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REPEAL OF STATUTES BY IMPLICATION AS APPLIED TO THE "TEN DAY" DIVORCE IN INDIANA

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Considerable conflict has arisen over the interpretation and construction of the recent enactment of the legislature, being Chap. 213, Acts of 1935, page 1019, entitled:

"AN ACT to amend section 1 of an act entitled "An act to amend section 367 of an act entitled 'An act concerning proceedings in civil cases,' approved April 7, 1881," approved March 8, 1883."

This act provides for some changes in civil procedure.

Recited therein is the specific amendment of Section 367 of the Civil Practice Act of 1881, Section 2-1905 Burns' Ann. St. 1933. Among other things, the act provides:

1. That the plaintiff may fix the day by endorsement on the complaint on which the defendant shall appear.

2. That if summons be personally served ten days before such day (or publication made in the manner provided), such action shall thereupon stand for issue and trial on such day.

3. That "the provisions of this act shall apply to all suits and proceedings for divorce."

It is apparent that this act is inconsistent with the Acts of 1923, page 467, Sec. 3-1211 Burns' Ann. St. 1933, reading as follows:

"The trial of no cause for absolute or limited divorce shall be had or heard by any court until after the expiration of sixty days from the date of issue of such summons as shall have been duly served on the defendant's spouse or from the date of the publication of the first notice to a non-resident defendant. Any trial had or decree rendered in any such case in less than such sixty days shall be null and void."

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In 1873, the original act pertaining to civil procedure was passed (Acts of 1873, chapter 43, Section 13). This act made provisions as follows:

"The cause shall stand for issue and trial at the first term of court after the summons has been personally served upon the defendant at least 10 days, or publication has been made thirty days before the first day of such term."

In 1881 the legislature, evincing a desire to speed up the trial of civil cases, included in the act on civil procedure the section which the Acts of 1935, page 1019, purports to amend. The Act of 1881 (Chap. 38, page 240, Sec. 376), provided among other things:

1. That every action shall stand for trial at the first term after commenced, if summons had been served ten days, or publication made thirty days before the first day of such term.
2. That the plaintiff may fix the day, by endorsement on the complaint, on which the defendant shall appear.

The amendment of 1935, it can be seen, simply moved up the trial day from the term following the filing of a complaint, to a date any time after the expiration of ten days after summons had been served. It is now possible to file and try a case within the same term, whereas, previously, this could not be done.

The Act of 1881 applied to "every action." However, to omit any doubt about proceedings for divorce, the legislature in 1883 added another sentence to the Act of 1881. Acts of 1883, Ch. 133, page 199, reads as follows:

"And it is also provided, that the provisions of this act shall apply to all suits and proceedings for divorce, the same as all other actions."

It is obvious that subsequent to the passage of this act, divorce proceedings could be tried and determined on any day of the term following which the action was filed, provided, however, that ten days had elapsed after summons had been served, or thirty days in the case of publication, as applicable to other civil proceedings. Evidently this practice was followed, for the case of *MacFarland v. MacFarland,* 40 Ind.

458, reveals the trial of a divorce proceeding approximately 54 days after it was commenced, noting, however, that the action was begun during vacation and also the fact that publication was necessary. The case of *Thompson v. Thompson,* 132 Ind. 288, 291, reveals the commencement of an action on October 12, 1886, and the granting of a divorce on the following day, the defendant having appeared to the action.

It was apparent, therefore, that if an action was commenced and service obtained ten days before the expiration of one term, trial could be had on the first day of the following term, so that on the whole, a divorce could be obtained in eleven days.

In 1913, the legislature, evidently recognizing that some deterrent should be placed upon the granting of quick divorces, enacted legislation permitting the trial of a divorce only after 60 days had elapsed following the filing of suit. But instead of amending the acts of 1881 and 1883, the legislature concerned itself with the old act of 1873, and amended section 13 of that act as follows (Acts 1913, Ch. 44, page 76):

"The cause shall stand for issue and trial at the first term of court after summons has been personally served upon the defendant at least ten days or publication has been made thirty days before the first day of such term, but in no case shall such trial be had within sixty days of the filing of the suit."

However, it was not long before this legislation was called into question. In the case of *Panty v. Panty,* 74 Ind. App. 485, 129 N. E. 283 a plaintiff was granted a divorce 24 days after filing suit. The defense raised the protest that this was prohibited by statute, whereupon it was contended that the statute was invalid for the reason that it purported to amend a statute that had already been superseded by the Acts of 1881 as amended in 1883. (Acts of 1881, Chap. 38 and Acts of 1883, Chap. 133.)

