The reluctance of the federal courts in previous cases to declare moral turpitude to be present may be explained by the fact that those cases involved deportation proceedings, while the state cases involved the less serious issue of the revocation of licenses.

Since the consequences of moral turpitude attaching to a crime often result in the infliction of additional punishments of a more or less severe nature, it is unfortunate that the word does not possess a more definite meaning than it does under the majority approach. This approach, moreover, is inconvenient in that it necessitates an inquiry into the details of the previous conviction.20 A possible solution might be the substitution in the statutes of the phrase "infamous crime."21 However, while such a substitution would permit certainty of prediction, the strict application of such a rule might work injustice in many cases because of the application of the same standard regardless of the issue involved.

It is suggested that the degree of moral degradation which should constitute just cause for the termination of the marriage relationship is less than the degree which should constitute just cause for forcibly taking a man away from his employment and friends and expelling him from the country. Therefore the best solution would be a statute specifically stating the length of sentence for a crime which provides grounds for divorce, another length of sentence for grounds for deportation,22 and a third for grounds for revocation of licenses. Perhaps the grounds for revocation of licenses might be further limited to certain specified crimes which prove the offender to be peculiarly unfit to continue to practice his particular profession. Such statutes would permit both greater predictability of result and individuality of treatment than is now enjoyed through the haphazard definition by the courts of the term "moral turpitude."

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20 In re Peters, 73 Mont. 284, 235 Pac. 772 (1925); Rudolph v. United States, 6 F. (2d) 487 (App. D.C. 1925). At times the federal courts apparently will refuse to inquire into the particular facts of a conviction, regarding the record of conviction as sufficient. United States ex rel. Andreachi v. Curran, 38 F. (2d) 494 (D.C.N.Y. 1926). The instant case, however, indicates a tendency away from that view. The court says: "An act which creates human misery, corruption, and moral ruin . . . is so base and shameful as to leave the offender not wanting in the depravity which the words 'moral turpitude' imply." Surely the court would not regard a violation of the statute because of some technical oversight as such a depraved act.


22 The proposed Kerr-Coolidge Act, 74th Cong. 2d Sess. 10486, H.R. 8163 (1935), provided that violations of state narcotic laws be made grounds for deportation. The bill did not pass.

1 295 Ill. App. 34, 14 N.E. (2d) 517 (1938).
In effect what the court has done here is to declare the service charge invalid and nullify the statute which states that usury is not a defense between corporations by using an inconspicuous injunction statute. The court's holding, however, is limited to the fact situation and would not invalidate service charges generally, because it is based on failure of consideration which the court finds in the attempt to collect before the notes were due. It would seem that a ruling under this injunction statute would have been foreclosed by the lower court's ruling on the motions to vacate. The statute permits an injunction against so much of a judgment “as the plaintiff shall show himself equitably not bound to pay,” and in the rulings on the motions to vacate the court considered the equitable reasons for granting the relief sought. Thus the lower court's rulings on the motions to vacate appear to be res adjudicata as to the validity of the service charges by permitting their collection. Similarly, the denials of the motion would seem to be res adjudicata as to the question of failure of consideration relied on by the court in the instant case. Generally a service charge such as was involved here is not held to be invalid, which seems to point to the recognition of the fact that many loans could not profitably be made at the legal rate of interest and that the means of making it profitable for private capital to handle these loans is to permit them additional payment in the form of a service charge. Possibly a better solution might be for the legislature to indicate in what situations and for what purposes more than the present legal rate of interest might be charged.

Courts have repeatedly asserted that they exercise equitable jurisdiction in considering motions to vacate confession judgments. In the instant case, however, the court stated that the plaintiffs did not have an adequate legal remedy in such a proceeding:

While it is true that in motions to vacate judgments entered by confession it is said that courts exercise equitable powers; yet we think it cannot be said that in such cases the court exercises as broad equity powers as does a chancellor in a suit in equity. . . . We are of the opinion that plaintiff's remedy in seeking to have the judgments by confession opened up and for leave to defend, was not as complete and adequate as that afforded by a court of chancery.

Established precedents show courts using legal or equitable defenses as the basis for granting a motion to vacate or to open a confession judgment with leave to defend:


4 Wright v. Griffey, 147 Ill. 496, 35 N.E. 732 (1893); Litch v. Clinch, 136 Ill. 410, 26 N.E. 579 (1891) (res adjudicata embraces not only the issue decided in a previous case but also any other matter properly involved or which might have been raised and determined in the former suit).

5 However, service charges of one dollar ($1.00) on each of six notes for $25.00 running from one to six months were held to be usurious because they amounted to more than the statutory interest limit of 8% per annum. Dickey v. Bank of Clarksdale, 184 So. 34, 37 (Miss. 1938).

6 Note Rendered Usurious by Service Charge, 56 Banking Law Journal 1, 4 (1939).


9 Pearce v. Miller, 201 Ill. 188, 190, 66 N.E. 221 (1903), aff'd 99 Ill. App. 424. "And if the affidavits, when considered, should disclose a clear and equitable reason for opening the judg-
procedural defects and irregularities do not provide adequate grounds for granting such a motion. In Condon v. Besse on a motion to open a confession judgment the court stated that where there is fraud or a meritorious defense or where a greater part of the debt has been paid then the court on motion to vacate should enter a conditional order allowing the debtors to interpose pleas, for, "if such means of correcting wrongs did not exist, the defendant would be at the mercy of the plaintiff, unless relief was sought in equity at much expense and delay."

