

denial will raise the proper issue, or whether a new assignment⁴⁵ is necessary.

A departure is just as objectionable⁴⁶ under the Code as at common law, and pleaders must take the common law rules on that subject into account.

This is, in short, an outline at least of the general scheme of pleading provided by the Civil Practice Act.

THE NEW POOR LAW: A STUDY OF FRAUD IN ILLINOIS UNEMPLOYMENT RELIEF*

LEON M. DESPRES**

ONE OF the most difficult social problems created by the current economic depression has been the providing of relief for the unemployed until future re-employment. Unemployment is, of course, not a phenomenon peculiar to the depression; but during the depression the vast American poor-house system and the generously endowed agencies of private charity have proven insufficient to solve the problem, and the municipalities, the states and the federal government have been compelled to summon all available instrumentalities to meet an unparalleled crisis directly involving approximately 15,000,000 unemployed persons. Contemporaneously with the decisive shift in the agencies, method, and scope of poor relief has come a similar shift in the laws applicable thereto, ranging in spirit from the Wisconsin Unemployment Reserve Act¹ to the "dole" laws of most other states. It can definitely be stated that a new body of statutory principles has been and is being enacted to provide a concomitant growth in the law. It is proposed in this study to examine the growth of this new body of law in Illinois, particularly in its application to the question of civil and criminal liability of relief recipients for alleged "fraud" and "misrepresentation" in obtaining relief. This applica-

⁴⁵ There is no provision in the Act, or in any of the other Codes, for a formal new assignment, but when the necessity arises a new assignment in fact is made by an amendment of the complaint, *Campbell v. Bannister*, 79 Ky. 205 (1880).

⁴⁶ *Trainor v. Wouman*, 34 Minn. 237, 25 N.W. 401 (1885); *Talbert v. C. R. I. & P. Ry.*, 314 Mo. 352, 284 S.W. 499 (1926).

* The writer acknowledges his gratitude and appreciation for the valuable suggestions and information of Mr. James Peterson, attorney for the Illinois Emergency Relief Commission, and Mr. Joseph Lofton, public defender appointed by the Chicago Bar Association to defend unemployment relief fraud cases.

** Member of the Illinois Bar.

¹ Wisconsin Laws (1933), c. 383.

tion furnishes an excellent illustration of the new laws, for the limits fixed to such liability indicate the intended scope of the new relief.

At the instance of the Illinois Emergency Relief Commission, numerous informations have been filed in the courts charging relief recipients with the obtaining of goods by false pretenses. Public defenders appointed by the Chicago Bar Association have been designated to defend most of those accused. Differences of opinion between counsel for the Commission and counsel for the defense as to the elements of the new fraud have repeatedly been aired in the public prints. Such differences of opinion on this question are vital and go to the very root of the theory underlying the new statutes.

THE ILLINOIS PAUPER LAW

The legal provisions affecting the poor law system prior to 1929 were in the main based on certain sections of the Illinois Revised Statutes of 1845,³ imposing upon counties and towns the duty to "relieve and support all poor and indigent persons lawfully resident therein."⁴ These provisions and the accompanying laws affecting paupers and their settlements are based substantially on early English statutes.⁵ Most of the cases which have arisen thereunder deal with the respective liabilities of public bodies for the support of acknowledged paupers.⁶ In defining paupers, the statute refers to poor persons "who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause" and provides that certain relatives in a specified order shall be liable for their support.⁷ The Illinois Supreme Court has amplified this definition by stating that

to become a public charge the person must be poor, and unable to earn a livelihood by reason of some one of the enumerated causes, and must not have any of the enumerated relatives of sufficient ability for their support.⁸

In 1925, the Illinois Assembly established⁹ county bureaus of public welfare in counties having a population over five hundred thousand, for the purpose of consolidating "all branches of investigations, powers, functions and duties included in the term 'Social Service Functions.'"¹⁰ This

³ Substantially re-enacted in Ill. Cahill's Rev. Stat. (1933), c. 107, §§ 14, 15.

⁴ *Ibid.*, §§ 14, 15.

