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Business Organizations - Survey of Illinois Law for the Year 1946-1947

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SURVEY OF ILLINOIS LAW FOR THE YEAR 1946-1947

I. BUSINESS ORGANIZATIONS

CORPORATIONS

Most of the significant cases during the past year relating to corporate law dealt with problems concerning the rights and obligations of shareholders. For example, two apparently conflicting decisions have been rendered by the Appellate Court for the First District on the point of the right to extend the duration of a voting trust. In each instance the voting trust agreement, adopted under corporate reorganization proceedings, provided that the arrangement should "terminate in any event" on a designated date although it might be terminated sooner if desired. A subsequent provision in each agreement indicated that the same might be amended, altered or modified in the manner therein indicated, but there was nothing in the amendment provision expressly limiting the power of amendment with respect to the expiration of the trust. In each instance, the trustees and a majority of the beneficiaries approved an extension of the arrangement beyond the original term and minority interests sued to have the exten-

*The present survey is not intended in any sense to be a complete commentary upon, or annotation of, the cases decided by the Illinois courts during the past year, but is published rather for the purpose of calling attention merely to cases and developments believed significant and interesting. The period covered is that of the judicial year, embracing from 394 Ill. 1 to 397 Ill. 339; from 329 Ill. App. 244 to 332 Ill. App. 161. Statutory changes having general interest are also included.
sion declared invalid. The First Division of the court, in Olson v. Rossetter, held the purported amendment invalid and ordered the trial court to dissolve the voting trust. The Third Division, however, in Russ v. Blair, came to a contrary conclusion and regarded the extension as being valid. The only comparable case noted, that of Bechtel v. Rorick, reached this last-mentioned conclusion by a divided court, so it is worth noting that leave to appeal has been granted in each instance and the apparent inconsistency is about to be resolved.

There is undoubted utility in the formation and existence of voting trusts as a desirable method of insuring, at least for a time, some permanence in control. Hitherto, except in cases of reorganization, there has been no statutory authority warranting the adoption of that device by shareholders of corporations organized in Illinois. A new statute now permits the creation of voting trusts among existing shareholders, at least for a ten-year period, although it requires that a copy of the trust agreement be deposited with the corporation and be made subject to inspection as are the other books and records of the company. There may, however, be grave doubts as to the constitutionality of the new provisions for the state constitution directs that the general assembly shall provide that “every stockholder shall have the right to vote” at least with respect to the election of directors and earlier decisions have indicated that any attempts to sever voting power from ownership would be invalid.

1 The only apparent difference in the cases might lie in the fact that in Russ v. Blair, 330 Ill. App. 571, 71 N. E. (2d) 838 (1947), the court indicated any beneficiary was entitled to withdraw from the trust and receive voting stock at will. No point was made as to this distinction, if in fact it is one. The headnote to the abstract opinion in Metcoff v. Farr, 330 Ill. App. 432, 71 N. E. (2d) 366 (1947), would indicate that much the same problem was involved therein, but leave to appeal from that decision was denied.


4 65 Ohio App. 455, 30 N. E. (2d) 451 (1949).


6 Ill. Const. 1870, Art. XI, § 3.

Notice was taken last year of the decision of the Appellate Court in the case of Doggett v. North American Life Insurance Company of Chicago\(^8\) wherein it was held that the provisions of the Business Corporation Act respecting the shareholder’s right of inspection, including the penalties there prescribed, applied to stockholders of insurance companies even though the latter are incorporated under a different statute. The Illinois Supreme Court, after leave to appeal had been granted, reversed that holding insofar as it imposed penalties on the officers refusing to honor the demand for inspection\(^9\) but did recognize that, in the absence of special legislation on the subject, the shareholder in such a company was entitled to the aid furnished by a common-law writ of mandamus. The earlier case of Venner v. Chicago City Railway Company\(^10\) which had treated railroad companies as being within the ambit of the general corporation act was not followed.\(^11\)

