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NEED FOR COORDINATION OF ILLINOIS STATUTES WITH UNIFIED TRIAL COURT UNDER THE JUDICIAL ARTICLE

By Harry G. Fins*

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."¹ This jurisdictional separation of law, on the one side, and equity, on the other, was abolished by section 9 of the new Judicial Article, effective January 1, 1964, which provides: "The Circuit Court shall have unlimited original jurisdiction of all justiciable matters."² The above change affects judicial procedure and not substantive law.

COURT DIVISIONS IN THE 102 ILLINOIS COUNTIES

Section 8 of the new Judicial Article grants the chief judge of a particular circuit court the "general administrative authority in the court, including authority to provide for divisions, general or specialized . . . ."³

The following is a list of the 21 Illinois judicial circuits, showing the counties that each one embraces and the court divisions of each:

Cook County

The Circuit Court of Cook County is divided into two departments — County and Municipal. In the County Department, there are the following divisions: Law, Chancery, Divorce, County, Juvenile, Probate, and Criminal. In the Municipal Department, there are six districts, each covering a specified geographic area.


¹ Ill. Const. art. VI, §12 (1870).
² Ill. Const. art. VI, §9. The underlying purpose for the change of article VI was to provide for the improved judicial administration of the Illinois courts system. For a general expression of the reasons for these changes and in particular the revision of section 9 of the Judicial Article, see Ill. Ann. Stat., Ill. Const. art. VI, §9, Historical & Practice Notes (Smith-Hurd 1969).
³ Ill. Const. art. VI, §8.
First Circuit

Deaths: Alexander, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union and Williamson.
Divisions: None.

Second Circuit

Divisions: None.

Third Circuit

Deaths: Bond and Madison.
Divisions: Civil, Juvenile, Family, Criminal and Magistrate.

Fourth Circuit

Deaths: Christian, Clay, Clinton, Effingham, Fayette, Jasper, Marion, Montgomery and Shelby.
Divisions: Law, Chancery, Probate, Criminal, Traffic and Small Claims.

Fifth Circuit

Deaths: Clark, Coles, Cumberland, Edgar and Vermillion.
Divisions: General, County, Probate, and Magistrate.

Sixth Circuit

Deaths: Champaign, DeWitt, Douglas, Macon, Moultrie and Piatt.
Divisions: Law, Chancery, Probate, Criminal, Traffic and Quasi-Criminal, and Small Claims.

Seventh Circuit

Deaths: Greene, Jersey, Macoupin, Morgan, Sangamon and Scott.
Divisions: Law, Chancery, Criminal, Domestic Relations, Probate, Magistrate, Juvenile, and Condemnation.

Eighth Circuit

Divisions: Family, Criminal, Probate, Civil, and Magistrate.

Ninth Circuit

Deaths: Fulton, Hancock, Henderson, Knox, McDonough and Warren.
Divisions: General, County, and Magistrate.

Tenth Circuit

Deaths: Marshall, Peoria, Putnam, Stark and Tazewell.
Divisions: In Marshall, Putnam and Stark counties, no divisions. In Tazewell county, the following divisions: Trial, General, and Magistrate. In Peoria county, the following divisions: Trial, Criminal, Family, and Magistrate.

Eleventh Circuit
Counties: Ford, Livingston, Logan, McLean and Woodford.
Divisions: General, Probate and Chancery, Family, and Magistrate.

Twelfth Circuit
Counties: Iroquois, Kankakee and Will.
Divisions: In Will county, the following divisions: General, Criminal, Family, Magistrate. In Kankakee and Iroquois counties, no divisions.

Thirteenth Circuit
Counties: Bureau, Grundy and LaSalle.
Divisions: General, Criminal, Family, Probate, and Magistrate.

Fourteenth Circuit
Counties: Henry, Mercer, Rock Island and Whiteside.
Divisions: General, County, Probate, and Magistrate.

Fifteenth Circuit
Counties: Carroll, Jo Daviess, Lee, Ogle and Stephenson.
Divisions: None.

Sixteenth Circuit
Counties: DeKalb, Kane and Kendall.

Seventeenth Circuit
Counties: Boone and Winnebago.
Divisions: In Winnebago county, the following divisions: General, County, Probate, Juvenile, and Magistrate. In Boone county, the following divisions: General, County, and Magistrate.

Eighteenth Circuit
County: DuPage.
Divisions: General, Criminal, County, Probate and Magistrate.

Nineteenth Circuit
Counties: Lake and McHenry.
Divisions: General, Family, Probate, and Magistrate.
Twentieth Circuit

Counties: Monroe, Perry, Randolph, St. Clair and Washington.

Divisions: In St. Clair county, the following divisions: Civil, Criminal, Family, and Probate and Tax. In the other counties, no divisions.

Thus, in the circuit court of populous Cook County\(^4\) which handles an extremely large number of cases per year,\(^5\) the chief judge has established a "chancery" division, while the 18th and 19th judicial circuits\(^6\) have no chancery division. Of the 102 counties in the state, 35 counties have no court divisions at all and an additional 41 counties have no "chancery" division, making a total of 76 counties without any "chancery" division and only 26 counties with a "chancery" division.

There are, however, a number of Illinois statutes which adhere to the former distinction between actions at law and suits in chancery. These statutes were enacted before the adoption of the new Judicial Article which brought into being a unified circuit court with "unlimited original jurisdiction of all justiciable matters."

In the recent case of Chrysler Credit Corporation v. M.C.R. Leasing Co.,\(^7\) the appellate court held that the circuit court had the power to grant a temporary injunction in a replevin action, directing that the books and records of the defendants, which the plaintiff feared might be altered or destroyed before examination thereof, be deposited at a designated place under the control of the sheriff subject to the further order of the court. In affirming the trial court's decision, the reviewing court made the following salient comments:

The defendants also contend that the injunction order was improper in that a replevin action is an action at law and the equitable relief of injunction may not be granted in such an action, and that only the relief specifically provided for by the replevin statute may be awarded. We do not agree with the contention that injunctive relief is improper in a replevin action.