⁵ 27 Henry VIII, c. 25 (1535); 1 Bl. Comm. (3d ed. 1768), 359-365; 21 R.C.L., Poor and Poor Laws (1918), 701-3, §§ 1-3.

⁶ Board of Supervisors v. Town of South Ottawa, 12 Ill. 480 (1851); Board of Supervisors v. Plaut, 42 Ill. 324 (1866); Board of Supervisors v. People, 49 Ill. App. 369 (1893).

⁷ Ill. Cahill's Rev. Stat. (1933), c. 107, § 1.

⁸ City of Alton v. County of Madison, 21 Ill. 115, 116 (1859).

⁹ Ill. Cahill's Rev. Stat. (1933), c. 23, §§ 446-454.

¹⁰ *Ibid.*, § 448.

term was defined¹¹ to include not only duties with reference to dependent children, blind adults, etc., but also to "cases involving social, economic, and home conditions, non-support, desertion and abandonment, where the aid of the county or the jurisdiction of a court of record is invoked,"¹² and to "the furnishing of social service and making provision of aid, food, clothing, medical attention or other relief to all persons in said county applying for or in need thereof."¹³ Thus it was already recognized that the scope of state social service relief duties extends beyond the furnishing of bare subsistence to technical paupers. Save for this statutory exception, it can readily be seen that the pauper acts have in the main a restricted application, and are concerned, as were the old English poor laws, only that the poor be sustained "so that none should die by default of sustenance."¹⁴

EMERGENCY RELIEF ACTS

By act approved February 6, 1932,¹⁵ the Illinois Assembly created the Illinois Emergency Relief Commission, consisting of seven commissioners, whose duty is "to provide relief to residents of the State of Illinois, who, by reason of unemployment or otherwise, are destitute and in necessitous circumstances."¹⁶ The Commission is also authorized to "make use of and cooperate with counties, townships and any other municipal corporations charged by law with the duty of poor relief and with other local relief agencies."¹⁷ The statute specifically avoids the use of the term "poor and indigent persons" which appears in the pauper acts.¹⁸

A study of the emergency clauses in this statute and other statutes indicates a substantial change of attitude on the part of the Illinois Assembly from the narrow terms of the pauper acts. Reference is made to "the degree of unemployment and the necessity for furnishing assistance to the destitute without delay and particularly during the winter months."¹⁹ In an act to provide unemployment relief funds by a state tax, the Assembly declared an emergency "in as much as it is vitally necessary to provide funds without delay for the relief of the hundreds of thousands of persons who are in destitute circumstances."²⁰

Under the terms of the Federal Emergency Relief Act of 1933,²¹ sub-

¹¹ *Ibid.*, § 447.

¹³ *Ibid.*, § 447(11).

¹² *Ibid.*, § 447(10).

¹⁴ *Mirror of Justices*, c. 1, § 3.

¹⁵ Ill. Cahill's Rev. Stat. (1933), c. 23, §§ 463-467.

¹⁶ *Ibid.*, § 464.

¹⁸ *Ibid.*, c. 107, §§ 14, 15.

¹⁷ *Ibid.*, § 464.

¹⁹ *Ibid.*, c. 23, § 467.

²⁰ Ill. Cahill's Rev. Stat. (1933), c. 23, § 470; see also §§ 458, 462.

²¹ H. R. Rep. No. 4606, 73d Cong. (1933); 48 Stat. 55, 15 U.S.C.A. Supp. §§ 721-728 (1933).

stantial grants have been made to the State of Illinois "to aid in meeting the costs of furnishing relief and work relief and in relieving the hardship and suffering caused by unemployment"²² and "to provide the necessities of life to persons in need as a result of the present emergency."²³ In passing this act, Congress declared that "the present economic depression has created a serious emergency, due to widespread unemployment and increasing inadequacy of State and local relief funds, resulting in the existing or threatened deprivation of a considerable number of families and individuals of the necessities of life."²⁴

The new statutes were considered by the Supreme Court of Illinois in a suit²⁵ involving the validity of a levy for the maintenance of a county home. After citing the many statutes authorizing the county to erect and maintain a poor house, the court stated:²⁶

The different statutes above mentioned are distinctly and essentially humanitarian in their purpose and must therefore receive a liberal construction where no constitutional privilege is violated. The court takes judicial notice of the emergency relief measures taken by the State and nation to relieve unemployment and distress during 1931 and 1932.

