

band, who might then introduce proof of changed circumstances. The court, in its discretion, might then modify or cancel arrearages if justice so required in light of the circumstances of both parties.

Under such a provision, a husband could not be taken unaware by enforcement of arrears of more than a year; a wife, in order to escape the possibility of further contest, would need only to obtain execution<sup>25</sup> within that year. This does not seem an excessive standard of diligence to impose, inasmuch as a wife honestly in need of alimony for support in any case would be compelled to take reasonably prompt action.

Of the possible solutions considered, the third appears to deal most effectively with the problems discussed in this comment. It is believed that most cases of hardship could thus be relieved, and that a judgment under such a provision would be entitled to full faith and credit for that period in which the home state placed no equitable condition upon its enforcement. It is therefore suggested that the Illinois legislature give serious consideration to amending its divorce act along these lines.

<sup>25</sup> Or institute suit in another state.

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#### PRE-FILING DELAYS IN ILLINOIS MARITAL ACTIONS— THEIR CONSTITUTIONALITY AND UTILITY

The most recent attempt<sup>1</sup> of the Illinois legislature to enact a formalized reconciliation procedure to avert broken marriages was declared unconstitutional in *People ex rel. Christiansen v. Connell*.<sup>2</sup> The statute required any party desiring to commence an action of annulment, separate maintenance, or divorce to file, not less than sixty days nor more than one year prior to the filing of a complaint, a statement of intent to bring action. The trial court was given discretionary power to "waive" compliance with the time requirement. During the "cooling-off" period the judge could invite the voluntary attendance of the prospective litigants at a reconciliation conference, but was not empowered to issue binding orders.<sup>3</sup>

<sup>1</sup> The legislature had twice before attempted without success to accomplish some of the objectives of the statute here at issue. Section 105 of Chapter 37 of the Illinois Statutes (Smith-Hurd, 1947), which set up a "divorce division" in judicial circuits of 500,000 or more, was held repugnant to Article IV, Section 22, of the Illinois Constitution in *Hunt v. Cook County*, 398 Ill. 412, 76 N.E. 2d 48 (1947). See Unconstitutionality of Illinois Divorce Act, 15 Univ. Chi. L. Rev. 770 (1948). To obviate the objections of the *Hunt* decision the Illinois legislature passed the Domestic Relations Act of 1949 [Ill. Rev. Stat. (1949) c. 37, § 105.20]. This legislation was held unconstitutional in *Bernat v. Bicek*, 405 Ill. 510, 91 N.E. 2d 588 (1950). The various grounds of the *Bernat* decision are discussed in *Legislative Progress and Judicial Reluctance in Illinois Divorce Reform*, 18 Univ. Chi. L. Rev. 342 (1951). Neither statute provided for a pre-filing delay.

<sup>2</sup> 2 Ill. 2d 332, 118 N.E. 2d 262 (1954).

<sup>3</sup> Ill. Rev. Stat. (1953) c. 40, § 23: "Subject to the exceptions hereinafter provided, any person desiring to commence an action for divorce, separate maintenance or annulment of

The Illinois Supreme Court held that the statute denied justice without delay in contravention of Section 19 of Article II of the Illinois Constitution. It also found that the statute conferred nonjudicial functions on the trial court. The court's language indicates that its second objection was based on the doctrine of separation of powers.<sup>4</sup> Yet its discussion implies that the foundation of the objection was equally the statutory authorization of the exercise of judicial power despite the absence of "causes in law [or] equity" to which that power is constitutionally limited.<sup>5</sup> On either basis the objection seems sound.<sup>6</sup>

The constitutional inquiry of this comment will be limited to a consideration of Article II, Section 19, and its bearing on delays legislatively imposed on the judicial resolution of legal controversies. The utility of statutory delays in marital actions will also be discussed.

Section 19 states:

Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay.<sup>7</sup>

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marriage, shall not less than sixty days nor more than one year before filing a complaint, file with the Clerk of the court in which the action is intended to be commenced, a written statement reciting his intention to file the complaint." *Ibid.*, § 24: "On written motion, supported by one or more affidavits setting forth facts which satisfy the court that immediate action is required to protect the interests of any person who could be affected by a decree in the proceedings, the court may, by order, waive compliance with all or any part of the provisions of Section one of this Act. In any case where compliance with any provision of said Section one is waived, the final order or decree shall recite the facts constituting the grounds for such waiver." *Ibid.*, § 27: "The judge may, after inspection of the statement of intention, invite the prospective parties and their counsel, if any, to confer with him in his chambers. No testimony shall be taken at the conference or any record made of the statements of any party. Attendance shall be voluntary and nothing herein is an authorization to compel the attendance of a party by process or order of court."

