Chicago-Kent Law Review

Volume 25 | Issue 1 Article 8

December 1946

Public Law - Survey of Illinois Law for the Year 1945-1946

Chicago-Kent Law Review

VII. PUBLIC LAW

CONSTITUTIONAL LAW*

Few important constitutional issues came before the Illinois courts during the period covered by this survey and the federal courts considered only one case from this state involving a constitutional problem. The advocates of reapportionment made another attempt to enlist judicial assistance in their cause. As usual, the effort was futile. A complaint under the federal Declaratory Judgment Act was filed in *Colegrove* v. *Green*[1] in the District Court seeking a decree declaring the act apportioning Illinois into congressional districts invalid and asking an injunction to restrain the governor, the secretary of state and the state auditor, as the Illinois Primary Certifying Board, from taking proceedings for the November election. The district court dismissed the complaint. That decision was affirmed by the United States Supreme Court,[2] in an opinion written by Mr. Justice Frankfurter, reiterating the familiar characterization that the controversy was political in character and that the courts had nothing to do with its determination. In holding that there was want of equity in the complaint, the majority opinion stated: "The duty to see to it that the laws are faithfully executed cannot be brought under judicial compulsion."[3]

A few other cases involving decisions on constitutional questions are worthy of mention. The decision in *People ex rel. Sanitary District of Chicago* v. *Schlaeger*[4] upheld the constitutionality of the 1933 amendment to the Australian Ballot Act.[5] In substance, the amendment provides for the sharing of the costs of printing and delivery of ballots and the compensation of judges

* Investigation discloses no cases worthy of comment dealing with aspects of Administrative Law within the scope of this survey except that of Northwestern Institute of Foot Surgery v. Thompson, 326 Ill. App. 439, 62 N. E. (2d) 42 (1945), which was included in last year's report: 24 CHICAGO-KENT LAW REVIEW 67.

1 64 F. Supp. 632 (1946).

2 Colegrove v. Green, 326 U. S. —, 66 S. Ct. 1198, 90 L. Ed. (adv.) 1242 (1946).

3 326 U. S. — at —, 66 S. Ct. 1196 at 1201, 90 L. Ed. (adv.) 1242 at 1245.

4 391 Ill. 314, 63 N. E. (2d) 382 (1945).

5 Laws 1933, p. 578; Ill. Rev. Stat. 1945, Ch. 46, §§ 16—2 and 13—11.

and clerks of election where the names of candidates for offices of municipalities, townships, park districts, school districts or sanitary districts, the territorial limits of which are less than the territorial limits of a county, appear upon the same ballot with those of candidates for county offices at a general election. It was argued that the statute was invalid because it created a debt equivalent to levying a tax for local purposes in violation of Sections 9 and 10 of Article IX of the state constitution. The court held that funds applied to defray part of the cost of holding general elections were applied to the payment of general governmental expenses. In *People ex rel. Curren* v. *Schommer*[6] the court upheld the constitutionality of the act creating the Illinois State Super-Highway Commission;[7] deciding that tolls to be charged are to be regarded not as taxes but as compensation for the use of property. The court also considered the power of the commission to borrow money and decided that, under the proper interpretation of the act, such power was limited to borrowing for repayment out of tolls and fees to be collected.

CONFLICT OF LAWS

The Illinois Supreme Court considered generally the effect to be given the judgments and decrees of courts of other states, under the full faith and credit clause, in the case of *People ex rel. Jones* v. *Chicago Lloyds*.[8] In that case, a suit was begun in 1934 in Missouri against an unincorporated association engaged in the insurance business to recover damages for malicious prosecution and false arrest. In 1938, while this action was pending, liquidation proceedings were instituted against the association in Illinois and a decree was entered appointing a liquidator and vesting him with possession of the association's property. The liquidator directed the association's counsel not to participate further in the Missouri proceeding. In 1941, the Missouri court entered judgment in the tort case. The judgment was presented as a claim in

