to enter orders based on stipulation, permitting litigant spouses to live together without subsequent defense of condonation.)

61 INT. REV. CODE of 1954, §§ 71(a)(2), 215.

62 INT. REV. CODE of 1954, § 71 (a)(3).

63 243 F.2d 904 (6th Cir. 1957).

B. Temporary Exclusive Possession of Marital Home (Gives courts in divorce suits (and not in actions for separate maintenance) the power to grant temporary exclusive possession of the marital home to one spouse.)

C. Registration of All Decrees of Marriage, Divorce, Separate Maintenance, and Annulment.

D. "Waiting" or "Cool-Off" Law (As noted, these laws remain controversial; legislation will be for outright repeal or for repeal with retention of optional praecipe and no need for waiver to file complaint.)

Of course, over the years, problems will arise from social changes and need which will invite further remedial legislation. It is to be hoped that the lag between need and action will be shortened somewhat by the growing interest of society in the complexities of the marriage relationship.