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Domestic Relations

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DOMESTIC RELATIONS

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INTRODUCTION**

The relatively few domestic relation laws enacted by the 1957 Florida Legislature will be discussed under the various headings of this article. Those bills which, in most cases, met a timely demise will be discussed in this section. The reader may feel that an inordinate amount of discussion is devoted to bills which failed of enactment. However, the writer believes, based upon the records of the last three regular sessions, that these bills will be resurrected, in one guise or the other, in the next session.

It is submitted that the legislature wisely defeated a measure[1] which provided that divorce suits brought against non-resident defendants could only be brought in the county where the plaintiff resided or the cause of action accrued. What difference does it make if the plaintiff desires to bring an action in some county other than his own? It is submitted that this is a frequent practice of plaintiffs to escape the embarrassment of having all the details of the complaint published in local newspapers. One bill[2] would have permitted the circuit court to relinquish jurisdiction to the juvenile court of portions of pending and adjudicated cases dealing with custody and support of children; another bill[3] provided that in the event of conflicting orders, involving child custody, the order of the circuit court would prevail, but that juvenile judges could, in cases of emergency, issue orders binding until reviewed by the circuit court in which the case originated. What is the wisdom of dividing a case into portions? If these bills became law, perhaps every case would be tried twice, once in the circuit court in order to decide the question of divorce, again in the juvenile court to determine the question of child custody and support. It is submitted that most chancellors will admit that their decisions regarding the custody of children are influenced, to some extent, by the conduct of the parents *vis a vis* each other. To deprive the juvenile courts of this testimony would force him to decide a case with an incomplete knowledge of the facts. In

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**For a few of the many law review articles on domestic relations published in the University of Miami Law Review (former Miami Law Quarterly) and the University of Florida Law Review during the last two years see: Adoption—Right to Inherit upon Readoption, XI M.L.Q. 140 (1956); Contracts—Antenuptial Agreements—Public Policy, XI M.L.Q. 143 (1956); Trowbridge, Domicile Problems of "Winter Residents," XI M.L.Q. 375 (1957); Torts: Husband's Liability to Wife for Prenuptial Personal Injury, X Univ. of Fla. L. Rev. 105 (1957).

1. Companion Bills, H.B. No. 44, H. 481, S.B. No. 625, 36th Regular Session, Florida (1957).

2. H.B. No. 778, 36th Regular Session, Florida (1957).

3. H.B. No. 1149, 36th Regular Session, Florida (1957).

order to overcome this defect, the parties would have to try the case *again* before him.

Another bill[4] would have permitted the circuit court to transfer alimony as well as support cases to the juvenile court for enforcement of orders. What connection with a juvenile court alimony has is beyond the writer's understanding. It would appear that the juvenile courts are zealously attempting to build an empire. If the legislature is determined to curtail the power of the circuit courts in domestic matters, perhaps the proper way is to create domestic relations courts which would have jurisdiction over every facet of marital cases, leaving to the juvenile courts jurisdiction limited to delinquent children.

Another bill[5] would have deprived notaries of their authority to solemnize marriages. If this bill were enacted, all marriages would have to be performed by a minister of the gospel or a judicial officer.

The legislature wisely defeated two bills[6] which would have made divorce decrees interlocutory for a period of sixty days. Most lawyers agree that when the final hearing has been held, and the parties have castigated each other's conduct sufficiently, it is somewhat late to hope that time and delay will develop a reconciliation.

Another measure[7] would have amended section 856.04 of the Florida Statutes by increasing the penalty from one year to not more than three years for desertion and withholding of support of children by a mother or father. Apparently, the effect of this bill would be to make certain that the wife and children would be without support for an additional period of two years while the father was incarcerated!

Along with the puerile bills that were defeated, two worthwhile measures were also defeated. In the first,[8] a parent would have been allowed to institute annulment proceedings where his child, under the age of sixteen years, was married without the parent's consent; in the second,[9] common-law marriages would have been abolished and prohibited after January 1, 1958. This bill further provided that all common-law marriages contracted prior to that date would have to be registered with the county judge within one year thereafter. According to press reports, this bill was defeated because the legislature feared that it would work an undue hardship upon our colored population. If the legislature had read the case of *Chaachou v. Chaachou*[10] (among others) it would soon realize that the common-law marriage rule creates more problems than it solves.

4. H.B. No. 1105, 36th Regular Session, Florida (1957).
5. H.B. No. 214, 36th Regular Session, Florida (1957).
6. Companion Bills, H.B. No. 47 and S.B. No. 63, 36th Regular Session Florida (1957).
7. S.B. No. 604, 36th Regular Session, Florida (1957).
8. H.B. No. 1104, 36th Regular Session, Florida (1957).
9. H.B. No. 41, 36th Regular Session, Florida (1957).
10. 73 So.2d 830 (Fla. 1954), *Modified on Rehearing*, 92 So.2d 414 (1957).

MARRIAGE

Common law marriages.—During the last two years the court decided only two cases dealing with common-law marriages. In the first case,[11] the court held that a common-law marriage had not been proved; the parties entered into a meretricious relationship in 1949 which continued for several years until temporarily interrupted by a marriage of the alleged wife to a third person and a subsequent divorce from him. She did not change her bank account, driver's license, social security card or other documents to reflect the alleged marital status. Since this relationship was conceived meretriciously, she had the burden of showing the transition from concubinage to marriage, which she failed to do. In the second case,[12] which had been before the court previously, the court quashed a lower court order which held the parties to be husband and wife and remanded for further testimony even though a prima facie case had been proved by the wife. The decision was apparently predicated upon the fact that much confusion and delay had ensued and justice required a final factual determination.

Presumption of the validity of a second marriage.—In a workman's compensation proceeding,[13] a woman proved that she had married a workman, now deceased, in Georgia in 1938 and that they had lived together until 1948, when the husband left her and never returned. She testified that she had never been served with divorce papers and that she had not secured a divorce. Her attorney testified that he searched the public records of Dade County, Florida, and that no divorce proceedings appeared therein. The Deputy and the full Industrial Commission held that she, by her testimony, overcame the presumption of the validity of an alleged subsequent marriage of her husband to another woman. The court reversed and held that the presumption of the validity of a second marriage is one of the strongest presumptions known to law, and that the burden of overcoming it rests upon the person attacking its validity; in this case the first wife would necessarily have to prove that she exhaustively searched the public records (bureaus of vital statistics) of Georgia and Florida to show that a divorce had never been granted to her husband.