<sup>4</sup> *People ex rel. Christiansen v. Connell*, 2 Ill. 2d —, —, 118 N.E. 2d 262, 269-70 (1954); Ill. Const. Art. III.

<sup>5</sup> 2 Ill. 2d —, —, 118 N.E. 2d 262, 270 (1954); Ill. Const. Art. VI, § 12.

<sup>6</sup> *In re Summers*, 325 U.S. 561, 567 (1945) ("[a question must have] assumed 'such a form that the judicial power is capable of acting on it' . . . and there must be an actual controversy over an issue"); *Devine v. Brunswick-Balke Co.*, 270 Ill. 504, 510-11, 110 N.E. 780, 782-83 (1915), and cases there cited; *People ex rel. Dolan v. Dusher*, 411 Ill. 535, 541, 104 N.E. 2d 775, 779 (1952) ("ministerial functions cannot be conferred upon the circuit court"); *McQuade v. City of Joliet*, 293 Ill. 515, 518, 127 N.E. 690, 691 (1920) (act placing circuit and county judges on board to determine removal of fire and police officers held invalid: "The persons of whom [the board] is constituted are of the judicial department, and are prevented by article 3 of the constitution from the exercise of judicial powers"). But cf. *Letter of Justices of the Supreme Court*, 243 Ill. 9, 37 (1909) ("[t]he constitution has placed the responsibility for [legislative] recommendations . . . upon the judges of the Supreme Court as individuals and not as a court"); *People ex rel. Dunham v. Morgan*, 90 Ill. 558, 568 (1878) ("[t]he power [given circuit judges to appoint park commissioners] might, no doubt, be sustained, on the ground that its exercise is the act of the individual").

<sup>7</sup> Ill. Const. Art. II, § 19.

Its historical origin is chapter 40 of the Magna Charta: "To none will we sell, to none will we deny, to none will we delay right or justice."<sup>8</sup> Scholars seem to agree that the purpose of chapter 40 was to prevent the exaction of fines or bribes to pervert justice, speed judgments, or delay or deny trial.<sup>9</sup>

Some men used to pay fines to have or obtain justice or right, others to have their right or their proceedings or judgments speeded; others, for stopping or delaying of proceedings at law . . . so that the king seemed to sell justice and right to some and to delay or deny it to others.<sup>10</sup>

Apparently the Charta provision was directed primarily, if not exclusively, at the judicial disposition of cases and not at legislation.

The wording of some state constitutional provisions comparable to Section 19 indicates that chapter 40 has been so understood. They read: "justice shall be administered without . . . delay."<sup>11</sup> Justice is administered by the courts, not the legislature.

Judicial interpretation of some justice-without-delay clauses also indicates that they are understood as admonitions directed, at least in first instance, at the judiciary.<sup>12</sup> Cases adopting this view almost uniformly leave open the possibility that the legislature is within the reach of such clauses. Two early Kentucky opinions cannot be so interpreted. Both are explicit in stating that legislation is not subject to the limitations of the Kentucky justice-without-delay provision.<sup>13</sup> The subsequent overruling of these decisions<sup>14</sup> does not alter the fact that such a position was once considered tenable. Furthermore, the fact that the opposite position was adopted by a decision later in time need not give it greater weight in determining the scope of the justice-without-delay provision of the Illinois Constitution.

Other state courts have explicitly held justice-without-delay provisions ap-

<sup>8</sup> Thomson, *An Historical Essay on the Magna Charta of King John* 83 (1829).

<sup>9</sup> *Ibid.*, at 229-31; see *Perce v. Hallett*, 13 R.I. 363 (1881), and authorities there cited.

<sup>10</sup> Madox, *History of the Exchequer*, c. 12, cited in *Perce v. Hallett*, 13 R.I. 363, 364 (1881); compare 2 Reeves, *History of the English Law* 43 n. A (Finlason's ed., 1880).

<sup>11</sup> E.g., Ala. Const. Art. I, § 13; Idaho Const. Art. I, § 18; Ind. Const. Art. I, § 12; Mont. Const. Art. III, § 6; Mo. Const. Art. I, § 14; Okla. Const. Art. II, § 6; Vt. Const. c. II, § 28, "The Courts of Justice shall be open . . . and justice shall be *therein* impartially administered without . . . unnecessary delay" (emphasis added). Consult Ky. Const. § 14; Ohio Const. Art. I, § 16; Pa. Const. Art. I, § 11.

