in applying a general statutory provision to a particular set of facts. An administrative decision which is both rational and supported by substantial evidence should not be upset merely because it is not based upon traditional precedents or specific legislative provisions.

Appeal and Error—Appealable Interest—Right of Landlord Not Party to Dram Shop Proceeding to Prosecute Appeal—[Illinois].—The plaintiff was injured in a tavern by the acts of an intoxicated person. Section 14 of the Illinois Liquor Control Act[1] gives to the party injured in such circumstances the right to sue the tavern keeper and property owner separately or jointly. The plaintiff elected to sue only the tavern keeper, and he obtained a judgment. Pursuant to Section 15 of the Liquor Control Act,[2] the plaintiff then sued to subject the building in which the tavern was located to the payment of the judgment. The owners, non-residents, had that action removed to the federal district court, where it is now pending, and filed a petition with the Illinois appellate court for leave to appeal the original judgment. The appellate court dismissed this appeal on the plaintiff's motion.[3] On appeal to the Illinois Supreme Court of the appellate court's dismissal of the property owners' petition to appeal the original judgment, *held*, the property owners have no appealable interest in the original judgment. Judgment affirmed. *Gibbons v. Cannaven.*[4]

At common law the only mode of removing a cause from an inferior court to a superior court was by writ of error.[5] The writ of error was available to anyone who was a party to the record, was injured by the judgment, would be benefited by a reversal, or was competent to release errors.[6] An additional method of review under certain restrictions, the right of appeal, was created by statute.[7] Prior to the Civil Practice Act, under Illinois statutes, a person not a party to the record could not maintain an appeal,[8] although he might have been able to do so under the writ of error. Section 81 of the Civil Practice Act eliminated the distinction between the writ of error and the right of appeal.[9] This merger

[1] Ill. Rev. Stat. (1945) c. 43, § 135.

[2] Ill. Rev. Stat. (1945) c. 43, § 136.

[3] Gibbons v. Cannaven, 325 Ill. App. 337, 60 N.E. 2d 254 (1945).

[4] 393 Ill. 376, 66 N.E. 2d 370 (1946).

[5] Bowers v. Green, 2 Ill. 42 (1832).

[6] People v. Whealan, 353 Ill. 500, 187 N.E. 491 (1933); White Brass Castings Co. v. Union Metal Mfg. Co., 232 Ill. 165, 83 N.E. 540 (1908); People v. Harrigan's Estate, 294 Ill. 171, 128 N.E. 334 (1920); People v. Lowrer, 254 Ill. 306, 98 N.E. 557 (1912); People v. O'Connell, 252 Ill. 304, 96 N.E. 1008 (1911).

[7] Veach v. Hendricks, 278 Ill. App. 376 (1935).

[8] People v. Franklin County Bldg. Ass'n, 329 Ill. 582, 161 N.E. 56 (1928); National Bank v. Barth, 179 Ill. 83, 53 N.E. 615 (1899).

[9] Ill. Rev. Stat. (1945) c. 110, § 205. "The right heretofore possessed by any person not a party to the record to review a judgment or decree by writ of error shall be preserved by notice of appeal."

brought the common law limitations of the writ of error into the realm of the appeal.

Under the writ of error, the Illinois courts adopted a narrow interpretation in deciding whether one not a party to the record was injured by the judgment or would benefit by a reversal.[10] The doctrine was limited to cases wherein the record indicated prejudice by the judgment.[11] Where a judgment granting, among other things, lawyer's fees, was reversed, the lawyer was given leave to sue out a writ of error.[12] An executrix was permitted to review a judgment against the decedent,[13] and legatees were allowed to bring a writ of error to review a judgment of the circuit court dismissing their appeal from an order of the probate court allowing a claim for unpaid taxes against the estate.[14] Easing the rule, the court in *People v. Harrigan*[15] held that if a party's interest was not apparent on the record, it must be alleged in the assignment of errors.

Since the passage of the Practice Act, the Illinois Supreme Court has held that the same requirements must be met by a party not of record who seeks an appeal as was necessary under the writ of error—that he has been injured by the judgment or will benefit by a reversal.[16] The court in *People v. Kennedy*[17] said, "Before he [one not a party to the record] can successfully prosecute an appeal his interest in the suit must appear in the transcript of the record or be alleged in the points relied upon for reversal. A notice of appeal is a part of the record." Despite this apparent liberality the courts seem to be limiting the right to appeal of persons not parties to the record to those whose interest in the judgment appears on the face of the record of the original action or whose interest can be reasonably inferred from the record without resort to outside evidence.[18]

[10] In Leland v. Leland, 319 Ill. 426, 150 N.E. 270 (1926), a correspondent in a divorce suit was refused the right to sue out a writ of error to review the decree granting the divorce, notwithstanding the effect of the decree on the reputation of the correspondent; in White Brass Castings Co. v. Union Metal Mfg. Co., 232 Ill. 165, 83 N.E. 540 (1908), stockholders were held unable to prosecute a writ of error to reverse a judgment against the corporation.

