benefit of its creditors is in law an innocent holder of such assets"[21] and, therefore, the defense of the third party available against the bank would not run against the receiver. A majority of the state courts have avoided this fiction and the difficulties of the other concepts by basing their decisions on estoppel.[22] This principle, which seems more clearly to explain what the courts are actually doing, is that a party to a fraud perpetrated against the bank examiners and the creditors is estopped from alleging lack of consideration, release from liability and illegal contract.

The reasoning and result of these cases employing estoppel are in keeping with demands of public policy[23] that neither bank examiners nor creditors should be victims of fraudulent arrangements with outsiders. Even the federal courts allow receivers to recover against officers and directors[24] whose fraudulent acts were detrimental to creditors. There seems to be little justification for a limitation in suits against the officers' co-tort feasors.[25] Yet the court in the instant case, invoking the principle of *stare decisis*, allows one who has made the fraud possible to go with impunity.

Constitutional Law—Municipalities—Minimum Wage Law for Firemen—[Illinois].—The Illinois "Firemen's Minimum Wage Act"[1] provides that the salary to be paid regular firemen in any municipality having a population of more than 25,000, but less than 150,000 inhabitants shall be not less than $175.00 per month. A petition for mandamus was filed on the relation of the active members of the fire department of the city of Springfield to compel the city of Springfield and certain of its officers to pay the amounts required by the act and to levy taxes for that purpose. The defendants contended that the act was unconstitutional in that it was special legislation,[2] and it created a corporate debt of the city without its consent,[3] and that the act is incomplete and in conflict with existing statutes. On appeal from a judgment and orders granting the petition, *held* (one dissent), affirmed. *People ex rel. Moshier v. City of Springfield.*[4]

The decision in the instant case destroys most of the few remaining vestiges of

[21] Harwick v. Davis, 220 Ill. App. 40, 45 (1920); Mueller v. Novak, 251 Ill. App. 262 (1929).

[22] See cases cited in note 15 *supra;* State Bank of Pittsburg v. Kirk, 216 Pa. 452, 65 Atl. 932 (1907); Golden v. Cervenka, 278 Ill. 409, 427, 116 N.E. 273, 281 (1917); Engen v. Mattleys, 50 N.D. 487, 196 N.W. 550 (1923).

[23] "The business of banking is affected with public interest" (German-American Finance Corp. v. Merchants' & Manufacturers' State Bank, 177 Minn. 529, 535, 225 N.W. 891, 893 (1929)), since "public faith, credit and honesty in business transactions are a bank's main assets" (Cedar State Bank v. Olsen, 116 Kan. 320, 323, 226 Pac. 995, 997 (1924)).

[24] Bowerman v. Homner, 250 U.S. 504 (1919) (for violation of common law duty); Bates v. Dresser, 251 U.S. 524 (1920) (for failure to catch embezzling cashier); Freeman v. Jackson, 227 Fed. 688 (D.C. Ga. 1915) (for disregard of duties); Fed. Reserve Bank of Kansas City v. Omaha Nat'l. Bank, 45 F. (2d) 511, 518 (C.C.A. 8th 1930) (for fraudulent handling of funds).

[25] The problem as to whether or not notice to the general agent with "apparent authority" was notice to the defendant surety company was not discussed by the court.

[1] Ill. Rev. Stat. 1937, c. 24, ¶ 860(c)(d).

[2] See Ill. Const. 1870, Art. IV, § 22.

[3] See Ill. Const. 1870, Art IX, § 10.

[4] Sup. Ct. Ill., Dec. 22, 1937. Not yet reported.

"home rule"[5] in Illinois.[6] Some measure of "home rule" was thought to have been guaranteed by the constitutional provision that "The General Assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes."[7] If fire departments were engaged in "corporate purposes" within the meaning of this provision, then the act should be invalid thereunder, even though no tax were placed upon the municipality, for it has repeatedly been held that the creation of a debt which must be discharged by the levy of a municipal tax is the same as a direct imposition of a tax.[8] In defining fire protection as a "governmental" function, the court relied upon authority making the distinction between "governmental" and "corporate" functions to define the tort liability of municipalities.[9] The policy upon which that distinction is expressly based, to limit municipal liability for tort,[10] seems wholly inapplicable. Since the factors which should determine the amount of wage to be paid—the financial ability of the cities, the labor available, the cost of living, the nature of the work and the risks attendant upon it—seem to vary, not with the population of the municipalities, but with the peculiar characteristics of the community in which each municipality is located,[11] it would seem that the classification of cities according to population might conceivably have been held unreasonable.[12] The desirability of "home rule," however, seems more properly a question of politics than judicial decision; so if its abolition were the only objection to the result in the instant case, the legislative determination might well be left undisturbed.

