plate glass windows,[17] or bicycles and bicycle tires stolen or damaged, regardless of cause,[18] or to defend physicians against malpractice suits for a specified period.[19]

The Ohio court in its solicitous attempt to protect the public from unregulated insurance practice, seems to have carried the intent of the insurance statutes beyond the bounds which the legislation was intended to cover. If unfair competition results from the use of unconditional guaranties, remedial acts may be passed by the legislature.[20]

Practice—Power of Municipal Court To Prescribe Service of Process—[Illinois].—Original summons and three alias summons were issued from the Municipal Court of Chicago against the defendant. All were returned "not found," an employee at the defendant's place of business reporting in each instance that the defendant was not in. The court then directed service by delivering the summons to an employee at the defendant's place of business, and by mailing a copy of the summons to the defendant. An Illinois statute[1] provides that a majority of the judges of the Municipal Court of Chicago shall have power to make rules regulating "practice" in that court. Rule 10A[2] of that court in turn provides that "in any case in which an officer is unable from any cause to make due service of summons, the court . . . . may direct such service to be made in such manner as the court shall deem proper." Judgment was taken against the defendant by default. The lower court overruled a motion to quash the summons and vacate the judgment. On appeal, *held*, reversed. The power to direct the manner of service of summons was not included in the power granted to make rules of practice. Moreover, the legislature had delegated to a majority of the judges power to make rules of practice, where as Rule 10A conferred that power upon a single judge. *Danoff v. Larson.*[3]

The case is an interesting one because, while Rule 10A was probably invalid, the grounds on which the decision is placed may foreclose future legitimate action by the Municipal Court. It has been held that the legislature may delegate to the courts power to make their own rules of practice.[4] The statute[5] granting to the Municipal Court power to make its own rules of practice would seem to have been passed with the object of giving that court power to deal adequately with its peculiar municipal problems.[6] On the other hand, it is unlikely that the legislature contemplated delegation to a single judge of unlimited discretionary powers as to what would be proper

[17] Moresh v. O'Regan, 120 N.J. Eq. 534, 187 Atl. 619 (1936).

[18] Pennsylvania v. Provident Bicycle Co., 178 Pa. 636, 36 Atl. 197 (1897).

[19] State v. Laylin, 73 Ohio St. 90, 76 N.E. 567 (1905).

[20] In interstate commerce the use of warranties which are in effect misrepresentations may be prevented by the Federal Trade Commission. 38 Stat. 717 (1914) § 5; 15 U.S.C.A. § 45 (1938).

[1] Ill. Rev. St., 1937, c. 37, § 375.

[2] Rule 10A, Revised Civil Practice Rules of the Municipal Court (1935).

[3] 15 N.E. (2d) 290 (Ill. 1938).

[4] Hopkins v. Levandowski, 250 Ill. 372, 95 N.E. 496 (1911).

[5] Ill. Rev. Stat., 1937, c. 37, § 375.

[6] The rules of practice of the Illinois Civil Practice Act do not apply to the Municipal Court. Ptacek v. Coleman, 364 Ill. 618, 5 N.E. (2d) 467 (1936); Barry v. Knight, 15 N.E. (2d) 999 (Ill. App. 1938).

service of process, and, since the courts alone pass on their own authority, it is unwise for the judiciary to assume a questionable grant of power.[6a] In addition, the statute requires that the rules made shall be "spread upon the record" of the court.[7] This requirement was undoubtedly made in the interests of uniformity of procedure, so that lawyers and litigants would know at all times exactly what the rules of the court were. A rule which states that the court will in each instance do as it sees fit can hardly be said to be a rule at all, and is certainly not helpful to persons practicing or appearing before the court.[8]

While this power could not be delegated to one judge, could not a *majority* of the judges of the Municipal Court make definite alternative rules governing service of process to be invoked should a personal summons be returned "not found"? This depends upon whether or not service of process was included in the legislative grant of power to make rules governing "practice." Although it is used frequently, the word "practice," nevertheless, has at best but a vague meaning. It is generally understood to mean the formal or technical steps by means of which a litigant achieves his rights.[9] The following definition has been approved by the United States Supreme Court: "The word means those legal rules which direct the course of proceeding *to bring parties into court* and the course of the court after they are brought in."[10] Substantially the same definition has been adopted by the highest courts of Illinois,[11] and California.[12]

[6a] See the dissent of Justice Stone in *United States v. Butler*, 267 U.S. 1 (1936).

[7] Ill. Rev. St., 1937, Ch. 37, § 375.

[8] As the principal case points out, "No one within the jurisdiction of that court would have any means of knowing whether or not he had been lawfully served with process."

