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Article 20

Legislation - Special Statutes with Classification by Population

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are familiar between the functions of the jury and those of the Court. It may do away with the jury altogether, modify its constitution, the requirements of a verdict, or the procedure before it."[16]

It is difficult to understand why Ohio should be denied the right to demand that equitable relief first be obtained from a release obtained by fraud before the cause of action may be brought, in view of the fact that the federal courts still retain the division of law and equity. It is well settled that on the equity side of the federal courts there is no right to a trial by jury.[17]

LEGISLATION–SPECIAL STATUTES WITH CLASSIFICATION BY POPULATION

John Gaca, a Chicago policeman, brought an action against the City of Chicago for recovery of a $2300 judgment obtained against him for a false arrest. He recovered under section 1–15, chapter 24, of the Illinois Revised Statutes which provides that in municipalities with a population of 500,000 or more, policemen shall be indemnified for judgments recovered against them by reason of non-wilful torts committed while on duty. His recovery was affirmed by the Illinois Supreme Court. *Gaca v. City of Chicago*, 411 Ill. 146, 103 N.E. 2d 617 (1952).

Defendant, the City of Chicago, claimed that this statute contravenes Section 22 of Article IV of the Illinois Constitution, prohibiting special statutes granting any special or exclusive privileges, and that it imposes a tax upon a municipal corporation for corporation purposes, thereby violating Section 10 of Article IX of the Illinois Constitution.

The Illinois Supreme Court upheld the statute in spite of a strong dissent. The court said that the classification was reasonable since policemen in municipalities with populations over 500,000 are fraught with problems that are not found in the rest of the state. The second argument of the defendant did not merit an answer.

Municipalities were not liable at common law for the negligent acts of policemen in the performance of their duties.[1] Policemen have been individually liable notwithstanding that the tort was committed while on duty.[2]

Although the Illinois Constitution prohibits laws granting special privileges and immunities,[3] the courts have seen fit to allow a leeway from the

[16] Chicago, R.I. and P.R. Co. v. Cole, 251 U.S. 54 (1919).

[17] Parsons v. Bedford, 3 Pet. (U.S.) 433 (1830). See also, Dimick v. Schiedt, 293 U.S. 474 (1934); Liberty Oil Co. v. Condon National Bank, 260 U.S. 235 (1922).

[1] Evans v. City of Kankakee, 231 Ill. 223, 83 N.E. 223 (1907).

[2] City of Chicago v. Williams, 182 Ill. 135, 55 N.E. 123 (1899); Wisher v. City of Centralia, 273 Ill. App. 168 (1933).

[3] Ill. Const. Art. 4, § 22.

literal meaning of these words. They have said that it is not necessary that the same rules shall apply to every individual in the state, but only to those in substantially the same circumstances.[4] An act is not local or special because it operates in but one place or upon a particular class if there is a reasonable basis for the classification[5] and if it operates upon all similarly situated.[6] Population may be a proper basis of classification in a statute where it is obvious that density or sparsity of population requires different remedies and facilities to effect the public purpose.[7]

The courts have passed on the validity of many classifications by population.[8] Two previous cases dealt with classifications of 500,000 persons. One held valid the authorization of a working cash fund to be raised by bonds in counties having a population of over 500,000, reasoning that this was only necessary in cities with large populations and big administrations.[9] The other held void an authorization for a division of courts in regard to divorce in judicial circuits of 500,000 or more inhabitants.[10] This court said that population does not have a direct relation to divorce problems, but that:

> There is no substantial difference between problems in that judicial circuit in these matters and in any other circuit in the state, except as to the greatly increased number of cases. It is true that the dense population of cities... creates social problems differing from those in a rural community, but the incidents of divorce and separation of married persons... are largely the same throughout the state.[11]

[4] People v. Deatherage, 401 Ill. 25, 81 N.E. 2d 581 (1948); People v. City of Springfield, 370 Ill. 541, 19 N.E. 2d 598 (1939).

[5] Hunt v. Rosenbaum Grain Corp., 355 Ill. 504, 189 N.E. 907 (1934).

[6] People v. Borgeson, 335 Ill. 136, 166 N.E. 451 (1929); People v. Callicott, 322 Ill. 390, 153 N.E. 688 (1926).

[7] Giebelhausen v. Daley, 407 Ill. 25, 95 N.E. 2d 84 (1950); Littell v. City of Peoria, 374 Ill. 344, 29 N.E. 2d 533 (1940).

[8] The following cases held valid a classification by population: Littell v. City of Peoria, 374 Ill. 344, 29 N.E. 2d 533 (1940); People v. City of Springfield, 370 Ill. 541, 19 N.E. 2d 598 (1939); Mathews v. City of Chicago, 342 Ill. 120, 174 N.E. 35 (1930); People v. Kastings, 307 Ill. 92, 138 N.E. 269 (1923); Hughes v. Traeger, 264 Ill. 612, 106 N.E. 431 (1914); People v. Grover, 258 Ill. 124, 101 N.E. 216 (1913); Douglas v. People, 225 Ill. 536, 80 N.E. 341 (1907); Chicago Terminal Transfer R. Co. v. Greer, 223 Ill. 104, 79 N.E. 46 (1906).
The following cases held void a classification by population: Hunt v. County of Cook, 398 Ill. 412, 76 N.E. 2d 48 (1947); People v. Read, 344 Ill. 397, 176 N.E. 284 (1931); People v. Fox, 247 Ill. 402, 93 N.E. 302 (1910); Strong v. Dignan, 207 Ill. 385, 69 N.E. 909 (1904); Bessette v. People, 193 Ill. 334, 62 N.E. 215 (1901); People v. Knopf, 183 Ill. 410, 56 N.E. 155 (1900); Devine v. Board of Commissioners of Cook County, 84 Ill. 590 (1877).

