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SURVEY OF ILLINOIS LAW FOR THE YEAR

1943-1944*

VIII. PUBLIC LAW

THE COURTS of Illinois have had little to say during the past year on matters affecting the law as it relates either to administrative tribunals or to public utilities while those decisions which involve principles of conflict of laws have already been noted elsewhere.¹ Some other decisions concerning aspects of public law are, however, worthy of comment and are presented in the following sections.

CONSTITUTIONAL LAW

The constitutionality of the federal Emergency Price Control Act of 1942² was involved in the case of *Regan v. Kroger Grocery & Baking Company*³ which was a proceeding begun to collect damages for violations of Section 205(e) of the Act.⁴ Plaintiff alleged that he had been charged more than the ceiling prices established by the General Maximum Price Regulation of May 18, 1942, on three different occasions and asked judgment for \$50.00 for each alleged violation. Among other defenses, the defendant claimed that (1) the statute was unconstitutional, and (2) that the provisions of Section 205(e) were penal in character hence could not be enforced in the courts of Illinois. General attack on the statute was made on the ground that it was beyond the power of Congress to regulate the prices at which personal property might be bought in purely local or intrastate transactions. It was also argued that Section 204(d) violated the due process clause of the Fifth Amendment to the Federal Constitution by denying to the state courts the power to pass upon the validity of the act

* The first seven sections of this survey appeared in 23 CHICAGO-KENT LAW REVIEW 1 et seq.

¹ See comment on *Atkins v. Atkins*, 386 Ill. 345, 54 N. E. (2d) 488 (1944); *Brown v. Hall*, 385 Ill. 260, 52 N. E. (2d) 781 (1944); and *Fuhrhop v. Austin*, 385 Ill. 149, 52 N. E. (2d) 267 (1944), which appeared in the section on Family Law, 23 CHICAGO-KENT LAW REVIEW 47-51.

² 50 U. S. C. A. Appendix § 901 et seq.

³ 386 Ill. 284, 54 N. E. (2d) 210 (1944). Thompson, J., wrote a dissenting opinion based primarily on the ground that the judgment was against the weight of the evidence.

⁴ 50 U. S. C. A. § 925(e).

or of any price regulation made pursuant to it.⁵ The court, nevertheless, interpreted the language of that section to mean that the jurisdictional limitations applied only to suits in equity brought to restrain the enforcement of the act and to questions involving the validity of regulations promulgated under the act as distinguished from questions involving the validity of the act itself. Since the validity of the act could be made an issue in actions to enforce its provisions, there was no violation of due process. The court further upheld the constitutionality of the statute under the war powers of the Congress. By way of answer to the contention that the Illinois courts should not enforce the provisions of Section 205(e) because they were penal in character, the court held the rule inapplicable to statutes of the United States. It was said to be established law that Illinois courts will not enforce the penal laws of a foreign jurisdiction. Acts of Congress, however, are laws of Illinois and together with the State laws form one system of jurisprudence. The State courts are merely given concurrent jurisdiction with the federal courts to enforce the laws of a common country.

In *Metropolitan Trust Company v. Jones*,⁶ the Supreme Court held unconstitutional the provision of the Small Loans Act which prohibits a licensee thereunder from pledging any note or security given by a borrower, except with a bank authorized to transact business in Illinois under an agreement permitting the Director of Insurance to examine the papers so hypothecated.⁷ Plaintiff, a trust company, sought an injunction to restrain the enforcement of the provision and the regulation thereunder on the ground that the due process and equal protection clauses were violated. The court held that

⁵ 50 U. S. C. A. § 924(d) declares that: "The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 . . . of any price schedule effective in accordance with the provisions of section 206 . . . and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision."

⁶ 384 Ill. 248, 51 N. E. (2d) 256 (1943).

⁷ Ill. Rev. Stat. 1943, Ch. 74, § 30.

the exemption of banks, which was refused to trust companies, was unreasonable and arbitrary in view of the fact that trust companies were under the same supervision as banks and no reason appeared to exist why the purposes of the Small Loans Act were better served by refusing the exemption to them. Other provisions of the statute were not disturbed by the ruling.