This contention was upheld by the Appellate Court, with particular reference to the act of 1883, being the amendment concerning the trial of divorces. The court held thus:

"Section 367 *(of the acts of 1881*)* as amended in 1883 is not supplemental to section 13, acts of 1873, and the two are repugnant. It shows that section 13, by the enactment of 1883, was repealed by implication."

The effect of the ruling in *Panty v. Panty, supra,* and the holding of the Act of 1913 invalid was an endorsement of the trial of a divorce within a comparatively short period of time, and the Acts of 1881 and 1883 remained the governing factors as far as the period of elapsed time was concerned. The efforts of the legislature of 1913 were therefore defeated and presented the problem of extending the trial period for divorces to the legislature of 1923.

The legislature of 1923 handled this matter by enacting the statute cited at the beginning of this article. (Acts of 1923, page 467; Sec. 3-1211, Burns' Ann. St. 1933.) This act was specific legislation on the subject of divorce and not on the subject of procedure as had been the previous attempt of the legislature of 1913. Being a later act, and of a special nature, it took precedence over the general law pertaining to the trial of civil cases as far as divorces were concerned. Pursuant thereto, it was generally conceded that the trial of a cause for divorce could not be had within sixty days after the case was filed.

The act of 1935, therefore, raises the question as to whether a general statute on the subject of the trial of civil cases, and specifically designating that such procedure shall relate to divorce actions, repeals by implication the special statute on divorces as found in the Act of 1923, *supra.* To make such a determination, the rules of construction governing repeal of statutes by implication must be applied.

It is established law that repeal of statutes by implication is not favored.[1] However, the Supreme Court of Indiana

* These italics are ours.

[1] Spencer v. State, 5 Ind. 41; Blaine v. Bailey, 25 Ind. 165; Water Works Co. v. Burkhart, 41 Ind. 364; Chamberlain v. City, 77 Ind. 542; Hunt v. Railway Co., 112 Ind. 69, 13 N. E. 263; Pomeroy v. Beach, 149 Ind. 511, 49 N. E. 263; State v. City of Noblesville, 157 Ind. 31, 60 N. E. 704; Sefton v. Board, 160 Ind. 357, 66 N. E. 1012; Sosat v. State, 2 Ind. A. 586, 28 N. E. 1017; City of Indianapolis v. Morris, 25 Ind. A. 409, 58 N. E. 510; Huff v.

has held that this rule is not to be so extended as to require courts to hold that where the legislature has enacted a law which purports to apply to all cases of a certain character, it did not mean what the words imply.[2] It is also established that when the language of different statutes is so repugnant as necessarily to destroy the meaning of one, the last enacted always prevails,[3] and that the later law, embracing the subject of the former one by implication, repeals the former one so far as they conflict with each other.[4]

It is important to remember that there is always a strong presumption against repeal by implication.[5] The instances where courts have held that a repeal by implication exists have been based upon the proposition that the court gave effect to the intention of the legislature, and rests in the presumption that the legislature intended that the later act would repeal the former one on the same subject, although not so stating expressly.[6] Hence, the question whether a new act works an implied repeal of an existing act is always one of legislative intention,[7] which is to be determined by construction.[8]

Fetch, 194 Ind. 570, 143 N. E. 705; Florida East Coast Ry. v. Hazel, 43 Fla. 263, 31 So. 272, 99 A. S. R. 114; Ex parte Morgan, 57 Tex. Cr. 551, 124 S. W. 99, 136 A. S. R. 996; Horton v. Mobile School Comrs., 43 Ala. 598; Conner v. Southern Exp. Co., 37 Ga. 397; Board of Supervisors v. Campbell, 42 Ill. 490; People v. Barr, 44 Ill. 198; McGillen v. Waiff, 83 Ill. A. 227; People v. San Francisco R. R. Co., 28 Cal. 254; State v. Berry, 12 Iowa 58; Dawson County v. Clark, 58 Neb. 756, 79 N. W. 822; Robinson v. Goldboro, 122 N. C. 211, 30 S. E. 324.