ANNULMENT

In *Mahan v. Mahan*[14] an alleged wife filed for an annulment stating that she was so intoxicated that she did not know that she had been married until the day following the marriage. The alleged husband answered that he could neither admit nor deny the allegations of the complaint because at the time of the alleged marriage he also was so intoxicated that he could

11. Jordan v. Jordan, 89 So.2d 22 (Fla. 1956).
12. Chaachou v. Chaachou, 92 So.2d 414 (Fla. 1957).
13. Teel v. Nolen Brown Motors, Inc. 93 So.2d 874 (Fla. 1957).
14. 88 So.2d 545 (Fla. 1956).

not even state whether he was married to the woman. The facts showed no cohabitation of the parties after their reason returned. The court overruled the chancellor who had denied an annulment, stating:

> . . . , it cannot be doubted that if the party, at the time of entering into the contract, is so much intoxicated as to be non compos mentis, and does not know what he is doing, *and is for the time deprived of reason*, the marriage is invalid; but it is not invalid if the intoxication is of a less degree than that stated.[15]
> (emphasis added.)

Jurisdiction, Domicile and Venue For Divorce

In an apparent effort to curb the alleged divorce mill "industry" the legislature increased the residence requirements for divorce from ninety days to six months[16] and provided that no testimony on the merits should be taken in divorce suits for a period of thirty days after the cause is at issue "except for good cause at the discretion of the judge."[17] It is the opinion of the writer that the legislature was tilting at windmills in enacting these statutes. When the legislature finally realizes that the divorce "disease" is essentially a sociological psychological, moral, and religious problem, it, perhaps, will seek to find the basic causes and their cures.[18]

Estoppel by Judgement and Res Judicata As A Bar to Further Actions, Vacating of Decrees and Appeals

Estoppel by judgment and res judicata.—The court decided three cases involving the effect of foreign decrees asserted as a bar to Florida actions. In the first case the court seemed to hold that a husband's suit for divorce, based upon the wife's desertion and her habitual indulgence in a violent and ungovernable temper, would be barred under the theories of res judicata and estoppel by judgment. The wife pleaded two Massachusetts' decrees, one granting her separate maintenance based on the husband's fault and the other dismissing the husband's complaint for divorce based upon the wife's alleged cruel and abusive treatment and her alleged violent and ungovernable temper.[19] In the second case the court held that a New York decree granting the husband a divorce from bed and board on the ground of abandonment does not bar the wife's action for divorce in Florida on the ground of habitual intemperance because the actions are entirely different; therefore there was

15. *Id.* at 547.
16. Fla. Stat. § 65.02 (1941), as amended by c. 57.44, S.B. No. 64, 36th Regular Session, Florida (1957).
17. Fla. Stat. § 65.20 (1941), as amended by c. 57-258, S.B. No. 63, 36th Regular Session, Florida (1957).
18. See Rheinstein, *The Law of Divorce And The Problem of Marriage Stability*, 9 Vand. L. Rev. 633 (1956); Bradway, *Divorce Litigation And The Welfare of the Family*, 9 Vand. L. Rev. 665 (1956); McCurdy, *Divorce—A suggested Approach With Particular Reference to Dissolution For Living Separate and Apart*, 9 Vand. L. Rev. 685 (1956); Freund, *Divorce Law Reform*, 19 Modern L. Rev. 573 (1956) (British).
19. Carducci v. Carducci, 82 So.2d 360 (Fla. 1955).

no res judicata or estoppel by judgment.[20] In the third case, a New Jersey separate maintenance decree conclusively adjudicating that the husband was at fault in the separation of the parties, which occurred in 1951, estopped the husband from obtaining a divorce in Florida based upon the alleged desertion commencing with the original separation in 1951, and also upon mental cruelty which primarily consisted of the same desertion. The court pointed out that if the husband made a bona fide offer of reconciliation *after* that date, which was rejected by the wife, the husband might allege a desertion commencing with the rejection.[21]

Effect of divorce decree prior to recordation.—In a case of first impression, the court held that where a divorce decree merely dissolved the marriage and did not provide for any other relief it was effective from the time it was signed, not from the time of recordation; hence, when the husband died within minutes after the decree was signed, but before it was recorded, the marriage was dissolved and his alleged widow had no claim to his large estate. The law is that no action may be taken on a final decree until it is recorded, that is, the final decree is effective as a basis for subsequent proceedings (as distinguished from dissolution of the marital status) only when recorded.[22]

Petition for re-hearing as tolling the time for an appeal.—For the sake of uniformity, the court held that the timely filing (within ten days) of a petition for re-hearing in chancery tolled the time for filing an appeal in the same manner as does a motion for a new trial on the law side of the court.[23]

Vacating of decrees.—In a decision, which re-affirmed the holding in the *Lorenz* case,[24] the court held that it was improper for a chancellor to vacate a final decree of divorce merely because a divorced wife sent the chancellor two letters to the effect that she lied about her residence when she obtained the divorce. No suit was properly brought to attack the solemn decree and the proceeding *ex mero motu* was wholly irregular; therefore there was no foundation for the decree setting aside the divorce.[25]

GROUNDS AND PROOF FOR DIVORCE

Cruelty.—When the plaintiff failed to prove that the defendant had been guilty of extreme cruelty, because of a lack of corroboration, a divorce was denied even though the parties had been separated twenty years and the chancellor felt that the parties ought to be divorced. The supreme court

20. Horn v. Horn, 85 So.2d 860 (Fla. 1956).
21. Field v. Field, 91 So.2d 640, Fla. 1956).
22. Berkenfield v. Jacobs, 83 So.2d 265 (Fla. 1955).
23. Ganzer v. Ganzer, 84 So.2d 591 (Fla. 1956).
24. State *ex rel.* Lorenz v. Lorenz, 149 Fla. 625, 6 So.2d 620 (1942).
25. Hoffman v. Hoffman, 92 So.2d 524 (Fla. 1957).

rejected the thesis of the plaintiff that a divorce would be "practicable" under the circumstances on the ground that the dissolution of marriage was not to be taken lightly and the authority of the court was limited by the proof of the parties.[26] It seems strange to the writer that we perpetuate our Anglo-Saxon system of law which demands that the winning party must satisfactorily besmirch the other in order to obtain a divorce. If the parties can not live together as man and wife, why should the law continue the legal existence of the marriage when it does not exist in fact? The laws of Nevada and Cuba allow the dissolution of a marriage for incompatibility of character; Peru recognizes the ground of hatred; Uruguay permits divorce if it is the will of the wife, provided she expresses the desire three times in six months; and the former Russian Code of 1924 permitted divorce upon the simple desire of either party.[27] Our system would seem to make the separation more bitter and, in many cases, force the parties to resort to perjury. In a later decision, in accord with the above case, the court reaffirmed the rule[28] and held that a divorce could not be granted on the un-corroborated testimony of one party.[29]