Derivative actions by shareholders also received attention in two cases. In one of them, that of Winger v. Chicago City Bank & Trust Company,\(^12\) the Supreme Court approved the maintenance of a derivative suit by the policyholders of an assessment insurance company against its directors and officers to compel restoration of funds and property wrongfully withdrawn. It deemed such action proper, even though control over litigation involving insurance companies is largely vested in the Director of Insurance,\(^13\) on the ground that the litigation was not such as would interfere with the prosecution of the business of the company but rather was designed to enforce fiduciary duties owed by the directors of the type made clear in the leading case of Farwell v. Pyle-National Electric Headlight Company.\(^14\) The recognized

\(^9\) 396 Ill. 354, 71 N. E. (2d) 686 (1947).
\(^11\) Absence of any specific provision in the Insurance Code, Ill. Rev. Stat. 1947, Ch. 73, would seem to be a defect that would bear correction.
\(^12\) 394 Ill. 94, 67 N. E. (2d) 265 (1946).
\(^13\) Ill. Rev. Stat. 1947, Ch. 73, § 813.
right of the shareholder to maintain such derivative actions, however, is necessarily subject to applicable rules of the court in which such suit is maintained. Objection was made, therefore, in *H F G Company v. Pioneer Publishing Company*, that the plaintiff, using the federal court on the ground of diversity of citizenship, could not maintain the action in question inasmuch as it was not a registered shareholder at the time of the wrongs complained about. The court, upon finding that the plaintiff was not a shareholder of record but actually held the full equitable title to the shares, which had been issued in the name of its nominee, nevertheless decided that an equitable shareholder had as much or even a better right to sue than would the holder of a bare legal title. As the corporation involved was one organized in Illinois, the court turned to the law of this state and could find no indication that the decision in *Green v. Hedenburg* had been in any way changed by the fact that the present Business Corporation Act defines a shareholder as one who is "a holder of record of shares in a corporation." Such definition, said the court, applied only for the purpose of the statute in question and had no relation to proceedings conducted independently thereof.

Evident dissatisfaction on the part of shareholders in state banks with the double liability imposed by the state constitution, plus the fact that other methods at remedying the situation have failed, has led to renewed efforts before the courts to bring about nullification of that liability. In *Henry v. Raboin* the attack took the form of a challenge of the constitutionality of the provi-

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15 That there are limitations on the exercise of such right, particularly when claimed by a transferee of shares whose transferor might be estopped from suing, see Russell v. Louis Melind Co., 331 Ill. App. 182, 72 N. E. (2d) 869 (1947).
16 162 F. (2d) 536 (1947).
17 Rule 23(b), Fed. Rules of Civ. Pro., 28 U. S. C. A. foll. § 723c, provides that in an action brought to enforce a secondary right, the complaint shall "... aver (1) that the plaintiff was a shareholder at the time of the transaction of which he complains..."
21 See 22 CHICAGO-KENT LAW REVIEW 216, particularly p. 219, note 30.
22 395 Ill. 118, 69 N. E. (2d) 491 (1946).
tion in question, and of the statute predicated thereon, on grounds not heretofore presented. The stockholder there sued asserted that the imposition of double liability was improper because (1) the state provision was so worded as to be applicable to stockholders of both state and national banks or, in the alternative, (2) if valid when adopted, had become invalid by reason of subsequent federal enactments which had resulted in producing such inequality between shareholders in state and national banks as to amount to a violation of rights guaranteed by the federal constitution. Neither contention succeeded. The Illinois Supreme Court, although finding that the language was broad enough to include both state and national bank stockholders, answered the first objection by excluding national bank stockholders from the operation thereof on the ground that such was necessary to sustain the constitutionality of the law and the two classes were not so inextricably interwoven as to require a decision that the whole section was void for all purposes. The second contention was met by noting that any discrepancy between the rights and liabilities of the two classes was produced by competition introduced by federal law rather than by state action and was, although unfortunate, a necessary corollary of the dual system of government under which each government has the right to operate in the same territory.

