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HABEAS CORPUS-INADEQUACY OF STATE REMEDY

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HABEAS CORPUS—INADEQUACY OF STATE REMEDY—Petitioner had pleaded guilty to a criminal indictment and was sentenced to prison by an Illinois circuit court. His petition for a writ of habeas corpus, based upon an alleged denial of due process at trial, was denied without hearing. The Illinois Supreme Court in *People v. Loftus*,[1] decided in 1949, seems squarely to have held that habeas corpus is a proper post-trial proceeding for hearing charges of denial of due process. Since the Illinois Supreme Court does not review habeas corpus proceedings in the circuit court, the United States Supreme Court granted certiorari. *Held*, remanded to the Illinois circuit court to determine whether, in the light of the *Loftus* decision, the writ of habeas corpus should be granted. *Young v. Ragen*, 337 U.S. 235, 69 S.Ct. 1073 (1949).

Since *Ex parte Hawk*,[2] the United States courts have steadfastly refused to hear charges of denial of federal constitutional rights unless petitioner has exhausted all state procedures for hearing such charges. At the same time the United States courts have insisted that, before the doctrine of *Ex parte Hawk* will be applied, the states must provide adequate remedies. Illinois has three post-trial remedies.[3] But the Court in the principal case is of the opinion that none of these

[1] 400 Ill. 432, 81 N.E. (2d) (1949).

[2] 321 U.S. 114, 64 S.Ct. 448 (1944).

[3] (1) Writ of error: Upon which only the common law mandatory record is reviewed. People v. Loftus, 400 Ill. 432, 81 N.E. (2d) (1949). This remedy is obviously inappropriate for such commonly alleged denials of due process as a lack of attorney and coerced confessions. (2) A statutory writ of error coram nobis. Ill. Rev. Stat. (1945) c. 110, §72. This motion has proved ineffective for most due process questions because the reviewing court must confine its review to facts, and only those facts of which the trial judge was not aware. In addi-

remedies are adequate unless the scope of the writ of habeas corpus has been enlarged by the *Loftus* decision to include hearings on charges of denial of procedural due process. In *Woods v. Nierstheimer*[4] the United States Supreme Court noted the limited scope of habeas corpus in Illinois. Although the petitioner had been given no hearing, the Court decided that there were adequate non-federal grounds for refusing habeas corpus since this writ was a proper remedy in Illinois only to consider allegations that the trial court lacked initial jurisdiction,[5] or, that subsequent events had rendered the judgment void.[6] As cases continued to appear from Illinois it became evident that prisoners there had no adequate remedy.[7] By a concurring opinion in *Marino v. Ragen*,[8] Justice Rutledge gave notice that the Supreme Court was exhausting its patience; it was his opinion that Illinois procedural remedies were completely inadequate and that the *Hawk* doctrine should not be applied. The United States Supreme Court subsequently requested a clarification of the extent and scope of Illinois procedural remedies. The clarification was attempted in *People v. Loftus*.[9] The Illinois Supreme Court, in an apparent extension of the writ of habeas corpus, announced that a lack of due process rendered a judgment void; that habeas corpus was, therefore, an appropriate remedy for due process hearings. The remand of the principal case will require an Illinois circuit court interpretation of the *Loftus* decision. The decision may be followed and habeas corpus made available for denial of due process hearings; if not, it is very likely that the United States Supreme Court will decide that Illinois has no adequate post-trial remedy and allow Illinois prisoners to petition directly to the federal courts.

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tion, a five year period of limitations on this writ has been declared constitutional by the Illinois Supreme Court. People v. Rave, 392 Ill. 435, 65 N.E. (2d) 23 (1946). (3) Habeas Corpus.

[4] 328 U.S. 211, 66 S.Ct. 996 (1946).

[5] People ex rel. Swolley v. Ragen, 390 Ill. 106, 61 N.E. (2d) 248 (1946). See 42 ILL. L. REV. 329 at 334, n. 34 (1947), for additional citations.

[6] People ex rel. Courtney v. Thompson, 358 Ill. 81, 192 N.E. 693 (1934).

[7] For a detailed treatment of the procedural confusion facing petitioners in Illinois, see 47 MICH. L. REV. 72 (1948); 42 ILL. L. REV. 329 (1947); 15 UNIV. CHI. L. REV. 107 at 118 (1947).

[8] 332 U.S. 561, 68 S.Ct. 240 (1947).

[9] 400 Ill. 432, 81 N.E. (2d) 495 (1949).