Extreme cruelty as a ground for divorce is relative; hence, when a husband constantly criticized the actions of his wife, caused her to feel she lived in a constant aura of criticism which induced asthmatic attacks, and filed an un-founded suit for divorce against her, the court held the ground was sufficiently proved.[30-31]

Desertion.—In a very interesting case, involving many evidentiary problems, the court held that wilful, obstinate and continued desertion had been proved. The wife testified that her husband left her and she produced two witnesses who, although never having met the husband, testified that no man had lived with the wife for over a year. The court stated that:[32]

> From the testimony of the corroborating witnesses there follows only one reasonable, and indeed inescapable, inference which is that Mr. Lear was guilty of having lived apart from his wife and neglected his marital duties for a period greater than one year. An inference of this character is by law elevated for the purpose of further inference to the dignity of an established fact. It may independently, or together with other established facts, become a predicate for a further inference, contrary to the general rule that one inference may not be superimposed upon another. . . . This inference so dignified, considered in connection with the evidence

26. Straughter v. Straughter, 87 So.2d 499 (Fla. 1956).
27. Millás, *Cuban Divorce Law*, 3 M.L.Q. 269 (1949).
28. It was established in 1924 in the case of Dean v. Dean, 87 Fla. 242, 99 So. 816 (1924).
29. Holmes v. Holmes, 95 So.2d 593 (Fla. 1957).
30. Grossman v. Grossman, 90 So.2d 115 (Fla. 1956).
31. The case of Collins v. Collins, 88 So.2d 604 (Fla. 1956) involving charges and counter-charges is not discussed in this article because the writer feels it was not worthwhile.
32. Lear v. Lear, 95 So.2d 519 (Fla. 1957).

> as a whole, gives rise to the further inference that such desertion was wilful and obstinate, for otherwise Mr. Lear would have returned and resumed his marital obligations. . . .[33]

Procedure on appeal.—A motion to affirm the decree on appeal will be sustained by the supreme court under rule 38 of the Florida Supreme Court Rules of Practice where there is competent substantial evidence to support the chancellor's findings of extreme cruelty and desertion.[34]

ALIMONY, SUPPORT AND PROPERTY RIGHTS IN DIVORCE AND SEPARATE MAINTENANCE DECREES

Because both the right to alimony and the amount thereof are primarily based upon the facts of each case, the writer has been forced to include the pertinent facts of each case and he begs the indulgence of those readers who may expect to read abstract "principles of law."

The court decided three cases which, to the writer, seem somewhat inconsistent in result. In *West v. West*[35] the court affirmed an alimony award of twenty-five dollars per month from a husband who was earning $335.00 per month. When one considers that the wife was permanently disabled in an accident and that her doctor's bills amounted to approximately $800.00 per year, one is forced to agree with the dissenting view that:

> In this case had the Chancellor denied alimony entirely it would have come with better taste, but a mere pittance of twenty-five dollars per month indicates to me that the Chancellor was following literally the *Longino* case rather than actually giving her an award based on her need and her husband's ability.[36]

In *Newman v. Newman*[37] the court held it was error for a chancellor to refuse to award any alimony to the wife when the facts showed that the parties were married sixteen years; the wife was forty-eight years old and in poor health; the husband was receiving $132.00 per month pension and owned several thousand dollars worth of government bonds, while being owed approximately $4,000.00 on a loan; and that it was the husband's actions which caused destruction of the marriage. What is the real difference between no alimony and twenty-five dollars per month, except that the latter pittance will prolong the wife's starvation agonies a few more days? In the *cause célébre* of *Astor v. Astor*,[38] the wife left the husband after six weeks of marriage. The husband was well endowed with this world's goods, having an estate worth $4,750,000.00, with a net income in 1954 of

33. *Id.* at 521.
34. Trobaugh v. Trobaugh, 81 So.2d 629 (Fla. 1955).
35. 86 So.2d 267 (Fla. 1956).
36. *Ibid.*
37. 94 So.2d 841 (Fla. 1957).
38. 89 So.2d 645 (Fla. 1956).

$63,000.00; he spent $238,000.00 during 1954 for "personal expenses." The chancellor, having serious doubts about the wife's sincerity awarded her twenty-five dollars per week; the supreme court increased the award to $250.00 per week "in order to conform reasonably with the mode of living that the husband has set for himself." One could well believe that the wife was handsomely "rewarded" rather than "awarded" for her arduous travail of six weeks of marriage!

Reduction of alimony because of bad moral behavior of ex-wife.—The case of *James v. James*[39] which seemed to condition the right of the former wife to receive alimony upon her continued good moral behavior seems difficult to justify. The parties were divorced and the wife was awarded alimony of $190.00 per month. In 1953 the lower court, upon petition of the ex-husband, relieved him from future payments until "the further order of this court" because the court found that the ex-wife had been living with another man as "man and wife." In 1955, the ex-wife petitioned the lower court to reinstate the 1948 order, vacate the 1953 amendatory order, and increase the alimony to $250.00 a month. The supreme court held that the 1953 order was res judicata unless obtained by fraud, collusion, deceit or mistake. However, the wife did have the right for a re-examination by the court as to her right to obtain alimony in the future "and to persuade the court, if she can, that her misconduct in the past should not mitigate against her right to recover alimony in the future." The writer does not disagree with the res judicata aspect of the case. However, why the ex-wife's living meretriciously with another man should cut off her right to alimony is beyond the writer's understanding. If the former wife's living with the other man was actually a common-law marriage there would be no question that this marriage would destroy her right to continued alimony. However, it is submitted that after a divorce and in the absence of children, neither party should have any control, directly or indirectly, over the subsequent moral behavior of the other spouse. If the paramour were actually supporting the woman, then the issue should merely be one of economics, that is, does the wife need alimony if she is being supported by another?