[6] 392 Ill. 17, 63 N. E. (2d) 744 (1945).
[7] Ill. Rev. Stat. 1945, Ch. 121, § 314a et seq.
[8] 391 Ill. 492, 63 N. E. (2d) 479 (1945), noted in 46 Col. L. Rev. 479.

the liquidation proceedings and was disallowed. On appeal, the Supreme Court applied the familiar rule that the full faith and credit clause does not require a state to recognize the judgment of a sister state obtained subsequent to a decree transferring the property of the judgment debtor to a trustee or other officer for the benefit of all creditors. In the instant case, the court further held that the Missouri judgment, considered in the light of a claim, gave the judgment creditor no rights in the liquidation proceedings.

Only one other case dealing with a problem of conflict of laws need be mentioned here. In *Lubin* v. *Equitable Life Assurance Society of United States,*[9] nineteen separate plaintiffs filed separate suits in equity against nineteen mutual life insurance companies praying for an accounting and distribution of undistributed surplus funds. All of such insurance companies were organized in states other than Illinois. Separate appeals from orders dismissing the complaints were consolidated for hearing before the Appellate Court. That court followed the established practice of refusing to take jurisdiction to regulate the internal affairs of foreign corporations, saying: "In view of the fact that the law governing every aspect and phase of the theory of plaintiffs' complaints had been long and well established prior to the filing of said complaints, we are constrained to believe that the nineteen suits involved herein were instituted solely for what possible nuisance value they might prove to have."[10]

MUNICIPAL CORPORATIONS

A large number of cases, some of which may have far-reaching consequences, were passed upon in the field of municipal law. They dealt with a wide variety of topics. Thus, in *Woodruff* v. *City of Chicago,*[11] it was held that an abutting property owner could not recover the amount he had paid on a special assessment for widen-

[9] 326 Ill. App. 358, 61 N. E. (2d) 753 (1945).

[10] 326 Ill. App. 358 at 376, 61 N. E. (2d) 753 at 760.

[11] 326 Ill. App. 577, 63 N. E. (2d) 124 (1945). The Supreme Court granted leave to appeal and, in 394 Ill. 542, 69 N. E. (2d) 287 (1946). not in the period of this survey, reversed the Appellate Court in part.

ing and improving a street since the evidence did not show that the city had abandoned the project even though it had been long delayed. The court suggested that the plaintiff's remedy, if any existed for failure to complete the improvement, was in an action for damages.

An interesting case concerning the liability of a city on the theory of *quantum meruit* for services rendered may be found in *DeLeuw, Cather & Company* v. *City of Joliet.*[12] The city there concerned intended to use federal funds for the erection of a new municipal waterworks system and engaged plaintiff's services for certain preliminary work in connection therewith. The federal grant failed, the project was abandoned, and plaintiff then sued for the value of its serevices. The court held that no prior appropriation was necessary to make the contract binding as it was not contemplated that payment was to be made from general funds. As the federal funds were never made available and as no bonds were issued, one can only speculate as to where the funds to pay the judgment are to come from if not from the general fund. If the case is to be followed, it would seem that earlier rules applied in this state have been overruled.[13]

In the case of *Village of Westchester* v. *Holmes,*[14] the Supreme Court squarely held that the extension and refunding of special assessment bonds pursuant to the Local Improvement Act[15] was properly refused where much of the property had been sold on foreclosure proceedings for delinquency in the payment of general taxes and special assessments. The court pointed out that as the liens of general taxes and special assessments are of equal dignity, if refunding of the special assessments was allowed, the lien for general taxes, which cannot be refunded, would be greatly diluted and prejudiced. The court seemed anxious not to jeopardize the rights of buyers at the tax foreclosure sale.

12 327 Ill. App. 453, 64 N. E. (2d) 779 (1946). Leave to appeal has been denied.

