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Notes and Comments

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NOTES AND COMMENTS

Statutory Immunity To Firemen

The law appears well-settled that a municipal corporation, in the absence of statute, is immune from liability for injury or damage arising from the negligent acts, whether of commission or omission, of the members of its police and fire departments.[1] It was, until recently, equally well-settled in this state that the immunity granted to the municipality did not extend to the individual policemen[2] or fireman,[3] either of whom might be held for his own carelessness. Legislative enactments, however, would appear to have produced a complete revolution of these principles, for since 1931 the municipal government has lost the immunity it previously enjoyed,[4] while the municipal employees have obtained an exemption not heretofore recognized.[5] There is occasion to doubt, however, whether the immunity granted to the firemen is as total as it would, at

[1] Wilcox v. City of Chicago, 107 Ill. 334, 47 Am. Rep. 434 (1893). See also Cooley, Municipal Corporations, Ch. 12, p. 376. The test to be applied, of course, is the "governmental v. proprietary" test: Seasongood, "Municipal Corporations: Objections to the Governmental or Proprietary Test," 22 Va. L. Rev. 910 (1936), particularly pp. 914-5, and cases there cited. An attempt to depart from this doctrine was made in Fowler v. City of Cleveland, 100 Ohio St. 158, 126 N. E. 72, 9 A. L. R. 131 (1919), where the court distinguished between the determination to have a fire department, said to be a governmental function, and the actual performance of that department once it was established, considered to be a proprietary service. That attempt was nullified in Aldrich v. City of Youngstown, 106 Ohio St. 342, 140 N. E. 164, 27 A. L. R. 1497 (1922). Statutory action to destroy immunity has since been regarded as necessary Municipal liability for tortious acts of policeman is discussed in Taylor v. City of Berwyn, 372 Ill. 124, 22 N. E. (2d) 930 (1922); Evans v. Kankakee, 231 Ill. 223, 83 N. E. 223, 13 L. R. A. (N. S.) 1190 (1907); Craig v. City of Charleston, 180 Ill. 154, 54 N. E. 184 (1899); Culver v. City of Streator, 130 Ill. 238, 22 N. E. 810 (1889); Sykes v. City of Berwyn, 320 Ill. App. 440, 51 N. E. (2d) 587 (1943), leave to appeal denied.

[2] Manwaring v. Geisler, 191 Ky. 532, 230 S. W. 918 (1921); Growbarger v. U. S. F. & G. Co., 126 Ky. 118, 102 S. W. 873 (1907); American Guaranty Co. v. McNiece, 111 Ohio St. 532, 146 N. E. 77 (1924). See also annotations in 53 A. L. R. 41, 39 A. L. R. 1289. 18 A. L. R. 192, 128 Am. St. Rep. 274.

[3] Skerry v. Rich, 228 Mass. 462, 117 N. E. 824 (1917); Florio v. Jersey City, 101 N. J. L. 535, 129 A. 470 (1925). In the latter case the court stated: "We think that a sound public policy requires that public officers and employees shall be held accountable for their negligent acts in the performance of their official duties, to those who suffer injury by reason of their misconduct. Public office or employment should not be made a shield to protect careless public officials from the consequences of their misfeasances in the performance of their public duties."

[4] Laws 1931, p. 618, § 1. The statute was repealed in 1941, but re-incorporated without substantial change in the Revised Cities and Villages Act: Ill. Rev. Stat. 1945, Ch. 24, § 1—13. A more limited statute pertaining to policemen was enacted in 1941: Ill. Rev. Stat. 1945, Ch. 24, § 1—15.

[5] See statutes referred to in note 4, ante. The liability of a police officer is discussed in LaCerra v. Woodrich, 321 Ill. App. 107, 52 N. E. (2d) 461 (1943).

first glance, appear to be, judging from the holding in the recent Illinois case of *Hansen* v. *Raleigh*.[6]