Lump-sum awards.—Although a Florida statute[40] confers jurisdiction upon a chancellor to order a lump-sum payment of alimony, the court has heretofore held that this should not be done where it would unreasonably deplete the husband's financial position or endanger his economic status.[41] However, there are instances where some special equities might make this advisable. Therefore, when a wife and her parents have helped a husband to acquire property and the husband has demonstrated by past conduct with other wives that he will fail to abide by alimony and support orders, it is proper to compel him to deed property to the wife, one-half

39. 84 So.2d 914 (Fla. 1956).
40. FLA. STAT. § 65.08 (1947).
41. Yandell v. Yandell, 39 So.2d 554 (Fla. 1949).

of the income therefrom to be charged for the support of the children of the marriage.[42]

In the absence of a statute, a Florida court has no authority to award lump-sum alimony in a separate maintenance suit or a suit for alimony unconnected with divorce. However, the court stated that:[43]

> Although in a separate maintenance proceedings the property rights of husband and wife in the income from estates by the entireties may be adjusted, (*White vs. White*, Fla. 1949, 42 So.2d 710), we have heretofore held that in such a proceeding a division of the husband's property and transfer to the wife is not proper, even though he might properly be required to provide living accommodations for her. *Randall v. Randall*, 158 Fla. 502, 29 So.2d 238.[44]

In another case the chancellor awarded the wife $50,000.00 as lump-sum alimony to be paid within two years; until the amount was paid she was to receive $125.00 per week. The court held that these weekly payments were not to be charged against the lump-sum award. The supreme court modified the decree by awarding the wife interest at six per cent per annum on the lump-sum from the date of the decree until paid, less the weekly amounts actually paid and less "interest accrued thereon at the rate stipulated when the lump-sum is ultimately paid."[45]

Right to alimony as affected by divorce obtained on constructive service.—For those lawyers who handle "migratory" uncontested divorce cases and are therefore concerned over questions of alimony which may develop in the future, two cases are of special importance. In the first, a United States Supreme Court decision, the Court was presented the following interesting fact situation. A husband and wife were domiciled in Florida; later the wife moved to Ohio and the husband filed suit for divorce in Florida. Service upon the wife was made by publication and she did not appear in the action. The Florida court entered a final decree of divorce, the pertinent part stating that the wife:

> . . . has not come into this court in good faith or made any claim to the equitable conscience of the court and has made no showing of any need on her part for alimony. It is therefore, specifically decreed that no award of alimony be made to the defendant. . . .

After the rendition of the decree, the Ohio courts awarded the ex-wife alimony; the ex-husband claimed in the instant action that the Ohio courts had not given full faith and credit to the Florida decree. The majority of the Supreme Court held that the Florida court did not purport to adjudicate

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42. Lindley v. Lindley, 84 So.2d 17 (Fla. 1955). The court cited section 65.14 of the Florida Statutes as authority for the ordering of the conveyance as security for performance of the award of alimony.

43. Bredin v. Bredin, 89 So.2d 353 (Fla. 1956).

44. *Id.* at 356.

45. Williams v. Williams, 85 So.2d 225 (Fla. 1955).

the question of alimony and did not deny her any; therefore the Ohio courts had not failed to afford the Florida decree full faith and credit. The dissenting Justices stated that the decree was plainly a denial of alimony, not because the court had left the matter open, but because the chancellor thought that the wife should not have any alimony; therefore, there was a direct conflict between the Ohio and Florida decrees. However, the dissenters stated that since the Florida court never obtained personal service upon the wife, it did not have jurisdiction to enter a personal judgment against the wife depriving her of right to alimony. Therefore the Ohio court did not have to give full faith and credit to the Florida decree.[46] In the second case, the supreme court held in accord with the "divisible divorce" theory enunciated in the *Pawley*[47] case; a final decree of divorce granted in Alabama upon constructive service dissolved the marriage, but did not affect the rights of the wife under a pre-existing Florida separate maintenance decree.[48]

Modification of alimony awards.— In *McArthur v. McArthur*[49] the facts indicated that: the wife had about $5,000.00 in cash; she had outstanding obligations of about $600.00; she was forced to give up working; she was fifty-three years old; her husband paid income taxes in excess of $50,000.00 in 1955; he had inherited $300,000.00 from his second wife and had sold real property in excess of $1,000,000.00. She was held to have shown a change in circumstances since the rendition of a former alimony decree and to be entitled to more than fifty dollars a week alimony.

Division of property.—In the absence of proof and pleadings, a chancellor was not authorized to order a sale of property held as an estate by the entirety with the proceeds, less expenses, to be distributed to one of the parties.[50]

MISCELLANEOUS

Effect of decrees against non-parties to suit.—Since a corporation is a "person" within the meaning of the due process clause of the fourteenth amendment to the United States Constitution, the chancellor, in a divorce suit, had no right to enter a judgment against a non-party corporation in favor of the husband for money allegedly loaned to the corporation even though the wife owned 498 shares out of 500 shares issued.[51]

Effect of re-marriage asserted as a bar to an appeal from a divorce decree.—Although a husband who remarried, pending an appeal from a divorce decree entered against him, was estopped to attack that part of

46. Armstrong v. Armstrong, 350 U.S. 568 (1956), petition for *rehearing denied* 351 U.S. 943 (1956).
47. Pawley v. Pawley, 46 So.2d 464 (Fla. 1950), *cert. denied* 340 U.S. 866 (1950).
48. Sorrells v. Sorrells, 82 So.2d 684 (Fla. 1955).
49. 95 So.2d 521 (Fla. 1957).
50. Holmes v. Holmes, 95 So.2d 593 (Fla. 1957).
51. Freidus v. Freidus, 89 So.2d 604 (Fla. 1956).

the decree dissolving the marriage, he was not estopped to question the portions of the decree dealing with alimony, property rights, and attorney's fees.[52]

Res-judicata.—A wife sued for alimony unconnected with divorce[53] and her suit was dismissed because of her failure to prove that her husband failed to support her or their children; she later filed suit for divorce which also was dismissed for lack of proof. The chancellor had no authority to award alimony because he already had determined the question adversely to her. The court stated that an examination of the facts showed that the wife had taken money from their joint bank account after the husband had agreed that this money should be used to support her and their children; hence he was not guilty of withholding support.[54]

PROPERTY AND TORTS

Cases involving property, torts, and insurance are discussed elsewhere in this issue.