A third decision of interest was that in the case of *People ex rel. Baker v. Strautz*.⁸ In that case the statute authorizing a judge or justice of the peace to order examination and treatment of any person charged with crime who may be suffering from any communicable venereal disease⁹ was held not to violate the due process clause. The statutory language authorizes the judicial officer to proceed "when it appears . . . from the evidence or otherwise that any person coming before him on any criminal charge may be suffering from any communicable venereal disease. . . ." Such language was held not to confer any power upon such officer outside of the evidence before him but to limit his power to cases in which the evidence tends to create a reasonable suspicion of the existence of communicable disease. However, it was decided that a charge of soliciting to prostitution in itself created such a reasonable inference.

MUNICIPAL CORPORATIONS

The validity of municipal ordinances vacating public streets was questioned in two cases during the past year in each of which the municipality attempted to justify its action under pertinent provisions of the statutes which purport to declare that municipal action in such cases is conclusive. In the first of them, that of *People ex rel. Hill v. Eakin*,¹⁰ a majority of the court found that some public benefit was derived from the vacation ordinance so decided to treat the action of the city council thereon as final and conclusive.¹¹ In the other, that of

⁸ 386 Ill. 360, 54 N. E. (2d) 441 (1944).

⁹ Ill. Rev. Stat. 1943, Ch. 23, § 392.

¹⁰ 383 Ill. 383, 50 N. E. (2d) 474 (1943). Gunn and Thompson, JJ., dissented.

¹¹ The statute there involved, Ill. Rev. Stat. 1941, Ch. 145, § 1, was subsequently repealed but the substance of the language thereof was incorporated in Ill. Rev. Stat. 1943, Ch. 24, § 69-11.

People ex rel. Foote v. Kelly,¹² the court indicated that the determination of the city council is not necessarily conclusive on the courts despite statutory language purporting to achieve that result¹³ so that, if there is allegation that no public benefit arises from the vacation ordinance, the court may conduct inquiry to ascertain if there has been an abuse of discretion in that regard.

More has been said on the subject of municipal liability for salaries due firemen and policemen under "minimum salary" statutes.¹⁴ The Appellate Court holding in *George v. City of Danville*,¹⁵ which had held invalid an agreement by firemen to accept a lesser salary in consideration that none would be discharged and all would have less work to do, was carried to the Illinois Supreme Court where such holding was affirmed over a vigorous dissent that to permit recovery would perpetrate a fraud on the municipality.¹⁶ In *Patteson v. City of Peoria*¹⁷ it was held that a minimum salary statute, since repealed,¹⁸ applied to six female employees of a police department, two of whom were policewomen, two matrons, and two clerks in the bureau of identification, as all were deemed to be performing police duties in a regularly constituted police department and the word "policeman," as used in such statute, was not limited to male persons. Provisions of such statutes were also held to apply to *de facto* officers in *Kohler v. City of Kewanee*.¹⁹

Liability on municipal contracts was considered in two cases where, upon finding that the public corporation had no right to make a valid binding contract, recovery in quasi-contract for benefits received through such transactions was like-

¹² 385 Ill. 543, 53 N. E. (2d) 429 (1944), noted in 22 CHICAGO-KENT LAW REVIEW 296. Murphy, J., wrote a dissenting opinion in which he relied on *People ex rel. Hill v. Eakin*, 383 Ill. 383, 50 N. E. (2d) 474 (1943).

¹³ Ill. Rev. Stat. 1943, Ch. 24, § 69-11.

¹⁴ *Ibid.*, Ch. 24, §§ 11-2 and 12-2.

¹⁵ 315 Ill. App. 17, 42 N. E. (2d) 300 (1942), noted in 22 CHICAGO-KENT LAW REVIEW 63.

¹⁶ 383 Ill. 454, 50 N. E. (2d) 467 (1943), noted in 42 Mich. L. Rev. 720, affirming 315 Ill. App. 17, 42 N. E. (2d) 300 (1942). Smith, J., wrote a dissenting opinion.

¹⁷ 386 Ill. 460, 54 N. E. (2d) 445 (1944), reversing 318 Ill. App. 245, 47 N. E. (2d) 867 (1943).

¹⁸ Ill. Rev. Stat. 1937, Ch. 24, §§ 860a-860b.

¹⁹ 321 Ill. App. 479, 53 N. E. (2d) 479 (1944)

wise denied. In *Ashton v. County of Cook*²⁰ a contract by a private attorney to collect forfeited taxes on a contingent basis was rejected and recovery on *quantum meruit* was denied because the function of collecting such defaulted taxes belonged to the state's attorney, a constitutional officer. Failure by the municipal corporation to provide an appropriation in advance was held reason to repudiate a contract to purchase a road grader in *Galion Iron Works & Manufacturing Co. v. City of Georgetown*²¹ and, as that transaction was invalid, it necessarily followed that there could be no recovery for the use made by the municipality of the equipment.