2 Pittsburgh Railroad v. Lighheiser, 163 Ind. 247, 71 N. E. 60.

3 Simington v. State, 5 Ind. 479; Farmer's Co. v. Harrah, 47 Ind. 236; Dowdell v. State, 58 Ind. 333; State v. Smith, 59 Ind. 179; Wright v. Board, 98 Ind. 88; Railroad v. Dunlap, 112 Ind. 93, 13 N. E. 403; District of Columbia v. Hutton, 143 U. S. 18, 12 Sup. Ct. 369; Union Iron Co. v. Pierce, 4 Biss. 327, Fed. Cas. No. 14, 367; Mersereau v. Mersereau Co., 51 N. J. Eq. 382, 26 Atl. 682; State v. Halliday, 63 Ohio St. 165, 57 N. E. 1097.

4 Dr. Pann v. City, 22 Ind. 204; Wright v. Board, 98 Ind. 88; Board of Comm. v. Aetna Life Ins. Co., 90 Fed. 222, 32 C. C. A. 585; Conners v. Carp River Iron Co., 54 Mich. 168, 19 N. W. 938.

5 See Note 1.

6 See Note: 14 Am. Dec. 209.

7 U. S. v. Claflin, 97 U. S. 546, 24 U. S. (L. ed.) 1082; Neldon v. Clark, 20 Utah 382, 59 Pac. 524, 77 A. S. R. 928.

8 Huston v. Scott, 20 Okla. 142, 94 Pac. 512, 35 L. R. A. (N. S.) 721; State v. Lowry, 166 Ind. 372, 77 N. E. 728; U. S. Cement Co. v. Cooper,

Applying the rule to the situation herein, it should first be ascertained from the title of, and recitals in the Act of 1935, as to whether or not, by its enactment, it was the intention of the legislature to repeal the provisions of the Act of 1923. This intention must clearly appear, for the courts will not construe a repeal to exist, if they can find reasonable grounds to hold to the contrary,[9] or if the case be doubtful.[10]

In other words, one statute will not repeal another by implication unless it appears in the terms and provisions of the later act that it was the intention of the legislature to enact a new law in place of the old.[11] Or, stated conversely, courts have repeatedly held that a repeal by implication cannot be so extended as to include cases not within the intention of the legislature.[12]

To aid in determining the intention of the legislature, rules of construction permit the following inquiries into the act:

1. Reference to the title.
2. Reference to the preamble.
3. Examination of the substance.
4. Study of the history of the particular legislation.
5. The evils designed to be remedied by the act.

The title of a statute may be a guide where the statute appears to be ambiguous or doubtful.[13] The act of 1935 is certainly not ambiguous in its meaning, for it very clearly

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172 Ind. 599, 88 N. E. 69; Hyland v. Rochelle, 179 Ind 671, 100 N. E. 842; Pennsylvania Co. v. Masher, 47 Ind. A. 556, 94 N. E. 899; Greenbush Assn. v. Van Natta, 29 Ind. A. 192, 94 N. E. 368; Morrison v. Eau Claire, 115 Wis. 538, 95 A. S. R. 955, 92 N. W. 280.

9 Michigan Tele. Co. v. Benton Harbor, 212 Mich. 512, 80 N. W. 368, 47 L. R. A. 104.

10 Morrison v. State ex rel., 181 Ind. 544, 105 N. E. 113; Lake Agricultural Co. v. Brown, 186 Ind. 30, 114 N. E. 755; Jose v. Hunter, 63 Ind. A. 268, 124 N. E. 65.

11 State v. Coleman, 117 La. 973, 42 So. 471; State v. Superior Court, 60 Wash. 370, 111 Pac. 223, 140 A. S. R. 925; Note, 88 A. S. R. 272.

12 State v. Perkins, 141 N. C. 797, 53 S. E. 735, 9 L. R. A. (N. S.) 165.

13 Garrigas v. Board, 39 Ind. 66; City of Rushville v. Rushville Co., 132 Ind. 575, 28 N. E. 853; State v. Brugh, 5 Ind. A. 592, 32 N. E. 869; Huff v. Fetch, 194 Ind. 570, 143 N. E. 705.

purports to amend the acts of 1881 and 1883. The ambiguity, if any, exists in whether or not the act was designed to include the legislation of 1923. If the act of 1923 was to be amended, such an intention would ordinarily be manifested by the legislature so stating specifically, for it is a presumption that the legislature, in the enactment of a statute, considered all of the existing laws on the subject.[14] If some mention had been made in the body of the act of the subject of divorce as well as the subject of procedure, there might have been some connecting reference to the act of 1923 so as to give rise to an assumption that the legislature intended to amend it, as well as the acts of 1881 and 1883 referred to in the title.