[11] White Brass Castings Co. v. Union Metal Mfg. Co., 232 Ill. 165, 83 N.E. 540 (1908).

[12] Anderson v. Stegar, 173 Ill. 112, 50 N.E. 665 (1898).

[13] Moll v. Sanitary District of Chicago, 228 Ill. 633, 81 N.E. 1147 (1907).

[14] People v. Harrigan's Estate, 294 Ill. 171, 128 N.E. 334 (1920). In People v. Whealan, 353 Ill. 500, 187 N.E. 491 (1933), the court held that where county officers are required by mandamus to issue and pay warrants on the county treasury for salary claimed by a county employee, the county, although not a party to the record, was permitted to prosecute a writ of error to the Illinois Supreme Court.

[15] 294 Ill. 171, 128 N.E. 334 (1920).

[16] Hotchkiss v. Calumet City, 377 Ill. 615, 37 N.E. 2d 332 (1941); Lenhart v. Miller, 375 Ill. 346, 31 N.E. 2d 781 (1940); People v. Kennedy, 367 Ill. 236, 10 N.E. 2d 806 (1937).

[17] 367 Ill. 236, 10 N.E. 2d 806 (1937).

[18] In the Kennedy case landowners were granted leave to appeal a decision granting mandamus commanding the annexation of their territory for school land, but in People v. City of Peoria, 378 Ill. 572, 39 N.E. 2d 42 (1941), neighboring property owners were unsuccessful in their attempt to appeal from a judgment awarding mandamus for a building permit.

Lending support to this inference is the expressed corollary that a party not of record must have a direct interest in the subject matter of the litigation which is prejudiced by the judgment before he can maintain an appeal.[19] Dicta in *Almon v. American Carloading Corp.*[20] restrict the right to appeal to cases wherein his interest is one which is attached to the judgment or decree that is entered on the merits of the controversy.

In holding that the property owners in the instant case did not have an appealable interest the court has departed from the line of decisions which have held that a party not of record could maintain an appeal if he could show a direct interest in the judgment or that he would benefit by a reversal. Although the court has cited this standard for appeal with approval,[21] it has nevertheless held that here the property owners had no direct interest in the original judgment despite the fact that the same statute which gave the plaintiff a cause of action against the tavern keeper also gave the plaintiff the right to satisfy any judgment obtained in that action against the property owners.[22] It is difficult to call the property owners' interest anything less than direct when it is so probable that the plaintiff will be forced to collect the judgment from the property owners because of the inability of tavern keepers as a class to meet such judgments.

It has been held that in the subsequent action on the original judgment the property owners' defense will be limited to denying (1) the existence of the judgment or that any part of it remains unpaid, (2) that a lease was made for the use of the premises as a tavern, or (3) that if a lease was not made for the use of the premises as a tavern, that it was so used with the property owners' knowledge.[23] In the original action are settled, then, the most frequently disputed issues of whether the injury was caused by a person who became intoxicated in the tavern on the property owners' premises, the extent of the plaintiff's injuries, the existence of acts by the plaintiff contributing to the intoxication of the tortfeasor,[24] and the existence of a provocation of the assault.[25] It is apparent, therefore, that the property owners' liability is ordinarily settled in the original judgment.[26]

[19] American Surety Co. v. Jones, 384 Ill. 222, 51 N.E. 2d 122 (1943). Yet in Scott v. Great Western Coal Co., 223 Ill. 271, 79 N.E. 53 (1906), the court in determining who could sue out a writ of error said that "he must have some direct or collateral interest injuriously affected by the judgment upon which he can rest a right to a review."

[20] 380 Ill. 524, 44 N.E. 2d 592 (1942).

[21] Gibbons v. Cannaven, 393 Ill. 376, 66 N.E. 2d 370, 372 (1946).

[22] The judgment obtained against the tavern keeper in the original suit was $12,000.

[23] Eiger v. Garrity, 246 U.S. 97 (1918).

[24] Bowman v. O'Brien, 303 Ill. App. 630, 25 N.E. 2d 544 (1940).

[25] Pearson v. Reufro, 320 Ill. App. 202, 50 N.E. 2d 598 (1943); Hill v. Alexander, 321 Ill App. 406, 53 N.E. 2d 307 (1944).

[26] The position of the landowner in situations similar to that in the instant case has been compared to that of a surety. Garrity v. Eiger, 272 Ill. 127, 111 N.E. 735 (1916); cf. Hardten

The court reached the result in the instant case by apparently confusing the requirements of Section 81 of the Civil Practice Act and Sections 14 and 15 of the Liquor Control Act. It is obvious that the property owners have a direct interest in the original judgment and will be benefited by a reversal, since that judgment is the basis upon which the plaintiff will maintain his action against them in the suit now pending in the federal district court. Hence it would appear that the property owners have qualified under Section 81 of the Civil Practice Act.[27] What the court has actually held is that, despite this showing by the property owners, they are prohibited from making this appeal because Section 14 of the Liquor Control Act gives the plaintiff three distinct remedies, and to allow the property owners to appeal a judgment obtained against the tavern keeper alone would frustrate one of the remedies which the legislature has given the plaintiff—the right to sue only the tavern keeper.[28] This interpretation of Sections 14 and 15 of the Liquor Control Act places the property owner in an almost helpless position. He cannot intervene in the original action against the tavern keeper,[29] he cannot appeal a decision against the tavern keeper, and when he is sued on that judgment, he cannot question the merits.