Questions concerning tort liability of municipal corporations have led to some hairline distinctions in the past between governmental and proprietary functions. Three such cases arose during the period of this survey. In *McKeown v. City of Chicago*²² the negligent act of city firemen in flooding a vacant lot for ice-skating purposes was held sufficient to establish municipal liability since it did not constitute a governmental function. For that matter, carelessness in burning brush which had been removed from city streets after a heavy storm, so that private property was destroyed, was held actionable in *Peterson v. City of Gibson*²³ against the claim that the municipal employer was rendered immune because acting in its governmental capacity. In *Sykes v. City of Berwyn*,²⁴ however, the carelessness of a police officer while cleaning out a squad car was deemed insufficient to establish municipal liability as the act being done was held to be immediately related to a clearly governmental function.

A unique case involving municipal power to levy a special assessment was presented in *City of DesPlaines v. Boeckenhauer*²⁵ where a sewer assessment had been levied against land outside of but adjoining the municipality. After confirmation of the assessment and payment of three of the in-

²⁰ 384 Ill. 287, 51 N. E. (2d) 161 (1943).

²¹ 322 Ill. App. 498, 54 N. E. (2d) 601 (1944).

²² 319 Ill. App. 563, 49 N. E. (2d) 729 (1943), noted in 22 CHICAGO-KENT LAW REVIEW 96.

²³ 322 Ill. App. 97, 54 N. E. (2d) 79 (1944). Leave to appeal has been denied.

²⁴ 320 Ill. App. 440, 51 N. E. (2d) 587 (1943). Leave to appeal has been denied.

²⁵ 383 Ill. 475, 50 N. E. (2d) 483 (1943).

stallments, the land owner petition to have the same declared null and void. The city contend that inasmuch as the property in question had been, subsequent to the special assessment proceeding, annexed to the municipality the assessment should stand particularly since the petition amounted to a collateral attack on the judgment of confirmation. It was, nevertheless, held that the original proceeding was wholly void and that no estoppel had arisen from the fact that the landowner had expressly requested that the land be assessed for the improvement made thereto. The action of the trial court in quashing the assessment was, therefore, confirmed.

The final chapter in the litigation involving the power of a municipality to prevent the use of paper milk containers appears to have been written by the decision in *Dean Milk Company v. City of Chicago*.²⁶ Federal proceedings, which had been instituted to test the validity of a city ordinance requiring that milk be delivered in "standard milk bottles,"²⁷ had been suspended to await the outcome of state court proceedings on the same point. It has now been decided, by a divided court, that paper containers do not measure up to the standard fixed by the ordinance and that such ordinance does not conflict with the provisions of the statute regulating the pasteurization of milk.²⁸ Municipal power to act on the subject was said to rest on several sections of the Cities and Villages Act.²⁹ The position of the city having been vindicated, the ordinance in question was subsequently amended to permit the use of paper containers as well as glass milk bottles.³⁰

Only one zoning case is worthy of mention, and that case is *City of Watseka v. Blatt*³¹ wherein was involved the validity of a zoning ordinance which forbade the use of land for a junk yard unless the same was located in an industrial district and

²⁶ 385 Ill. 565, 53 N. E. (2d) 612 (1944). Stone, J., wrote a dissenting opinion in which Wilson and Gunn, JJ., concurred.

²⁷ *Fildcrest Dairies, Inc. v. City of Chicago*, 316 U. S. 168, 62 S. Ct. 986, 86 L. Ed. 1355 (1942), noted in 21 CHICAGO-KENT LAW REVIEW 75.

²⁸ Ill. Rev. Stat. 1943, Ch. 56½, § 115 et seq.

²⁹ *Ibid.*, Ch. 24, §§ 23-63, 23-64, 23-81 and 23-105.

³⁰ Mun. Code, Chicago, § 154-14 as amended March 16, 1944, permits the use of single service containers complying with United States Public Health Service standards for the duration of the war and six months thereafter.

³¹ 320 Ill. App. 191, 50 N. E. (2d) 589 (1943).

then permitted such use only if frontage consents were given and specific approval was obtained from the board of zoning appeals. It was held that the power of the city council to adopt zoning ordinances³² was a delegated power which could not be re-delegated by it to a zoning board, hence the restriction in question was invalid.

