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sideration need be necessary for a lottery to exist; the Court thus holding the ordinance broader than that of the ordinary lottery statute. In a recent Connecticut case[25] a statute was construed which subjected to fine or imprisonment, "[a]ny person who shall set up any lottery to raise and collect money or for the sale of any property or shall by any kind of hazard, sell or dispose of any kind of property. . . ."[26] It was determined that the Act prohibited not merely lotteries in the strict sense of the term, but certainly also covered enterprises in the general nature of a lottery wherein chance was the predominant element, even though those who participated directly risk no money or property of their own. The factual situation in this case closely paralleled that of the instant case. Persons could register at food stores without making a purchase, for a drawing at which merchandise would be given away to those whose names were drawn, whether the winner was present or not. The court, in holding this a lottery, stressed that the element being prohibited by the statute was the arousing of the desire to gain somehing for nothing which was present in that particular scheme.

It becomes evident that such statutes are being construed as prohibiting not only lotteries in the narrow sense of the word, but also schemes in the nature of a lottery. By the use of a broad construction, the courts have been able to strike down schemes which apparently require no consideration, but nonetheless are patent evasions of the spirit, if not the letter of the statutes. Where such a view is taken, the conflict over what is meant by consideration as used in the statute is relegated to the position of a moot question—no longer of any importance in deciding the cases.

MUNICIPAL CORPORATIONS–INJURY RESULTING FROM MOB ACTION HELD ACTIONABLE UNDER MOB VIOLENCE ACT

Plaintiff, a Negro motorist, suffered personal injuries at the hands of a group of persons congregated to protest the intrusion of Negro families into their community. Recovery is sought under the provisions of "An Act to Suppress Mob Violence."[1] Plaintiff, who was not one of the new residents, was driving in the vicinity and was accosted by the crowd and injuries resulted. Defendant's motion for a directed verdict was sustained by the trial court. The Appellate Court, determining that there was substantial evidence upon which to submit the case to the jury, reversed and

[25] Herald Publishing Co. v. Bill, 142 Conn. 53, 111 A. 2d 4 (1955).

[26] Conn. Gen. St. § 8667 (1949).

[1] Ill. Rev. Stat. (1955) c. 38, § 512–517.

remanded the cause with directions. *Slaton v. City of Chicago*, 8 Ill. App. 2d. 47, 130 N.E. 2d. 205 (1955).

At common law an injured party had no remedy against the political subdivision in that a failure to prevent riots and maintain the peace was merely a lapse of governmental duty for which there was no pecuniary liability.[2] Approximately one-half of the states adopted statutes allowing private actions to redress injuries resulting from mob violence.[3] The rationale supporting the introduction of this legislation is the recognition of the public duty, entrusted by the state to municipalities and other subdivisions, to preserve peace and order and to protect lives and property.[4] The need and desire for such legislation was discussed at length in *County of Allegheny v. Gibson*[5] wherein it was stated:

> The principle upon which this legislation rested was that every political subdivision of the state should be responsible for the public peace and the preservation of private property; and that this end could be best subserved by making each individual member of the community surety for the good behavior of his neighbor and for that of each stranger temporarily sojourning among them.[6]

In 1905, Illinois enacted the present law entitled "An Act to Suppress Mob Violence."[7] The constitutionality of this statute was challenged and upheld[8] on basis of police power.

The instant case is primarily concerned with one section of the Act, section 515:

> Damage by violence—Penalty-Action against municipality.
> Any person or persons composing a mob under the provisions of this act, who shall by violence inflict material damage to the property or serious injury to the person of any other person upon the pretense of exercising correctional powers over such person or persons, by violence and without authority of law, shall be deemed guilty of a felony, and shall suffer imprisonment in the penitentiary not exceeding five years; and any person so suffering material damage to property or injury to person by a mob shall have an action against the county, park district or city in which such injury is inflicted, for such damages as he may sustain, to an amount not exceeding ten thousand ($10,000.00) dollars.[9]

[2] 2 Holdsworth, History of English Law (3 Ed. 1927) Introd. 5. "An apparent extension of the historical aphorism, The King can do no wrong." Gianfornte v. New Orleans, 61 Fed. 64, 66 (1894).