[9] "Practice" has been held to exclude: Assets Adjustment Co. v. Atkinson, 180 Ill. App. 296 (1913) (requiring that the defendant's answer be stricken from the record); Holmes v. Straus, 283 Ill. 621, 119 N.E. 708 (1918) (changing case to different statutory class); Hoffman v. Paradis, 259 Ill. 111, 102 N.E. 253 (1913) (regulating time for writs of error); St. Louis Valley Irrigating District v. Centennial Irrigating Ditch Co., 84 Colo. 502, 272 Pac. 9 (1928) (eliminating personal service in proceeding for change of point of diversion); Broome County Farmers' Relief Ass'n v. N.Y. State Electric & Gas Corp., 239 App. Div. 304, 268 N.Y. Supp. 131 (1933), aff'd 264 N.Y. 614, 191 N.E. 591 (1934) (requiring deposition to be read aloud). Practice has been held to include: Union Nat'l Bank v. Byram, 131 Ill. 92, 22 N.E. 842 (1889) (serving of mesne process); Wilson v. Trustees of Schools, 138 Ill. 285, 27 N.E. 1103 (1891) (final process in ejectment action); Ginsburg v. Ginsburg, 361 Ill. 499, 198 N.E. 432 (1936) (rule as to burden of proof); Weil v. Federal Insurance Co., 264 Ill. 425, 106 N.E. 246 (1914) and American Credit Indemnity Co. of New York v. Yamer, 170 Ill. App. 350 (1912) (pleadings); Grollman v. Lake Geneva Piano Stool Co., 147 Ill. App. 332 (1910) (rules as to objections to oral arguments); Friend & Co. v. The Goldsmith & Seidel Co., 307 Ill. 45, 138 N.E. 185 (1923) (rule requiring statement of claims); Perry v. Krausz, 166 Ill. App. 1 (1911) (rule the defendant file affidavit of merit); State v. Pavelich, 153 Wash. 379, 279 Pac. 1102 (1929) (rule contrary to statute requiring court to instruct that the accused's refusal to testify shall not be evidence of his guilt); Pear v. Graham, 258 Mich. 161, 241 N.W. 865 (1932) (greatly increasing the stringency of court-room procedure).

[10] Kring v. State of Missouri, 107 U.S. 221 (1883). (Italics ours.) *Cf.* Iser v. Brockway, 6 Law Week 217 (D.C. Pa. 1938).

[11] Fleishman v. Walker, 91 Ill. 318, 320 (1878); Bowar v. Chicago West Division Railway Co., 136 Ill. 101, 107, 26 N.E. 702, 703 (1892).

[12] People v. Central Pac. Ry. Co., 83 Cal. 393, 404, 23 Pac. 303, 307 (1890).

So it would seem that the legislature's use of the word "practice" could well be construed to include service of process. However, the constitutional issue of due process still remains. Historically, service of process was not a right of the defendant's but a command to appear in the king's court.[13] It has gradually acquired a different significance, however, with the growth, in Anglo-American countries, of the due process concept.[14] This is understood to mean, in this connection, that a defendant must have the opportunity to be heard before judgment can be rendered.[15] A corollary to this principle is that he must know that a suit is pending against him.[16] Mere knowledge on his part that such a suit has been brought is not sufficient.[17] The most that is required, however, is reasonable notice, such notice as would advise the average man that he should appear in court and defend his rights.[18] The due process requirement does not demand that traditional methods be used.[19] Therefore, so long as a prescribed method of service conforms to the requirement that reasonable notice be given, no constitutional objection is apparent.

Hence, there would seem to be no reason why a majority of the judges of the Municipal Court could not promulgate rules for service of summons. It is unfortunate that the court, in properly invalidating Rule 10A, has precluded such action.

Practice—Substituted Service on Non-resident Motorist—Liability of Foreign Corporations—[Illinois].—An agent of the defendant, a non-resident corporation, injured the plaintiffs while driving a car "on behalf of" the defendant. In an action for damages service of process was made on the defendant in accordance with the provisions of an Illinois statute: "The use and operation by a non-resident of a motor vehicle over the highways of the State of Illinois, shall be deemed an appointment .... of the Secretary of State to be his .... attorney upon whom may be served all legal process in any action ...., growing out of such use ...."[1] The defendant challenged the application of the statute to a non-resident corporation when the car is driven by an employee. On appeal from a judgment for the defendant, *held*, affirmed.

[13] Prewitt v. Caudill, 250 Ky. 698, 704, 63 S.W. (2d) 954, 957 (1933); Shipman, Common Law Pleading 17 (3d ed. 1923).

[14] See Murray v. Hoboken Land and Improvement Co., 59 U.S. 272, 276 (1855) and Davidson v. New Orleans, 96 U.S. 97, 101 (1877) for statements that "by the law of the land" in Magna Carta have the same connotation as our phrase "due process of law." See also Straub v. Palmer, 74 N.Y. 183 (1878); Mason v. Eldred, 73 U.S. 231, 239 (1867); Galpin v. Page, 85 U.S. 350, 368 (1873); Riverside Cotton Mills v. Menefee, 237 U.S. 189 (1914).

[15] Pinney v. Providence Loan Co., 106 Wis. 396, 82 N.W. 308 (1900); Furgeson v. Jones, 17 Ore. 204, 20 Pac. 842 (1888).

[16] Strode v. Strode, 6 Idaho 67, 52 Pac. 161 (1898); Nat'l Metal Co. v. Greene Consol. Copper Co., 9 Ariz. 192, 80 Pac. 397 (1905).

[17] Scott v. McNeal, 154 U.S. 34 (1894); Hobby v. Bunch, 83 Ga. 1, 10 S.E. 113 (1889); Davies v. Thompson, 61 Okla. 21, 160 Pac. 75 (1916).

[18] Roller v. Holly, 176 U.S. 398 (1900); City of Norfolk v. Young, 97 Va. 728, 34 S.E. 886 (1900); Commonwealth v. O'Keafe, 298 Pa. 169, 148 Atl. 73 (1929).

[19] Hurtado v. California, 110 U.S. 516 (1884) (information instead of indictment does not violate due process); Maxwell v. Dow, 176 U.S. 581 (1900) (jury of less than twelve).

[1] Ill. L. 1929, p. 646; Ill. Rev. Stat. 1937, c. 95½ § 23.