In that case, plaintiff sued the town of Cicero and the individual defendant, fire commissioner of Cicero, to recover damages for injuries sustained in a collision between plaintiff's car and the official automobile of the fire commissioner, when the collision occurred inside the limits of the City of Chicago. Plaintiff relied on the fire commissioner's negligence in speeding, in disregarding a stop light, in the wilful use of a siren, and also upon a general charge of wanton conduct. Action against the municipality was dismissed for want of statutory notice.[7] The individual defendant filed an answer denying negligence and also relied on the affirmative defense that he was responding to a fire alarm in Chicago, pursuant to agreement between the municipal governments of Cicero and Chicago to render mutual assistance in fighting fires, so was entitled to the benefit of the statutory exemption. Thereafter, defendant moved to dismiss the action on the ground that the allegations in the pleadings, not denied by way of reply, clearly showed absence of liability. That motion was also supported by documentary evidence. Plaintiff answered such motion with the contention that the immunity statute was unconstitutional or, if not, that defendant was not benefited thereby since he was a mere "observer" when going to the Chicago fire and was not there as a "fireman engaged in the performance of his duties." Defendant's motion was sustained and the suit was dismissed. On direct appeal to the Illinois Supreme Court because the constitutionality of a statute was directly involved, that court held the statute constitutional[8] but reversed on the ground that if, in fact, defendant was merely an "observer," he was not entitled to the statutory immunity.

The statute relied upon declares that "in no case shall a member of a municipal fire department be liable in damages for any injury to the person or property of another caused by him while operating a motor vehicle while engaged in the performance of his duties *as a fireman.*"[9] The Illinois Supreme Court indicated that such statute permitted no other construction than that the fireman must be acting "in the performance of his duties" at the time of any collision in order to have the benefit thereof or else is not to be regarded as a "fireman." The

[6] 391 Ill. 536, 63 N. E. (2d) 851 (1945).

[7] Ill. Rev. Stat. 1945, Ch. 24, § 1—11.

[8] It was argued that the statute was unconstitutional because contravening Ill. Const. 1870, Art. IV, §§ 22-3, prohibiting special legislation releasing the indebtedness or obligation of a private individual to a municipal corporation. The statute was held not to be a special law because it affected all members of the same class alike and was based on a valid classification. The reasoning used was similar to that in Bryan v. City of Chicago, 371 Ill. 64, 20 N. E. (2d) 37 (1939), which had upheld another portion of the statute as it applied to the municipal corporation.

[9] Ill. Rev. Stat. 1945, Ch. 24, § 1—13. Italics added.

decision, however, gives little more than a working clue as to what may be comprehended within the expression "in the performance of his duties as a fireman." There was some indication from the pleadings that the oral arrangement between the two municipalities existed for the purpose of (1) mutual help in extinguishing fires in close proximity to municipal borders in order to prevent conflagrations spreading across division lines into the adjoining municipality; and (2) so as to provide the members of the fire department of the smaller neighbor with an opportunity to obtain training and experience in metropolitan fire-fighting methods. From dicta used in the opinion, it would seem that if the defendant was en route to assist in fighting a fire in the adjoining municipality, pursuant to instructions given by superior municipal authority, he would be entitled to the immunity even though his purpose may also have been to gain training and experience. Whether defendant was or was not under any *duty* at the time becomes of primary importance in view of the construction placed on the statutory language.

The municipality is, of course, subservient to the state so it is accepted law that municipalities can exercise only those powers granted by the state.[10] Under a general grant of police power, or under the welfare clause, a municipality may make such regulations and adopt such measures as may be necessary and reasonable to preserve the peace, order, health, and safety of its citizens,[11] but the corporate boundaries usually mark a territorial limit for the exercise of the police power by a given municipality. In matters concerning health, the municipal police power may extend beyond the corporate boundaries,[12] especially if sanctioned by statute,[13] but Illinois has no statute authorizing municipal subdivisions of the state to interchange fire equipment or apparatus, interchange service, or even to contract for the interchange of equipment or service.[14]

[10] Dillon, Municipal Corporations, 5th Ed., § 237, pp. 448-9, states: "It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others; first, those granted in express words; second, those necessarily or fairly implied in or incidental to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient but indispensable." See also Hemingway, "The Extra-territorial Powers of a Municipality," 24 Ky. L. J. 107 (1936); Tooke, "Construction and Operation of Municipal Powers," 7 Temple L. Q. 267 (1933).

[11] Cooley, Municipal Corporations, Ch. 10; McQuillan, Municipal Corporations, Vol. III, § 895.