13 Another case which reaches a similar result but by a different route may be observed in Welsbach Traffic Signal Co. v. City of Chicago, 328 Ill. App. 467, 66 N. E. (2d) 471 (1946).

14 390 Ill. 436, 62 N. E. (2d) 410 (1945).

15 Ill. Rev. Stat. 1945, Ch. 24, § 84—86a.

The right of a *de jure* civil service employee to recover his full salary, accruing in the interim between the issuance of a peremptory writ of mandamus and the time when the same was affirmed on appeal, was firmly established in *Corbett* v. *City of Chicago*.[16] The court expressly rejected the contention of the city that payment of the salary to a *de facto* employee, made in good faith, constituted a defense.

The constitutionality of the act providing for airports in parks[17] was upheld in *People ex rel. Ammann* v. *Wabash Railroad Company*[18] wherein the railroad questioned the legality of a Decatur park district tax levy for airport expense. The court, in a lengthy opinion, upheld the act by stating, in substance, that the act specifically granted the power to the municipal corporation, was for a proper corporate purpose and, no abuse or unreasonableness as to the exercise of the power having been shown, it was a proper delegation of a legislative power. The argument of the railroad was more in the nature of an indictment of the General Assembly for permitting so many different municipal bodies to have authority to acquire and operate airports. Another important case on the same general subject was presented in *People ex rel. Curren* v. *Wood*,[19] a decision which upheld the Municipal Airport Authorities Act[20] against a number of constitutional objections which had been levelled against it. One objection, most vigorously pressed, was that the act was for the furtherance of private purposes since rental would be charged to private interests using the airport facilities. The court pointed out that the public interest lay in the fact that such "airports have been characterized as the 'highways of the air.' "[21] Mention might also be made of the action of the General Assembly in passing the Airport Zoning Act,[22] a statute which empowers the Department of Aeronautics

[16] 391 Ill. 96, 62 N. E. (2d) 693 (1945), affirming 323 Ill. App. 429, 55 N. E. (2d) 717 (1944), noted in 23 CHICAGO-KENT LAW REVIEW 268.

[17] Laws 1929, p. 557; Ill. Rev. Stat. 1945, Ch. 105, § 327b et seq.

[18] 391 Ill. 200, 62 N. E. (2d) 819 (1945).

[19] 391 Ill. 237, 62 N. E. (2d) 809 (1945).

[20] Ill. Rev. Stat. 1945, Ch. 15½, §§ 68.1 to 68.20.

[21] An earlier statute had been held invalid in People ex rel. Greening v. Bartholf, 388 Ill. 445, 58 N. E. (2d) 172 (1944).

[22] Ill. Rev. Stat. 1945, Ch. 15½, § 48.1 et seq.

and municipal subdivisions of the state to exercise zoning powers in order to prevent airport hazards, thereby aiding aerial navigation.

The old problem as to the liability of a municipality on bonds issued to satisfy indebtedness, other than corporate, was again raised in the case of *Indiana Harbor Belt Railroad Company* v. *Calumet City*.[23] The action was one in equity to enjoin the defendant municipality and its officers from issuing bonds to retire certain judgments against the city, which judgments had been rendered in certain actions based on local improvement bonds and which might have been prevented had the suits been more vigorously contested. Plaintiff's position was that payment of such judgments was not a proper corporate purpose. The court held that inasmuch as there was no fraud shown in connection with the procurement of the earlier judgments, such judgments had become valid obligations which could be retired by a bond issue. To arrive at that result, the court was obliged to distinguish its holding from that in *Leviton* v. *Board of Education*[24] which had indicated that an improper expenditure does not become a proper one merely because it comes robed in the form of a judgment. It attempted a distinction on the ground that a school district, "being a quasi-municipal corporation, cannot be held liable for the shortcomings of its officials."[25] There is some difficulty in seeing why that distinction should be of controlling importance. Much the same rationale, however, seems to have been followed in *Edward J. Berwind, Inc.* v. *Chicago Park District*[26] where the court held that the municipal corporation was liable for the acts of the park commissioners in diverting funds collected for the retirement of tax anticipation warrants.[27]

The extent of the licensing powers of a municipality was

[23] 391 Ill. 280, 63 N. E. (2d) 369 (1945).