The Illinois Assembly, which created the Illinois Emergency Relief Commission and provided most of the relief in Illinois, Congress, which has provided for a substantial part of the relief, and the Supreme Court of Illinois have all attested that there is a new object in the passage of recent relief legislation.

FRAUD AND MISREPRESENTATION IN OBTAINING RELIEF

At this time, there are many informations on file in the courts charging relief recipients with obtaining goods by false pretenses. The Illinois Emergency Relief Commission now holds choses in action having a face value in excess of \$55,000 which have been tendered to the Commission by former relief recipients in the hope of escaping criminal prosecution. It is therefore pertinent to inquire what acts are necessary to constitute the crime of obtaining goods by false pretenses. The Illinois statute defining the crime²⁷ fixes certain necessary elements: (1) there must exist an intent to defraud; (2) the defendant must make use of a false token, writing or pretense; (3) the false pretense must be used to perpetrate the fraud; (4)

²² *Ibid.*, § 4a; 15 U.S.C.A. Supp. § 724a (1933).

²³ *Ibid.*

²⁴ *Ibid.*, § 1; 15 U.S.C.A. Supp. § 721 (1933).

²⁵ *People ex rel. Witte v. Franklin*, 352 Ill. 528, 186 N.E. 137 (1933).

²⁶ 352 Ill. 528, 531, 186 N.E. 137, 138 (1933).

²⁷ Ill. Cahill's Rev. Stat. (1933), c. 38, § 228.

the fraud must be accomplished by means of the false pretense. If any of these elements is absent, there can be no crime under the statute.

It has been contended, principally on the basis of an early New York case,²⁸ that the fraudulent obtaining of money or goods from a charity is not indictable under the statute, on the ground that "the virtue [of charity] is sufficiently could [sic], inquisitive and scrupulous to be safe without the protection of the criminal law."²⁹ Were this case still law, the contention would be correct; however, the case was repudiated by a subsequent decision in the same jurisdiction³⁰ and it has been distinguished or rejected whenever the question has arisen.³¹

It also seems clear that a charge of obtaining money or other property by false pretenses may be predicated upon an attempt thus to obtain money or goods from a governmental agency.³²

Since it has been made the express statutory duty of the Illinois Emergency Relief Commission to provide relief to residents of Illinois who are "destitute and in necessitous circumstances,"³³ it would surely seem that no criminal or civil liability could be imposed upon a person who receives relief and is "destitute and in necessitous circumstances" even though prior to receiving relief, the recipient may have made one or more misrepresentations; for if the Commission grants relief according to the legislative mandate, it will always be presumed to be fulfilling its duty. It is only when a recipient receives more relief than the statute permits or authorizes the Commission to provide that he may be guilty of obtaining goods by false pretenses. It becomes necessary, therefore, to determine the meaning of the words "destitute and in necessitous circumstances" as used in the statute.

²⁸ *People v. Clough*, 17 Wend. (N.Y.) 351 (1837).

²⁹ 17 Wend. (N.Y.) 351, 352 (1837).

³⁰ *McCord v. People*, 46 N.Y. 470 (1871).

³¹ *Strong v. State*, 86 Ind. 208 (1882); *State v. Styner*, 154 Ind. 131, 56 N.E. 98 (1900); *State v. Carter*, 112 Iowa 15, 83 N.W. 715, 900 (1900); *Commonwealth v. Whitcomb*, 107 Mass. 486, 487 (1871) ("the law favors charity as well as trade, and should protect the one as well as the other from imposture by means of false pretenses"); *State v. Matthews*, 91 N.C. 635 (1884); *Baker v. State*, 120 Wis. 135, 97 N.W. 566 (1903); *Reg. v. Jones*, 1 T. & M. 270 (Cr. App. 1850), in which the conviction was upheld despite the existence of another statute, 5 Geo. IV, c. 83, § 4 (1824) against "endeavouring to procure charitable contributions of any nature or kind under any false or fraudulent pretenses." This would indicate that, as today, the state favored prosecution under the statute against false pretenses rather than under statutes specifically referring to frauds in charities; *Reg. v. Hensler*, 11 Cox C.C. 570 (Cr. App. 1870).