The argument that injunctive relief is equitable and may not be awarded in an action at law is not persuasive. There are in-

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\(^4\) According to the 1960 federal census, the population of Cook County was 5,129,725.

\(^5\) The 1967 Annual Report of the Administrative Office of the Illinois Courts shows that a total of 1,628,075 cases were begun and 1,671,477 cases were terminated in the Circuit Court of Cook County during the calendar year of 1967.

\(^6\) The population of the 18th Judicial Circuit, DuPage County, was 313,459 according to the 1960 federal census. The 1960 census reported a population of 377,866 for the 19th Judicial Circuit consisting of Lake and McHenry Counties.

stances, presumably, where the time-honored distinctions between courts of law and chancery and their powers may have merit. See: Ill. Rev. Stat. 1967, c. 110, par. 1. These instances and distinctions, however, have long been losing significance.

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. It is of no significance that a circuit may not have a chancery division; the important point is that under the new Judicial Article, every circuit judge has equity powers, which may be exercised, to grant the form of relief which the case may require. Thus, the struggle to amalgamate law and chancery powers, which began in England in 1873, was concluded in Illinois when its electorate adopted the new Judicial Article in November of 1964 [sic 1962.]

Similarly, in an article published in 1969, the Honorable George N. Leighton, Justice of the Illinois Appellate Court for the First District, has stated:

In this country, particularly in Illinois, equity was recognized as a separate system of jurisprudence administered by judges sitting in chancery. Although there never was a statutory court of chancery separate and distinct as a tribunal, it was generally recognized that there always existed in Illinois two tribunals, chancery and law, presided over by the same judge, yet possessing separate and distinct jurisdictions. From 1819 to 1933, when the Illinois Civil Practice Act was adopted, the two systems existed side by side and were treated as separate and distinct. It was in this way the concepts of equity, the bases of equitable jurisdiction, and the principles of equitable relief evolved and developed as the system of equity we now know in Illinois law. This evolution was consistent with the American experience of a court of chancery administering a system peculiar to equitable jurisdiction and existing within a framework which provided a mode of justice similar to that administered in England.

For the Illinois practitioner, recent judicial reform has particular significance. Section 12 of article 6 of the Illinois Constitution of 1870 provided that "The circuit courts shall have original jurisdiction of all causes in law and equity ..." This constitutional provision solidified the concept of separate tribunals for equity and law. As a corollary, jurisdiction of Illinois courts in equity rested in part on statutes. This was the situation until the civil procedure reforms of the 1930's. Although lawyers generally believe that the Civil Practice Act of 1933 merged law and equity, the Supreme Court in 1952 had to remind the practicing bar that in Illinois the amalgamation of law and equity was not complete.

In fact, this degree of amalgamation did not come until the judicial article was amended by the electorate in November 1962, effective January 1, 1964. The new judicial article provides that: "The Circuit Court shall have unlimited original jurisdiction of all justiciable matters ..." This is a complete merger of law and equity. As a result, jurisdictional distinctions between courts of law and courts of equity no longer exist in Illinois. Therefore, it is of no significance that a judicial district or circuit court does

*Id. at 48, 49, 251 N.E.2d at 650, 651 (1969).
not have a chancery division. In fact there are many circuit courts in the several Illinois judicial districts which do not have a separate division for equity cases.\footnote{Leighton, Elements of Equitable Relief, 2 John Mar. J. Prac. & Proc. 230, 31-32 (1969).}

The Appellate Court of Illinois, First District, very recently illustrated the practical effect of the abolition of the distinction between law and equity courts when it stated in \textit{Douglas v. Papierz}:

Plaintiff, John Douglas, appeals from the dismissal of his complaint against defendants Stanley Papierz and Stanley Papierz Builders, Inc. The trial court dismissed the complaint on the ground that there had been a prior adjudication of the issues, and that the cause was res judicata.

It was not necessary, as plaintiff maintains, after summary judgment was entered in the chancery division of the Circuit Court, to file the subsequent suit on the contract in the law division. Jurisdictional differences between equity and law courts have been abolished, and today, Illinois Circuit Courts have original jurisdiction in all cases brought before them. It was the duty of the plaintiff to see that all of the issues before the court were resolved in the one lawsuit.

Accordingly, the judgment of the Circuit Court is affirmed.\footnote{Douglas v. Papierz, No. 52314, 1st Dist. Appellate Court, decided Mar. 5, 1970.}

\section*{Statutory Amendments Needed}

The following is a list of paragraphs in the various chapters of Illinois Revised Statutes 1969, which require amendment to bring about coordination with the unified trial courts, together with suggested changes to be made by the Legislature:\footnote{In the preparation of the list of paragraphs that are in need of correction, the writer has omitted from the list the many statutory references to the terms “at law,” “in chancery” and “in equity” which are employed in a historical connotation, as distinguished from a statutory requirement of compliance in future litigation. For example, Sections 1, 7(4), 30, 31, 35c(1), 44(1), 48(3), 57.1(8), 62, 64(3)-(4), 72(1) & 73(2)(e) of the Illinois Civil Practice Act contain historical references to former practices at law and in equity. These have been excluded from the list of items which are in need of correction.}

\begin{itemize}
\item \textbf{CHAPTER 7. AMENDMENTS AND JEOFAILS}

\section*{§ 9.}
\textit{Present text:} “actions in courts of law or chancery”
\textit{Suggested change:} Delete above and insert instead “civil actions”

\section*{CHAPTER 10. ARBITRATION AND AWARD}

\section*{§ 20.}
\textit{Present text:} “an action at law or bill in equity”
\textit{Suggested change:} Delete above and insert instead a “civil action”
\end{itemize}
CHAPTER 10 1/2. ARCHITECTS

§ 15.1

Present text: “complaint in equity”
Suggested change: Delete “in equity”

CHAPTER 13. ATTORNEYS AND COUNSELORS

§ 22.