In construing statutes, the courts may look to both the title and the body of the act. The title is considered in construing the body, and the whole act is construed together.[15] In that only the acts of 1881 and 1883 are mentioned in the title, and no mention of the act of 1923 is made either in the title or the body, it can hardly be assumed that the legislature intended to imply its repeal. Consequently, regarded as a whole act, the act of 1935 can only be considered as amendatory of and related to the acts of 1881 and 1883.

The preamble of a statute may also be considered for the purpose of ascertaining the intent of the legislature in its enactment, and the reason or occasion for making the law,[16] as well as the general purpose that the legislature had in mind.[17] To determine such intent, the courts will look to contemporaneous history for the evils sought to be remedied, and the conditions sought to be corrected.[18] It is reasonable to assume that the effort of the legislatures of both 1913

[14] Domestic Coal Co. v. DeArmey, 179 Ind. 592, 100 N. E. 675.

[15] Cyrus v. State, 195 Ind. 346, 145 N. E. 497.

[16] Hanly v. Sims, 175 Ind. 345, 93 N. E. 228, 94 N. E. 401.

[17] Titus v. Town of Bloomfield, 80 Ind. A. 483, 141 N. E. 360.

[18] Bailey v. State, 163 Ind. 165, 71 N. E. 655; State v. Lowry, 166 Ind. 372, 77 N. E. 728; Railroad Comm. v. Grand Trunk R. R. Co., 179 Ind. 255, 100 N. E. 852; Hyland v. Rochelle, 179 Ind. 671, 100 N. E. 842; City of Albany v. Stier, 34 Ind. A. 615, 22 N. E. 275; Klemm v. Fread, 45 Ind. A, 587, 91 N. E. 256; Greenbush Assn. v. Van Natta, 49 Ind. A. 192, 94 N. E. 899; Doney v. Laughlin, 50 Ind. A. 38, 94 N. E. 1027.

and 1923 to delay the trial of a divorce proceeding for 60 days was for some remedial purpose. The Act of 1935 can hardly be said to remove such a purpose without a clearly defined intention so manifested, and to construe a repeal by implication would be to defeat the purposes of both legislatures acting within a more or less contemporaneous period in their efforts to correct an existing evil.

In the case of *Walgreen v. Industrial Com.*, 323 Ill. 194, 153 N. E. 83, 48 A. L. R. 1199, it was held:

"In the interpretation and construction of statutes, the purpose and intent of the legislature when the act was passed, must be ascertained and given effect, if possible, and the words of a statute must be taken in the sense in which they were understood at the time the statute was enacted, and in ascertaining such purpose and intent, it is proper to consider the history of the legislation on the subject enacted at the same or different sessions and to consider the statutes upon cognate subjects though not strictly in pari materia".[19]

Following this reasoning, the Act of 1935 which embraces only the subject of civil procedure is effective only as to such matter, and could not concern itself with nullifying the special statute of 1923.

It has always been a primary rule of construction that all statutes upon the same subject are to be construed together so that all may be given effect and produce a harmonious system,[20] and if a reasonable construction will enable both acts to stand, this should be adopted.[21] As has been previously stated, the repeal of statutes by implication not being favored, courts will, if possible, construe a later statute so

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[19] Citing: People ex rel. Fyfe v. Barnett, 319 Ill. 403, 150 N. E. 290; Enslye v. State, 172 Ind. 198, 88 N. E. 62.

[20] Snyder v. Thiene Wagner Co., 173 Ind. 659, 90 N. E. 314; Princeton Coal Co. v. Lawrence, 167 Ind. 469, 95 N. E. 423; Humrichous v. Thomas, 177 Ind. 593, 98 N. E. 419; Hyland v. Rochelle, 179 Ind. 671, 100 N. E. 842; Western Union v. Sefrit, 38 Ind. A. 565, 78 N. E. 638; Teagarden v. State, 39 Ind. A. 15, 79 N. E. 211; Campbell v. Indianapolis Tractor Co., 39 Ind. A. 65, 99 N. E. 223; Wilson v. Jackson Hill Coal Co., 48 Ind. A. 150, 95 N. E. 589; Doney v. Laughlin, 50 Ind. A. 38, 94 N. E. 1027; Johnson v. City of Indianapolis, 174 Ind. 691, 93 N. E. 589.

[21] In the matter of The Evergreens, 47 N. Y. 216.

that both laws may stand and be operative.[22] It is possible for two or more statutes upon the same subject to exist without the later statute repealing the prior,[23] and although the provisions of the different statutes appear to conflict, that construction will be adopted which will allow both to stand.[24]

It is entirely possible for the courts to allow both statutes to stand by declaring that the civil practice act, as amended, applies to all cases including actions for divorce, but that the trial of a divorce shall in no case be had within sixty days after suit has been filed.