³² *State v. Wilkerson*, 98 N.C. 696, 3 S.E. 683 (1887) (the defendant continued to draw a pauper's stipend from the Board of County Commissioners after the removal of the pauper from the county); *State v. Kelly*, 27 N.M. 412, 202 Pac. 524 (1921); *State v. Talley*, 77 S.C. 99, 57 S.E. 618 (1907); 21 A.L.R. 180.

³³ Ill. Cahill's Rev. Stat. (1933), c. 23, § 464.

In 1920, the Bureau of Labor Statistics of the United States Department of Labor carefully computed a minimum quantity budget necessary to maintain a family of five in health and decency,³⁴ intending to establish a standard below which a family cannot go without danger of physical and moral deterioration. The budget fails to include many ordinary comforts such as stationery, postage, telephoning and telegraphing, and tobacco. In June, 1929, the cost of living index based upon this budget was 170.2 (1913 = 100)³⁵ and the estimated minimum for maintaining this cash budget in Chicago was \$2,431.96.³⁶ In June, 1933, the cost of living index was 128.3,³⁷ indicating a drop in the retail prices involved since June, 1929, of approximately 24.6%.

A far more rigid budget providing only for the bare necessities of life, omitting all savings against old age, sickness, future contingencies of any sort, tuition, etc., has been established by the National Industrial Conference Board. A study of this budget in June, 1931, revealed that the cost of all items provided for was \$1,808.64, as against \$2,152.14, the figure for the budget established by the Bureau of Labor Statistics.³⁸ The cost of living index in June, 1931, was 150.3 against 128.3 for June, 1933,³⁹ indicating a fall in the retail prices involved of approximately 14.6%. A composite of these two budgets gives an approximate average of the budget required throughout Illinois. The Bureau of Labor Statistics reported that "no yearly earnings which fall below the cost of the budget . . . can be considered a living wage, since the total represents the lowest cost of the meager budget allowed by the government as the bottom level of health and decency."⁴⁰ *A fortiori* this is true of the budget conceived by the National Industrial Conference Board. It would seem, therefore, that so long as the total available resources of a person are insufficient to maintain a reasonable budget standard such as those of the Bureau of Labor Statistics or of the Industrial Conference Board, i.e., so long as his health and decency are seriously impaired, he is "destitute and in necessitous circumstances" within the meaning of the statute imposing a duty on the Illinois Emergency Relief Commission to provide relief.

The phrases "destitute" and "necessitous circumstances" have received judicial interpretation in many jurisdictions. In connection with a

³⁴ Standards of Living (Bureau of Applied Economics, Bulletin No. 7, Rev. Ed. 1920), 1.

³⁵ 12 Monthly Labor Review 65, 313 (U.S. Bureau of Labor Statistics, 1921).

³⁶ Facts for Workers (Labor Bureau, Inc., Sept. 1929).

³⁷ 37 Monthly Labor Review 455 (U.S. Bureau of Labor Statistics, 1933).

³⁸ The Cost of Living in Twelve Industrial Cities, c. 12 (National Industrial Conference Board, 1928).

³⁹ See *supra* note 37.

⁴⁰ Laidler, *How America Lives* (3d ed. 1930), 17.

statute providing punishment for non-support, the Kansas court stated that the phrases imply a lack of the necessities of life, covering not only primitive physical needs and things indispensable to human existence and decency, but also those things which are in fact necessary to the particular person left without support.⁴¹ Under a pauper statute, the Maine court held that the term "destitute" does not exclude the ownership of property not available for immediate relief,⁴² and in a case involving the constitution and by-laws of a mutual benefit association, the Indiana court held a man "destitute" although he received a pension of \$29.65 a month.⁴³ There are other decisions⁴⁴ which confine the word "destitute" to a description of a state of great need and poverty. These cases involve criminal statutes which require a restricted interpretation and such situations differ substantially from the granting of unemployment relief not only to the small number of paupers and habitually unemployed of yesteryear but also to manual and professional working people who are accustomed to life according to the American standard of living. Furthermore, the declarations⁴⁵ of the Illinois Assembly and a recent dictum⁴⁶ of the Illinois Supreme Court indicate a readiness to accept a new concept of the spirit of unemployment relief. For these reasons it would seem that a broad construction should be given to the relief legislation, and criminal liability for fraud in obtaining relief should be imposed only on persons who have obtained relief when the amount of their available resources plus the sum obtained from the Illinois Emergency Relief Commission would enable them to live above the minimum standard of health and decency.