Present text: “at common law or in chancery”
Suggested change: Delete above

CHAPTER 15 1/2. AVIATION

§ 68.15a

Present text: “either in law or in equity”
Suggested change: Delete above and insert instead “in a civil action”

CHAPTER 19. CANALS AND WATERWAYS

§§ 187, 259, 409 and 461.

Present text: “suits at law or proceedings in equity”
Suggested change: Delete above in each of the four sections and insert instead “civil actions” in each of the paragraphs

CHAPTER 22. CHANCERY

§ 1.

Repeal section in toto, as Section 9 of the Judicial Article and the last sentence of Section 1 of the Civil Practice Act fully cover the subject.12

§ 5.

Present text: “suits in chancery”
Suggested change: Delete above and insert “civil actions seeking equitable relief”

§ 6.

Present text: “cause in equity” and “suit in equity”
Suggested change: Delete both above quoted phrases and insert “civil action” in both places

§ 41.

Present text: “proceeding in equity”
Suggested change: Delete “in equity” and insert instead

12 This statutory provision now reads:
The several circuit courts of this state, in all causes of which they may have jurisdiction as courts of chancery shall have power to proceed therein according to the mode hereinafter prescribed; and where no provision is made by this act, according to the general usage and practice of courts of equity.

Ill. Rev. Stat. ch. 22, §1 (1969). As this section presently reads, this would regulate both substantive and procedural matters for equitable actions and if no procedure were specifically referred to then the previously established procedure would control. Section I of the Civil Practice Act now controls because of that statute’s application to all civil actions. Thus, the repeal of section 1 of chapter 22 would eliminate this apparent conflict as to the procedural rules to be followed in equitable actions.
§ 42.

*Present text:* “complainant”

*Suggested change:* Delete above and insert instead “plaintiff.” See § 21(1) of Civil Practice Act regarding appropriate terminology.\(^{13}\)

§ 45.

*Present text:* “given in causes in equity in this State” and “to a suit in equity”

*Suggested change:* Delete both above quoted phrases

§ 46.

*Present text:* “in any suit in equity”

*Suggested change:* Delete above

§ 49.

*Present text:* “at law or in equity,” “in chancery” and “at law or not”

*Suggested change:* Delete the above quoted phrases

CHAPTER 24. CITIES AND VILLAGES

§ 11-15.1-4

*Present text:* “either in law or in equity by suit, action”

*Suggested change:* Delete above and insert instead “by civil action”

§ 11-139-11.

*Present text:* “either in law or in equity”

*Suggested change:* Delete above and insert instead “by a civil action”

CHAPTER 29. CONTRACTS

§ 2.

*Present text:* “any court, having chancery jurisdiction”

*Suggested change:* Delete above and insert instead “the circuit court”

CHAPTER 30. CONVEYANCES

§ 131.

*Present text:* “cases in equity”

*Suggested change:* Delete “in equity”\(^{14}\)

CHAPTER 32. CORPORATIONS

§ 157.86.

*Present text:* “courts of equity”

\(^{13}\) ILL. REV. STAT. ch. 110, §21(1) (1969).

\(^{14}\) This recommended revision would cause this provision to be consistent with the remainder of this section which provides for the application of the Civil Practice Act to proceedings brought under the statute.
Suggested change: Delete above and insert "the circuit court"

§ 157.125.
Present text: "an action at law or in equity" which appears twice in the first paragraph of that section
"any action at law or suit in equity" which appears in the second paragraph of that section
Suggested change: Delete above and insert instead "a civil action" in each of the three places

§ 163a53.
Present text: "courts of equity"
Suggested change: Delete above and insert instead "the circuit court"

§ 863.
Present text: "for taking like depositions in chancery cases"
Suggested change: Delete "chancery" and insert "civil" instead

§ 922.
Present text: "complaint in equity"
Suggested change: Delete "in equity"

CHAPTER 33. COSTS

§ 1.
Present text: "cases in law or equity"
Suggested change: Delete above and insert instead "civil cases"

§ 18.
Present text: "suit in equity" and "other cases in equity"
Suggested change: Delete above and insert "action" instead of the first above-quoted phrase, and insert "civil actions" instead of the second above-quoted phrase

CHAPTER 37. COURTS

§ 439.8(d).
Present text: "at law or in chancery"
Suggested change: Delete above and insert instead "in a civil action"

§ 439.9.
Present text: "served upon the person named therein as a summons at common law is served"
Suggested change: Delete "at common law" and insert instead "in a civil action"

§ 439.15.

Present text: "by the rules of common law or chancery in suits between individuals"

Suggested change: Delete "rules of common law or chancery in suits" and insert instead "law applicable to civil actions"

CHAPTER 38. CRIMINAL LAW AND PROCEDURE

§ 13-3

Present text: "action in equity" and "as in other chancery proceedings"

Suggested change: Delete "in equity" from the first quotation and delete "chancery proceedings" from the second quotation and insert "civil actions" instead

§ 60-7.

Present text: "proceedings in equity"

Suggested change: Delete "in equity"

§ 84-6

Present text: "either at law or equity"

Suggested change: Delete above

CHAPTER 42. DRAINAGE

§ 349.

Present text: "on the chancery side thereof" and "bill against said corporation, which bill shall set forth"

Suggested change: Delete first quotation. In the second quotation, delete the word "bill" in both places and insert instead the word "complaint" in each place.

§ 452.

Present text: "either at law or in equity"

Suggested change: Delete above

CHAPTER 45. EJECTMENT

§ 56.

Present text: "either at law or in equity"

Suggested change: Delete above

CHAPTER 46. ELECTIONS

§ 23-23.