<sup>12</sup> E.g., *Simmons v. Kidd*, 73 S.D. 41, 38 N.W. 2d 883 (1949); *State v. Woodruff*, 134 Fla. 437, 184 So. 81 (1938); *State v. Lee*, 110 Ore. 682, 224 Pac. 627 (1924); *Burns v. Crawford*, 34 Mo. 330 (1864); *Wortman v. Minich*, 28 Ind. App. 31, 62 N.E. 85 (1901).

<sup>13</sup> *Johnson v. Higgins*, 3 Metc. (Ky.) 566, 570-71 (1861) ("[t]he terms and import of this provision show that it relates altogether to the judicial department of the government, which is to administer justice 'by due course of law,' and not to the legislative department, by which such 'due course' may be prescribed"). *Barkley v. Glover*, 4 Metc. (Ky.) 44 (1862).

<sup>14</sup> *Ludwig v. Johnson*, 243 Ky. 533, 49 S.W. 2d 347 (1932) (two judges dissented from the proposition that the legislation there at issue violated the Kentucky counterpart of § 19).

plicable to legislation.<sup>15</sup> This division of precedent underscores the necessity of careful examination of the wording of Section 19. If all of the adverbial phrases except "without denial" in the second principal clause are omitted, it reads: "every person . . . ought to obtain, by law, right and justice . . . without denial." As a command to the legislature it might read: "No legislation ought to deny to any person right and justice." Applied to statutory, if not to common-law,<sup>16</sup> causes of action, this statement does not seem meaningful. Right and justice in relation to these causes are what the legislature says they are. Otherwise worded, legislation is the promulgated statement of what the legislature considers right and just. The recast clause of Section 19 therefore means: "No statement of what the legislature considers right and just ought to deny to any person what the legislature says is right and just." It seems difficult to avoid the conclusion that the phrase "without denial" does not apply to legislation. Unless the without-delay provision of Section 19 is held to have broader scope than "without denial," it must be equally restricted.

Should "justice without delay" be interpreted as a restriction on the legislature although "justice without denial" cannot be, questions of the susceptibility of the right to justice without delay to reasonable legislative limitation remain. The words in Section 19 are: "every person . . . ought to *obtain* justice . . . without delay." (Emphasis added.) Since a right of access to the courts without delay can hardly be held to exhaust the right to obtain justice without delay, a right to expedient disposition of causes once filed must also exist. Since legislative authorization of continuances<sup>17</sup> is presumably constitutional, these post-filing rights are not unqualified. A statement in the *Christiansen* decision arguably implies this distinction between an unqualified right to file an immediate complaint and a qualified right to an expedient resolution of legal controversy. The court said: "statutes which require the lapse of a given period of time after the filing of suit or service of process before a final decree for divorce may be entered . . . [do] not impinge upon the right of access to the courts freely and without delay."<sup>18</sup> There is no apparent warrant for holding unqualified the

<sup>15</sup> *McCullum v. Birmingham Post Co.*, 259 Ala. 88, 65 So. 2d 689 (1953); *State v. Rose*, 33 Del. 168, 132 Atl. 864 (1926); *Coffman v. Bank of Kentucky*, 40 Miss. 29 (1866); *Lincoln v. Smith*, 27 Vt. 328 (1855). The protection is usually said to be only against arbitrary action. But see *City of Toledo v. Preston*, 50 Ohio 361, 34 N.E. 353 (1893); *Townsend v. Townsend*, 7 Tenn. 1, 12 (1821).

<sup>16</sup> *Heck v. Schupp*, 394 Ill. 296, 68 N.E. 2d 464, 167 A.L.R. 232 (1946), invalidated an "anti-heart-balm" act as a violation of Section 19. The causes of action the act attempted to abolish were, however, common-law causes.

<sup>17</sup> Ill. Rev. Stat. (1953) c. 110, § 259.14.

<sup>18</sup> *People ex rel. Christiansen v. Connell*, 2 Ill. 2d —, —, 118 N.E. 2d 262, 268 (1954). The court also distinguished "statutes which provide that suit for divorce shall not be filed before the lapse of a given time after the commission of certain acts which are made the basis of an action for divorce." The validity of the latter distinction seems open to question; if the Illinois court considers a statute of the latter type consonant with Section 19, the difficulties of drafting a pre-filing "cooling-off" provision would, however, seem negligible.

right to file a complaint, and thus for this distinction. Comparison of the justice-without-delay clause of Section 19 with similar provisions in other state constitutions, the wording of the clause, and its constitutional context suggest that it means "without unreasonable delay," whatever its application.