[12] Chicago Packing & Provision Co. v. City of Chicago, 88 Ill. 221, 30 Am. Rep. 545 (1878).

[13] Ill. Rev. Stat. 1945, Ch. 24, § 8—1.

[14] The authority conferred by Ill. Rev. Stat. 1945, Ch. 24, § 23—74 to provide fire protection to areas outside of municipal limits is restricted, by Ill. Rev. Stat. Ch. 127½, § 21 et seq., to the providing of protection to unincorporated and otherwise unprotected areas. The authority to make contracts granted by Ch. 127½, § 31a, is likewise limited to contracts between municipalities and adjacent organized fire districts. It does not contemplate inter-municipal contracts such as the one involved in the instant case.

If there was a statute and if the municipalities concerned had duly contracted thereunder, the defendant in the instant case might be said to be under a duty so as to bring him within the immunity provision of the statute provided he was, in fact, in the performance of his duties as a fireman. Statutes of that character exist in Ohio[15] and in New York,[16] so that the members of fire departments in those states rendering service outside of corporate boundaries pursuant to such contracts have the same immunities and privileges as if performing duties within their own areas.[17] The duty and the corresponding immunity is clear in such cases. But while the town of Cicero, in the instant case, did pass a resolution authorizing the use of its fire equipment to aid its neighbor and giving the commissioner leave to attend all fires in surrounding areas, there was no enabling legislation authorizing such resolution. It would appear, therefore, that the defendant could not be in the performance of his "duties as a fireman" at the time of the accident so the court should probably have held against his claim of statutory immunity on this ground alone. Any custom between the municipal governments could not suffice for the New York court, in the case of *Wieszczecinski* v. *Village of Sloan*,[18] held that the habit of responding in reciprocity to alarms in adjoining districts did not have the force of custom amounting to law, especially where formal negotiations and agreements were lacking.

Another aspect of this subject, though not discussed in the Raleigh case, is whether or not the immunity granted by the Illinois statute is the same going to, as well as when returning from, a fire. An Ohio immunity statute provides that the fireman's defense shall show that he was "engaged in duty at a fire or while proceeding to a place where a fire is in progress or is believed to be in progress or in answering any other emergency alarm."[19] There are no specific cases in point under that statute, but an opinion by the Attorney General of that state indicates that a municipal corporation is liable for the negligence of members of the fire department in operating fire-fighting apparatus when returning from a fire or other emergency alarm,[20] so it would seem that the fireman would not have the benefit of the immunity provision under like circumstances.[21] The Illinois court in the instant case drew

[15] Page Ohio Gen. Code Ann., § 3698-60 and § 3741-1.

[16] Cahill, Cons. Laws, Gen. Mun. Law, Art. 10, § 209 (1937 Supp.).

[17] In re Gilbert, 165 Misc. 222, 300 N. Y. S. 790 (1938), appeal dis. 254 App. Div. 814, 4 N. Y. S. (2d) 753 (1938).

[18] 258 App. Div. 858, 15 N. Y. S. (2d) 958 (1939), reargument denied 258 App. Div. 1033, 17 N. Y. S. (2d) 862 (1940).

[19] Page Ohio Gen. Code Ann., § 3741-1.

[20] Ohio, Opin. Atty. Gen. No. 1043.

[21] The case of Fowler v. City of Cleveland, 100 Ohio St. 158, 126 N. E. 72, 9 A. L. R. 131 (1919), suggests that the state of emergency and excitement attendant thereon might be facts to be considered in determining if negligence was present.

distinctions between the situation presented where a fire truck was going to a fire and where it was returning to illustrate the point it was deciding. It may thereby be intimating an opinion that the local statute is likewise limited. As it simply provides that a fireman shall not be liable for damages to the person or property of another "caused by him while operating a motor vehicle while engaged in the performance of his duties as a fireman," the precise boundaries of this phrase are yet to be delineated.

Much of the force of the argument in favor of immunity while proceeding to a fire is lost when applied to the return trip. The fireman is not then acting under the pressure of an emergency, where excessive speed is necessary to protect the interests of the entire community. He is, rather, acting in the role of an ordinary motorist. Test or practice runs would seem to be in the same category, so the court well might, in the interest of public safety, conclude that such activities were outside of the scope of duties "as a fireman."