Present text: "chancery actions"

Suggested change: Delete above and insert instead "actions seeking equitable relief"
§§ 29A-6, 29A-7 and 29A-8

Present text: “an action at law, suit in equity or other proper proceeding for redress”

Suggested change: Delete above and insert instead “a civil action”

CHAPTER 49. ESCHEATS

§ 7.

Present text: “petition in chancery,” which is repeated twice in section

Suggested change: Delete “in chancery” in both places

CHAPTER 51. EVIDENCE

§ 38.

Present text: “suit in chancery”

Suggested change: Delete above and insert instead “action seeking equitable relief”

CHAPTER 53. FEES AND SALARIES

§ 31.

Present text: “at law or in equity”

Suggested change: Delete above

§ 51.

Present text: “in every civil action at law not quasi-criminal in its nature and not a proceeding for the exercise of the right of eminent domain and in every suit in chancery wherein the right of trial by jury is or may be given by law”

Suggested change: Delete “at law.” Delete “suit in chancery” and insert instead “equitable action”

§ 51.1.

Present text: “action in chancery” which appears in subdivision (c) (3).

Suggested change: Delete “in chancery” and insert instead “for equitable relief”

CHAPTER 57. FORCIBLE ENTRY AND DETAINER

§ 13.

Present text: “an action at law or in equity”

Suggested change: Delete above and insert instead “a civil action”

CHAPTER 67 1/2. HOUSING AND REDEVELOPMENT

§ 22.

Present text: “suit, action or proceeding at law or in
equity" and "suit, action or proceeding in equity"

Suggested change: Delete first quotation and insert instead "or other civil action"; delete second quotation and insert instead "civil action"

CHAPTER 68. HUSBAND AND WIFE

§ 17.
Present text: "having general chancery jurisdiction"
Suggested change: Delete above

§ 22.
Present text: "in equity"
Suggested change: Delete above

CHAPTER 69. INJUNCTION

§ 12.
Present text: "of chancery"
Suggested change: Delete above

CHAPTER 77. JUDGMENTS, DECREES AND EXECUTIONS

§ 2.
Present text: "out of chancery"
Suggested change: Delete above

CHAPTER 80. LANDLORD AND TENANT

§ 4.
Present text: "by bill, filed in chancery"
Suggested change: Delete above and insert "by civil action filed"

CHAPTER 82. LIENS

§ 13.
Present text: "action of law"
Suggested change: Delete above and insert instead "civil action"

CHAPTER 83. LIMITATIONS

§ 12.1.
Present text: "either at law or in equity"
Suggested change: Delete above

CHAPTER 85. LOCAL GOVERNMENT

§ 1046.
Present text: "suit, action or proceeding at law or in equity" and "suit, action or proceeding in equity"
Suggested change: Delete first quotation and insert instead “or other civil action”; delete second quotation and insert instead “civil action”

§§ 1211 and 1230.
Present text: “suits at law or proceedings in equity”
Suggested change: Delete above in both paragraphs and insert instead “civil actions” in both places

CHAPTER 91½. MENTAL HEALTH

§ 426.
Present text: “complaint in equity”
Suggested change: Delete “equity” and insert instead “the circuit court”

CHAPTER 95½. MOTOR VEHICLES

§ 7-215.
Present text: “action at law”
Suggested change: Delete above and insert instead “civil action”

CHAPTER 97. NE EXEAT

§ 10.
Present text: “in chancery”
Suggested change: Delete above and insert instead “where equitable relief is sought”

CHAPTER 102. OFFICERS

§§ 11 and 12.
Present text: “in equity”
Suggested change: Delete above in both paragraphs

§ 13.
Present text: “information in equity,” which is repeated twice in section
Suggested change: Delete the above in both places and insert “complaint”

§ 14.
Present text: “suit in equity” which is repeated three times in the section
Suggested change: Delete “in equity” in all three instances

CHAPTER 103. OFFICIAL BONDS

§ 21.
Present text: “suit in equity” and “any court having equity jurisdiction”
Suggested change: In first quotation, delete “in equity”; delete second quotation and insert instead “the circuit court”

CHAPTER 104. OIL AND GAS

§ 26.

Present text: “complaint in chancery”

Suggested change: Delete “in chancery”

§ 102.

Present text: “any court having jurisdiction to hear and decide equity cases”

Suggested change: Delete above and insert instead “the circuit court”

CHAPTER 106. PARTITION

§ 44.

Present text: “complaint in chancery”

Suggested change: Delete “in chancery”

CHAPTER 110. PRACTICE

§ 44(2).

Present text: “any cause of action, counterclaim, third-party claim or issue may be transferred at any time, by order of the court, from the law docket to the equity docket, or vice versa, as the nature thereof may require”

Suggested change: Delete the above for the following reasons: Of the 102 Illinois counties, 76 have no “law” or “chancery” divisions. Moreover, there is no Illinois statute requiring the clerks of the circuit courts to maintain such separate dockets.  

§ 64(1).

Present text: “In any proceeding transferred in whole or in part from the equity docket to the law docket a plaintiff desirous of a trial by jury must file his demand with the clerk within 3 days from the day the order of transfer is entered and a defendant desirous of a trial by jury shall file his demand within 6 days from that day; otherwise, the party waives a jury.”

15 ILL. REV. STAT. ch. 25 §16 (1969). It should be noted that the elimination of this provision would not prohibit the various circuit courts from maintaining such dockets by local court rule if that is deemed necessary. This would be consonant with the general administrative authority granted by the Judicial Article. [IL. CONST. art VI, §5.
Suggested change: For the reasons set forth under section 44(2) of this chapter, delete the above quoted sentence and insert the following: "If an action is filed seeking equitable relief and the court thereafter determines that one or more of the parties is or are entitled to a trial by jury, the plaintiff, within 3 days from the entry of such order by the court, or the defendant, within 6 days from the entry of such order by the court, may file his demand for trial by jury with the clerk of the court."