If the act is held constitutional only in its application to the facts of the instant case, perhaps no other objection may yet be raised, for the court found that the financial condition of the city of Springfield enabled it to make the wage payments required. Among the other cities covered by the act, however, few will be able practically to ful-

[5] The court stated: "The legislature, therefore, may compel a municipal corporation to perform any duty which relates to the general welfare and security of the state although the performance of the duty will create a debt to be paid by local taxation."

[6] Except that which was guaranteed to the city of Chicago by the 6th amendment of 1904. See Ill. Const. 1870, Art IV, § 34.

[7] Ill. Const. 1870, Art. IX, § 10.

[8] Morgan v. Schusselle, 228 Ill. 106, 81 N.E. 814 (1907); People v. Block, 276 Ill. 286, 114 N.E. 527 (1916).

[9] Wilcox v. City of Chicago, 107 Ill. 334 (1883); Miralgo Corp. v. Village of Kenilworth, 290 Ill. App. 230, 7 N.E. (2d) 602 (1937); Roumbos v. City of Chicago, 332 Ill. 70, 80, 163 N.E. 361, 365 (1928). See also Gebhardt v. Village of La Grange Park, 354 Ill. 234, 188 N.E. 372 (1933).

[10] "The reason for adherence to the distinction, notwithstanding the difficulty of stating a definite rule which may be generally applied, is the public danger that in this class of cases liability of the municipality would impose upon the taxpayers damages which *might prove so onerous as to destroy the municipality itself*." Miralgo Corp. v. Village of Kenilworth, 290 Ill. App. 230, 242, 7 N.E. (2d) 602, 607 (1937) (italics added). See also Wilcox v. City of Chicago, 107 Ill. 334, 339 (1883); Roumbos v. City of Chicago, 332 Ill. 70, 81, 163 N.E. 361, 366 (1928).

[11] Thus, for example, the cost of living may be higher in a municipality near a great urban center than in a larger municipality located in a rural area. See Matthews, The Minimum Wage Law for Policemen and Firemen, 16 Ill. Mun. Rev. 202 (1937).

[12] Thus, special legislation in violation of Ill. Const. 1870, Art. IV, § 22.

fill its requirements.[13] Those cities are limited in their total general tax levy[14] and in the amount of their bonded indebtedness.[15] It is a matter of common knowledge that many cities have reached those limits. Only two possible means of raising the money exist: (1) referendum increase of the general tax rate from $66\frac{2}{3}$ to $87\frac{1}{2}$ cents on the one hundred dollar valuation,[16] and (2) referendum adoption of the "Fire Protection Tax Act"[17] which empowers the municipality to levy a special tax of two mills on the dollar. Adoption of both of these measures might be insufficient in many cases,[18] and the practical impossibility of securing the adoption of both or either is apparent. The General Assembly recognized that impossibility and passed a bill, companion to the minimum wage bill and introduced by the same members, increasing the authorized general tax levy in the municipalities affected from $66\frac{2}{3}$ to 90 cents on the one hundred dollar valuation.[19] After adjournment of the legislature the tax increase bill was vetoed by the governor, while the minimum wage bill was permitted to become a law. To hold that the distinction between "governmental" and "corporate" functions drawn in the municipal tort cases[20] may properly be applied to uphold the minimum wage act in its application to these cities, unable to meet its requirements, would be a blind adherence to a most crude concept, for the policy which urges the extension of the "governmental" category in the tort cases,[21] equally demands its limitation in this application. Since the limits placed upon the levying of taxes and borrowing of money make it impossible for some cities to comply with the act, it should be held invalid as applied to them,[22] as inconsistent and repugnant to the existing statutory circumscription of municipal tax levies.[23]

If, however, the wage act is later held invalid as applied to any of the cities, then it would seem that it should be held unconstitutional as applied to all of them, as an unreasonable classification,[24] based only on the ability to pay. This situation, in which

[13] See Matthews, *op. cit. supra* note 11.

[14] The total general tax levy is limited to $66\frac{2}{3}$ cents on one hundred dollar valuation, except that by referendum it may be increased to $87\frac{1}{2}$ cents. Ill. Rev. Stat. 1937, c. 24, ¶ 123.

[15] The bonded indebtedness may not exceed 5% of the taxable property in the municipality. Ill. Rev. Stat. 1937, c. 24, ¶ 65.4.