Although essentially a problem of construing contractual language, the case of *Mueller v. Howard Aircraft Corporation* should receive the attention of corporate officials, particularly those concerned with the problems which might arise from efforts to redeem outstanding corporate securities. The plaintiff therein was the holder of one of defendant's convertible debentures which the company had the right, on notice, to call for payment prior to maturity date. Due notice of call was given, but funds sufficient to cover payment were not deposited with the paying agent named in the indenture. Unaware of the fact that his debenture had

24 Only state action is condemned by the Fourteenth Amendment: Corrigan *v. Buckley*, 271 U. S. 322, 46 S. Ct. 521, 70 L. Ed. 969 (1926).
25 329 Ill. App. 570, 70 N. E. (2d) 203 (1946), noted in 17 Corp. J. 324.
been called, plaintiff sought to exercise the conversion privilege. His request was denied on the ground that the privilege had been nullified by expiration of the time fixed by the redemption notice. When plaintiff tendered his debenture to the paying agent, he was told that he would be obliged to leave the same for a sufficient length of time to requisition funds from the debtor corporation for the purpose of making payment inasmuch as no funds had been deposited with them. Plaintiff again demanded the right to convert his debenture into stock of the corporation and, upon further refusal, sued to recover damages equal to the market value of the shares to which he would have been entitled. It was held that plaintiff should have been granted a summary judgment for the language of the redemption provision was found to be such that the giving of the call notice alone did not destroy the conversion privilege but that a deposit of the redemption price was also an essential condition precedent to that end. It was also said that a provision requiring "presentation and surrender" of the debenture before payment would be made contemplated nothing more than that "surrender" and "payment" were to be mutual and concurrent acts.

Any intimation in the case of In re Peer Manor Building Corporation that a dissolved corporation might obtain beneficial relief through a petition to reorganize under Chapter X of the Bankruptcy Act by claiming to be an "unincorporated company or association," especially after the lapse of time within which proceedings may be instituted despite dissolution, has been minimized by the decision in In re Midwest Athletic Club. That case limits the earlier decision to situations wherein the dissolved corporation has continued to function as a business by reason of

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26 That measure of damage was said to be appropriate in Denney v. Cleveland & Pittsburg R. R. Co., 28 Ohio St. 108 (1875).
27 134 F. (2d) 839 (1943).
29 Ibid., App. § 1 (8).
31 161 F. (2d) 1005 (1947).
the fact that its members have carried on joint operations. The mere fact that title to the corporate real estate, after dissolution, had devolved on the shareholders as tenants in common was treated as insufficient to show any "association" between the several owners and the operation of such real estate by a receiver, acting as an arm of the court in certain foreclosure proceedings, was held not to constitute the "doing of business" in the corporate name. No corporation existing, no matter how loosely the term "corporation" might be defined, it was held that reorganization proceedings could not be maintained.

In addition to statutory changes already noted, the recent session of the legislature amended the Community Currency Exchange Act in some small particulars, principally by exempting concerns who act as payroll disbursing agents for employers and by increasing the amount of the bond required for a license;\(^2^2\) has amended some, and added other, sections in the Building Loan and Homestead Association Act;\(^2^3\) has acted to validate conveyances heretofore made by such associations when in voluntary liquidation;\(^2^4\) has attempted to expand the investment powers of credit unions;\(^2^5\) has overhauled the laws relating to hospital service corporations\(^2^6\) and medical service plan companies;\(^2^7\) has clarified the definition provisions in the statute relating to neighborhood redevelopment;\(^2^8\) has removed the acreage restrictions on the amounts of land which may be acquired by religious corporations;\(^2^9\) has made a minor amendment to the Trust Companies

35 Laws 1947, p. 679, S. B. 594; Ill. Rev. Stat. 1947, Ch. 32, § 476. The enrolled bills appears defective in that some lines of type appear to have been dropped therefrom.
39 Laws 1947, pp. 687-8, H. B. 39; Ill. Rev. Stat. 1947, Ch. 32, § 164 et seq., particularly §§ 171, 174, 181 and 185. The extent of land which may be so acquired is so much as the religious corporation "may deem necessary," rather than the limitation that it be "appropriate to enable it to accomplish" its purposes, which is the limitation attached to business corporations under Ill. Rev. Stat. 1947, Ch. 32, § 157.5(d).
Act relating to trusts for the perpetual care of burial lots;\(^40\) and has added an additional ground for the involuntary dissolution of corporations organized not for profit.\(^41\) The new ground involves the failure to use funds for the purpose solicited or the fraudulent solicitation or use of money obtained by solicitation.