CHAPTER 111½. PUBLIC HEALTH

§ 116.63. Present text: "complaint in equity," which appears in subsections (2) and (4).

Suggested change: Delete “in equity” in both subsections (2) and (4).

§ 264. Present text: “any court of equity” and “a court of equity”

Suggested change: Delete above and insert instead “the circuit court” in both places

CHAPTER 114. RAILROADS AND WAREHOUSES

§ 381. Present text: “suit, action or proceeding at law or in equity” and “suit, action or proceeding in equity”

Suggested change: Delete first quotation and insert instead “or other civil action”; delete second quotation and insert instead “civil action”

CHAPTER 116. RECORDS

§ 15. Present text: “any court in such county having chancery jurisdiction”

Suggested change: Delete above and insert instead “the circuit court in such county”

CHAPTER 120. REVENUE

§§ 432, 453.6 and 453.36. Present text: “any court of equity”
Suggested change: Delete above in all three sections and insert instead “the circuit court” in the three places.

§ 444e.

Present text: “in equity” appears in section three times

Suggested change: Delete “in equity”

§ 697.

Present text: “foreclosed in equity”

Suggested change: Delete “in equity”

§ 751.

Present text: “in law or equity” and “either at law or in equity”

Suggested change: Delete above

CHAPTER 121. ROADS AND BRIDGES

§ 5-203.

Present text: “service shall be the same as in suits in chancery”

Suggested change: Delete “suits in chancery” and insert instead “civil actions”

§ 10-711.

Present text: “proceeding, either at law or in equity”

Suggested change: Delete above and insert instead “civil action”

§ 314a39.

Present text: “suits at law or proceedings in equity” which appears in second paragraph of section

Suggested change: Delete above quotation and insert instead “civil actions”

§ 314a52.

Present text: “suits at law or procedures in equity” which appears in subparagraph (a) and “suit at law,” which appears in subparagraph (b).

Suggested change: Delete first quotation above and insert instead “civil actions”; delete second quotation above and insert instead “a civil action”

CHAPTER 127. STATE GOVERNMENT

§ 172.

Present text: “complaint in chancery”

Suggested change: Delete “in chancery”
CHAPTER 140. TRADEMARKS

§ 28. Present text: “an action at law, suit in equity or other appropriate proceeding”

Suggested change: Delete above and insert instead “a civil action”

CHAPTER 144. UNIVERSITIES

§§ 645 and 676. Present text: “either in law or in equity, by suit, action, mandamus or other proceeding”

Suggested change: Delete above and insert instead “by mandamus or other civil action”

CHAPTER 146. VENUE

§ 1. Present text: “suit or proceeding in law or equity, including proceedings for the exercise of the right of eminent domain”

Suggested change: Delete above and insert instead “action”

The following situations are of special interest:

Change of Venue

The pertinent statute makes a change of venue available “in any civil suit or proceeding in law or equity, including proceedings for the exercise of the right of eminent domain . . . .”16 A divorce proceeding is neither law nor equity nor eminent domain. Nevertheless, there are a large number of reported divorce cases where change of venue was granted by virtue of the above statute.17

Declaratory Judgment

An action for declaratory judgment “is neither legal nor equitable, but is sui generis.”18 Thus, where a statute provides that a litigant may bring an “action” and does not confine it to “at law” or “in equity,” declaratory judgment is available, but where a statute provides that a litigant may bring “an action at law or in equity,” as many of the outmoded Illinois statutes provide, a declaratory judgment is not available. This points up the necessity for deleting the confining phrases of “at law” or “in equity” or a combination of both.

Separate Maintenance

This particular statute provides that married persons who seek to obtain separate maintenance "may have their remedy in equity." By way of contrast, it is to be noted that there is no requirement in the Divorce Act that the proceeding be "in equity." It is also of interest to observe that the Circuit Court of Cook County has a "Divorce Division" and a "Chancery Division" and that separate maintenance proceedings are assigned to the Divorce Division, not to the Chancery Division.

Non-Probate Matters in Probate Division

A number of matters, which prior to January 1, 1964, were heard by Illinois courts sitting at law and in chancery, are, since the effective date of the new Judicial Article, adjudicated by the Probate Division of the Circuit Court of Cook County. To coordinate the statutory law with judicial construction, the following limitation formerly contained in section 5 of the Probate Act was removed: "Matters not germane to the distinctive purpose of the proceeding shall not be introduced by joinder, counterclaim or otherwise." Furthermore, cases involving will contests, will construction, and contracts to make a will, which were, prior to January 1, 1964, heard by chancery courts, are now heard in the Probate Division of the Circuit Court of Cook County.

Court of Chancery

A tribunal which is limited to chancery jurisdiction has no authority over actions at law, adoption, divorce, eminent domain, probate and many other justiciable matters. Such a tribunal is totally unlike the Illinois circuit courts which have "unlimited original jurisdiction of all justiciable matters." Therefore, an Illinois statute dealing with "jurisdiction of courts of chancery" is completely out of harmony with the unified trial court established by section 9 of the new Judicial Article.

In chapter 22 of the 1969 Illinois Revised Statutes appears

20 General Order No. 1, 2.1, III, of the Circuit Court of Cook County.
21 See People v. Corcoran, 39 Ill. 2d 233, 234 N.E.2d 794 (1968), accounting against a trustee; Murukas v. Murukas, 99 Ill. App. 2d 342, 240 N.E.2d 797 (1968), Probate Division having reserved jurisdiction to determine attorney's fees, Chancery Division could make the determination on the subject; In re Estate of Garrett, 81 Ill. App. 2d 141, 224 N.E.2d 654 (1967), accounting suit for conversion of property; In re Estate of Bort, 75 Ill. App. 2d 322, 221 N.E.2d 24 (1966), adjudication as to non-probate assets; In re Estate of Breault, 63 Ill. App. 2d 246, 211 N.E.2d 424 (1965), adjudication as to non-probate assets.
23 General Order No. 1, 2.1, V, of the Circuit Court of Cook County.
24 ILL. CONST. art. VI, §3.
Coordination of Illinois Statutes

a statute which is entitled "An Act to regulate the practice in courts of chancery" and consists of 13 sections, numbered 1 through 52 with 39 sections previously repealed. It is suggested that the title be changed to "An Act regarding proceedings pertaining to equitable relief."