ATTORNEY'S FEES

Criteria for award.—The defendant husband earned in excess of one hundred dollars per week as a carpenter, had a very small bank account, and was forced to borrow $1,000.00 from his employer to pay hospital bills, mortgage payments, doctor's bills, etc.; it was shown that the wife's assets were slight. Under these circumstances the court reversed a lower court award of $1,000.00 in fees to be paid to the wife's attorney, remanding the cause to the lower court to determine what amount was "fit, equitable and just in view of the circumstances of the parties." The court cautioned that every record should contain evidence and recitals which support the fee awarded so that there will be a basis upon which the supreme court can intelligently weigh the judgment of the trial court.[55] However, in a later case the supreme court awarded $250.00 to the wife's attorneys for their services rendered on appeal without any indication as to the criterion used to award the sum.[56]

Where the husband had a bare subsistence for himself after making contributions to the support of his children, the court refused to disturb an award of $200.00 attorney's fees against the husband as inadequate, the court stating that:[57]

> In the matter of the allowance of attorney's fees, it may be that the amount allowed, $200.00, was inadequate. The criterion to govern the allowance of attorney's fees in a divorce is 'from the

52. Weatherford v. Weatherford, 91 So.2d 179 (Fla. 1956).
53. FLA. STAT. § 65.10 (1941).
54. Egland v. Egland, 92 So.2d 647 (Fla. 1957).
55. Hryckowian v. Hryckowian, 82 So.2d 879 (Fla. 1955).
56. Collins v. Collins, 88 So.2d 604 (Fla. 1956).
57. Shephard v. Shephard, 87 So.2d 807 (Fla. 1956).

> circumstances of the parties and nature of the case may be fit, equitable and just.' Section 65.08, Florida Statutes, F.S.A., *Hryckowian v. Hhychowian*, Fla., 82 So.2d 879. In contested cases what is 'fit, equitable and just' is at times beyond the reach of of litigants to pay. In such cases the answer to the question is determined by how much the traffic will bear and we cannot say that the chancellor adduced a wrong answer to that question. Such cases are often so unpleasant to litigate that attorneys refuse to take them and it is doubtful if those who do are ever adequately compensated. Such cases may be catalogued as liabilities of the profession.[58]

When the husband petitioned the court to terminate a previous alimony award, but did not press the matter, and the wife petitioned to increase the previous award, she was not automatically entitled to attorney's fees for contesting the ex-husband's petition because she was acting affirmatively; the matter was stated to be addressed to the discretion of the court.[59]

Custody and Support of Children

Custody—*Parents v. grandparents and aunts.*—The court decided four cases which seem to indicate a possible trend towards making grandparents and aunts permanent "baby sitters." In the first case,[60] a mother of two children aged twenty-one months and three days, died. Two weeks later the husband left the children with their maternal grandparents in Florida. Subsequently the father returned to Florida from California and filed a writ of habeas corpus which was denied; the court awarded custody to the maternal grandparents. At the same time the county judge ordered the father to contribute to the support of his children. The father's petition to the circuit court to modify its order was denied. The supreme court affirmed, stating that it was in the best interests of the children to stay with the grandparents. Although the father had not permanently relinquished his right to enjoy the custody of his children; he would have to more clearly demonstrate that the enjoyment of this right would be in the interest of the children. Justice Drew, in a strong, well reasoned dissent, stated that the court would not deprive the father of his children forever and that the sooner the father regained custody, the less the injury to the grandparents and the children.

In the second case[61] the court affirmed a ruling of the chancellor, giving custody of two minor children to the paternal grandparents, because the children were well provided for, attended school and church regularly, were well disciplined, and the children preferred living with them; the mother was unstable and the father not too dependable.

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58. *Id.* at 809.
59. McArthur v. McArthur, 95 So.2d 521 (Fla. 1957).
60. State *ex rel.* Sparks v. Reeves, 81 So.2d 754 (Fla. 1955).
61. Shephard v. Shephard, 87 So.2d 807 (Fla. 1956).

In the third case,[62] the special master recommended that three minor children be awarded to the mother. The chancellor, without stating any reasons in his decree, awarded the two youngest children to the mother, the oldest child to the father, with custody to the father's mother when the father was absent from home, which was approximately six months out of each year. The supreme court reversed the chancellor and held that all three children should be with the mother in order, among other things, to avoid a further family separation.

In the fourth case[63] the court affirmed the action of the lower court in taking the custody of a fifteen year old boy from his mother, and giving it to the boy's paternal aunt, because the atmosphere of the home of his mother and new step-father was intolerable to him. From this home he emerged underweight, undernourished and weighing only seventy-nine pounds at age fifteen. The court made some important procedural rulings which are discussed in the following section.[64]

Jurisdiction and procedure.—In another case,[65] apparently of first impression in Florida, the court held that where the Volusia County circuit court entered a divorce decree providing for the support of a minor child, and subsequently the ex-husband moved to Connecticut and the ex-wife moved to Duval County, the Duval circuit court had jurisdiction when the ex-wife filed proceedings under the Uniform Reciprocal Enforcement of Support Law.[66]

In a proceeding brought to increase a support award, it was not necessary for service of process to be made upon the defendant husband-father since it was not a new action, but merely a continuation of the original proceeding. All that was required was that he be given adequate notice and an opportunity to be heard before the decree was altered in a manner that would directly affect his person, status or property; this would be accomplished if a copy of the petition were mailed to him even though he resided in a different state.[67]

It was erroneous for a chancellor to enter an order directing that a juvenile officer take custody of children without any notice to the mother (who in the instant case had received custody from the same chancellor two years previously) pursuant to a petition which failed to allege that notice would accelerate injury and which failed to provide any other excuse or reason for failure to give notice to the mother.[68]

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62. Arons v. Arons, 94 So.2d 849 (Fla. 1957).
63. Grant v. Corbitt, 95 So.2d 25 (Fla. 1957).
64. See Note 67 *infra.*
65. Thompson v. Thompson, 93 So.2d 90 (Fla. 1957).
66. Fla. Stat. § 88.011 (1955).
67. Watson v. Watson, 88 So.2d 133 (Fla. 1956).
68. Abney v. Abney, 84 So.2d 905 (Fla. 1956).