In the construction of statutes, the courts have always considered the provisions of prior statutes upon the same subject.[25]

Where there is a general statute, such as in this case the acts of 1881 and 1883, as amended by the Act of 1935, in the absence of an express repealing clause, it has been held that such statute will not ordinarily repeal a prior special statute on a like subject, but both statutes will remain in force and are to be construed together.[26] A general statute, without negative words, cannot repeal a previous particular statute, even though the provisions in one be different from the other,[27] and in these the presumption against repeal by implication has a peculiar and special force.[28] If the

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22 Collins Coal Co. v. Hadley, 38 Ind. A. 637, 75 N. E. 832, 78 N. E. 353; Chicago R. R. Co. v. Luddington, 175 Ind. 35, 91 N. E. 939; State v. Ensley, 177 Ind. 483, 97 N. E. 113; Beard v. State, 176 Ind. 353, 95 N. E. 1103.

23 Sefton v. Board, 160 Ind. 357, 66 N. E. 891.

24 State v. Smith, 59 Ind. 179; State v. Wells, 112 Ind. 237, 13 N. E. 263.

25 Advisory Board v. State, 164 Ind. 295, 73 N. E. 700; Cheney v. State, 165 Ind. 212, 74 N. E. 892; Snyder v. Thieme Wagner Co., 173 Ind. 659, 90 N. E. 17; Johnson v. City of Indianapolis, 174 Ind. 691, 93 N. E. 17; State v. Board, 175 Ind. 400, 94 N. E. 716; Hyland v. Rochelle, 179 Ind. 671, 100 N. E. 842; City of Albany v. Stier, 34 Ind. A. 615, 72 N. E. 275; Greenbush Assn. v. Van Natta, 49 Ind. A. 192, 94 N. E. 899.

26 Monical v Heise, 49 Ind. A. 302, 94 N. E. 232.

27 Com. of Penn. ex rel. Ruth Mathews v. Sallie Lomas, 302 Pa. 97, 153 Atl. 124, 74 A. L. R. 481; Petri v. F. E. Creelman Lumber Co., 199 U. S. 487, 26 S. E. 133, 50 U. S. (L. ed.) 281; Note: 88 A. S. R. 281; Bank v. Yolo County, 104 Cal. 258, 37 Pac. 900.

28 Small v Lutz, 41 Ore. 570, 67 Pac. 421; Powell v. King, 78 Minn. 83, 80 N. W. 850; Public Service Comm. v. City of Indianapolis, 193 Ind. 37,

two acts can be reconciled by any reasonable hypothesis, this will be done in order to avoid a repeal.[29]

Thus the special statute of 1923 would not be repealed by the statute of 1935 unless the latter contained an express repealing clause. The statute of 1935 being merely a re-enactment of the Acts of 1881 and 1883 could not ordinarily repeal an intermediate act such as the Act of 1923, which qualified and limited the acts of 1881 and 1883, and it has been held that such intermediate act will be deemed to remain in force and to qualify and modify the new act in the same manner as it did the first.[30]

The case of *Monical v. Hesse* (49 Ind. App. 302, 94 N. E. 232) is very pertinent to the problem herein and should determine the answer to the question in hand. In that case the plaintiff sought to enjoin the school trustees of Orleans from proceeding with the issue and sale of bonds for the erection of a school house, unless they proceeded in accordance with the acts of 1907 (page 655 and 576) providing for the filing of a petition showing the estimated amount required to pay for the building and ground, and the passage of a resolution approving the issue and sale of the bonds.

The appellants contended that the act of 1903 (p. 350) was a general act applicable to school boards of all incorporated cities, and that no provision was contained in said act for the filing of a petition and the passage of a resolution; that in 1909 (Acts of 1909, p. 100) the act of 1903 was amended in practically the same form excepting that it contained no provisions on the question of submission to electors in certain cases, and that it also omitted to provide for the filing of a petition and the passage of a resolution. Consequently, appellants said that the Acts of 1909 amending the Acts of 1903 had the effect of repealing by implication the special acts of 1907 and that the latter had no force or effect.

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137 N. E. 705; 1 Sutherland, Stat. Contr. (2d ed.), Sec. 273; Endlich, Interpretation Stat., Sec. 194.

[29] Village of Ridgway v. Gallatin Co., 181 Ill. 521, 55 N. E. 146; Louisville v. Louisville W. Co., 20 Ky. L. R. 1529, 49 S. W. 766.