[24] 374 Ill. 594, 30 N. E. (2d) 497 (1940).

[25] 391 Ill. 280 at 293, 63 N. E. (2d) 369 at 375.

[26] 393 Ill. 317, 65 N. E. (2d) 785 (1946).

[27] The court again sought to distinguish its decision from the holdings in Berman v. Board of Education, 360 Ill. 535, 196 N. E. 464 (1935), and a number of other cases listed in 393 Ill. 317 at 337, also dealing with the diversion of funds. Can it be that the Illinois Supreme Court is seeking to modify its earlier decisions to some extent?

involved in three cases. In *Lamere* v. *City of Chicago,*[28] the court was asked to construe Section 23—54 of the Cities and Villages Act which expressly authorizes municipalities to license "theatricals and other exhibitions, shows and amusements."[29] An ordinance enacted pursuant thereto required that all automatic musical instruments and "juke" boxes be licensed. It also established an annual license fee of $50 for each instrument. The Supreme Court, on direct appeal,[30] held the ordinance to be a regulatory, as opposed to a revenue, measure, but as the fee was regarded as excessive the ordinance was declared invalid. The second licensing case, that of *City of Bloomington* v. *Ramey,*[31] involved the same section but there the ordinance required that a license be obtained by all itinerant merchants and provided for a graduated license fee, commencing with a $50 minimum. Again, the court held that the ordinance was a licensing and not a taxing one but considered the amount charged was unnecessarily burdensome and bore no general relation to the burden of regulation. The third case involved two ordinances of the City of Chicago[32] which purported to regulate and license "Homes" and "Nursing Homes." Both ordinances were held valid in *Father Basil's Lodge, Inc.* v. *City of Chicago,*[33] even though the city admitted that no express power had been delegated. It did, however, contend that several sections of the Cities and Villages Act, giving the power to pass ordinances for the health and safety of the residents,[34] were sufficient for the purpose. The Supreme Court agreed, pointing out that care for the health and safety of the inhabitants was an important police power, particularly when directed toward the safety of inmates of institutions.

[28] 391 Ill. 552, 63 N. E. (2d) 863 (1945).

[29] Ill. Rev. Stat. 1945, Ch. 24, § 23—54.

[30] In County of Winnebago v. Harrington, 391 Ill. 267, 63 N. E. (2d) 6 (1945), however, direct appeal to the Supreme Court in a case involving the constitutionality of a county zoning ordinance was denied when the court considered such an ordinance as not being within the meaning of Ill. Rev. Stat. 1945, Ch. 110, § 199.

[31] 393 Ill. 467, 66 N. E. (2d) 385 (1946).

[32] Municipal Code, Chicago, Ch. 136 and Ch. 136.1.

[33] 393 Ill. 246, 65 N. E. (2d) 805 (1946).

[34] Ill. Rev. Stat. 1945, Ch. 24, §§ 23—5, 23—70, 23—72, 23—81, 23—83, 23—105, and 23—106.

Fundamental problems in the field of public law were considered in *People* v. *Chicago Transit Authority*,[35] which decision upheld the constitutionality of the Metropolitan Transit Authority Act.[36] The court indicated that the fact that the Authority was given no power to levy taxes for any of its corporate purposes did not prevent it from being a municipal corporation as the power to tax was not a necessary incident thereto. It was also claimed that, as the transit authority would be given the use of certain city-owned subways, a violation of a constitutional provision, forbidding a municipal corporation from loaning its credit to a "railroad or private corporation,"[37] had occurred. Upon finding that the authority was neither a "railroad" nor a "private corporation," the court concluded that no violation had occurred.