TAXATION

An old tax question, complicated by modern developments, came before the court in *Sanitary District of Chicago v. Rhodes*³³ in which case the district sued to enjoin the county collector of Will County from collecting real estate taxes levied against that portion of the district's main channel located within such county. Exemption was claimed on the theory that the channel constituted "public grounds owned by a municipal corporation and used exclusively for public purposes."³⁴ Upon finding that the channel was not used exclusively for public purposes, a decree denying an injunction was affirmed on the fundamental proposition that laws exempting property from taxation will be subject to strict construction.³⁵

Attention was called last year to decisions concerning the applicability of the Retailers' Occupation Tax Act to the solicitation of retail sales in this state by out-of-state vendors.³⁶ Subsequent to the outcome of such cases, the legislature amended Section 1b of the statute³⁷ so as to make the same apply to sales by foreign vendors operating through soliciting agents in this state. Further litigation ensued over the question of the validity of such amendment and it is understood that the Circuit Court of Sangamon County declared the same to be unconstitutional.³⁸ No review of such ruling has been sought by the Department of Finance. In view of the

³² Ill. Rev. Stat. 1943, Ch. 24, § 73-1 et seq.

³³ 386 Ill. 269, 53 N. E. (2d) 869 (1944).

³⁴ Ill. Rev. Stat. 1943, Ch. 120, § 500(9), grants an exemption in such cases.

³⁵ *People ex rel. Thompson v. First Cong. Church*, 232 Ill. 158, 83 N. E. 536 (1908).

³⁶ See comment on *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 50 N. E. (2d) 505 (1943), in 22 CHICAGO-KENT LAW REVIEW 70.

³⁷ Laws 1943, Vol. 1, p. 1121; Ill. Rev. Stat. 1943, Ch. 120, § 440b.

³⁸ See report of decision in *Ex-Cell-O Corp. v. Collins*, in Corp. Tax Service (Illinois) p. 6501.

little publicity given to such holding, it is deemed wise to give emphasis thereto.³⁹

The holding of the earlier Appellate Court decision in *People's Drug Shop, Inc. v. Moysey*,⁴⁰ dealing with the right of the retailer to pass the occupation tax on to the consumer, was affirmed when that case reached the Illinois Supreme Court.⁴¹ As could be expected in view of the theory underlying such tax⁴² and the unambiguous language of the statute,⁴³ the court held the levy was one imposed on the retailer and one which he could not, unless as a hidden charge or by express agreement, pass on to the consumer. Suits for refunds based on Section 6 of the same statute were presented in *Svithiod Singing Club v. McKibbin*⁴⁴ and *People ex rel. Sterling Lumber & Supply Company v. Workman*⁴⁵ in both of which cases recovery was denied as neither plaintiff was able to show that it had repaid the purchasers the amounts collected from them, repayment of which was a condition to recovery of a refund from the state.⁴⁶

Injunction to restrain an alleged illegal levy of tax under the same statute was sought in *Owens-Illinois Glass Company v. McKibbin*⁴⁷ but was resisted on the ground that, inasmuch as the statute permits the payment of tax under protest and provides for an orderly process to obtain a refund, resort to equity was unnecessary and improper. Such injunction was upheld on the theory that courts of equity have always granted injunctions against the levy of an illegal tax as an

³⁹ Other cases dealing with the application of the statute prior to its amendment as aforesaid are *Allis-Chalmers Co. v. Wright*, 383 Ill. 363, 50 N. E. (2d) 508 (1943), and *Ayrshire Corp. v. Nudelman*, 383 Ill. 345, 50 N. E. (2d) 509 (1943). In each case sales were made by out-of-state vendors through soliciting agents in Illinois, but the property sold was located outside of the state, title passed outside thereof, and the orders were actually accepted in the foreign state. Such sales were held to be non-taxable.

⁴⁰ 317 Ill. App. 370, 45 N. E. (2d) 978 (1943).

⁴¹ *People's Drug Shop, Inc. v. Moysey*, 384 Ill. 283, 51 N. E. (2d) 144 (1943).

⁴² *Reif v. Barrett*, 355 Ill. 104, 188 N. E. 889 (1933).

⁴³ Ill. Rev. Stat. 1943, Ch. 120, § 441.