**PRINCIPAL AND AGENT**

It would scarcely be thought that any question existed about the rule that an agency may not be created for the purpose of doing criminal or tortious acts, yet in *Tuttle v. Forsberg*\(^42\) such a question was raised in connection with the determination of liability for injuries caused by reckless gunfire. One of the defendants therein, a police officer, had been requested by the manager of the other defendant, an automobile livery concern, to "lock up" a customer who had failed to return a rented vehicle. While the officer was confirming the authority to make the arrest, the defaulting customer fled and was recaptured only after the officer had pursued him and fired the shots that caused plaintiff's injury. Plaintiff, relying on *Schramko v. Boston Store of Chicago*,\(^43\) claimed that the officer "lock up" the customer was "an implied request to take any and all steps necessary to complete the arrest" and that, therefore, he acted as agent or servant of the livery concern when he recklessly caused the injuries. The court, however, characterized this theory as "far fetched, indeed, and it is certainly not supported by the law."\(^44\) Nothing in the request of the manager did authorize, or could have authorized, the officer to resort to gun-play in a wild, wantonly reckless and illegal manner to accomplish the purpose of the request, hence he could not be deemed an agent for that purpose.

Problems of the enforceability of agency contracts also have led the courts to analyze the circumstances surrounding the crea-

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\(^{42}\) 331 Ill. App. 503, 73 N. E. (2d) 861 (1947).

\(^{43}\) 243 Ill. App. 251 (1927).

\(^{44}\) 331 Ill. App. 503 at 510, 73 N. E. (2d) 861 at 864.
tion of agency relationships. One common cause of unenforceability is, of course, vagueness and indefiniteness of terms concerning prices of goods or services involved. Agency contracts involving future delivery of goods frequently leave the element of price open for determination at a later date, and there seems to be no objection to such failure to specifically fix prices so long as it is clear from the contract, interpreted as a whole, that some method has been selected and agreed upon for definitely ascertaining prices when the need arises. A contract of this type was involved in Anderson & Brown Company v. Anderson where defendant had been engaged as agent to sell plaintiff's electrical equipment. By the terms of the contract the agent agreed to pay "40% of the net price" when the order was forwarded and the balance "when said order is complete and ready for shipment, but before delivery; the terms to be net cash and the price of each item is to be agreed upon in writing by the parties hereto, depending on the size and cost of material." Such terms, the court felt, left the matter of price determination too indefinite to permit specific performance notwithstanding the fact that the parties appeared to have succeeded in operating under its terms for a year.

In one decision, that in the case of Minters v. Mid-City Management Corporation, the Appellate Court found it necessary to recognize limitations on the "assumption of risk" doctrine. That case involved a suit by a tenant against a landlord for injuries sustained through slipping and falling on a floor in a hotel covered with soapy water being mopped by a servant of the landlord. The landlord's defense that his tenant had assumed the risk when she noticed that the floor was being mopped was not allowed. Even though general authorities were cited to show that the assumption of risk doctrine might properly be extended beyond the master and servant relationship, the court pointed out that the Illinois Supreme Court had confined its application to the contractual

46 161 F. (2d) 974 (1947).
47 331 Ill. App. 64, 72 N. E. (2d) 729 (1947). Leave to appeal has been denied.
relation of master and servant so refused to recognize it as a defense where that relationship was not present.

The "assumption of risk" defense, insofar as it was available to railroads, was abolished by the 1939 amendment to the Federal Employers Liability Act, and the decisions of the courts since then have been in harmony with the liberal tendencies displayed by Congress. But, even in actions brought under the federal statute, problems still arise with respect to plaintiff's responsibility to show a causal connection between the defendant's negligence and the injury complained about. In O'Brien v. Chicago & North Western Railway Company, for example, plaintiff's decedent, a railroad fireman, had been ordered by his engineer to seek shelter in a steam-heated compartment provided for that purpose and located in the locomotive tender. To get to the shelter it was necessary to crawl over the top of the tender and, during the course of this act, the decedent was apparently knocked from the moving train by projections from a viaduct under which the engine passed. Plaintiff contended that evidence of the old and leaky condition of pipes and spouts on water-towers maintained by defendant for use by its employees when filling locomotive water tanks, with resultant overflow and splashing of water on the decedent's clothes in sub-zero weather, established that defendant had failed in its duty to furnish a reasonably safe place to work and was the proximate cause of the deceased being ordered to do the act which resulted in his death. Although evidence of the precise cause and manner of death was largely circumstantial, it was held that recovery against the employer should not be denied.