[3] For a detailed discussion, see McQuillin, Municipal Corporations, § 2821, 2822 (rev. ed. 1939).

[4] Pennsylvania Co. v. City of Chicago, 81 Fed. 317 (1897); Pittsburgh, C.,C. and St. L. Ry. Co. v. Chicago, 242 Ill. 178, 89 N.E. 1022 (1909).

[5] 90 Pa. St. 397 (1879). [6] Ibid., at 418.

[7] Ill. Rev. Stat. (1955) c. 38, § 512–517.

[8] Chicago v. Sturges, 222 U.S. 313 (1911).

[9] See Ill. Rev. Stat. (1955) c. 38, § 512. Numerically, five or more are needed to compose a mob.

The main consideration before the court is interpreting the language of the statute to determine within what limits the remedy should extend. A primary tenet is construing the language of legislation both remedial and penal in character is to afford a liberal interpretation.[10] It is universally recognized that such statutes should not be so strictly consrued as to defeat the obvious intent of the legislature.[11] The consequential result is that court decisions rest to a great extent upon the facts of the case before the court.

The Illinois court has chosen to disregard past interpretations of the Illinois Act, and the interpretations of similar acts in other jurisdictions, by labeling them as not in point.[12] These Illinois cases interpreting the language of the Act, indicate that a prerequisite to recovery is the necessity of showing that the mob intended to exercise correctional powers over the party who suffered the injury. In *Barnes v. City of Chicago*,[13] recovery was sought under a section of the act requiring that the injured party be the object of the lynch mob. Recovery was denied because the injured party was merely an officer of the law assigned to restraining the mob. The court declared that an essential element in stating a cause of action was the showing that the person injured was charged or at least suspected of some crime. Again in *Anderson v. City of Chicago*,[14] where an innocent bystander was injured by police who were dispersing the mob, recovery was denied due to the fact that the claimant was not the one over whom the mob intended to exercise control, and, consequently, he was not entitled to a remedy under the Act.

It appears that these decisions have been predicated upon the inter-

[10] Yalenezian v. City of Boston, 238 Mass. 538, 131 N.E. 220 (1921). Remedial so far as it provides compensation to the injured party, and penal so far as it rendered the city responsible for the results of mob violence.

[11] Long v. City of Neenah, 128 Wis. 40, 107 N.W. 10 (1906); Barnes v. Chicago, 225 Ill. App. 31 (1922); Burgis v. County of Philadelphia, 169 Pa. Super, 23, 82 A. 2d 561 (1951).

[12] Barnes v. City of Chicago, 323 Ill. 203, 153 N.E. 821 (1926); Kennedy v. City of Chicago, 340 Ill. App. 100, 91 N.E. 2d 138 (1950); Anderson v. City of Chicago, 313 Ill. App. 616, 40 N.E. 2d 601 (1942); Hailey v. City of Newark, 22 N.J. Misc. 139, 36 A.2d 210 (1944); Lexa v. Zmunt, 123 Ohio St. 510, 176 N.E. 82 (1931); Hammett v. Cook, 42 Ohio App. 167, 182 N.E. 36 (1932).

[13] 323 Ill. 203, 153 N.E. 821 (1926). This case is distinguished from the instant case in that it was brought under a different section of the Act, expressly requiring the ingredient mentioned.

Its value in interpreting the Act lies in its being a reversal of the Appellate Court's decision in Barnes v. Chicago, 225 Ill. App. 31, 35, (1922), in which the court stated, "The result of lynching is no less serious to the community, or persons affected, whether the mob extends its violence on a particular party against whom it purposes vengeance or some innocent bystander."

[14] 313 Ill. App. 616, 40 N.E. 2d 601 (1942).

pretation of the words, ". . . upon the pretense of exercising correctional powers over such person or persons."[15]

The court in the instant case interpreted the wording of the Act so as to bring the particular facts of the case within it. The court first established the meaning of the activity, concluded that it was mob activity, and then resolved it to the Act. The court said that the mob was not acting to promote their individual interests when they undertook to prevent the entrance of Negroes into the community but rather that they wrongfully assumed to be a collective community interest.[16] The court said:

> We believe a more logical interpretation of the statute would allow recovery under the Act in those cases where it is shown that the unlawful crowd of people was assembled for the purpose of carrying out *what it believed was its collective or community interest*, and in the execution of that purpose took over the powers lawfully delegated to and vested in the local authorities in order to exercise such powers correctionally and summarily over the plaintiff.[17]

The interpretation accorded the Act is unique to Illinois law. Language closest to that adopted by the court is found in Justice Treanor's dissent in an Indiana decision, where a similar statute was construed to include the use of violence by a mob or riotous assemblage for the purpose of compelling other persons to conform to the ideas and standards of conduct of the persons using the violence.[18] He stated that the evil aimed at in these statutes is the substitution of the exercise of the power of private individuals for the orderly exercise of power of the State.[19]

The case of *Reynolds v. Lathrop*[20] is another instance of a court construing the phrase "exercising correctional powers" in an Ohio act. There the court determined that the words indicate an unlawful attempt by a mob to mete out justice by physical force and violence to a real or supposed wrongdoer. In a criminal prosecution in New Jersey,[21] the court declared that "exercising correctional power" as regards mob action must be directed towards some one charged with a crime.[22]

[15] Ill. Rev. Stat. (1955) c. 38, § 515.

[16] Slaton v. City of Chicago, 8 Ill. App. 2d 47, 130 N.E. 2d 205 (1955).

[17] Ibid., at 58 and 210. Emphasis added.

[18] Shake v. Board of Com'rs of Sullivan County, 210 Ind. 61, 1 N.E. 2d 132 (1936). The majority of the court offered a strict interpretation of the statute. The court limited recovery to injuries inflicted by persons who have usurped and assumed power to regulate and correct individuals who have violated some supposed law.

[19] Ibid.

[20] 133 Ohio St. 435, 14 N.E. 2d 599 (1938). It should be noted that the court in the instant case dismissed this case as not being on point. This dismissal is based upon a distinction of fact.

[21] State v. Algor, 26 N.J. Super. 527, 98 A. 2d 340 (1953).

[22] As established in Wells Fargo and Co. v. Mayor and Alderman of Jersey City, 207 Fed. 871 (D.C. N.J. 1913), 219 Fed. 699 (C.A. 3d 1915), statutes in derogation of

The hesitation of the courts in past decisions in affording too liberal an interpretation of the language of the Act is undoubtedly a repercussion of a fear that a contrary holding would result in persons obtaining relief who were not contemplated by the legislature to be entitled to relief.

The decision in the instant case allows recovery in an area where recovery has been heretofore denied. In the past, courts have limited recovery to those persons injured by a mob who were charged, or at least suspected of some crime. Now, the boundary lines of recovery have been extended to include those instances where an injury resulted when a mob was acting to protect what it believed was a "community interest."

There is evidence of the court's hesitation to allow any interpretation of its decision as a change or exception to any established legal concepts. The court stated:

> We are of the opinion that it was the legislative intent in enacting the law to impose a penalty upon the community in the form of additional taxes when its members participate in or allow *the condition to arise that we find in the instant case.*[23]

It is to be remembered that the plaintiff here has not yet won his case. The decision that he has made out a *prima facie* case under the statute is a major hurdle. It is submitted that the court in the instant case has correctly effectuated the intent of the legislature in the application of the statute. The original purpose of the Act was to counteract strike violence and lynching. It can reasonably be said that these activities and the activities of the mob in the instant case are akin. Both are a dangerous disruption of law and order. Both can easily become uncontrollable. Both are inclined to cause serious bodily harm to innocent persons. If mob action is to be conquered by a pecuniary penalty on the community, it would seem that this case should occasion a valid infliction of that penalty.

PROPERTY–MURDER BY JOINT TENANT EXTINGUISHES RIGHT OF SURVIVORSHIP

Lawrence and Matilda Fox, husband and wife, were owners of certain real property which they held in joint tenancy. Lawrence Fox murdered his wife and three days later conveyed the premises. Fox was convicted of the murder and sentenced to the State Penitentiary.

The administrator of the estate of the decedent and her daughter by

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the common law should be strictly construed (if not both penal and remedial in character).

[23] Slaton v. City of Chicago, 8 Ill. App. 2d 47, 59, 130 N.E. 2d 205, 211 (1955). Emphasis added.