In *Hansen* v. *Raleigh*,[38] the court upheld Section 1—13 of the Cities and Villages Act which exempts a member of a municipal fire department from liability for damages "caused by him while operating a motor vehicle while engaged in the performance of his duties as a fireman."[39] The court indicated that the statute constituted a proper subject for legislative classification, but limited its operating by denying that it extended to cover a fireman on his way to a fire as an "observer" for the purpose of gaining knowledge for fire-fighting methods.

One other case might bear mention. In *People ex rel. Schlaeger* v. *Bunge Bros. Coal Company*,[40] the court held that the appropriation by a municipality of a modest sum for dues in an organization composed of city mayors constituted a proper public expenditure because of the benefit derived by the city. The purchase of works of art created by local talent, however, was held an improper expenditure as the court said it was "difficult to see therein a public purpose."[41]

[35] 392 Ill. 77, 64 N. E. (2d) 4 (1945).
[36] Ill. Rev. Stat. 1945, Ch. 111⅔, § 301 et seq.
[37] Ill. Const. 1870, Art. XIV, § 2.
[38] 391 Ill. 536, 63 N. E. (2d) 851 (1945), noted in 24 CHICAGO-KENT LAW REVIEW 257.
[39] Ill. Rev. Stat. 1945, Ch. 24, § 1—13.
[40] 392 Ill. 153, 64 N. E. (2d) 365 (1946).
[41] 392 Ill. 153 at 168, 64 N. E. (2d) 365 at 371.

PUBLIC UTILITIES

Another phase of Chicago's complicated transportation situation reached the Supreme Court this past year through the case of *Sprague* v. *Biggs*[42] in which direct appeal was taken from an order dismissing a suit to enjoin the members of the Illinois Commerce Commission from enforcing certain orders which it had entered denying certain temporary increases in fares. The trustees of the transportation system took the position that the orders in question deprived them of property without due process of law because the enforcement thereof would amount to a confiscation of the property. The court held, on the merits, that the trustees were not receiving reasonable compensation as the revenue was insufficient to meet operating expenses, but said that the trustees had not presented a case upon which a rate base providing for a proper return on investment could be determined. The case was, accordingly, reversed and remanded.

Several contentions which were collateral to the merits of the case, however, presented questions of interest. In the first place, the defendants claimed that the trustees were merely seeking a review of the decision of the Commission; that this simply called for a reweighing of the evidence presented to it; that the procedure for such a review was set out in the Public Utilities Act; and that this established procedure for review had not been followed. Answering this contention, the court said:

> . . . situations may arise in rate cases before the commission where the procedure to be followed under the Public Utilities Act does not furnish a utility full and adequate means to prevent the actions of the commission in reference to rates from violating constitutional rights. Under these circumstances, a court of equity takes jurisdiction to prevent the utility suffering irreparable loss and injury. The equity action is a trial *de novo* and is independent of the proceeding pending before the commission. There may be questions of fact which are common to both cases and the decisions to be

[42] 390 Ill. 537, 62 N. E. (2d) 420 (1945).

made may relate to the same subject matter, but on the issues raised and the matter of proof to be followed in the equity case, they are to be considered as separate and distinct actions. The opinions in some of the cases indicate that the evidence introduced before the commission was placed in evidence in the equity suit, but it cannot be said that such procedure is essential in all cases to the maintenance of the equity action.[43]

The defendants also pointed out that some of the franchises of the transit company had expired; that many more were about to expire; that the trustees, therefore, should be considered merely as "tenants at sufferance," and that, as such, they were in no position to invoke the constitutional right to make a fair rate of return or even to avoid a loss. The court observed, however, that the municipality had made no reference in its answer to these facts nor did it mention the same in its brief. Pointing out that the power of a city to grant franchises to a utility had to be distinguished from the power delegated by the legislature to the Commission to regulate the rates of utilities, the court concluded:

The proceedings before the commission in this suit are on the assumption that the property held by the trustees is going to continue to render service as a utility, and that the city will continue to permit the use of parts of its streets. The orders of the commission are on the basis that the utility will continue to furnish transportation to the public. Under such circumstances, the property of the utility must be considered as devoted to a public utility and during the continuance of such use the trustees have the right to be compensated for the services it renders. We perceive no reason why the trustees operating a public utility under the circumstances shown would not be entitled to invoke the constitutional requirements of due process.[44]

The defendants finally urged that, even if the expiration of the franchise did not prohibit the trustees from claiming confisca-

[43] 390 Ill. 537 at 546, 62 N. E. (2d) 420 at 425.
[44] 390 Ill. 537 at 550, 62 N. E. (2d) 420 at 426-7.

tion, at least the expiration would render the property which was located in the streets valueless except for "scrap." For support in denying this contention, the court relied upon *City and County of Denver* v. *Denver Union Water Company*[45] and *Iowa City* v. *Iowa City Light & Power Company*.[46] In the first of these cases, it was said: "It involves a practical contradiction of terms to say that property useful and actually used in a public service is not to be estimated as having the value of property in use, but is to be reckoned with on the basis of its 'junk value.' "[47]

TAXATION

In *People ex rel. Prindable* v. *Union Electric Power Company*,[48] the Supreme Court resurveyed the entire Illinois law upon the question of the interpretation and application of Section 1 of Article IX of the Illinois Constitution[49] to the problem of assessment of capital stock taxes, overruling its earlier decision in *People ex rel. McDonough* v. *Grand Trunk Railroad Company*.[50] The question presented is succinctly stated by the court in quoting from the appellant's, i.e. taxpayer's brief, as follows:

> The question for decision in this case is clear cut. Appellant was charged with taxes for the year 1943 extended against 54% of the full fair cash value of its capital stock as determined by the Department of Revenue. All real estate and personal property located in the county of St. Clair and in the taxing district in which appellant's principal office is located, and all corporations whose capital stock was subject to assess-

[45] 246 U. S. 178, 38 S. Ct. 278, 62 L. Ed. 649 (1918).

[46] 90 F. (2d) 679 (1937).

[47] 246 U. S. 178 at 191, 38 S. Ct. 278, 62 L. Ed. 649 at 661.

[48] 392 Ill. 271, 64 N. E. (2d) 534 (1946).

[49] Ill. Const. 1870, Art. IX, § 1, declares: "The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax . . . persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

[50] 327 Ill. 493, 192 N. E. 645 (1934).

ment by the local assessing officers, have been required to pay taxes extended against 35% only of the full fair cash value of such property.[51]

The position of the appellant, which, in general, the *McDonough* case would seem to support, was that Section 1 of Article IX prescribes, throughout its length and breadth, the imposition of an *ad valorem* property tax implicitly requiring substantial equality in the level of assessment. The court, however, in a well considered opinion which would seem to indicate in general a liberalization of the court's attitude toward the limitations imposed by Section 1, held that while the general plan of uniformity is required to be applied to both clauses of Section 1, that it need not be applied as between the two clauses themselves but only within the scope and limit of each clause individually.

While the provision interpreted is susceptible of this construction, it has generally been supposed that the first clause authorized the imposition of property taxes and imposed an absolute *ad valorem* requirement with reference thereto, and that the second clause authorized the imposition of excise taxes and required only uniformity within the particular class with reference to the assessment thereof. The opinion of the court will bear careful reading and study, containing as it does an interesting gloss in shifted and shifting emphasis upon certain leading Illinois tax cases.

An interesting problem is presented in *People ex rel. Sanitary District of Chicago* v. *Schlaeger*[52] with respect to another section of Article IX of the Illinois Constitution, one which prohibits the general assembly from imposing upon municipal corporations or their inhabitants or property any taxes for corporate purposes.[53]

[51] 392 Ill. 271 at 273, 64 N. E. (2d) 534 at 535.

