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Business Organizations - Survey of Illinois Law for the Year 1947-1948

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SURVEY OF ILLINOIS LAW FOR THE YEAR 1947-1948*

I. BUSINESS ORGANIZATIONS

CORPORATIONS

THE BULK of the significant cases falling in the realm of corporate law decided within the past year have bearing on the fundamental nature of a corporation and the rights and liabilities which may arise from the adoption of that form of organization. At the outset, it may be noted that disregard of the separate entity theory, and application of the alter ego theory, of corporate existence has frequently occurred in the past at the request of third persons who would otherwise be harmed if the corporate veil could not be pierced to reach the true owner of the enterprise. It is unusual, however, to find situations such as that involved in *Earp v. Schmitz*¹ where the sole owner of a business, in order to avoid a forfeiture of his lease, was allowed to show that the formal corporate cloak which he adopted in fact possessed no legal significance.

In much the same way, instances calling for the use of the

* 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 397 Ill. 399 to 400 Ill. 347; from 332 Ill. App. 161 to 334 Ill. App. 629. As the Illinois legislature was not in session during the period, there are no statutory modifications to report.

¹ 334 Ill. App. 382, 79 N. E. (2d) 637 (1948). Leave to appeal has been denied.

writ of mandamus in cases involving purely private corporations are not rare,² but the case of *People ex rel. Tinkoff v. Northwestern University*³ goes to unusual length in an effort to establish that a private educational institution is not subject to mandamus, as for example to compel the admission of a prospective student, albeit a publicly maintained university or college might be so subject.⁴ There can be no quarrel with the outcome of the case, for the applicant there seeking admission to the university had failed to show the necessary clear right to the writ,⁵ but since every corporation owes its existence to state action, whether evidenced by general or special statute, there would seem to be no doubt that the public character of the franchise exercised by a corporation is such as would support mandamus, as well as quo warranto, in a proper case.⁶ The fact that the corporation in question was engaged in eleemosynary activities rather than in profit-making enterprises should not be made the test by which to decide its immunity from suit.

At the time a new immunity seems to have been created for certain corporations, another one favoring them appears marked for eventual elimination. The deep-seated and steady pressure to bring about a nullification of the immunity heretofore granted to charitable corporations from tort liability for the acts of their

² See note in 22 CHICAGO-KENT LAW REVIEW 201 discussing the right to obtain mandamus to secure inspection of corporate books and records.

³ 333 Ill. App. 224, 77 N. E. (2d) 345 (1948), cause transferred in 396 Ill. 233, 71 N. E. (2d) 156 (1947) because no constitutional issue was involved.

⁴ In *People ex rel. Board of Trustees v. Barrett*, 382 Ill. 321, 46 N. E. (2d) 951 (1943), mandamus was refused because the requisite clear right thereto had not been shown, at least as to part of the case. See also *North v. Trustees of the University of Illinois*, 137 Ill. 296, 27 N. E. 54 (1891); *Anthony v. Syracuse University*, 130 Misc. 249, 223 N. Y. S. 796 (1927), reversed in 224 App. Div. 487, 231 N. Y. S. 435 (1928).

⁵ See *People v. City of Chicago*, 382 Ill. 500, 48 N. E. (2d) 329 (1943). Admission to the university in the instant case was subject to a reserved right, on the part of the university corporation, to reject any application for any reason it might deem adequate.

⁶ *Brooks v. State ex rel. Richards*, 26 Del. 1, 79 A. 790 (1911). In *People v. Utica Ins. Co.*, 15 Johns. (N. Y.) 358 at 387, 8 Am. Dec. 243 at 257, the court said: ". . . a privilege or immunity . . . which cannot legally be exercised without legislative grant, would be a franchise."