Contrasting Statutory Draftsmanship

There are a large number of Illinois statutes which, without any reference to a "court of chancery," provide that the "circuit court" or "a court of competent jurisdiction" may grant an injunction, or may appoint a receiver, or may do both.

EPILOGUE — "THE LEFTOVERS"

The following is a list of the paragraphs in the various chapters of the 1969 Illinois Revised Statutes consisting of miscellaneous items which are in need of coordination with the new Judicial Article, with the Illinois Civil Practice Act and with the Supreme Court Rules, together with suggested changes to be made by the Legislature:

CHAPTER 8. ANIMALS

§§ 37s.16c and 421.

Present text: "in the manner prescribed by statute for depositions in suits at law in the courts of record of this State."

Suggested change: Delete above, as there is no statute dealing with the manner of taking depositions. The subject is covered by Illinois Supreme Court Rules 201 through 219.28 The procedure is the same for law and equity cases and all Illinois courts are courts of record. Insert instead "in the manner prescribed for depositions in the courts of this State."

22 See, e.g., ILL. REV. STAT. (1969) at ch. 5, §§183 & 184; ch. 15½, §§22.79a, 48.34, 48.109; ch. 16½, §§56.2, 98, 267; ch. 16%, §§14.92(11), 29a; ch. 19, §§712; ch. 23, §§5109; ch. 24, §§11-13-5, 11-80-1; ch. 32, §§496.30(13), 1028(14); ch. 34, §§429.8; ch. 38, §§14-6, 37-4, 38-2, 202-24; ch. 40, §§15, 13, 214; ch. 42, §§26a; ch. 43-1/2, §§178, 284; ch. 73, §§801, 809, 924, 1096; ch. 74, §§81, 91, §§16u.1, 35.55, 55.28, 105.24; ch. 99, §§103; ch. 95½, §§2-116, 2-117, 282.25, 3-831, 3-914, 18-902; ch. 99, §§103; ch. 100, §§2, 16; ch. 104, §§72; ch. 111, §§73.24c, 116.101, 116.214, 240.15, 570; ch. 111½, §§79; ch. 120, §§41b; ch. 121, §§467; ch. 121½, §§137.11, 266.267; ch. 127, §§12, 63b1.5; ch. 127½, §§207; ch. 131, §§1, 138, §49.1; ch. 134, §§6; ch. 140, §§22; ch. 147, §158.

23 See ILL. REV. STAT. (1969) at ch. 5, §§183 & 184; ch. 15½, §§22.79a, 48.34, 48.109; ch. 16½, §§56.2, 98, 267; ch. 16%, §§14.92(11), 29a; ch. 19, §§712; ch. 23, §§5109; ch. 24, §§11-13-5, 11-80-1; ch. 32, §§496.30(13), 1028(14); ch. 34, §§429.8; ch. 38, §§14-6, 37-4, 38-2, 202-24; ch. 40, §§15, 13, 214; ch. 42, §§26a; ch. 43-1/2, §§178, 284; ch. 73, §§801, 809, 924, 1096; ch. 74, §§81, 91, §§16u.1, 35.55, 55.28, 105.24; ch. 99, §§103; ch. 95½, §§2-116, 2-117, 282.25, 3-831, 3-914, 18-902; ch. 99, §§103; ch. 100, §§2, 16; ch. 104, §§72; ch. 111, §§73.24c, 116.101, 116.214, 240.15, 570; ch. 111½, §§79; ch. 120, §§41b; ch. 121, §§467; ch. 121½, §§137.11, 266.267; ch. 127, §§12, 63b1.5; ch. 127½, §§207; ch. 131, §§1, 138, §49.1; ch. 134, §§6; ch. 140, §§22; ch. 147, §158.

24 See ILL. REV. STAT. (1969) at ch. 5, §§183 & 184; ch. 15½, §§22.79a, 48.34, 48.109; ch. 16½, §§56.2, 98, 267; ch. 16%, §§14.92(11), 29a; ch. 19, §§712; ch. 23, §§5109; ch. 24, §§11-13-5, 11-80-1; ch. 32, §§496.30(13), 1028(14); ch. 34, §§429.8; ch. 38, §§14-6, 37-4, 38-2, 202-24; ch. 40, §§15, 13, 214; ch. 42, §§26a; ch. 43-1/2, §§178, 284; ch. 73, §§801, 809, 924, 1096; ch. 74, §§81, 91, §§16u.1, 35.55, 55.28, 105.24; ch. 99, §§103; ch. 95½, §§2-116, 2-117, 282.25, 3-831, 3-914, 18-902; ch. 99, §§103; ch. 100, §§2, 16; ch. 104, §§72; ch. 111, §§73.24c, 116.101, 116.214, 240.15, 570; ch. 111½, §§79; ch. 120, §§41b; ch. 121, §§467; ch. 121½, §§137.11, 266.267; ch. 127, §§12, 63b1.5; ch. 127½, §§207; ch. 131, §§1, 138, §49.1; ch. 134, §§6; ch. 140, §§22; ch. 147, §158.

25 See ILL. REV. STAT. (1969) at ch. 24, §§11-31-1 and 11-31-2; ch. 62, §§50; ch. 82, §§89; ch. 121½, §§267 and 268.

CHAPTER 13. ATTORNEYS AND COUNSELORS

§ 14.