A father petitioned for modification of a support award and the chancellor denied the petition; the court did not reverse the ruling of the chancellor because the father failed to accompany his petition with a certified transcript of the record of the proceedings. The court was ignorant of the testimony and could not accept the unverified averments of the petition.[69]

In a case of first impression, the court held that a writ of attachment[70] ordering the sheriff to take a defendant father into custody and detain him until he paid the amount of arrearages of a child support order was not the proper remedy because:

> So to apply it would substitute the arbitrary action of the rule for contempt proceedings and thereby circumvent the protection accorded a defendant under the Constitution by depriving him of the opportunity to meet the charge before incarceration.[71]

In an opinion, which the writer feels is entirely unjust and tragic, the court affirmed an award of custody of a minor daughter to her mother whom the chancellor found to be guilty of numerous adulteries and of extreme cruelty and quite unfit to have the custody of the child. The father, although a fit person to have custody of the child, had no home in which to raise her except with hired help who would be in complete charge during his many absences. The court affirmed because the father failed to include in his appellate appendix any testimony regarding the character of the wife and her fitness or unfitness to be guardian. The final decree itself stated that the mother was unfit to have custody. If this were not considered sufficient, the court should have, in the best interests of the child, requested, or ordered the father to produce the lacking testimony. This procedure would admittedly be irregular, but when the court is dealing with the welfare of helpless children it should not sacrifice them because of any inadvertence of the father or his counsel. The opinion of the court granted on a petition for re-hearing added nothing to the sagacity of the final decision.[72] The court, in a later case involving custody of children, decided "to pass over the technicalities of procedure and to dispose of the case upon its merits," and held that it was technically erroneous to grant temporary custody of a child to his paternal aunt, who was not a party to the original divorce proceedings (which occurred some eleven years previous to the instant action). he mother was given notice and an opportunity to be heard, although she was given an opportunity to and did fully present her side of the case before the final hearing. The court justified its "bending" of the rules because "it is well settled that the welfare of the child is the paramount consideration in cases of this kind." The court further held that even though the legal domicile of the child may have been in Georgia (the

69. Connolly v. Connolly, 86 So.2d 167 (Fla. 1956).
70. Fla. R. C. P. (1954) r. 3.15.
71. Atkinson v. Atkinson, 80 So.2d 464, 465 (Fla. 1955).
72. Widett v. Widett, 88 So2d 769 (Fla. 1956).

home of the mother) the fact that the child presently resided in Florida gave the Florida court jurisdiction.[73]

Duration and modification of child support awards.—The financial ability of a father to pay more than a previous court award for the support of a minor child was held not the sole criterion. While the father's financial ability was undoubtedly a substantial factor, there were other elements, such as: the actual needs of the child, the advisability of spending more than a certain amount in the maintenance of the child, the general living conditions available to the child, and his station in life.[74]

In accord with the case of *Guinta v. Lo Re*,[75] a decree which ordered monthly payments for the support of a minor child did not survive the death of the father when he, by a will, disinherited the child. The dissenting opinion stated that the *Guinta* case should be overruled because today there is very little similarity between the child support laws of England and Florida. In England the father was not legally obligated to support his child even during the father's lifetime; the whole statutory and judicial policy of Florida is just the opposite, the dissenters stating that:

> It seems to me illogical to hold that as the father under English law is not legally bound to support his minor children and his estate is not accountable after his death, still the English law is applicable after the death of the father although in this state he is legally bound to support his minor children before his death.[76]

If the earning ability of a father decreased since the entry of a previous child support award, and one of the children has since become employed, the earnings of the child should be considered in determining the need of the child and the father's ability to pay.[77]

Important legislative enactments.—Section 65.141 of the Florida Statues was amended[78] by adding two sections which make it unlawful for any person with criminal intent to remove a child from the state without permission during the pendency of any suit affecting custody of the child after the person receives notice of the suit or fails to return a child who was removed with court permission. It is submitted that this statute should prove more effective than the usual temporary injunction or restraining order.

Miscellaneous legislative enactments.—Section 391.07 of the Florida Statutes was amended[79] by repealing the provision requiring the juvenile

73. Grant v. Corbitt, 95 So2d 25 (Fla. 1957).
74. Brown v. Brown, 84 So2d 311 (Fla. 1956).
75. 159 Fla. 488, 31 So.2d 704 (1947).
76. Flagler v. Flagler, 94 So2d 592, 596 (Fla. 1957).
77. Eisinger v. Eisinger, 95 So2d 502 (Fla. 1957).
78. FLA. STAT. § 65.141 (1955), as amended by c. 57-337, H.B. 637, 36th Regular Session, Florida (1957).
79. FLA. STAT. § 391.07 (1941), as amended by c. 57-215, S.B. 522, 36th Regular Session, Florida (1957).

court to determine the financial ability of parents to pay for medical care and treatment of indigent crippled children and vesting such determination in the Crippled Children's Commission.

Section 88.151 of the Florida Statutes was amended[80] by specifying who shall defray the costs and court fees under the reciprocal support laws.

Separation Agreements

Indirect attack.—A separation agreement, which was later incorporated in a divorce decree, provided that the husband and wife should each receive a one-half undivided interest in property being purchased under a contract for deed and that the husband should pay the balance of the payments. The husband, after the divorce, brought suit for partition alleging that he was "uncertain" about his rights under the contract. The suit was dismissed because the court refused to sanction the disturbance of the divorce decree by this indirect method.[81]

Reduction in alimony caused by husband's voluntary diminution in income.—A husband was not barred from applying for a reduction in an alimony award based upon a separation agreement where necessity for the change was brought about by voluntary action on his part (he moved his medical practice from Georgia to Florida with a resulting decrease in income) even though he had capital assets to meet, at least for a time, the obligation. The court was careful to point out that if the separation agreement were in fact a settlement of property rights, that is, if the wife had relinquished special equities in her husband's business or the legal title to property held as tenants by the entirety in consideration for the husband's promise to pay the wife a stipulated sum per month, then the husband could be required to meet the contractual obligation even though it must be met from his capital assets rather than from his income.[82]

Duration of alimony under separation agreement.—Under a separation agreement which provided:

> That the said payments to the plaintiff, as provided in paragraph numbered '5' hereof (weekly payments of twenty-five dollars per week to the wife), shall cease, upon the death of the plaintiff or upon her re-marriage to any person other than the defendant. . . .

the majority of the court held that since this agreement expressly provided for the continuance of the payments "until the death of the wife" his estate remained liable for the obligation in the same manner as it would be for any

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80. Fla. Stat. § 88.151 (1955), as amended by c. 57-405, S.B. 512, 36th Regular Session, Florida (1957).
81. Fisher v. Davenport, 84 So.2d 910 (Fla. 1956).
82. Fort v. Fort, 90 So2d 313 (Fla. 1956).

other legitimate obligation. The well documented dissenting opinion stated that the obligation to make weekly payments should cease.