agents,⁷ particularly where the charity has seen fit to insure against the risk, has resulted in the decision pronounced by the Appellate Court for the First District in the case of *Wendt v. Servite Fathers*.⁸ The dike of immunity has not entirely collapsed for the court there restricted its decision to the point that liability may be present where "insurance exists and provides a fund from which tort liability may be collected so as not to impair the trust fund,"⁹ but at least a way has been shown by which to displace such holdings as those found in *Myers v. Young Men's Christian Association of Quincy*¹⁰ and in *Piper v. Epstein*.¹¹ Careful observance must be given to the tactical steps pursued in the most recent of these cases to avoid the pitfall of improper and prejudicial disclosure of the fact of insurance to the jury, but once that difficulty is surmounted there would seem to be no longer any adequate basis for an immunity not enjoyed by any other type of enterprise.¹²

It was the evident purpose of the legislature, when enacting Section 9 of the Business Corporation Act,¹³ to prevent the confusion which could well arise from having two corporations operating in Illinois where the names of both might be deceptively similar in nature. According to the case of *Ernest Freeman & Company v. Robert G. Regan Company*,¹⁴ however, that statute can have no application to a situation where one of the corpora-

⁷ *Parks v. Northwestern University*, 218 Ill. 381, 75 N. E. 991, 2 L. R. A. (N. S.) 556 (1905).

⁸ 332 Ill. App. 618, 76 N. E. (2d) 342 (1947), noted in 26 CHICAGO-KENT LAW REVIEW 279, 36 Ill. B. J. 488, 43 Ill. L. Rev. 248.

⁹ 332 Ill. App. 618 at 634, 76 N. E. (2d) 342 at 349.

¹⁰ 316 Ill. App. 177, 44 N. E. (2d) 755 (1942), criticized in 21 CHICAGO-KENT LAW REVIEW 256.

¹¹ 326 Ill. App. 400, 62 N. E. (2d) 139 (1945), criticized in 24 CHICAGO-KENT LAW REVIEW 266.

¹² In *Moore v. Moyle*, 335 Ill. App. 342, 82 N. E. (2d) 61 (1948), not in the period of this survey, the Appellate Court for the Second District denied recovery in a suit on substantially identical facts to the instant case without referring to the holding therein although it did cite the case of *Piper v. Epstein*. It is understood that a certificate of importance has been issued and the case is now pending review before the Illinois Supreme Court.

¹³ Ill. Rev. Stat. 1947, Ch. 32, § 157.9.

¹⁴ 332 Ill. App. 637, 76 N. E. (2d) 514 (1947).

tions has been dissolved, or has had its name changed, and another corporation, bearing an identical name, is later organized even though such organization occur in a short space of time after the dissolution or amendment. The net result of the holding was that the plaintiff therein, having a claim against the first concern, found itself properly barred from suing the second one but not until it had had the unpleasant experience of wasting time and money pursuing a will o' the wisp. There might be occasion to consider the wisdom of enacting an amendment to the statute so as to forbid the approval of articles of incorporation for new enterprises which seek to use names previously utilized at least until some stated period of time has elapsed so as to permit the dissipation of any confusion which otherwise could, and in this instance did, well occur from the similarity in the names.

Although the decision in *Western Foundry Company v. Wicker*¹⁵ called for an interpretation of provisions contained in the 1919 General Corporation Act¹⁶ which were repealed by the adoption of the present Business Corporation Act, the problem therein involved is one which can well arise today. As it is believed the same result would be achieved under the present statute, the case warrants attention. The litigation grew out of the efforts of an Illinois corporation to relieve itself of a substantial backlog of unearned and undeclared cumulative dividends on its preferred stock by a charter amendment intended to produce a waiver and release thereof on the part of the preferred stockholders without any change in the capital structure insofar as it concerned them and upon no other consideration than a resumption of dividend payments with respect to the future. More than two-thirds of the outstanding preferred shares were voted as being in favor of the amendment, but defendant, a preferred shareholder, objected to the validity of the purported change and demanded payment of the arrearages. In an action designed to obtain a declaratory judgment establishing validity of the amendment so ratified, the

¹⁵ 335 Ill. App. 106, 80 N. E. (2d) 548 (1948). Leave to appeal has been granted.

¹⁶ Laws 1919, pp. 328-9, § 59.

court held that the statutory provisions authorizing charter amendment did not extend to the point of permitting the change to have retroactive operation, hence declared the purported change to be invalid. The present statute being silent with respect to the right to cancel accumulations of undeclared preferred dividends,¹⁷ it would seem as if the backlog of arrearages on preferred shares can be waived or released only provided (a) all preferred shareholders consent, or (b) some substitute form of payment, such as the issuance of additional shares, be made to them as an acceptable satisfaction for their claims.