Present text: "in term time or vacation"

Suggested change: Delete above

CHAPTER 24. CITIES AND VILLAGES

§ 9-2-55.

Present text: 

Suggested change: Delete above sentence, as it is a vestige of common law pleading which was abolished by the passage of the Civil Practice Act. No substitute language is needed.

CHAPTER 32. CORPORATIONS

§ 496.30.

Present text: "in vacation" in subsection (6)

Suggested change: Delete above

§ 1028.

Present text: "in vacation" in subsection (7)

Suggested change: Delete above

CHAPTER 33. COSTS

§ 7.

Present text: "or demandant"

Suggested change: Delete above, 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 to the action of ejectment. Section 21(1) of the Civil Practice Act has established uniform terminology for all civil cases which are governed by the Act.²⁹

§ 9.

Present text: 

Suggested change: "Any person making avowry, justification or cognizance in replevin, if the same be found for him, or the plaintiff be non-suited, or non-pros'd, suffer a discontinuance, or be otherwise barred,

then such person shall recover his damages and costs against the plaintiff, in like manner as the plaintiff would have done, if the same had been found against the defendant.”

Suggested change: Repeal above section in toto, as it is a vestige of common law pleading in an action of replevin. This was abolished by the adoption of the Civil Practice Act.30

§ 24.

Present text: “supreme court”

Suggested change: Delete the word “supreme” and insert instead the word “reviewing,” as the provision is applicable to the Appellate Court as well as to the Supreme Court.31

CHAPTER 34. COUNTIES

§ 307.

Present text: “an action of debt before any justice of the peace of the county”

Suggested change: Delete above and insert instead “a civil action”

CHAPTER 37. COURTS

§ 704-2.

Present text: “within 10 judicial days”

Suggested change: Delete the word “judicial,” as it is meaningless in view of the fact that “An Act relating to circuit courts” provides: “There shall be no stated terms in the circuit courts, which shall always be open for the transaction of all business, subject to adjournment from time to time.”32

CHAPTER 38. CRIMINAL LAW AND PROCEDURE

§ 13-3.

Present text: “complainant” in subsection (d)

30 See ILL. REV. STAT. ch. 119, §21a (1969). According to Blackstone’s Commentaries, III ch. 9, p. 149, after an action for replevin was instituted because a distrain of property had been undertaken, the following procedure occurred:

[T]he distrainor ... makes avowry; that is, he avows taking the distress in his own right ... and sets forth the reason of it, as for rent arrere, damage done, or other cause ... .”

In view of our modern practice in such matters, such a proceeding has no place whatever in the system.

31 Dorn v. Smith, 85 Ill. App. 516 (1898), established that this provision was fully applicable to the appellate court.

Suggested change: Delete above and insert instead "plaintiff." Prior to the passage of the Civil Practice Act, the person who commenced an action at law was denominated as a "plaintiff" and the person who filed a suit in equity was designated as a "complainant." Section 21(1) of the Civil Practice Act provides for uniform terminology and specifies that "The party commencing an action shall be called the plaintiff."

§ 60-7.
Present text: "complainant"
Suggested change: Delete above and insert instead "plaintiff," in accordance with § 21(1) of the Civil Practice Act

§ 106-1.
Present text: "court of record"
Suggested change: Delete "of record," as all Illinois courts are courts of record

§ 109-1.
Present text: Subsection (b) (3) provides that the judge shall hold a preliminary hearing in those cases "where the judge is without jurisdiction to try the offense"
Suggested change: Delete the above quoted language and insert instead "in which the maximum punishment authorized by law does not exceed a fine of $1,000 or imprisonment for one year in an institution other than a penitentiary or both." Since the circuit court has "unlimited original jurisdiction over all judiciable matters" and the hearing of a case by a circuit judge, associate judge or magistrate involves only a question of "assignment," not "jurisdiction," there is no case over which a judge of a circuit court has no jurisdiction. It is, therefore, clear that subsection (b) (3) is geared to the judicial system which existed in Illinois prior to 1964. Therefore, the present statutory provision is meaningless, and a new standard as to
§ 122-7.

*Present text:* “Any final judgment entered upon such petition may be reviewed by the Supreme Court as an appeal in civil cases.” (emphasis added)

*Suggested change:* Repeal above section in toto, as it is in direct opposition to Supreme Court Rule 651 (d), which reads as follows: “The procedure for an appeal in post-conviction proceeding shall be in accordance with the rules governing criminal appeals, as near as may be.”

CHAPTER 42. DRAINAGE

§ 349.

*Present text:* “bill"

*Suggested change:* Delete above and insert instead “complaint”

CHAPTER 47. EMINENT DOMAIN

§ 7.

*Present text:* “If the panel be not full by reason of non-attendance, or be exhausted by challenges, the judge hearing such petition shall designate by name the necessary number of persons, of proper qualification, and the clerk or justice shall issue another venire, returnable instanter, and until the jury be full.”

*Suggested change:* Delete above sentence, as it is in conflict with the Jury Commissioners Act. Furthermore, the word “justice” refers to “justice of the peace,” a judicial office which was abolished by the Judicial Article effective January 1, 1964.

CHAPTER 50. ESTRAYS AND LOST PROPERTY

§ 27.

*Present text:* “in his estray book,” which appears in the section several times

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33 This change coordinates this statute with the provision contained in ILL. REV. STAT. ch. 37, §624(a) (1969).
34 ILL. REV. STAT. ch. 110A, §651(d) (1969) (emphasis added).
Suggested change: Delete the above quoted language, as it is a vestige of justice of the peace practice. Judges and magistrates have no estray book. The section, which is long, will have to be redrafted so as to provide for the appropriate entry of court orders to accomplish the desired result.

§ 28.
Present text: "estray record"
Suggested change: Delete above and insert instead "order"

CHAPTER 53. FEES AND SALARIES

§ 81.
Present text: consists of three, unnumbered paragraphs
Suggested change: The first and third paragraphs should be deleted, as the subject matter is covered by Supreme Court Rule 324.