The requirement of a false token, writing, or pretense can generally be fulfilled by the oral statement or written affidavit made by the relief recipient. Criminal liability might also be predicated upon the falsity of an affidavit. If the requirements of the perjury statute⁴⁷ are met, an indictment for perjury would lie; but the practical difficulties of obtaining a conviction on such a charge are well known to lawyers experienced in criminal cases. To meet this situation and provide an additional basis for criminal liability, the Illinois legislature in 1933 passed a statute⁴⁸ providing that:

⁴¹ *State v. Waller*, 90 Kans. 829, 136 Pac. 215 (1913).

⁴² *Inhabitants of Norridgewock v. Inhabitants of Solon*, 49 Me. 385 (1862).

⁴³ *Supreme Council v. Grove*, 176 Ind. 356, 96 N.E. 159 (1911).

⁴⁴ *St. John v. State*, 22 Ala. App. 115, 113 So. 321 (1927); *State v. Weyant*, 149 Iowa 457, 128 N.W. 839 (1910); *State v. Sayre*, 206 Iowa 1334, 222 N.W. 20 (1928); *Moorman v. State*, 129 Miss. 864, 93 So. 368 (1922).

⁴⁵ See *supra* notes 19, 20.

⁴⁶ *People ex rel. Witte v. Franklin*, 352 Ill. 528, 186 N.E. 137 (1933).

⁴⁷ Ill. Cahill's Rev. Stat. (1933), c. 38, §§ 482-485.

⁴⁸ *Ibid.*, c. 107, § 15(2).

Any poor and indigent person who applies for relief and support shall furnish to the overseer of the poor or the county bureau of public welfare, as the case may be, a sworn statement of his condition and submit to a reasonable examination by the overseer of the poor or the county bureau of public welfare as to his inability to support himself or his dependents.

The statute then enumerates the items of information which the affidavit must contain, and provides that:⁴⁹ "Any such person who wilfully makes a false statement, in the sworn statement herein required, shall be denied any relief or help and shall be guilty of perjury and punished accordingly." Apparently no prosecutions have been initiated under this section, and the difficulties which the statute suggests furnish ample reason for such failure: (1) The statute applies only to relief granted by the overseers of the poor or the county bureau of public welfare. It would probably not apply to these agencies when they act as mere conduits for the Illinois Emergency Relief Commission. The act creating the commission authorizes it to "make use of and cooperate with"⁵⁰ government agencies, but not to delegate its power. (2) The practical difficulties of obtaining a conviction for perjury are great. (3) The statute applies only to "poor and indigent" persons and the state would have the burden of proving the existence of that status. The statute seems to be related more to conventional pauper relief than to unemployment relief. (4) The statute would not apply to false statements not enumerated in the statute.

At the same time a further attempt was made to create criminal liability by enacting another statute providing that⁵¹

any person who makes application for relief and support when such relief or support is not required to maintain such applicant and his family or dependents, or makes application for a greater amount of relief or supplies than is required for such purpose, or who does not use such supplies for the purpose, for which they were furnished, is guilty of a misdemeanor.

The validity of this statute may be assailed on a number of grounds: (1) The term "relief and support" is vague and ambiguous, and can be given a large number of different constructions. (2) The word "maintain" seems fatally ambiguous. It has received varying interpretations,⁵² and it is entirely possible that the statute might receive a different construction in each case which arises, depending perhaps on the manner of life to which

⁴⁹ *Ibid.*, § 15(2).

⁵⁰ *Ibid.*, c. 23, § 464.

⁵¹ *Ibid.*, c. 107, § 15(1).