Other state constitutions specifically state that justice shall not be "unreasonably" or "unnecessarily" delayed.<sup>19</sup> In light of the common history of such clauses it is doubtful that the absence of these words indicates that a different reading of the Illinois clause was intended. Despite such an absence the clauses of other state constitutions have been read as if those words were included.<sup>20</sup>

The hortatory phrase, "ought to receive," which introduces the Illinois clause contrasts strikingly, moreover, with the commanding "shall" of other sections of the Bill of Rights.<sup>21</sup> The phrasing does not seem appropriate to the creation of an absolute right. And two cases have concluded that similar sections in the Rhode Island and Minnesota constitutions are merely guides and not commands.<sup>22</sup>

Set in juxtaposition to the "without-delay" clause is the provision that every person ought to receive justice "without being obliged to purchase it." Yet reasonable litigation fees have consistently been approved by Illinois courts;<sup>23</sup> and the *Christiansen* dictum, that a thousand-dollar filing fee would violate this provision,<sup>24</sup> implies approval of the measure of reasonableness which dictated those decisions. The *Christiansen* opinion does not make clear why the right to justice without sale is qualified and to justice without delay absolute.

Chief Justice Schaefer in a concurring opinion suggested a final argument for subjecting the right to justice without delay to reasonable legislative restriction. "To the extent that . . . [Section 19] may be thought to have a bearing upon the validity of legislation, it adds so little to the due process clause that I would measure its breach . . . by an appraisal of the reasonableness of the particular delay involved in terms of the objective which the legislature sought to accomplish."<sup>25</sup> This suggestion finds support in those constitutions which spe-

<sup>19</sup> Del. Const. Art. I, § 9; La. Const. Art. I, § 6; R.I. Const. Art. I, § 5; Utah Const. Art. I, § 11; Vt. Const. c. II, § 28.

<sup>20</sup> *Kyger v. Koerper*, 355 Mo. 772, 207 S.W. 2d 46 (1946); *Malin v. La Moure County*, 27 N.D. 140, 145 N.W. 582 (1914); *State ex rel. Rothrock v. Haynes*, 83 Okla. Crim. App. 387, 177 P. 2d 515 (1947) (semble); *Martin v. Martin*, 25 Ala. 201 (1854) (semble).

<sup>21</sup> Ill. Const. Art. II, §§ 2-16, 18.

<sup>22</sup> *Allen v. Pioneer Press Co.*, 40 Minn. 117, 41 N.W. 936 (1889); *Henry v. Cherry & Webb*, 30 R.I. 13, 73 Atl. 97 (1909); cf. *Welch v. Davis*, 342 Ill. App. 69, 95 N.E. 2d 108 (1950), rev'd (without mention of Section 19) 410 Ill. 130, 101 N.E. 2d 547, 28 A.L.R. 2d 656 (1951) (the Appellate Court said of the first part of Section 19: "[It] is more of a statement of philosophy than a rule which can be used to solve cases." *Ibid.*, at 77, 112).

<sup>23</sup> E.g., *Casey v. Horton*, 36 Ill. 234 (1864); *Morrison Hotel Co. v. Kirsner*, 245 Ill. 431, 92 N.E. 285 (1910).

<sup>24</sup> 2 Ill. 2d —, —, 118 N.E. 2d 262, 267 (1954).

<sup>25</sup> *Ibid.*, at —, 270.

cifically include, in provisions comparable to Section 19, the words "due course of law."<sup>26</sup> Similarly Section 19 originally contained the terminating phrase "conformably to the laws,"<sup>27</sup> which may be synonymous with "according to due process of law."<sup>28</sup> At least the substitution of the phrase "by law" in 1870 seems to bear out an intention to relate the clause to due process.<sup>29</sup> Since the notion of reasonableness is inherent in the concept of due process,<sup>30</sup> reasonable limitation of all rights which may be granted by the justice-without-delay provision of Section 19 seems justified.

It is submitted that the most appropriate reading of the justice-without-delay provision in the Illinois Constitution will interpret it as an exhortation directed at the judiciary. If interpreted as a limitation on legislation, however, it should be considered as a definition of one aspect of due process.<sup>31</sup> The right it creates, therefore, should not be held absolute but should be considered subject to reasonable legislative limitations.