A closer question is raised where the fireman is responding to a false alarm. The ordinary fireman, responding to a typical alarm, could not know in advance what would be required of him, so it would appear that the public interest would best be served by granting immunity for injuries caused during response to false alarms. The court, in the Raleigh case, however, indicated that a possible limitation might exist if the fireman had knowledge beforehand that fire-fighting was to be the secondary purpose for the trip, as where he makes the journey primarily for educational purposes. Consonant with that interpretation, immunity would be denied for the negligent operation of fire trucks and equipment in parades or shows.[22] Moreover, the statutory immunity is limited expressly to the performance of duties as a fireman in the operation of a motor vehicle, so negligent acts such as knocking down a pedestrian when suddenly opening the firehouse doors,[23] or allowing a child to fall through the polehole while taking him on a tour of the firehouse,[24] would not come within the purview of the statute.

There is a definite trend away from the old rules as to the fireman's individual liability for the negligent operation of a motor vehicle in the performance of his duties.[25] That trend is no doubt due to an increase

[22] Blankenship v. City of Sherman, 33 Tex. Civ. App. 507, 76 S. W. 805 (1903).

[23] Kies v. City of Erie, 135 Pa. 144, 19 A. 942 (1890).

[24] Nicastro v. City of Chicago, 175 Ill. App. 634 (1912). The decision, however, antedates the immunity statute and is merely declarative of common-law principles.

[25] Comparable statutes may be found in Mass. Gen. Laws, Ch. 41, § 100, and Purdon's Pa. Stat. 1936, Title 75, § 212. The validity of the latter was sustained in Mallinger v. City of Pittburgh, 316 Pa. 257, 175 A. 525 (1934). Policemen have not been so highly favored: LaCerra v. Woodrich, 321 Ill. App. 107, 52 N. E. (2d) 461 (1943); Cavey v. City of Bethlehem, 331 Pa. 556, 1 A. (2d) 653 (1938).

of official business, a lessening of personal performance, the rise of civil service restricting the power of the officer to choose his subordinates,[26] an increase in government operations making the financial responsibility of officers inadequate, as well as the inability of the officer to supervise all work in detail.[27] The vital character of the services performed by firemen, moreover, justifies a liberal interpretation of an immunity statute wherever the question is close, but we have yet to learn within what narrow confines the Illinois Supreme Court may hold the statutory immunity. The instant case does not signify a willingness to be too liberal on the subject.

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CIVIL PRACTICE ACT CASES

Appeal and Error—Parties Entitled to Allege Error—Whether or Not Appellee May Amend Pleadings to Make Same Correspond with Proofs and Findings After Case Reaches Appellate Tribunal—Recourse was had by the Appellate Court for the Second District, in the recent case of *Leffers* v. *Hayes*,[1] to Section 92(1)(a) of the Civil Practice Act[2] in order to justify granting to an appellee the right to amend his complaint in the reviewing court so as to make the same conform to the proofs and findings.[3] That decision would seem to be a logical sequitur to the earlier holding by the same court in *Bollaert* v. *Kankakee Tile & Brick Company*,[4] which had denied to the trial court the power to permit a similar amendment after the filing of notice of leave to appeal.[5] It does come clearly within the language of the statute and at the same time cir-

[26] An interesting point not considered in the instant case is the agency relation between a fire commissioner and the fireman assigned to drive the vehicle. In Dowler v. Johnson, 225 N. Y. 39, 121 N. E. 487, 3 A. L. R. 146 (1918), reversing 171 App. Div. 935, 156 N. Y. S. 1121 (1915), a new trial was directed to ascertain whether the fire commissioner directed or encouraged the act of the fireman by failing to protest at the excessive speed. Immunity provisions in force there are limited to conduct occurring while proceeding to a fire. See also Nardone v. Milton Fire District, 261 App. Div. 717, 27 N. Y. S. (2d) 489 (1941).

[27] David, "Tort Liability of Municipal Officers," 12 So. Cal. L. Rev. 368 (1939).

[1] 327 Ill. App. 440, 64 N. E. (2d) 768 (1946).

[2] Ill. Rev. Stat. 1945, Ch. 110, § 216(1)(a). See also Section 259.50.