Some decisions concerning the rights of shareholders are noteworthy. Statements by way of dicta exist in the Illinois decisions to the effect that, upon dissolution of a corporation, the title to corporate assets does not become vacant but rather falls on those who contributed to the capital to be administered, subject to the rights of creditors, for their benefit.¹⁸ It was not until the case of *Brooks v. Saloy*,¹⁹ however, that the issue was squarely presented as to the right of a minority shareholder of a defunct corporation, who was neither officer or director, to maintain a representative suit in equity to remove and cancel certain devious transactions, as clouds on the title, by which the defendants had acquired possession of the corporate real estate and thereafter to cause a partition to be made among the former shareholders. The Appellate Court translated the dicta into fact by permitting the share-

¹⁷ Ill. Rev. Stat. 1947, Ch. 32, § 157.52, dealing with the right to amend the articles of incorporation, merely speaks of the power to amend so as to change ". . . the preferences . . . and the special or relative rights in respect of all or any part" of the corporate shares.

¹⁸ Statements in *Wheeler v. Pullman Iron & Steel Co.*, 143 Ill. 197, 32 N. E. 420, 17 L. R. A. 818 (1892), are clearly dicta for the issue there turned on the right of a court of equity, in the absence of a statute, to conduct dissolution proceedings. In *Gulf Lines Connecting R. R. of Illinois v. Golconda Northern Ry.*, 290 Ill. 384, 125 N. E. 357 (1919), the court had merely to determine the effect, if any, of the subsequent dissolution of the corporate grantor on a conveyance of a fee simple title made by it while it still retained life. Language in *Walden Home Builders, Inc. v. Schmit*, 326 Ill. App. 386, 62 N. E. (2d) 11 (1945), noted in 24 CHICAGO-KENT LAW REVIEW 345, possesses no greater significance for the court had to decide whether the corporation itself, after dissolution, might have the benefit of Ill. Rev. Stat. 1947, Ch. 32, § 157.94, in support of its own suit to recover on claims due to it before dissolution.

¹⁹ 334 Ill. App. 93, 79 N. E. (2d) 97 (1948).

holder to proceed despite a decree at nisi prius dismissing the complaint for want of equity. Inasmuch as the suit was of equitable character, it might be inferred from that case that title to the corporate property could be said to vest in any shareholder, as a trustee, who should see fit to concern himself over the assets. Would not confusion over ownership be lessened if the title, likewise in trust, had been said to vest in those who had, at the time of dissolution, constituted the board of directors? Certainly, a more workable liquidation would follow from such a solution and title be more readily made marketable than if conveyance had to be obtained from all the former shareholders.²⁰

For certain purposes, the Business Corporation Act defines a shareholder as one who is "a holder of record of shares in a corporation."²¹ That definition, of course, can have no application to matters falling beyond the scope of the statute. It is not surprising to note, therefore, that the Circuit Court of Appeals for the Seventh Circuit, in the case of *HFG Company v. Pioneer Publishing Company*,²² held that one did not have to be a record holder of shares in order to maintain a representative suit so long as he did have an equitable and beneficial interest therein, the federal rule merely requiring that he be a "shareholder" at the time of the transaction made the basis of the complaint.²³ The rule announced long ago in *Green v. Hedenburg*²⁴ does not appear to have been changed in any respect.

Notice was taken previously of the interlocutory determination in the case of *Rinn v. Broadway Trust & Savings Bank of*

²⁰ See 26 Chicago Bar Rec. 141-2 (1945).

²¹ Ill. Rev. Stat. 1947, Ch. 32, § 157.2(g).

²² 162 F. (2d) 536 (1947).

²³ See Rule 23b of the Fed. Rules of Civ. Procedure, 28 U. S. C. A. foll. § 723c. Lindley, D. J., concurred specially on the ground that the rule in question was solely procedural in character whereas the determination as to what was necessary to constitute one a shareholder involved a question of substantive right to be decided by reference to local law.