CHAPTER 56½. FOODS

§ 66.12.
Present text: "County Court" in subsection (e)
Suggested change: Delete "County" and insert instead "Circuit"

CHAPTER 65. HABEAS CORPUS

§ 2.
Present text: a court "of the city," which is repeated in the section twice
Suggested change: Delete above quoted phrase, as there are no city courts under the Judicial Article of 1964. The section will have to be redrafted for appropriate coordination of language.

CHAPTER 66. HORSESHOERS

§ 6.
Present text: commence suit "by summons in usual form before" the circuit court
Suggested change: Delete above quoted phrase, which is a vestige of practice before justices of the peace. Insert instead "by filing a complaint in."

§ 7.
Present text: "commenced by summons"
Suggested change: Delete above quotation, which is a vestige of practice before justices of the peace.

CHAPTER 67 1/2. HOUSING AND DEVELOPMENT

§ 174.

Present text: “court of record” in first paragraph; “either in term time or vacation” in third paragraph.

Suggested change: Delete “of record” in first paragraph, and “either in term time or vacation” in third paragraph as there are no longer any “terms of court.”

§ 176.

Present text: “county court” and “county judge” are repeated a number of times in the section, “or Superior court” also appears therein.

Suggested change: Delete “county court” and “county judge” wherever it appears and substitute therefor “circuit court” and “circuit judge” respectively. Delete “or Superior” from the phrase “or Superior court.”

§ 181.

Present text: “court of record” and “an action at law”

Suggested change: Delete “court of record,” as all Illinois courts are courts of record, and delete “an action at law” and insert instead “a civil action.”

§ 182.

Present text: “or Superior court”

Suggested change: Delete “or Superior”

§ 183.

Present text: “or Superior court” and “directly to the Supreme Court”

Suggested change: Delete “or Superior” and delete “directly to the Supreme Court,” as the provision for taking of an appeal directly to the Supreme Court is contrary to §§ 5 and 7 of the Judicial Article.

CHAPTER 82. LIENS

§ 53.

Present text: “in any court having jurisdiction of the amount claimed to be due”
Suggested change: Delete above quotation and insert instead "circuit court," as the only trial court available in Illinois is the circuit court, which has “unlimited original jurisdiction of all justiciable matters.”

CHAPTER 95. MORTGAGES

§ 22b.56.

Present text: “The parties shall have the same rights of appeal from any order placing or refusing to place a mortgagee in possession as in the case of an order appointing or refusing to appoint a receiver.”

Suggested change: Delete the above sentence, as the matter is fully covered by Supreme Court Rule 307 (a) (4). This is an area which is within the exclusive rule-making powers of the Supreme Court.

CHAPTER 95½. MOTOR VEHICLES

§ 18-701.

Present text: “Circuit or Superior Court”

Suggested change: Delete “or Superior”

CHAPTER 100½. NUISANCES

§ 16.

Present text: the court “in term time, or a judge in vacation”

Suggested change: Delete above quotation, as there are no longer terms and vacations in the Illinois circuit courts

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36 ILL. CONST. art. VI, §9.
37 ILL. REV. STAT. ch. 110A, §307(a) (4) (1969) promulgated pursuant to ILL. CONST. art. VI, §7. In People ex rel. Stamos v. Jones, 40 Ill. 2d 62, 66, 237 N.E.2d 495, 498 (1968), the supreme court said: “[T]he constitution has placed responsibility for rules governing appeal in the Supreme Court, and not in the General Assembly.” Likewise, in Whitely Estates Corp. v. Cappelletti, 112 Ill. App. 2d 157, 251 N.E.2d 397 (1969), wherein the appellant relied upon a statute as authority for seeking review of an interlocutory order of the circuit court, the appellate court dismissed the appeal and said:

This Court must conclude that the Supreme Court has the sole responsibility for promulgating rules governing a right to appeal to the Appellate Court from other than final judgments. The absence of such a rule governing a right to appeal from this interlocutory order prompts us to dismiss this appeal.

Id. at 160, 251 N.E.2d at 399.

Similarly, in South Chicago Community Hosp. v. Industrial Comm’n, 44 Ill. 2d 119, 254 N.E.2d 448 (1969), the Supreme Court dismissed an appeal and said: “In the absence of a Supreme Court rule providing for interlocutory review, none being applicable here, an appeal does not lie from an order which is not final.” Id. at 121, 254 N.E.2d at 449.
§ 21. Present text: "court of record"
Suggested change: Delete "of record," as there are no Illinois courts which are not courts of record.

§ 14-108.
Present text: "court of record"
Suggested change: Delete "of record"

CHAPTER 134. TELEGRAPH & TELEPHONE COMPANIES
§ 6.
Present text: "bill of complaint"
Suggested change: Delete "bill of," as section 32 of the Civil Practice Act provides that: "The first pleading shall be designated a complaint by the plaintiff."38

THE TASK AHEAD

The Judicial Article was adopted by the Illinois General Assembly in 1961, approved by the electorate in 1962, and became effective in 1964. In 1963, the Illinois General Assembly, in anticipation of the forthcoming change, enacted 68 implementation bills. In 1965, the General Assembly enacted 369 bills. In 1967, the General Assembly enacted 139 implementation bills,39 and in 1968 there were enacted 9 additional bills.40 In 1969, the General Assembly enacted 48 bills.41 Despite the enormous amount of work that has been done, there is still a considerable task ahead. It is our duty to complete this undertaking as soon as possible.

40 Senate Bills 1822, 1825, 1827, 1886, 1897, 1898 and 1932; House Bill 2568.
41 Senate Bills 462 through 473, 475, 476, 478, and 479; House Bills 113, 223, 739, 742, 772, 869 through 888, 1476, 1912, 2207, 2209, 2238, 2270, and 2271.