The utility of pre-filing delays in marital actions—if such delays are found to be reasonable and therefore constitutional—remains to be examined. The divorce rate is unquestionably a cause for concern and reconciliation machinery may help to reduce it. Reconciliation probably has a greater chance for success prior to publication in the complaint of ugly charges. But these propositions are manifestly inapplicable to a great many marital causes of action.

The *Christiansen* decision points out that delays preceding suits to annul void marriages serve no purpose.<sup>32</sup> This proposition seems unarguable; reconciliation cannot validate a void marriage.<sup>33</sup> The possibility of reconcilia-

<sup>26</sup> E.g., Conn. Const. Art. I, § 12; Ind. Const. Art. I, § 12; Pa. Const. Art. I, § 11; cf. Del. Const. Declaration of Rights § 12 and Md. Const. Art. I, § 19 ("according to Law of the Land").

<sup>27</sup> Ill. Const. Art. XIII, § 12 (1848).

<sup>28</sup> See, e.g., Mott, *Due Process of Law* 93-95 and notes 32-35 (1926).

<sup>29</sup> The forbear of the phrase "due process of law" is found in chapter 39 of the Magna Charta: "by the laws of the land." *Ibid.*, at 5.

<sup>30</sup> E.g., *Nebbia v. New York*, 291 U.S. 502, 537 (1934).

<sup>31</sup> *McGehee*, *Due Process of Law* 23 n. 4 (1906) ("when the article providing due process is incomplete or is omitted altogether . . . protection for life, liberty, and property" may still be provided by "provisions of various constitutions, such as the guaranty of certain remedies for wrong and injustice, either without delay, or by due course of law"); cf. Mott, *op. cit. supra* note 28, at 24 n. 37 ("[f]our out of five states which have omitted [due process] protection from their fundamental law have incorporated a clause" similar to Section 19). It is possible that such clauses should be interpreted as one form of equal-protection provision. Colo. Const. Art. II, § 6, is comparable to Section 19 and is entitled, "Equality of justice." Neither the New York nor the Iowa constitution contains a Section-19 counterpart. New York has, however, an equal-protection constitutional provision—N.Y. Const. Art. I, § 11; and the Iowa constitution has a privileges-and-immunities clause—Iowa Const. Art. I, § 6. Michigan, however, has none of these but has only a due-process clause in its constitution—Mich. Const. Art. II, § 16.

<sup>32</sup> 2 Ill. 2d —, —, 118 N.E. 2d 262, 269 (1954).

<sup>33</sup> Annulment of a void marriage is obtainable in Illinois. *Pyott v. Pyott*, 191 Ill. 280, 61 N.E. 88 (1901) (mental incapacity); *Whelan v. Whelan*, 346 Ill. App. 445, 105 N.E. 2d 314 (1952) (first cousins); *Hunt v. Hunt*, 252 Ill. App. 490 (1929) (bigamy). But see *Sutton v. Leib*, 199 F. 2d 163 (1952).

tion appears equally meaningless in suits for divorce on grounds of bigamy and impotency;<sup>34</sup> of highly doubtful utility where the moving party charges the defendant spouse with an attempt on his (or her) life "by poison or other means showing malice" or with the communication of a venereal disease;<sup>35</sup> and of hardly greater use where the grounds of the divorce action are the alleged commission of a felony or other infamous crime, two years' habitual drunkenness, or adultery.<sup>36</sup>

An Illinois prerequisite to a decree for separate maintenance is proof that the moving party is not living with the defendant spouse.<sup>37</sup> Assuming that extension of the delay already involved in establishing separate residence increases the possibility of reconciliation, it is nonetheless questionable whether the filing of a complaint can be usefully delayed. The inevitable publication to the community, by the separation of spouses, of the existence of serious marital discord seems only slightly less injurious than the filing of charges; and decrees of separate maintenance do not dissolve marriages—reconciliation remains a possibility after they are rendered.

Delays prior to the annulment of voidable marriages may be effective in saving some of them from failure. The desirability of reconciliation in all such instances is far from certain, however. Is it so clear, for example, that a non-age,<sup>38</sup> coerced,<sup>39</sup> or defrauded<sup>40</sup> party should be encouraged to accept the serious responsibilities of marriage despite a prior conviction that the marriage is undesirable?<sup>41</sup> The probable frequency, even assuming the desirability in all cases, of lasting reconciliation of the parties to such marriages does not seem high.

Nonetheless, delays prior to some actions for divorce may have merit. A prospective divorcee's reflection on the expense, the publication of intimate personal details, the potentially devastating results to children, and the moral implications of divorce is unquestionably desirable. Enforced waiting periods could stimulate reflection, and at the least might result in a decision by the parties to seek professional help.