²⁴ 159 Ill. 489, 42 N. E. 851, 50 Am. St. Rep. 178 (1896). The plaintiff there was regarded as a "shareholder" for this purpose, although his holding of corporate stock was for collateral security only. The report of the case, however, fails to disclose whether the shares had been registered in plaintiff's name as pledgee. See Ill. Rev. Stat. 1947, Ch. 32, § 157.30.

*Chicago*²⁵ which purported to indicate that a stockholder of an insolvent state bank, or one who held shares in a bank in course of voluntary liquidation, might bring a representative suit against the officers and directors based on their malfeasance or misfeasance while in office. Attention was then drawn to the fact that exclusive jurisdiction in cases of that character belonged in the hands of the State Auditor,²⁶ so that the remedy of the shareholder ought, more nearly, be by pursuing mandamus proceedings against the state official designed to compel him to act rather than by attempting to maintain an independent suit. Subsequent to the return of the case to the trial court, the stockholder's suit was dismissed for want of equity. An abstract opinion rendered on an appeal from that decree would now seem to confirm the criticism addressed to the former determination.²⁷

While the case was one primarily involving a problem as to the construction to be placed on language found in a voting trust agreement, the lawyer engaged in corporate practice should not overlook the decision announced by the Illinois Supreme Court in *Olson v. Rossetter*.²⁸ The question arose because of the presence of a statement in one part of a voting trust agreement to the effect that the trust should "terminate in any event" on a designated date whereas, in another part thereof, appeared a reserved power in favor of a majority of the beneficiaries to amend, alter or modify the agreement. It was held that the reserved power to amend was not broad enough to permit an extension of the arrangement beyond the original term. Now that voting trusts are apparently legalized in Illinois,²⁹ there will probably be occa-

²⁵ 326 Ill. App. 376, 62 N. E. (2d) 8 (1945), noted in 25 CHICAGO-KENT LAW REVIEW 4, and see comment thereon in 24 CHICAGO-KENT LAW REVIEW 188.

²⁶ See Ill. Rev. Stat. 1947, Ch. 16½, § 11, and *McIlvaine v. City Nat. Bank & Trust Co. of Chicago*, 314 Ill. App. 496, 42 N. E. (2d) 93 (1942).

²⁷ 333 Ill. App. 157, 76 N. E. (2d) 800 (1948). See particularly headnotes 1, 2 and 3 in 76 N. E. (2d) 800-1.

²⁸ 399 Ill. 232, 77 N. E. (2d) 652 (1948), affirming 330 Ill. App. 304, 71 N. E. (2d) 556 (1947), noted in 26 CHICAGO-KENT LAW REVIEW 2. The case was consolidated with the appeal granted in *Russ v. Blair*, and resulted in the reversal of the decision therein: 330 Ill. App. 571, 71 N. E. (2d) 838 (1947).

²⁹ Ill. Rev. Stat. 1947, Ch. 32, § 157.30a. But see Ill. Const. 1870, Art. XI, § 3.

sion to make more frequent use in the future of that device designed to maintain corporate control. If such a trust is designed to run for ten years, the maximum period sanctioned by the statute, there would be no problem of the type that confronted the court in the Olson case for any attempt to provide for an extension of duration beyond the legal limit would be stricken down as opposed to a clear legislative declaration of the new public policy. If a shorter period of life be established and there may be reason to consider the possibility of an extension, the power to amend should then be expressed in sufficiently broad language to cover that eventuality and the period of duration should be so stated as to omit the phrase providing for termination "in any event" on the designated day.