⁴⁴ 384 Ill. 493, 51 N. E. (2d) 550 (1943). A companion case, that of *Svithiod Singing Club v. McKibbin*, 381 Ill. 194, 44 N. E. (2d) 904 (1942), noted in 22 CHICAGO-KENT LAW REVIEW 69 and 38 Ill. L. Rev. 107, had decided that the club in question was not a retailer within the meaning of the statute.

⁴⁵ 385 Ill. 18, 52 N. E. (2d) 259 (1944).

⁴⁶ Ill. Rev. Stat. 1943, Ch. 120, § 445.

⁴⁷ 385 Ill. 245, 52 N. E. (2d) 177 (1944).

exception to the general rule that equity will not take jurisdiction where there is an adequate remedy at law.

Application of the statute to particular occupations was also considered in two cases. In *Stolze Lumber Company v. Stratton*,⁴⁸ a materials supply concern which furnished building materials to contractors and subcontractors successfully contended that the 1941 amendment to the statute seeking to impose tax liability on such concerns⁴⁹ was unconstitutional as not being within the scope of the title of the statute and, absent such provision, they were not engaged in selling at retail.⁵⁰ In the other case, that of *Huston Brothers Company v. McKibbin*,⁵¹ a similar holding was reached with regard to a drug concern furnishing medical and pharmaceutical supplies to doctors and hospitals.

Legislative attempts to impose taxes on the production of oil within the state⁵² collapsed under the impact of the decision in *Ohio Oil Company v. Wright*⁵³ which held the statute unconstitutional as a direct violation of Section 1 of Article IX of the state constitution. The court's reasoning therein followed the pattern that, as applied to royalty owners, the tax was not one on an occupation but rather constituted a direct tax on income from property hence amounted to a direct tax on the property itself.⁵⁴ As applied to actual producers of oil, the court indicated that the statute might form an acceptable basis for regulating an occupation but because it was lacking in uniformity the court felt obliged to declare the statute void *in toto*.

Several cases have arisen in the general property tax field. The rule of *Mobile & Ohio Railroad Company v. State Tax Commission*⁵⁵ was productive of further litigation to deter-

⁴⁸ 386 Ill. 334, 54 N. E. (2d) 554 (1944).

⁴⁹ Laws 1941, Vol. 1, p. 1079; Ill. Rev. Stat. 1943, Ch. 120, § 440.

⁵⁰ *Material Service Corp. v. McKibbin*, 380 Ill. 226, 43 N. E. (2d) 939 (1942), noted in 22 CHICAGO-KENT LAW REVIEW 70.

⁵¹ 386 Ill. 479, 54 N. E. (2d) 564 (1944).

⁵² Laws 1941, Vol. 1, p. 1068; Ill. Rev. Stat. 1943, Ch. 120, § 416.1 et seq.

⁵³ 386 Ill. 206, 53 N. E. (2d) 966 (1944).

⁵⁴ *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 15 S. Ct. 673, 39 L. Ed. 759 (1895).

⁵⁵ 374 Ill. 75, 28 N. E. (2d) 100 (1940).

mine the function of the Department of Revenue which is obliged to value railroad property and capital stock.⁵⁶ It was held, in *People ex rel. Little v. Collins*,⁵⁷ that the work of the Department combines two separate functions, namely assessment and equalization, and that the "original assessments" referred to in the statutory requirement concerning publication thereof dealt with the established fair cash value of property and not the equalized tax which might be imposed thereon. In *People ex rel. Voorhees v. Chicago, Burlington & Quincy Railroad Company*⁵⁸ it was held that a town levy for "home relief (including veterans)" was invalid as the burden of providing relief for destitute veterans was on the county⁵⁹ whereas the township was limited to the care of paupers generally.⁶⁰ Efforts to collect a judgment against a county, by compelling the county board to levy a tax for its satisfaction, came to naught in *Woodmen of the World Life Insurance Society v. Cook County*⁶¹ when the court found that constitutional limits on taxation would be violated by an additional levy while the maximum tax permitted was being entirely devoted to current and necessary expenses and liabilities.

Enforcement of tax liens by foreclosure was given added impetus by the decision in *Village of Palatine v. Palanois Estates, Inc.*,⁶² where the court held that foreclosure for unpaid special assessments was permissible even though the property was also encumbered by general property tax liens. It was indicated that to deny the right of the local government to sue except as a party to foreclosure proceedings brought to enforce general taxes would amount to an impairment of the authority to make local improvements.⁶³

Still another, and apparently the final, chapter in the liti-

⁵⁶ Ill. Rev. Stat. 1943, Ch. 120, § 618.