The court answered the obvious due-process objection by quoting extensively from both the United States Supreme Court and the Illinois Supreme Court opinions in *Eiger v. Garrity*,[30] a case which upheld the constitutionality of the provision in the Dram Shop Act subjecting a property owner to the payment of a judgment against that tavern keeper and refused to permit the tavern keeper to attack the original judgment collaterally. Since it was constitutional to attach liability to the property owner for injuries caused in a tavern on his premises and since the United States Supreme Court applied a basic procedural rule and refused to permit a collateral attack on a judgment, the Illinois court in the

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v. State, 32 Kan. 637, 5 Pac. 212 (1884). In other situations a surety has been held to have sufficient interest to appeal. Weer v. Gand, 88 Ill. 490 (1878); cf. Belchoir v. Branch, 11 R.I. 266 (1875); Garber v. Commonwealth, 7 Pa. 265 (1847). The position of the tavern keeper has also been compared to that of an agent for the landowner. Eiger v. Garrity, 246 U.S. 97 (1918). This analogy should likewise lead to the conclusion that the landowner's interest is sufficiently direct to permit him to appeal.

[27] Note 16 supra.

[28] The court presented a further argument against the appealable interest of the property owners based upon the procedural difficulties which would result if the appeal were allowed and were successful. Gibbons v. Cannaven, 393 Ill. 376, 66 N.E. 2d 370, 377–78 (1946). The same difficulties are presented when any person not party to the record is granted leave to appeal. Carried to its conclusion, this argument would result in nullifying that part of Section 81 of the Civil Practice Act which permits persons not party to the record to appeal.

[29] The court specifically rejected the possibility of intervention. Supporting this conclusion is the argument that the property owner's interest is too remote when the original action is in progress to permit intervention. The plaintiff might fail to obtain a judgment against the tavern keeper, or should he succeed, he may collect the full amount from the tavern keeper.

[30] 246 U.S. 97 (1918), affirming 272 Ill. 127, 111 N.E. 735 (1916).

instant case concluded that it does not violate due process to prohibit property owners from attacking the judgment by intervention or appeal—an issue not directly involved in the *Eiger* case.

The *Eiger* case recognized that the right to deal in intoxicating liquors is a privilege and that prohibition, regulation, and restraint of the sale and manufacture of liquor is justified by the police power of the state. That case recognized that it was in the public interest to place liability on landlords for any harm caused by persons becoming intoxicated in taverns located on the landlord's premises. This insures an injured person that he will be able to recover from a financially responsible person any damages he may be awarded, and centralizes the risk in those in the best position to pay the cost. The landlord can insure himself against any possible liability and pass the cost of the insurance on to the tavern keeper in the form of rent. The tavern keeper, in turn, can pass this cost on to the liquor consumers, thereby placing the ultimate burden on the group primarily responsible for the harm which has been caused to innocent persons.

The liability which the statute imposes does not require that the property owners be denied the opportunity to contest the extent of the harm, or to contest whether the tort is one which arose from their premises. Short of actual fraud or collusion, which the court implicitly recognizes as a defense to the property owners,[31] there are many ways in which the liability of the property owners may be much greater than if they had been permitted to conduct the defense. Their liability should not depend on the degree of enthusiasm with which the tavern keeper defends the original action. Basic notions of justice require that those who must pay should be given the opportunity to defend.

Bankruptcy—Railroad Reorganizations—Confirmation of Plan under Section 77 over Vote of Dissenting Class of Creditors—[United States].—The debtor railroad filed a petition in a United States district court on Nov. 1, 1935, for reorganization under Section 77 of the Bankruptcy Act.[1] Trustees were appointed and during the ensuing decade four different reorganization plans were submitted to the district court by the Interstate Commerce Commission. The first three plans were disapproved by that court; the last, which was under consideration here, was approved in October, 1943.[2] This plan reduced the capitalization of the railroad from about 200 million to about 143 million dollars and allocated to the old senior secured creditors the entire issue of new bonds and approximately 88 per cent of the new common stock, which combination at par equalled the face value of their claims plus accrued interest. Junior secured creditors were allocated the balance of the new common stock, at par

[31] Gibbons v. Cannaven, 393 Ill. 376, 66 N.E. 2d 370, 378 (1946).

[1] 49 Stat. 911 (1935), 11 U.S.C.A. § 205 (1946).

[2] In re Denver & Rio Grande Western R. Co., C. C. H. Bkcy. L. Serv. ¶ 54,562 (D.C. Colo., 1943). The details of the plan are reported in Denver & Rio Grande R. Co. Reorg., 254 I.C.C. 349 (1943).