> . . . unless by the terms and covenants of the separation agreement the husband, by express language which admits of no doubt, makes his obligation binding upon his estate.[83]

Setting aside separation agreements.—A wife testified that she and her husband had lived on a lavish scale, spending approximately $40,000.00 a year for living expenses. The master at the divorce hearing fully questioned her about her understanding of the agreement and she was properly represented. The court held that she could not but be aware of her husband's financial status and that she had failed to sustain the burden of showing that the agreement was obtained by her husband's alleged fraudulent representations regarding his financial condition.[84]

Effect of non-specific clause on a tenancy by the entirety.—A clause in a property settlement stipulation provided that:

> The said Rosalie Schrammel hereby releases, relinquishes and waives any and all other claims, dower rights or other rights she might have against the plaintiff, Frank Schrammel.[85]

This did not constitute a tranference by the wife to her husband of any independent property right which she had in an estate by the entirety, because the interest of a wife in an estate by the entirety is not a "claim" or "right" *against* her husband. In the absence of any provision in the divorce decree to the contrary, the parties became tenants in common.[86]

ADOPTION

Inasmuch as there is no statutory age limit in Florida for petitioners for adoption, the mere fact that the adopting father and mother were fifty-seven and fifty-three years old respectively would not, without more, bar an adoption. The fact that the petitioning mother was a "Psychic Reader" would not bar the adoption when it did not disturb the child. The remainder of the testimony showed that the natural mother consented to the adoption; a decree *pro confesso* was entered against the natural father; and that the adopting parents were fit. It seems very strange that the State Welfare Board reported that the petitioning parents were unfit and that the child should be committed to the Department of Public Welfare for further planning.[87]

In accord with the age aspect of the foregoing case, the court held that although a husband and wife were forty-eight and sixty-three years

83. Johnson v. Every, 93 So.2d 390, 396 (Fla. 1957).
84. Cower v. Cower, 95 So.2d 584 (Fla. 1957).
85. Quick v. Leatherman, 96 So.2d 136, 137 (Fla. 1957).
86. *Ibid.*
87. *In re* Brown's Adoption, 85 So.2d 617 (Fla. 1956).

old respectively, and had a limited annual income of "considerably more than $3,000.00," the chancellor abused his discretion in denying their adoption of a two and a half year old girl who had been in their custody for approximately one year. The adopting parents were in good health, wanted and loved this child, provided a good environment for her, and that "One with ten times the income and much younger might not be near so good a risk." Two justices dissented, and the writer confesses his inability to find one concrete reason stated justifying the dissent.[88]

Procedure.—When the consent of the natural mother to adoption was obtained by fraud, duress or both, the child was not a proper subject for adoption proceedings.[89]

It was error for the court to take judicial notice of what may be contained in the record of another distinct case unless it were bought to the attention of the court by being made a part of the record. However, when no testimony was recorded on a hearing for an interlocutory decree of adoption the court held it was unable to say that the lower court improperly took notice of other proceedings both civil and criminal. The presumption is that the lower court committed no error which was not rebutted by the appellants.[90]

Inheritance by adopted child.—Section 72.22 of the Florida Statutes was amended[91] to provide that when an adopted child has been subsequently adopted by some third party, or re-adopted by another or his natural parents, the child will not inherit from the first adopting parent in the absence of some evidence in writing that such first adopting parent considered such child his child for the purposes of inheritance, notwithstanding the subsequent adoption.

Guardianship and Guardians ad Litem

Gifts to minors.—The legislature has enacted the Florida Gifts to Minors Act[92] which prescribes the methods, procedures, rights and liabilities incurred in the making of gifts of money and securities to minors. The act is well drawn in that it seems to have been enacted, in part, to circumvent the rigidity, technicality, and expense of the guardianship laws.

Compensation of guardian.—A legally appointed guardian who properly performed his duties was entitled to compensation to be awarded by the court despite a contention that the guardian was a law clerk for a law partnership and was therefore a "mere nominee or dummy." The fact that the law

88. *In re* Duke, 95 So.2d 909 (Fla. 1957).
89. *In re* Adoption of Shea, 86 So.2d 164 (Fla. 1956).
90. *In re* Freeman's Adoption, 90 So.2d 109 (Fla. 1956).
91. Fla. Stat. § 72.22 (1943), as amended by c. 57-158, H.B. No. 690, 36th Regular Session, Florida (1957).
92. Chapter 57-53, S.B. No. 26, 36th Regular Session, Florida (1957).

clerk worked for a salary would not thereby entitle his employers to the guardianship fees. The court pointed out that if one's estate could be handled in the alleged manner, then the probate court could "farm out" the administration of every estate that comes within its jurisdiction, but the law does not so comtemplate.[93]

Guardian ad litem.—In a case of first impression under the Florida Civil Procedure Rules,[94] the court held that failure to appoint a guardian ad litem rendered a judgment against a minor voidable only, not void. Therefore, the judgment was not subject to collateral attack, but was subject to a direct attack if the incompetent defendant had a meritorious defense and was not properly represented.[95]

ILLEGITIMACY

Inheritance by illegitimate child. The Florida Statutes[96] requires two things to be proved to enable an illegitimate child to inherit from his putative father, namely: paternity and a written acknowledgment of paternity by the father made in the presence of a competent witness. In the event that the written acknowledgment has been lost, it may be established by secondary evidence under the general rules relating to the admissibility of secondary evidence of lost or destroyed writings. In the instant case the court held that a simple letter written by the alleged father if it directly, unequivocally and unquestionably acknowledged the paternity of the illegitimate child, was sufficient, provided it was written in the presence of (meaning to the knowledge of) the witness. The putative father must have been conscious of the fact that the writing was made within the knowledge of the witness. The court held that the explanation of the loss of the letter was doubtful, but decided the case adversely to the claimant upon the grounds that the testimony of the person who allegedly witnessed the writing of the letter was insufficient to prove its existence.[97]

Effect of pleading the fifth amendment by defendant.—A defendant in a bastardy proceeding may refuse to answer questions in a deposition by pleading his privilege against self-incrimination and he will not be subject to a summary judgment against him, *provided* he has other competent evidentiary support for his counter-affidavit filed in opposition to the motion. However, when his own testimony is *all* that he has to offer, and he forestalls testifying by asserting his constitutional privilege, then his affidavit has no *competent* evidentiary support and summary judgment may follow.[98]

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93. *In re* Guardianship of Krell, 85 So.2d 727 (Fla. 1956).
94. Fla. R. C. P. (1954) r. 1.17 (b).
95. Savage v. Rowell Distributing Corp., 95 So.2d 415 (Fla. 1957).
96. FLA STAT. § 731.29 (1955).
97. *In re* McCollum's Estate, 88 So.2d 537 (Fla. 1956).
98. Jones v. Stoutenburgh, 91 So.2d 299 (Fla. 1957).