Analysis of the agent's fiduciary responsibility to his principal has often assumed difficult proportions when the question has been raised in connection with activity leading to the termination of the agency relationship. In Pittsburgh Equitable Meter

Company v. Paul C. Loeber & Company, the defendant real estate broker was given a ninety-day exclusive agency to obtain a purchaser for land owned by plaintiff at a designated price. Prior to the expiration of the ninety days, defendant sought and obtained from plaintiff an option to buy the property in question for a lower figure. At the time the option was secured, defendant made full disclosure of all facts then known relating to the subject of the option. Thereafter, defendant's efforts in advertising the property resulted in the receipt of an offer from a prospective purchaser to buy at a figure substantially larger than the option price. Defendant exercised the option and resold the property to the stranger-purchaser. As the exercise of the option was not accompanied by a full disclosure of the impending resale, plaintiff sued to recover the alleged secret profit. Defendant contended that it had no fiduciary duty which extended beyond the agency and that that relationship had terminated when plaintiff executed the option for a valuable consideration. The court held, however, that the agency was not revoked but that it continued until either defendant exercised the option or the ninety-day period expired. As a practical matter, the court said, the defendant's negotiations with the prospective purchaser were based on defendant's authority as plaintiff's agent and not on any assumption that defendant owned the land. In the absence of any showing that the parties intended the agency to be revoked or that the option was absolutely inconsistent with the continuing fiduciary duty of the optionee, it was held that the duty remained.

The lien of an agent upon the property or funds of his principal for reimbursement for necessary expenses, advances or liabilities incurred on behalf of the principal may be created by any of several methods but, in recognizing the existence of an agent's lien, it is usually said that the courts favor specific rather than general ones. Because of this, the question arose in Dietzschman v. Korach as to whether clothing lent by the principal to the agent for purpose of display to prospective customers could

51 160 F. (2d) 721 (1947).
be made the subject of a lien for reimbursement of travelling expenses incurred by the agent. No Illinois precedents seem to exist on the point. There being no statute or special agreement or trade custom upon which to base a lien and as the agent’s skill and efforts had in no way enhanced the value of the goods lent to him, the court denied the right to either a special or general lien in favor of the agent.

LABOR LAW

The wave of new labor legislation which swept the country within the last year left this state untouched. Except for minor changes in the Unemployment Compensation Act,\(^5^3\) no important statutory enactments have occurred. But the courts have been called upon to determine a number of matters.

Right to unemployment compensation benefits, for example, was involved in the case of Local Union No. 11 v. Gordon\(^5^4\) where the problem was whether a controversy over the interpretation of a written contract covering the time of payment of past-due vacation pay, accompanied by the employees’ concerted refusal to work in order to compel compliance with their construction of the contract, constituted a labor dispute within the meaning of Section 7(d) of the Unemployment Compensation Act.\(^5^5\) The union concerned had a closed-shop agreement with the employer, a coal-mining company, calling for vacation pay. It was claimed that an installment of this vacation pay became due on August 28th but the company asserted it was not due until September 28th. When, on August 28th, the workers received their regular current pay but not the vacation pay installment, a “pit committee” was formed which requested immediate payment thereof under threat to close the mine if the demand was not met. Not being paid, the miners quit and stayed out until September 11th,


\(^{5^4}\) 396 Ill. 293, 71 N. E. (2d) 637 (1947). Smith, J., wrote a short dissenting opinion.

\(^{5^5}\) Ill. Rev. Stat. 1947, Ch. 48, § 223(d).
at which time the differences were composed.\textsuperscript{56} A claim for unemployment compensation benefits for the period mentioned was denied in the lower tribunals on the ground that the unemployment was due to a stoppage of work resulting from a labor dispute.\textsuperscript{57}