PRINCIPAL AND AGENT

The nature of the relationship existing between two persons is primarily a question of fact, but may involve the application of legal doctrines. It is for this reason that the decision in *Sea Insurance Company v. Sinks*³⁰ becomes of some importance to the law of agency. According to the facts therein, a freight forwarder who lacked adequate equipment of his own engaged the defendant, a trucker, to unload certain railroad cars and deliver the contents to designated places. While the goods were in the possession of the defendant the same were destroyed by fire of unknown origin. The freight forwarder was reimbursed for his loss by plaintiff, an insurance company, and the latter sued defendant under the theory of subrogation. If defendant was an agent of the freight forwarder, he would be liable only upon a showing of negligence on his part. If defendant instead acted in the capacity of a common carrier or a bailee for hire, he was either an insurer or at least bound to show the exercise of reasonable care in the handling of the cargo. Plaintiff, claiming the defendant to be a common carrier, proved that defendant possessed certificates of convenience and necessity issued by both the federal

³⁰ 166 F. (2d) 623 (1948).

and the state commerce commissions,³¹ and urged that such certificates defined defendant's legal status, thereby automatically excluding defendant from contracting in any other capacity than that of a common carrier. Judgment for the defendant in the trial court was, however, affirmed on appeal to the Circuit Court of Appeals for the Seventh Circuit.

The higher court met plaintiff's rather novel contention by noting that Illinois law would control and, according to state law, whether the defendant was or was not a common carrier had to be determined, as a matter of fact, from the activity concerned rather than from the corporate character of the defendant or from its declared purposes.³² The lower court had found the agreement between the parties to be one under which the trucker was not to issue any bill of lading, nor participate in any tariff, or issue delivery receipts. Such finding, adopted by the reviewing court, was held to be substantial evidence that the relationship between the parties was one of principal and agent. The fact that the trucker was expected to use his own men and equipment while performing the job, while significant, lost much of its effect when coupled with the fact that the principal had neither. The court also expressed the belief that there was nothing in the Illinois law which would prohibit a local carrier, while possessed of an operating certificate, from entering into a purely private arrangement external thereto.³³

Two well established principles of agency law, albeit ones frequently forgotten, were reaffirmed in the case of *Leach v. Hazel*³⁴ when the court reversed a decree for specific performance of a land contract, made through an agent, because of the absence

³¹ The state certificate was issued pursuant to Ill. Rev. Stat. 1947, Ch. 95½, § 240 et seq.

³² See *Rathbun v. Ocean Accident Corp.*, 299 Ill. 562, 132 N. E. 754, 19 A. L. R. 140 (1921); *Beatrice Creamery Co. v. Fisher*, 291 Ill. App. 495, 10 N. E. (2d) 220 (1937).

³³ The court noted that enforcement of the statute above noted properly belonged to the designated state department through proceedings to be conducted, if at all, in state tribunals.

³⁴ 398 Ill. 33, 74 N. E. (2d) 797 (1947).

of written authority given to the agent to make such a contract³⁵ plus the further point that a real estate broker employed to find a purchaser, even though the terms of sale be fully prescribed, does not, merely by his hiring, possess authority to execute a contract of sale which will be binding on the owner-principal.

LABOR LAW

Application and interpretation of the Unemployment Compensation Act became the matter of concern in three significant cases. In the first, that of *Donaldson v. Gordon*,³⁶ the question was one as to whether or not certain solicitors were employees within the meaning of the statute. The employer sought review of a determination that he was liable to contribute to the compensation fund, claiming the solicitors were not employees since their services were not performed "for wages or under any contract of hire, written or oral, express or implied."³⁷ The arrangement between the parties was one under which the solicitor sought prospective customers for the installation of floor coverings to whom an offer to do the job for a fixed sum would be made. The offer would then be submitted to Donaldson who was at liberty to accept or reject it. If accepted, the installation was completed under Donaldson's exclusive control and he collected the contract price. The money so collected was first applied to pay all costs, including price of material, labor, transportation and similar charges. The net balance was then divided between Donaldson and the solicitor equally, or if a loss had been sustained it was borne by both on the same basis. The solicitors were not required to work any specified number of days or hours, were not obliged to make reports to Donaldson, and were free to hire assistants or salesmen whose salaries were paid by the solicitors exclusively.

The Illinois Supreme Court ruled, on these facts, that Donaldson was exempt for, while the arrangement might or might not

³⁵ Ill. Rev. Stat. 1947, Ch. 59, § 2.

³⁶ 397 Ill. 488, 74 N. E. (2d) 816 (1947).