[16] See note 15 *supra*.

[17] Ill. Rev. Stat. 1937, c. 24, ¶ 838(a)(b).

[18] A further burden was imposed at the same time by the enactment of the "Policemen's Minimum Wage Act," providing for the same salaries for policemen. Ill. Rev. Stat. 1937, c. 24, ¶ 860(a)(b).

It has been suggested that the increase in payroll caused by these two acts would in some cases exceed the entire corporate tax. Matthews, *op. cit. supra* note 11.

[19] House Bill 271, 60th Gen. Ass., State of Ill. See Legislative Synopsis and Digest, no. 20, p. 285 (1937).

[20] See cases cited in note 9 *supra*. [21] See note 10 *supra*.

[22] To uphold the act as applied to these cities, merely denying the mandamus against them on the ground that compliance therewith would be impossible, would leave an impasse.

[23] See People v. Bd. of Election Comm'rs, 343 Ill. 66, 174 N.E. 840 (1931) (statute held invalid because it required election commissioners to hold an election within one week of another, which was shown to be practically impossible); People v. Sweitzer, 266 Ill. 459, 107 N.E. 902 (1915); People v. Emmerson, 323 Ill. 561, 154 N.E. 474 (1926).

[24] See note 12 *supra*.

the act has been held valid as applied to one city, should be held invalid as applied to another, and eventually be held wholly invalid, can be remedied by a reversal on rehearing or modification or repeal by the legislature. A desirable result might be reached by passing, and allowing to become law, an amendment incorporating a sufficient tax increase authorization and making the act as amended subject to local option referendum. If, however, views on the undesirability of "home rule" have become so firmly entrenched that the realities of the problem are overlooked by the court and the legislature, the municipal composition of indebtedness chapter[25] of the National Bankruptcy Act may have become eminently useful.

Damages—Assault—Recovery for Wrongful Revocation of License—[Australia].—The plaintiff, having bought a ticket in the customary manner, was admitted as a spectator on the defendant's land where races were being run. Shortly thereafter employees of the defendant requested him to leave, and on his refusal to do so, put him out, using no more force than was necessary. In an action for substantial damages for the assault, judgment was given for the defendant. On appeal to the High Court of Australia judgment *held* affirmed. By purchasing the ticket the plaintiff acquired nothing but a license to go on the land which was revocable even though given for value. Upon revocation of the license the plaintiff became a trespasser and could be ejected with reasonable force. *Cowell v. The Rosehill Racecourse Ltd.*[1]

There is no doubt that the defendant's wrongful conduct gives rise to a cause of action in favor of the plaintiff. The real problem is whether substantial damages may be recovered for the assault or whether recovery should be limited to the price of the ticket. The latter result, which is the one reached by the court in the instant case, gives the manager of a place of amusement unlimited freedom to eject spectators arbitrarily. While it is unlikely that this discretion normally would be abused—because of the common desire of proprietors to retain good will—still it is small comfort to an individual wrongfully ejected that such things rarely happen. His injuries in humiliation, loss of prestige, and even bodily harm if he resisted (and it would not be unreasonable for him to think he had the right to do so)[2] might be very real. On the other hand, perhaps absolute discretion as to whom to eject is desirable in that it enables the manager to maintain order in his place of amusement without fear of "strike" suits. Moreover, it would seem unreasonable to place the burden on the proprietor to convince a jury that the ejectment had been for cause.

The case repudiates the doctrine of *Hurst v. Picture Theatres Ltd.*,[3] a decision of the English Court of Appeals followed in England and parts of the British Commonwealth for over twenty years,[4] which held that a purchaser of a theater ticket acquires a

[25] 50 Stat. 654 (1937); 11 U.S.C.A. §§ 401–404 (1937), held unconstitutional in *In re* Lindsay-Strathmore Irrigation Dist., 5 U.S.L.W. 297 (D.C. Cal., Nov. 13, 1937).

[1] 56 C.L.R. 605 (1937).

[2] See Winfield, The Law of Tort, 51 L.Q.R. 257 (1935).

[3] [1915] 1 K.B. 1.

[4] Cox v. Coulson, [1916] 2 K.B. 177, 186, Hubbs v. Black, 46 D.L.R. 583, 588, 594 (1918); Heller v. Racing Ass'n, [1925] 2 D.L.R. 286, 287; Winfield, 51 L.Q.R. 257 (1935); *cf.* the American cases, 30 A.L.R. (1924).