The union argued, before the Illinois Supreme Court, that the controversy in question was not a true labor dispute since it related to back pay rather than to the more common demands for higher wages, shorter hours or better working conditions. It asserted that, as a consequence of the company's refusal to pay the vacation installment when it fell due, the miners had no assurance that it would ever be paid, hence they became involuntarily unemployed. The Supreme Court, nevertheless, affirmed the earlier holdings pointing out that although the term "labor dispute" is not expressly defined in the act, the statutory declaration of policy\textsuperscript{58} showed clearly that it was the intention of the legislature to grant unemployment compensation to those who were involuntarily unemployed. As the controversy concerned terms and conditions of employment and as the workers refused to work for the purpose of coercing the company into abandoning its own and adopting the union's construction of the contract, their conduct was said to amount to a strike, hence was a labor dispute within the purview of Section 7(d) of the act.\textsuperscript{59}

Whether labor unions have the right to engage in concerted activities against self-employers was made the subject of a decision of the Appellate Court for the Second District in \textit{Dinoffria v. International Brotherhood of Teamsters and Chauffeurs Local

\textsuperscript{56} During the shut-down of the mine, no picket line was formed and the company had sufficient orders on hand to keep the mine in continuous operation.

\textsuperscript{57} Ill. Rev. Stat. 1947, Ch. 48, § 223(d), so far as relevant, provides: "An individual shall be ineligible for benefits ... (d) For any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed. ..."

\textsuperscript{58} Ibid., § 217.

\textsuperscript{59} The court, 396 Ill. 293 at 302, 71 N. E. (2d) 637 at 641-2, said: "Where action is taken by either a labor organization or employer having a bearing upon a controversy as to wages, or conditions of employment, a labor dispute has developed." It also note that its opinion should not be construed as authority for the prosecution of unemployment compensation claims by unions.
Union No. 179. The plaintiff there concerned, self-employed operators of retail gasoline service stations, sought relief in the form of an injunction and money damages from the union which was in the process of boycotting the stations because of the refusal of the plaintiffs to join the union. Such conduct resulted in substantial injuries to the plaintiffs as they were not able to obtain the necessary supplies for the carrying on of their trade. The trial court denied both injunctive relief and the claim for damages but the Appellate Court reversed, declaring that while the scope of permissible conduct by working men acting in concert to improve their economic position had steadily expanded yet in no case had a court sanctioned or been called on to approve peaceful picketing or boycotting or other conduct of a labor union where it had been directed against a self-employer who hired no other persons.

Another interesting case pertaining to labor relations is that of Montgomery Ward & Company v. United Retail, Wholesale & Department Store Employees, C. I. O., which case deals with the right to enjoin against defamatory statements of a union concerning the employer, but as that case is dealt with more extensively elsewhere in this survey the existence of the decision is merely noted here.

WORKMEN'S COMPENSATION

The problem of subrogation for payments made by virtue of workmen's compensation laws, presented by the case of Smith v. Clavey Ravinia Nurseries Incorporated, was characterized by the Illinois Appellate Court as one of first impression not only in

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60 331 Ill. App. 129, 72 N. E. (2d) 635 (1947), noted in 25 CHICAGO-KENT LAW REVIEW 343. Writ of error has been granted.
61 The court made no mention of decisions expressly sanctioning union activities against self-employers, such as Cafeteria Employees Union v. Anjelos, 320 U. S. 293, 64 S. Ct. 95, 88 L. Ed. 58 (1943); Bakery & Pastry Drivers, etc. v. Wohl, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178 (1942); Baker v. Retail Clerks' I. Protective Ass'n, 313 Ill. App. 432, 40 N. E. (2d) 571 (1942); Naprawa v. Chicago Flat Janitors' Union Local No. 1, 315 Ill. App. 328, 43 N. E. (2d) 198 (1942), appeal dismissed on the ground the order was interlocutory 382 Ill. 124, 46 N. E. (2d) 27 (1943).
Illinois but also in the entire United States. An employee of the defendant there concerned, an Illinois corporation doing business in Wisconsin, had suffered a compensable injury in Wisconsin. The defendant’s original insurance carrier became insolvent and was succeeded by a second carrier which also became insolvent. Awards were entered in favor of the employee and against the defendant and the last-mentioned carrier. After the awards remained unpaid for sixty days, pursuant to Wisconsin law, the present plaintiff, as custodian of the security fund and in compliance with statutory mandate, paid the same. He then filed suit in Illinois seeking reimbursement. The complaint set out causes of action based on both common-law and statutory subrogation. The trial court dismissed the suit, but the Appellate court reversed and held that a good cause of action existed under either theory. Where the plaintiff, under compulsion of a statute, pays an obligation that is primarily that of the defendant, the equitable doctrine of subrogation as known to the common law is applicable and appropriate. Moreover, since the Wisconsin statute provides that “the state treasurer as custodian of the funds shall proceed to recover the sum of all liabilities of such carrier assumed by such funds, from such carrier . . . its receiver . . . employers, and all others liable, and may prosecute an action or proceeding therefore,” there is subrogation by virtue of the statute.