It seems unlikely, however, that lasting reconciliation often can be effected in six weeks' time. Far more frequently patient counseling over an extended period would appear necessary. A circuit court would not seem to have the required time at its disposal, and only its authority in the community would

<sup>34</sup> Ill. Rev. Stat. (1953) c. 40, § 1 (grounds for divorce).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> Ill. Rev. Stat. (1953) c. 68, § 22.

<sup>38</sup> *Mathes v. Mathes*, 198 Ill. App. 515, 523 (1916).

<sup>39</sup> *Short v. Short*, 265 Ill. App. 133 (1932).

<sup>40</sup> *Lyndon v. Lyndon*, 69 Ill. 43 (1873); *Arndt v. Arndt*, 336 Ill. App. 65, 82 N.E. 2d 908 (1948).

<sup>41</sup> Conference on Divorce, Univ. Chi. Law School (1952). Remarks by Dr. Thomas French at 62: "A psychiatrist soon learns that it is not his business either to try to save a marriage or try to destroy it. Not all marriages are worth saving."

appear to recommend it for any role in this counseling process<sup>42</sup>—even if demands on its time and constitutional objections<sup>43</sup> could be ignored.

If an attempt is made to draft a revised statute which provides for a "cooling-off" period in certain divorce actions, consideration should be given to one other problem. Prospective plaintiffs were forced by the statute invalidated in the *Christiansen* case to wait six weeks before obtaining jurisdiction over defendant spouses. The filing of an intention to seek divorce was an invitation to the defendant to leave the jurisdiction to avoid service of process. "Waiver" of the waiting period and a writ of *ne exeat*<sup>44</sup> were available to prevent this departure, but the plaintiff could not be sure that either could be obtained in time. Divorce remained available after a defendant's departure since service by publication is possible.<sup>45</sup> No alimony award can be obtained, however, in a default action.<sup>46</sup> It would therefore seem desirable that plaintiffs be permitted to obtain personal jurisdiction without delay.

To make this possible, without creating the obstacles to reconciliation which a detailed complaint might create, a revised statute might permit the plaintiff to file, instead of a statement of intention to bring action, a simplified-form complaint. This form might contain only the names of the parties, an allegation of jurisdiction, and a statement that ground for divorce under Chapter 40, Section 1, of the Illinois Statutes exists. The praecipe for summons seems adequate Illinois precedent for such a simplified procedure for the commencement of suits.<sup>47</sup>

The statute might further provide that subsequent to service of process on the defendant, and absent a showing that the defendant has left the jurisdiction, no further steps in the proceedings would be permitted during the stipulated waiting period. No action by the trial judge during this period beyond a recommendation that the parties consult marriage counselors should be authorized.

The potential of such a statute for ameliorating the "national tragedy of divorce" may deserve trial.<sup>48</sup>

<sup>42</sup> *Ibid.*, remarks of Dr. French at 62: "Therapy and compulsion do not go together very well. I question whether a specifically therapeutic approach is best associated with compulsory agencies such as the courts." And of Emily H. Mudd: "where marriage counseling is involved . . . special skills, background, and experience over and beyond routine graduate professional training are required for successful performance." *Ibid.*, at 65-66.

<sup>43</sup> See discussion of judicial functions note 6 *supra*.

<sup>44</sup> Ill. Rev. Stat. (1953) c. 37, § 72.26.

<sup>45</sup> Ill. Rev. Stat. (1953) c. 110, § 138.

<sup>46</sup> *Kelley v. Kelley*, 317 Ill. 104, 147 N.E. 659 (1925); *Mowrey v. Mowrey*, 328 Ill. App. 92, 65 N.E. 2d 234 (1946).

<sup>47</sup> Ill. Rev. Stat. (1953) c. 37, § 395. See, e.g., Fed. Rules Civ. Proc., Appendix of Forms, Rule 84 (1948).

<sup>48</sup> Statistics have been published allegedly indicating that the invalidation of the "cooling-off" period by the Illinois Supreme Court has resulted in a rise in the divorce rate. *Chicago Tribune* p. 3, col. 2 (May 1, 1954). Whether there is any relation between the two cannot be ascertained and nothing appears to have been published which indicates the number of reconciliations effected by the courts during the period in which the statute obtained or the number of such reconciliations which were not lasting. The statistics at least suggest, however, that further trial of "cooling-off" periods might be useful.