[52] 391 Ill. 314, 63 N. E. (2d) 382 (1945).

[53] Ill. Const. 1870, Art. IX, § 10, states: "The general assembly shall not impose taxes upon municipal corporations or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property, within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation."

Section 16—2 of the Election Code,[54] providing for the apportionment among municipalities of the expense of elections, was attacked as being within the prohibition of that constitutional provision. In sustaining the validity of the section of the Election Code, the court conceded that the imposition upon a municipality of a debt which would have to be paid out of general taxes would be as vulnerable to attack under the constitutional prohibition as would the imposition of the tax itself, but held that in this instance the state had imposed upon the municipalities in question the duty of performing certain "state" as distinguished from "local" functions, which it had a right to do, and that hence the liability imposed by the provision was not one for "corporate" purposes but rather for state purposes.

Although questions arising under the Unemployment Compensation Act[55] do not technically belong in the field of taxation, the practice heretofore established of treating such matters with taxation cases will be followed. Several cases are deemed worthy of mention, either upon a basis of general interest or of actual legal significance. In *American Medical Association* v. *Board of Review of Department of Labor,*[56] for example, the Supreme Court held the association subject to the Unemployment Compensation Act. It had sought exemption under the provisions of Section 2(f)(6)(G), which directs that the term "employment" shall not include service performed in the employment of a corporation "organized and operated exclusively for . . . charitable, scientific, . . . or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual."[57] It was conceded that the association was "organized" for charitable, scientific and educational purposes but the court failed to find that it had been operated "exclusively" for such purposes. The court called particular attention to the fact that the association devoted a substantial portion of its assets and its income toward protecting and furthering economic benefits

[54] Ill. Rev. Stat. 1945, Ch. 46, § 16—2.
[55] Ibid., Ch. 48, § 217 et seq.
[56] 392 Ill. 614, 65 N. E. (2d) 350 (1946).
[57] Ill. Rev. Stat. 1945, Ch. 48, § 218.

to its individual members; that it maintained and operated a bureau for printing and issuing to its membership information as to fees and payment for medical services, and a bureau providing financial status of patients and information as to collection and accounts, and concluded that these were not activities which made for or assisted in the primary proposition of a scientific or educational association. It may be interesting to note in this connection that an organization may fall within the exemption claimed even though certain of its income or activities are not of themselves derived from scientific or educational purposes, but where such income or activities are, nevertheless, expended for charitable, scientific or educational purposes.[58]

At least two more cases can be added to the string of employee-independent contractor cases. In *Aluminum Cooking Utensil Company* v. *Gordon*,[59] the court held to be an independent contractor a distributor of kitchen utensils operating under a written contract, performing work in a given territory, reporting progress of the work, using such hours as he chose, and being paid commissions, the contract not specifying any control of the performance of the work but retaining only the right to require minimum sales, the services being "performed outside all of the places of business of the enterprise for which such service is performed," and there being nothing in the contract to preclude engagement in another business in conjunction therewith. Although the contract was so carefully drawn that one cannot quarrel with the result reached, nevertheless, it is a little difficult to perceive very much distinction between this case and *Murphy* v. *Daumit*,[60] the vacuum cleaner salesman case, as well as certain other similar decisions rendered by the court in recent years.[61]

The court cited in support of its decision an earlier case falling within the scope of this survey, that of *John Gabel Manufacturing Company* v. *Murphy*.[62] It must be conceded that the

[58] People v. Young Men's Christian Association, 365 Ill. 118, 6 N. E. (2d) 166 (1937).

[59] 393 Ill. 542, 66 N. E. (2d) 431 (1946).

[60] 387 Ill. 406, 56 N. E. (2d) 800 (1944).

[61] See a number of similar cases noted in 24 CHICAGO-KENT LAW REVIEW 89-91.