³⁷ Ill. Rev. Stat. 1937, Ch. 48, § 218(f) (1).

be a partnership,³⁸ it was clearly not one of employment as (a) the services were not performed for "wages," that term contemplating payments of fixed sums without deduction or possibility of loss from the engagement and without regard to whether the employer gains or loses by the transaction, and (b) did not involve a "hiring," which postulates a contract for services to be rendered to the employing unit. Two independent elements were necessary here before Donaldson would be obligated to the solicitor. First, he had to accept the offer, and second, the job had to be completed at a profit. In effect, the solicitor had to take a gamble on both elements, hence the compensation, if any, received could not be deemed "wages" within the contemplation of the statute.

Questions concerning the right to unemployment compensation benefits were involved in *Fash v. Gordon*.³⁹ A labor dispute had developed therein over the renewal of a collective bargaining contract. The union submitted the question of renewal to the War Labor Board which recommended temporary extension of the agreement pending determination of certain disputed facts by the National Labor Relations Board. The employer refused to accede to this suggestion and the union members went out on strike. Certain of the employees sought unemployment compensation benefits for time lost by the strike but were denied any allowance by the Director. The circuit court reversed the ruling, but the Supreme Court reinstated the decision of the Director on the ground the case fell clearly within Section 7(d) of the Act.⁴⁰ The employees had argued that no labor dispute was involved since any "dispute" had been terminated after a decision on the merits had been pronounced by the governmental agency. The unemployment, the employees said, was allegedly caused by the employer's unilateral refusal to abide by the decision, for which refusal the employees had claimed the right to endeavor to compel obedience by strike measures. The court, however, indicated that, as the

³⁸ In general, see Ill. Rev. Stat. 1947, Ch. 106½, § 6(1).

³⁹ 398 Ill. 210, 75 N. E. (2d) 294 (1947), noted in 36 Ill. B. J. 364.

⁴⁰ Ill. Rev. Stat. 1947, Ch. 48, § 223, forbids compensation payments for "total or partial unemployment . . . because of a labor dispute."

statute did not differentiate between stoppages of work caused by either employees or employers, so long as the stoppage grew out of a labor dispute, compensation could not be granted. It likewise held that the initial labor dispute could not be regarded as ended until agreement over the contract terms was reached, whether that result was produced by submission to the order of the administrative board or from pressure generated by the strike. The reasonableness or unreasonableness of the demands, or the merits of the dispute, were said to have no place in determining the question of whether or not a labor dispute existed.

Much the same type of question was presented in the case of *Bankston Creek Collieries, Inc. v. Gordon*⁴¹ except there the specific issue turned on whether a strike resulting from the discharge of certain employees because of a slowdown in work should serve to bar the employees from compensation benefits. One employee, a truck driver, was prevented from pursuing his regular occupation because of a breakdown at the mine. The company assigned him to temporary duty at a slightly lower rate of compensation. To compel payment to him of the ordinary wage rate, other truck drivers employed at the same mine slowed down their performance to approximately fifteen per cent. of capacity. For this, they were discharged. The miners then ceased work in order to coerce the employer into rehiring the truck drivers, but finally returned to duty after a compromise had been worked out. Denial of compensation benefits was affirmed when the court indicated that a "labor dispute" was not necessarily synonymous with "strike," the latter term indicating the presence of the former but not vice versa, for a labor dispute could arise where the men quit because of a failure to pay agreed sums,⁴² or until a new contract was made, or in an effort to secure more favorable terms, and could even develop from action taken by the employer with respect to wages or conditions of employment. A work stoppage produced by a labor dispute, whatever the reason for its existence

⁴¹ 399 Ill. 291, 77 N. E. (2d) 670 (1948).

⁴² See *Local Union No. 11 v. Gordon*, 396 Ill. 293, 71 N. E. (2d) 637 (1947), noted in 26 CHICAGO-KENT LAW REVIEW 12-3.

might be, was deemed sufficient automatically to preclude payment of benefits.