⁵² *Federal Land Bank v. Miller*, 184 Ark. 415, 42 S.W. (2d) 564 (1931); *Cromwell v. Converse*, 108 Conn. 412, 143 Atl. 416 (1928); *In re Gabler's Will*, 140 Misc. 581, 251 N.Y.S. 211 (1931).

the relief applicant was previously accustomed. (3) The statute fails to specify to whom application must be made. (4) The statute fails to state who is to determine the "purpose for which" the relief supplies are furnished.

Still another attempt to create an enforceable criminal liability is contained in the same statute, which provides that⁵³

Any over-seer of the poor or any officer or employe of any county bureau of public welfare or any applicant for relief who connives with any other person or with each other in obtaining relief or supplies or in obtaining a greater amount of relief or supplies than is required to maintain such applicant and his family, or dependents, or who otherwise makes any unlawful disposition of any supplies furnished for relief purposes is guilty of a misdemeanor.

The constitutionality of this section also seems somewhat dubious, and several difficulties of proof are apparent: (1) The term "connives" is unduly vague; it would seem to comprise legitimate co-operation between an applicant and a social service worker in obtaining necessary relief. (2) The statute fails to state the persons or agencies from whom the relief or supplies must be obtained. (3) The term "maintain" is objectionable, as has been pointed out. (4) The "unlawful disposition" of supplies by definition could only be covered by pertinent sections of the Criminal Code dealing with such unlawful acts as might be involved in the "disposition."

The writer is informed that proceedings have also been instituted charging relief recipients with conspiracy to defraud. The same problem of the elements of fraud would be involved as in the cases of obtaining goods under false pretenses.

Thus, in the absence of a clear and provable case of perjury, it would seem that the only practical method of prosecution for fraud in obtaining unemployment relief would be under the statute against false pretenses. This is in fact the attitude now taken by the attorney for the Illinois Emergency Relief Commission.

CIVIL LIABILITY FOR OBTAINING RELIEF BY FRAUD

The Illinois Supreme Court has held that public bodies may recover for support against persons (or their estates) who were not actually paupers within the statutes at the time they were receiving relief and support.⁵⁴ Such recovery will be allowed regardless of the good or bad faith of the

⁵³ Ill. Cahill's Rev. Stat. (1933), c. 107, § 15(2).

⁵⁴ *Dandurand v. County of Kankakee*, 196 Ill. 537, 63 N.E. 1011 (1902); *Tazewell County v. Cooney*, 215 Ill. App. 617 (1919).

supposed pauper and regardless of the intention of the public body to effect a gift. The theory of the Supreme Court is that:⁵⁵

Intention does not enter into the case where the support is by a public body. If he [the supposed pauper] was liable for his own support under the law, there was no officer who could form an intention that gratuitous service should be rendered, which would bind the county and release the defendant from liability.

Although this doctrine seems to be opposed to the weight of American authority in the absence of a specific statute,⁵⁶ nevertheless, in view of the attitude of the Illinois courts, therefore, it would seem that relief recipients would be civilly liable, regardless of fraud or good faith, for any relief obtained from the Illinois Emergency Relief Commission which, added to the recipient's available resources, would exceed the amount required to maintain a minimum standard of health and decency and to prevent the recipient's falling into "necessitous circumstances."

CONCLUSION

In general form, the recent relief legislation follows the secular mould of English and American poor laws, which grant aid, upon a bare subsistence basis, only to wholly impoverished persons. The specific language of the new statutes, however, clearly recognizes a new standard of poor relief designed to protect the deserving unemployed; everyone trapped in an economic crisis may look to the state, not only for bare protection from starvation but for the wherewithal to maintain substantially the present American standard of living. Due to the broad scope of the Illinois statutes, it would seem that only in a limited number of cases could a criminal conviction or a civil judgment for fraud in obtaining such relief be sustained.

⁵⁵ *Dandurand v. County of Kankakee*, 196 Ill. 537, 541, 63 N.E. 1011 (1902).

⁵⁶ *Stow v. Sawyer*, 3 Allen (Mass.) 515, 517 (1862) ("How this might be if fraud were practiced on the town, we express no opinion"); *City of Albany v. McNamara*, 117 N.Y. 168, 22 N.E. 931 (1889); 55 L.R.A. 570.