⁵⁷ 386 Ill. 83, 53 N. E. (2d) 853 (1944).

⁵⁸ 386 Ill. 200, 53 N. E. (2d) 963 (1944).

⁵⁹ Ill. Rev. Stat. 1943, Ch. 23, § 154a.

⁶⁰ *Ibid.*, Ch. 139, § 39(3½).

⁶¹ 322 Ill. App. 112, 53 N. E. (2d) 994 (1944), cause transferred 381 Ill. 558, 46 N. E. (2d) 35 (1943).

⁶² 319 Ill. App. 474, 49 N. E. (2d) 655 (1943).

⁶³ Ill. Rev. Stat. 1943, Ch. 24, § 84-1 et seq.

gation to compel payment of the 1928-9 tax anticipation warrants issued by the Board of Education of the City of Chicago was written in two decisions delivered last year. In the first, that in *Leviton v. Board of Education of City of Chicago*,⁶⁴ the statute purporting to authorize school boards to issue bonds to pay judgment indebtedness⁶⁵ was held unconstitutional as applied to judgments on such tax warrants because the effect thereof would be to make the same payable from revenue other than that upon which such warrants were drawn. In the other, that of *People ex rel. Reconstruction Finance Corporation v. City of Chicago*,⁶⁶ mandamus was held properly denied on the ground that such warrants do not create a debt on the part of the issuing body. Judgments based on such warrants were left undisturbed, but the effect of the decision was to make the same unenforcible. The holders of the warrants in question would now seem to be without relief except so far as they might be able to get contribution through an accounting proceeding against former holders who had been paid in full.

Questions arising under the Unemployment Compensation Act⁶⁷ do not, technically, belong in the classification of taxation for the contribution collected thereunder is not a form of taxation although often thought of in that light. That statute was, however, held constitutional in *Oak Woods Cemetery Association v. Murphy*⁶⁸ as a proper exercise of the police power. At the same time, the court found therein that the exemption granted thereunder to agricultural labor did not extend to greenhouse workers employed by a cemetery. Other constitutional issues were raised in *Zehender & Factor, Inc. v. Murphy*⁶⁹ where it was argued that property was being taken without due process by reason of attempts to impose assessments on distinct corporate entities merely because the same happened to be owned or controlled by the same inter-

⁶⁴ 385 Ill. 599, 53 N. E. (2d) 596 (1944).

⁶⁵ Ill. Rev. Stat. 1943, Ch. 122, § 327.62 et seq.

⁶⁶ 386 Ill. 522, 54 N. E. (2d) 508 (1944).

⁶⁷ Ill. Rev. Stat. 1943, Ch. 48, § 217 et seq.

⁶⁸ 383 Ill. 301, 50 N. E. (2d) 582 (1943).

⁶⁹ 386 Ill. 258, 53 N. E. (2d) 944 (1944).

ests.⁷⁰ The court observed that the legislative purpose was to prevent decentralization of business to avoid being obliged to make contribution to the unemployment compensation fund and regarded the statute as one which established a reasonable basis for classification.

Applicability of the statute to particular occupations and to unusual features of employment would seem to be likely to generate as much litigation as that which arose under the Retailers' Occupation Tax Act. Such inference at least would seem to follow from the decision in *Ozark Minerals Company v. Murphy*⁷¹ where certain silica workers were held not to be employees but independent contractors because they were paid on a per ton basis of accepted output and were free to work when they pleased so long as they maintained a desired quota. The point of separation between employee and independent contractor may be hard to determine hereafter.⁷² Benefits under the statute, however, are to be paid only in case of an involuntary unemployment, according to *Walgreen Company v. Murphy*,⁷³ which denied compensation to employees who had participated in a labor dispute and thereby produced the stoppage of work out of which the claim of compensation arose.

⁷⁰ Ill. Rev. Stat. 1943, Ch. 48, § 218(e) (5).

⁷¹ 384 Ill. 94, 51 N. E. (2d) 197 (1943). *Murphy, J.*, wrote a concurring opinion. *Thompson, J.*, wrote a dissenting opinion.

⁷² In *Zelny v. Murphy*, 387 Ill. 492, 56 N. E. (2d) 754 (1944), not in the period of this survey, the court was able to find some evidence of control by the employer so as to support imposition of the burdens of the statute, although the contracts were practically identical with those in the *Ozark* case.

⁷³ 386 Ill. 32, 53 N. E. (2d) 390 (1944).