It is proper to note that two decisions mentioned in a prior survey have been left unchanged by any action of the Supreme Court on further review. Application for writ of error in *Dinoffria v. International Brotherhood of Teamsters and Chauffeurs Local Union No. 179*⁴³ was granted but, on further consideration, the writ was dismissed because no constitutional issue had, in fact, been decided by the Appellate Court.⁴⁴ As a consequence, the opinion of the latter tribunal, to the effect that an attempted organization of self-employers into an employee's union constitutes an unlawful labor objective, stands in full force and effect. Yet the status of the law in Illinois remains uncertain for two decisions uphold the right in contrast to the one which denies it.⁴⁵ The court also affirmed the holding in *Montgomery Ward & Company v. United Retail, Wholesale & Department Store Employees, C.I.O.*,⁴⁶ which had dealt with the right of an employer to secure injunction against defamatory statements concerning it made by the union.

WORKMEN'S COMPENSATION

Only one novel point arose during the period of this survey concerning the law regarding workmen's compensation. The plaintiff employer, in the case of *Carmack v. Great American Indemnity Company*,⁴⁷ had been obliged to pay additional compensation to an illegally employed minor and sought reimbursement from the insurance carrier. His right to recover was affirmed by the Supreme Court on the ground that Section 26(a)(3) of the

⁴³ 331 Ill. App. 129, 72 N. E. (2d) 635 (1947), noted in 25 CHICAGO-KENT LAW REVIEW 343 and 26 CHICAGO-KENT LAW REVIEW 13-4

⁴⁴ 399 Ill. 304, 77 N. E. (2d) 661 (1948).

⁴⁵ See *Naprawa v. Chicago Flat Janitors' Union*, 315 Ill. App. 328, 43 N. E. (2d) 198 (1942), petition for leave to appeal dismissed 382 Ill. 124, 46 N. E. (2d) 27 (1943); *Baker v. Retail Clerks' I. Protective Ass'n*, 313 Ill. App. 432, 40 N. E. (2d) 571 (1942).

⁴⁶ 400 Ill. 38, 79 N. E. (2d) 46 (1948), affirming 330 Ill. App. 49, 70 N. E. (2d) 75 (1946), noted in 26 CHICAGO-KENT LAW REVIEW 14 and 35-6.

⁴⁷ 400 Ill. 93, 78 N. E. (2d) 507 (1948), noted in 26 CHICAGO-KENT LAW REVIEW 296.

Illinois Compensation Act,⁴⁸ as well as the broad terms of the policy coverage,⁴⁹ required that result. From the standpoint of the carrier, such a decision does nothing to discourage the employer from engaging in indiscriminate hiring of minor employees. It should be said, however, on behalf of the minor employee that a firm public policy requires that he be protected against such hazards as can be anticipated. Among such hazards is the possibility that the employer may become insolvent and be unable to respond for the additional compensation. To hold otherwise would leave the minor without recourse against the carrier. It might be noted that the problem seems to have been handled more effectively in Wisconsin under an appropriate statute.⁵⁰

II. CONTRACTS

Only one case can be said to contain anything significant so far as general contract doctrines are concerned and even that is of limited appeal. In *Manthei v. Heimerdinger*¹ an argument arose as to whether a release given as to a common-law right of action for personal injuries growing out of an automobile accident should also operate to discharge a tavern proprietor from liability even though he had, in violation of the Liquor Control Act,² sold liquor to the already intoxicated tort-feasor. It is, without doubt, clear that a release of one joint tort-feasor will operate to discharge all others jointly responsible for the tort despite any contrary intention on the part of the contracting parties. If, however, the injury sustained may be said to be the result of two or more independent but concurring causes, then an area of doubt may exist as to whether the release of one serves to release all, especially so if the causes of action rest on different foundations and

⁴⁸ Ill. Rev. Stat. 1947, Ch. 48, § 163(a)(3).

⁴⁹ See paragraph I(a) of the standard form of workmen's compensation policy in use in Illinois.

⁵⁰ Wis. Stat. 1943, Ch. 102, § 102.62.

¹ 332 Ill. App. 335, 75 N. E. (2d) 132 (1947), noted in 26 CHICAGO-KENT LAW REVIEW 358 and 43 Ill. L. Rev. 409.

² Ill. Rev. Stat. 1947, Ch. 43, § 94 et seq.