The Florida courts, when asked to restore an infant to his natural mother, are not bound by mere legal right of parent or guardian. The courts are not bound to deliver a child into the custody of the claimant, but should, after a careful consideration of the facts, leave the child in such custody as the welfare of the child at that time appears to require.[99]

Legitimizing child by marriage of parents.—The legislature has wisely added a statute which provides that the marriage of the mother and putative father of a bastard child at any time after its birth legitimizes the child; upon the payment of all court costs and attorneys' fees a pending bastardy action shall be dismissed. The record of such proceedings shall be sealed against public inspection in the interests of the child.[100]

Juveniles and Juvenile Courts

Conflicts between juvenile and circuit courts.—It was the apparent theory of the legislature that juvenile courts, with supposed skill in child custody matters, could more effectively decide cases involving children than could the chancery courts. However, it is the view of the writer that with the apparent conflicts of jurisdiction between the courts these acts, instead of being a panacea, have developed into a carcinoma. An example of the foregoing is the *Watson*[101] case. A divorce decree was entered in 1954, and custody of three minor children was awarded to the mother. In April, 1955, the juvenile court assumed jurisdiction over the children as dependants and placed them in the custody and control of their grandfather. A few days later the circuit court entered an order which restrained the mother from removing the children and ordered them to be held by the aforesaid grandfather. Subsequently the juvenile court adjudicated the children as dependants and placed them with their father under the supervision of a court counselor. Despite the latter order, the circuit court authorized the mother to visit the children three mornings a week and to have the children visit her on Tuesday of each week. On June 6, the circuit court, without notice or hearing, directed the grandfather to deliver the children to the mother. On June 14, the circuit court ruled that it had jurisdiction and directed the grandfather to place custody of the children with their mother on Thursday of each week. Faced with this conflict between the courts, the supreme court held that the circuit court had jurisdiction of the estate and interests of minor children when brought into a divorce suit and that the circuit court could adjudicate their estates and interests at any time the circumstances warranted or the condition of the minor children so required. The juvenile court had no jurisdiction to adjudicate such "estate and interests," particularly their "estates," and the constitution is silent as to any intent

99. Arnd't v. Prose, 94 So.2d 818 (Fla. 1957).
100 Fla. Stat. § 742.091 (1957), as amended by c. 57-267, H.B. No. 393, 36th Regular Session, Florida (1957).
101. Pursuant to Fla. Stat. § 39.14 (1955).

to clothe them with such jurisdiction. The court stated that in some states the juvenile court may acquire jurisdiction over the children of divorced parents who later become "dependent" or "delinquent," but that the law of Florida does not so provide.

Scope of appellate review.—When an order of the juvenile court was appealed to the circuit court[102] and the case was brought to the supreme court by a petition for certiorari, the scope of review by the court was limited to a determination of the question whether the juvenile court misinterpreted the legal effect of the evidence as a whole or whether in some fashion it departed from the essential requirements of the law.[103] The *Hauser*[104] case is another case which illustrates the writer's opening remarks in this section. However, so as not to belabor the point, the facts of the case which show the shuttling back and forth of the case between the circuit court and the juvenile court are omitted. The ultimate holding was that the judgment of a circuit court (acting as an intermediate appellate court) which merely reversed the judgment of the juvenile court and remanded the case for further proceedings consistent with the ruling of the circuit court is not a final judgment that will support review by certiorari in the supreme court. The one exception to the foregoing rule is:

> . . . where the judgment of the Circuit Court reverses the judgment of an inferior court in such fashion and with such directions that would require the inferior court to proceed in violation of the essential requirements of the law should it abide by the judgment of the intermediate appellate Circuit Court.[105]

Attorney can not waive parents' rights to their children.—A juvenile court had jurisdiction over the natural parents and over the child and ordered the child temporarily committed to a licensed child-placing agency and reserved jurisdiction over the matter to make other orders "as may from time to time be necessary." It could not later, without giving notice to the parents, permanently commit the child to a licensing agency for adoption unless they executed before two witnesses and a notary public, or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child-placing agency.[106] A waiver of notice by the parents' attorney was not within the general scope of an attorney's authority to waive mere procedural requirements. Involved was a substantial right that could only be waived in the manner provided for in the statute.[107]

Juvenile court trials now open to the public.—The legislature has finally ripped away the iron curtain surrounding juvenile court trials by providing

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102. Pursuant to FLA. STAT. § 39.14 (1955).
103. Noeling v. Florida, 87 So.2d 593 (Fla. 1956).
104. Hauser v. Hauser, 93 So.2d 865 (Fla. 1957).
105. *Id.* at 867.
106. Pursuant to FLA. STAT. § 39.11 (D.E. 1955).
107. See note 97 *supra.*

that they are to be open to the public except in cases involving unwed mothers, custody or placement of illegitimate children, and "when the public interest or the welfare of the child in the opinion of the judge is best served by so doing."[108] It is submitted that this act subjecting juvenile delinquents to the white glare of publicity may do more to curb them than the former rule of secrecy. On the other hand, some delinquents seem to thrive upon notoriety. Only time will tell.

Interstate compact on juveniles.—In an attempt to cope with the problems of modern day "Huckleberry Finns," the legislature has enacted the Interstate Compact on Juveniles[109] which provides the procedures involved in the return of interstate juvenile runaways, escapees, and absconders.

Child labor laws.—The child labor laws were extensively amended as to minimum ages of employment, types of employment, hours of work, etc.[110]

Miscellaneous

Ne exeat bond.—A ne exeat bond was conditioned only upon continued presence of the principal within the state and his obedience to lawful orders and decrees of the court; therefore when the surety produced the principal in open court and requested release of the bond the chancellor had no other alternative but to discharge the surety. It was therefore improper to order that a portion of the bond be retained to secure the payment of court costs and attorney's fees.[111]

Divorce advertising.—Section 454.33 of the Florida Statutes which forbade any person from advertising that divorces could be procured by such person was repealed.[112] It is a pity that hundreds of other similarly useless laws could not be repealed in future sessions.

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108. Fla. Stat. § 39.09 (1951), as amended by c. 57-257, S.B. No. 60, 36th Regular Session, Florida (1957).

109. Fla. Stat. § 39.25 (1957, c. 57-298, S.B. No. 475, 36th Regular Session, Florida (1957).

110. Fla. Stat. § 450.011 (1953), as amended by c. 57-224, S.B. No. 676, 36th Regular Session, Florida (1957).

111. Aiken v. Aiken, 81 So.2d 757 (Fla. 1955).

112. Fla. Stat. § 454.33 (1941), as repealed by c. 57-39, H.B. No. 146, 36th Regular Session, Florida (1957).