When the plaintiffs' motions were denied it was not an end of their remedy at law since they could have taken an appeal from the denial of their motion to vacate. The basis of the appeal or writ of error is the denial of the motion to vacate, not the entering of the judgment originally. Instead of following this course the plaintiff here began a new suit in which he sought an injunction. In Hale v. Ferguson which involved a bill to enjoin collection of a judgment against the complainant, the abstract of the opinion, which is not fully reported, states the court's holding to be that a decree dismissing the bill was correct because the matter set up in the bill would have been available at law as well as in equity. It might be argued that the plaintiff did not have an adequate remedy at law in so far as the court of law could not declare the chattel mortgages securing the indebtedness null and void as was done by the injunction. But the decree of the equity court was necessarily based on the theory that the service charge was invalid and it would seem that the ruling on the motions to vacate were res adjudicata on that point.

The court states as another ground for its decision that of failure of consideration since judgment was confessed prior to the due date of the note. But this is also contrary to the precedent that confession of judgment under a warrant of attorney similar to that involved in this case is valid if taken before the due date specified in the note. In reaching this conclusion the courts have stated that the power to confess judgment for the face of the note before the due date was additional security for the creditors and it was included in the various notes in question as an express stipulation which is not defeated by the fact that the creditor may change the due date by confessing

10 Blake v. State Bank of Freeport, 178 Ill. 182, 52 N.E. 957 (1899); Moyses v. Schendorf, 238 Ill. 232, 87 N.E. 401 (1919); Mumford v. Tolman, 157 Ill. 258, 41 N.E. 617 (1895).
11 86 Ill. 159, 161 (1877).
12 Boyles v. Chytraus, 175 Ill. 370, 51 N.E. 563 (1898); Van Pelt v. Lindley, 217 Ill. App. 405 (1920).
13 Lake v. Cook, 15 Ill. 353 (1854).
14 186 Ill. App. 156 (1914); Blake v. State Bank of Freeport, 178 Ill. 182, 284, 52 N.E. 957, 958, (1899). "A court of law, being invested with such power, will not send a defendant against whom a judgment has been entered by confession, to a court of equity for redress, but the power, whether exercised by a court of law or of equity, is an equitable one, to be governed by the same principles."
16 Adam v. Arnold, 86 Ill. 185 (1877); Blanch v. Medley, 63 Ill. App. 211 (1895).
judgment. In the statement quoted above the court seems to recognize that its decision is against established precedent and yet it feels justified in making the departure. It is probable that the court felt that the plaintiff had been caught between two loan companies and deserved relief on whatever theory possible.

Not only does the decision seem to be unjustified on the basis of precedent but in addition it appears to be contrary to the policy of the Illinois Civil Practice Act by making a difference between the adequacy of relief available in an action to vacate the judgment and that in the suit for the injunction. Section 44 of the Practice Act permits a plaintiff to join any cause of action, legal or equitable, and a defendant to set up any counterclaim, legal or equitable. With reference to the portion of the opinion quoted above the court states that "... this distinction [of law and equity] has not been entirely abrogated by Section 44 of our Civil Practice Act." Under some codes providing for the union of law and equity the courts have not looked favorably on such a move but instead have preserved the ancient distinctions and have dismissed cases for procedural defects which codes were designed in part to eliminate. Dean Clark, writing shortly after the adoption of the Civil Practice Act, stated that such anomalous results can be avoided under the new act, but to do so will require "... that the Illinois judges will seize on the opportunity afforded by the joinder provisions to avoid such a result." Professor McCaskill, however, seems to adopt a view similar to that of the instant case when he states that, "In developing the one form of civil action it is well to bear in mind that whatever else may have been abolished, actions at law and suits in equity still remain, not, it is true, as independent systems of procedure, but within a system which provides for both. Attempts to obscure this fact lead only to confusion."

Thus by finding a difference between the relief granted in equity and at law the court is preventing a simplification which the Practice Act is designed to attain and which other states have achieved by stating in their codes that there shall be but one civil action.

Evidence—Constitutional Law—Inability of Wife To Waive Husband's Immunity to Unreasonable Search and Seizure—[Illinois].—While the defendant was detained in police custody on a charge of larceny, the complainant, accompanied by deputy sheriffs, went to the defendant's home in search of the stolen goods. The defendant's

17 Sherman v. Daddely, 11 Ill. 622 (1850).
19 Ill. Rev. Stat. 1937, c. 110, § 162: "Subject to rules, any demand by one or more defendants against one or more plaintiffs, or against one or more co-defendants, whether in the nature of set-off, recoupment, cross-bill in equity or otherwise, and whether in tort or contract, for liquidated or unliquidated damages, or for other relief, may be pleaded as a cross demand in any action, and when so pleaded shall be called a counterclaim."
21 Id. at 215.