[9] Mathews v. City of Chicago, 342 Ill. 120, 174 N.E. 35 (1930).

[10] Hunt v. County of Cook, 398 Ill. 412, 76 N.E. 2d 48 (1947).

[11] Ibid., at 420 and 53.

This latter case seems more in point than the case relied upon by the court, *People v. Kastings*,[12] which held valid an act requiring a $10,000 bond for each taxicab in cities of populations of 100,000 or more, because the probabilities of traffic accidents bear a direct relationship to the population. It must be kept in mind that a classification according to population may be valid with one subject matter and not with another.[13]

Another approach to the problem would be to consider the possible discrimination against policemen not covered by this act. Where a general law can be made applicable, no special law should be enacted.[14] An act is invalid if there is no legitimate reason why it is not extended to others not touched by it.[15]

It is another problem whether the indemnity for tort liability is such a thing as will accomplish the objects and purposes intended. It cannot be said with certainty that there is a direct relationship between this indemnity and the quality of law enforcement in large cities.

The court in the present case stated that the legislature may have sought to indirectly increase the wages of policemen in the city of Chicago, the only municipality affected, by relieving them of the expense of insuring against this risk. But in view of the fact that there is an express statute dealing with the minimum policemen's wage, it would be more likely that the legislature would make such a change by an amendment to the Policemen's Minimum Wage Act.[16]

Also the fact that since the municipality will bear the expense of the act, it may be a tax on a municipal corporation for corporation purposes such as is forbidden by Section 10 of Article IX of the Illinois Constitution. *Mathews v. City of Chicago*[17] discussed this problem and held that there was no violation if the act applied to all departments of the municipality, but also indicated that there would be a violation if it were for a specific or particular purpose. Here, the entire city is bearing the cost of the indemnity to the police department alone.

The burden is on the one alleging the unreasonableness of the classification.[18] Hence, the legislature has the benefit of the doubt in a classification problem. But since it appears that the difference between police problems of municipalities of more than 500,000 people and some municipalities of less population are not substantial, that there are policemen in

[12] 307 Ill. 92, 138 N.E. 269 (1923).

[13] Kales, Special Legislation as Defined in Illinois Cases, 1 Ill. L. Rev. 75 (1906).

[14] Hunt v. County of Cook, 398 Ill. 412, 76 N.E. 2d 48 (1947).

[15] Schuman v. Chicago Transit Authority, 407 Ill. 313, 95 N.E. 2d 447 (1950); Hansen v. Raleigh, 391 Ill. 536, 63 N.E. 2d 851 (1945).

[16] Ill. Rev. Stat. (1949) c. 24, § 11–2.

[17] 342 Ill. 120, 138, 174 N.E. 35, 42 (1930).

[18] Bagdonas v. Liberty Land and Investment Co., 309 Ill. 103, 140 N.E. 49 (1923).

municipalities of less than 500,000 who are similarly situated as those in a city with more, and that the indemnity to policemen does not promise to remedy the situation sought to be improved, the doubtful reasonableness of the classification and the resulting discrimination are such as would seem to justify a striking of the statute in question.

CONSTITUTIONAL LAW—RIGHT TO COUNSEL IN NON-CAPITAL CASES

Petitioner, a minor eighteen years of age, pleaded guilty upon arraignment to three indictments of armed robbery and larceny. Plaintiff was neither offered nor did he receive advice of counsel. A petition for a writ of habeas corpus was filed on grounds that permitting plaintiff to plead guilty without advice of counsel is so unfair that it violates the due process clause of the Fourteenth Amendment.[1] In denying the petition, the Supreme Court of New Hampshire held that there is always a presumption that the court exercised its proper discretion when it allowed a defendant over seventeen years of age to plead guilty without aid of counsel, and that this presumption was not overcome. The court concluded that the fair conduct of these matters must depend upon the wisdom and understanding of the trial judge. *Fitzgibbons v. Hancock*, 82 A. 2d 769 (N.H., 1951).

Under the Sixth Amendment[2] the right to the appointment of counsel in any federal criminal case is absolute where the benefit of counsel has not been waived.[3] However, the rule's counterpart, the right ot counsel in state cases, has remained uncertain. Earlier cases attempted to make a distinction between capital and non-capital state crimes, but the severity of punishment in non-capital cases and the lack of a definite rule even as to capital cases caused this distinction to suffer harsh criticism.[4] The first semblance of any concrete rule for the states was presented in the case of *Betts v. Brady*.[5] The petitioner in that case, forty-three years of age and of average intelligence, was convicted of robbery after his request for counsel was denied. A petition for habeas corpus was denied on the grounds that the Sixth Amendment guarantee was good only in federal cases.

The *Betts* case established the fundamental rule for determining whether

[1] U.S. Const. Amend. 14.

[2] U.S. Const. Amend. 6.

[3] Johnson v. Zerbst, 304 U.S. 458 (1938).

[4] Tompkins v. Missouri, 323 U.S. 485 (1945); Williams v. Kaiser, 323 U.S. 471 (1945); Odom v. State, 205 Miss. 572, 37 So. 2d 300 (1948); State v. Hedgebeth, 228 N.C. 259, 45 S.E. 2d 563 (1947); Johnson v. State, 148 Fla. 510, 4 So. 2d 671 (1941); Watson v. State, 142 Fla. 218, 194 So. 640 (1940).

[5] 316 U.S. 455 (1942).