The defendant also contended that the carrier’s payment of about one per cent. of the premium into the Wisconsin state security fund constituted a plan of reinsurance whereby the state reinsured the carrier’s risks, for which reason there could be no subrogation. Upon analysis of the purpose of the state fund, this idea evaporated. Another frivolous contention was that since the statute authorized the state treasurer to proceed against the carrier the result was to deprive the employer of his right to do so. The answer to this empty contention was that if the employer paid the award it could have sued and it would then have been unnecessary for the state treasurer to sue at all. A further point dealt with the question of whether Illinois should give full faith

64 Wis. Gen. Stats. 1945, § 102.65(1).
and credit to the Wisconsin statute, but comment thereon is not appropriate here. There is no doubt, under the circumstances, but what the Appellate Court has forwarded the effectiveness of the doctrine of subrogation and rightly so.

In *Sweitzer v. Industrial Commission*, a question arose as to whether or not one who seeks judicial review of a decision under the Illinois Workmen’s Compensation Act must exhaust his administrative remedies before being privileged to appeal to the courts. It was held that any person dissatisfied with the decision of an arbitrator must seek review before the commission prior to turning to the courts and, until this is done, the courts are lacking in jurisdiction to review. While the Administrative Review Act does not specifically apply to workmen’s compensation proceedings, it is indicative of a legislative intention to require exhaustion of administrative remedies and that fact may have aided the court resolve any doubts which may have existed as to the proper construction of Section 19 of the statute.

Whether the failure of a minor to give notice of injury within the statutory period precludes allowance of an award of compensation was answered in the affirmative by the Illinois Supreme Court in *Ferguson v. Industrial Commission*. The question had not been directly presented heretofore, although in *Walgreen Company v. Industrial Commission* the court had held that the limitation of time within which an application for an award should be made did not run against a minor so long as he was without a guardian. After that case, however, the statute was amended so as to read: “In case of mental incapacity of the employee or any dependents of a deceased employee who may be entitled to compensation under the provisions of this Act, the limitation of time by this Act provided shall not begin to run against said mental incompetents until a conservator or guardian has been appointed.” The court held that, as minors were not specifically

66 Ill. Rev. Stat. 1947, Ch. 110, § 264 et seq.
67 397 Ill. 348, 74 N. E. (2d) 539 (1947).
68 323 Ill. 194, 153 N. E. 831 (1926).
included in the provision relating to incompetents and as the General Assembly had elsewhere declared that minor employees shall be considered the same as adult employees, the exclusion of minors from the saving clause was intentional.

Legislative cognizance of the rise in both wages and living cost is evidenced by changes in both the Workmen’s Compensation Act\(^{70}\) and the Occupational Diseases Act\(^{71}\) through which increases in the amounts to be awarded for occupational injuries are granted.

II. CONTRACTS

The field of general contract law was barren of significant decisions, as is usually the case, but some cases dealing with rather specialized branches of that subject are worthy of notice.

INSURANCE

It is a well-settled rule that ambiguities in an insurance contract will be read in favor of the insured.\(^1\) This rule was expanded to the breaking point in *Hooker v. New York Life Insurance Company*\(^2\) wherein the court held that the beneficiary of an insured was entitled to double indemnity benefits though the facts of the insured’s death seemed clearly to bring it within an exception clause. The deceased met his death through accident while a participant in maneuvers in New Zealand with the United States Marine Corps Reserve during time of war. The defendant admitted no liability under the double indemnity provision of the life policy, contending that the cause of death was within the policy exception which read: "... provided, however, that such double indemnity benefit shall not be payable if the insured's death resulted, directly or indirectly, from ... war or any act incident thereto." Plaintiff contended the clause, by its very wording, applied only when the insured met his death in actual