[62] 390 Ill. 455, 62 N. E. (2d) 401 (1945), noted in 34 Ill. B. J. 267, Thompson, J., wrote a dissenting opinion. Smith, J., also dissented.

doctrine of the *Aluminum Utensil* case does not, in ingenuity at least, go beyond the *Gabel* case. In the latter case the appellant, resisting liability, owned and formerly had serviced a great number of automatic vending machines and automatic phonographs, through its employees. Several elaborate arrangements were entered into, beginning in 1938, under which the former salesmen and service men emerged first as partners operating under a leasing arrangement with the appellant and subsequently as independent lessees of the machines. Both the majority and dissenting opinions therein offer an interesting study in relationship of substance and form in the drafting of contracts and the application of legislative provisions.

Another case involving the Unemployment Compensation Act, at least collaterally, may be mentioned here. In *People* v. *Chicago Waste & Textile Company*,[63] the Illinois Supreme Court, with the approval of the United States Supreme Court,[64] rejected a somewhat tenuous but rather ingenious argument, designed to except from the operation of Section 3466 of the Revised Statutes,[65] concerning liability to the State of Illinois under the Unemployment Compensation Act. The federal statute establishes a priority for debts due the United States against the assets of an insolvent. The basic controversy was one of priority with respect to taxes levied under the Federal Unemployment Tax Act and federal insurance contributions under the Social Security Act, on the one hand, and liability under the Unemployment Compensation Act of Illinois, on the other. The argument advanced by the State of Illinois and approved by the trial court, but rejected by the Illinois and United States Supreme Courts, was predicated upon the assumption that the general framework and underlying philosophy of the social security legislation was intended to create an exception *pro tanto*. Both Supreme courts expressed an unwillingness to find an implied exception to the operation of "so clear a command" as that contained in Section 3466 of the federal statute.

[63] 391 Ill. 29, 62 N. E. (2d) 537 (1945).
[64] — U. S. —, 66 S. Ct. 841, 90 L. Ed. (adv.) 838 (1946).
[65] 31 U. S. C. A. § 191.

TRADE REGULATIONS

In the only case of interest in this field during the judicial year, the federal district court affirmed the doctrine announced in *Lady Esther, Limited* v. *Lady Esther Corset Shoppe, Inc.*,[66] by holding that the defendant in *Elastic Stop Nut Corporation of America* v. *Greer*[67] was guilty of unfair competition, although there was no proof of specific instances of palming off, where it was established that the trade generally was confused by what the defendant did into thinking that the product of the defendant was the product of the plaintiff. The court said, "It is sufficient to warrant injunctive relief if there is the likelihood of confusion in the trade."[68] The facts argued for the soundness of the court's position. The plaintiff therein was a manufacturer of self-locking nuts which it designated as "Elastic Stop Nuts" and "Stop Nuts." To provide visual identification for its product, the plaintiff used a red fiber for the insert by which the nut was locked on the bolt. The natural color of the fiber was gray. Based on this, it advertised its product as "nuts with the red collar." The defendant undertook to manufacture a substantially identical product. He used a fiber of identical red, asserted to the trade that his products could be "identified by the red center" and referred to his products as "Elastic Stop Nuts" and "Stop Nuts." The similarity was so pronounced that the tendency to provoke a "confusion in the trade" was readily apparent.

VIII. TORTS

Two defamation cases have evoked some interest. In *Life Printing & Publishing Company, Inc.* v. *Field*,[1] the Appellate Court indicated that a corporation can complain of libel only if the defamatory matter assails its financial position, its business methods, or accuses it of fraud or mismanagement. Since no

[66] 317 Ill. App. 451, 46 N. E. (2d) 165 (1943), noted in 22 CHICAGO-KENT LAW REVIEW 74.

[67] 62 F. Supp. 363 (1945).

[68] 62 F. Supp. 363 at 365.

[1] 327 Ill. App. 486, 64 N. E. (2d) 383 (1946). See also a companion case reported in 324 Ill. App. 254, 58 N. E. (2d) 307 (1944).