[30] Public Service Comm. v. City of Indianapolis, 193 Ind. 37, 137 N. E. 705.

But the court held that such was not the case, and that the Acts of 1907 qualified and limited the act of 1903, and that the Act of 1909, being a re-enactment of the Act of 1903, did not repeal the intermediate act of 1907, and the act of 1907 would qualify and modify the act of 1909 in the same manner as it did the act of 1903. The language of the Court was as follows:

"The reason which has been given for the application of these rules is, that in passing a special act, the legislature had its attention directed to the special case which the act was made to meet, and it will not be considered that in passing a later general act it had the special circumstances in mind which induced the passage of the provisions of the special act." [31]

Thus, under this reasoning, the Act of 1935 being merely a revision and continuation of an existing general law, cannot be said to operate as a repeal of the special statute of 1923, for the Act of 1923 has already engraved an exception on the general laws of 1881 and 1883 as amended by the Act of 1935.[32] It is a canon of statutory construction, that a later statute, general in its terms, and not expressly repealing an earlier statute, will not ordinarily effect a repeal of the special provision of such earlier statute.[33]

Under this same reasoning, the Connecticut Court held that:

"Where the intention of the legislature has been called to a particular subject and a special provision has been made regarding it, it cannot be supposed that they intended to repeal, when subsequently enacting a general statute in relation to the same subject." [34]

So mere revision and continuation of existing laws by means of amendment does not operate as a repeal of a special statute without the legislative intention clearly manifested,[35] and inasmuch as there is no such intention shown

[31] Monical v. Heise, 49 Ind. A. 302, 94 N. E. 232.

[32] See R. C. L., page 924.

[33] Lewis, Sutherland's Stat. Constr., Sec. 274; Collins Coal Co. v. Hadley, 38 Ind. A. 637, 75 N. E. 832, 78 N. E 353; Potter's Dwarres, Stat., Sec. 154; Holle v. Drudge, 190 Ind. 520, 129 N. E. 229; Waterworks Co. v. Burkhart, 41 Ind. 364; Worth v. Wheatley, 183 Ind. 598, 103 N. E. 958; Walter v. State, 105 Ind. 589; State v. Kates, 149 Ind. 46, 48 N. E. 365.

[34] Coe v. City of Meridan, 45 Conn. 145.

[35] Wilson et al. v. Seutman, 74 Ind. A. 112, 121 N. E. 669.

by the legislature of 1935 to repeal the statute of 1923, but merely a purpose to revise and continue the old acts of 1881 and 1883, to constitute a repeal would necessitate express terms, and in the absence of such terms, the presumption is against the intention.[36]

It is a reasonable interpretation, therefore, to construe the Act of 1935 as an act pertaining only to procedure in civil cases. While the act still applies to divorce actions, nevertheless the time of trial of such a divorce within 60 days from the date of filing still remains restricted in the same manner and design as before the enactment of the statute of 1935. As a matter of fact, it has been held that divorce cases under section 1 of the civil code of 1881 (Acts of 1881, Sec. 249) are civil actions in such a sense that the rules of pleading and practice therein provided will apply, except to the extent that a different procedure may be provided in the divorce act, and to the extent that it may be apparent that the legislature provided otherwise.[37]

The last sentence of the act of 1935 is almost identical with the last sentence in the act of 1881 as amended in 1883. There is nothing new or different in the act of 1935 from the acts of 1881 and 1883 in relation to proceedings in divorce. It is obvious, therefore, that the change desired to be effected by the legislature was in reference to the time of trial in civil matters rather than to proceedings for divorce. Perhaps, in the absence of the amendment of 1883, which added the last sentence referring to actions of divorce to the act of 1881, it might have been reasonably contended that the act of 1935 was new in this regard, and thus showed a legislative intent to cause a change in the procedure of divorce suits. But in the manner that it stands, rules of statutory construction set out herein seem to indicate that the act of 1923 remains in full force and unaffected, the same as it was before the legislative enactment of 1935.

[36] Kerney v. Vann, 154 N. C. 311, 70 S. E. 747; Lambert v. Barrett, 115 Va. 136, 78 S. E. 586, Ann. Cas. 1914D, 1226; Mosher v. Osborn, 75 Wash. 439, 134 Pac. 1092, 48 L. R. A. (N. S.) 917; State v. Milwaukee Electric R. R. Co., 144 Wis. 386, 129 N. W. 623.

[37] Powell v. Powell, 104 Ind. 18, 3 N. E. 639.