[3] Plaintiff had sued to foreclose a mechanic's lien and predicated his original complaint on a written contract. He subsequently filed an amended complaint which, in effect, relied on an oral contract. The proofs disclosed, and the court found, that the written contract was still in existence though orally modified in some respects. A decree was granted on the latter theory although plaintiff did not seek permission to amend the complaint. On appeal by defendant, the plaintiff-appellee sought permission to amend his pleadings. Held: motion granted.

[4] 317 Ill. App. 120, 45 N. E. (2d) 506 (1942), noted in 21 Chicago-Kent Law Review 244.

[5] Dove, P.J., who wrote the opinion in the instant case, dissented from the holding in the Bollaert case on the ground that Ill. Rev. Stat. 1945, Ch. 110, § 170(3), expressly recognized the right to amend after judgment.

cumvents the cumbersome procedure which would otherwise necessitate reversal of the trial court holding for variance between allegation and proof only to have that court permit amendment after receipt of the mandate so as to lay the foundation for another appeal. If the decision rests upon sound legal principles, it could be marked as a happy solution to a dangerous trap created by the earlier holding. But therein lies the rub, for while the statute purports to confer authority to permit such amendment, there is occasion to doubt its validity at least so far as it applies to proceedings pending in the Appellate Courts of the state.

While some original jurisdiction is vested in the Illinois Supreme Court,[6] the constitutional authority for the existence of Appellate Courts in this state definitely indicates that such tribunals shall be reviewing courts only[7] and they cannot exercise functions properly attributable to courts of original jurisdiction.[8] Direct amendment of the Appellate Courts Act to confer original jurisdiction would violate constitutional mandate, while indirect attempt to so do would present even more obvious grounds for condemnation. Other sections of the Civil Practice Act purporting to grant original jurisdiction to the reviewing courts of this state have already received judicial disapproval[9] so there is no reason to suppose that the instant section is any the less vulnerable unless it can be said that granting leave to amend the pleadings is not an exercise of original jurisdiction. When it is remembered that the reviewing court must take the record as it finds the same,[10] that subsequent action by the trial court does not affect the existing record,[11] and that, heretofore, amendment after an appeal was taken was never allowed,[12] there can be no question but

[6] See Stanley and Severns, "The Original Jurisdiction of the Illinois Supreme Court," 22 CHICAGO-KENT LAW REVIEW 169 (1944), particularly pp. 194-5.

[7] Ill. Const. 1870, Art. VI, § 11.

[8] Ill. Rev. Stat. 1945, Ch. 37, § 32, declares: "The said appellate courts created by this Act shall exercise appellate jurisdiction only. . . ." See also People v. Hoyne, 262 Ill. 82, 104 N. E. 255 (1914); Dahlberg v. Chicago City Bank & Trust Co., 310 Ill. App. 231, 33 N. E. (2d) 747 (1941); Riggs v. Barrett, 308 Ill. App. 549, 32 N. E. (2d) 382 (1941); Village of New Holland v. Holland, 99 Ill. App. 251 (1901), reversed on other grounds sub nom. Burchett v. People ex rel. Holland, 197 Ill. 593, 64 N. E. 543 (1902); Wabash R. R. Co. v. Kime, 42 Ill. App. 272 (1891).

[9] Ill. Rev. Stat. 1945, Ch. 110, § 192(3)(c), purporting to authorize the reviewing court to enter judgment according to the verdict when reversing a judgment notwithstanding the verdict, was declared a nullity in Sprague v. Goodrich, 376 Ill. 80, 32 N. E. (2d) 897 (1941), noted in 19 CHICAGO-KENT LAW REVIEW 275, and Scott v. Freeport Motor Casualty Co., 379 Ill. 155, 39 N. E. (2d) 999 (1942), noted in 21 CHICAGO-KENT LAW REVIEW 35. Section 92 of the Civil Practice Act, Ill. Rev. Stat. 1945, Ch. 110, § 216(1)(d), authorizing the reception of evidence not introduced in the trial court, has been condemned in Schmidt v. Equitable Life Assur. Soc., 376 Ill. 183, 33 N. E. (2d) 485 (1941), as applied to the Supreme Court, and in Ockenga v. Alken, 314 Ill. App. 389, 41 N. E. (2d) 548 (1942), as applied to the Appellate Courts.

[10] Finn v. Glos, 268 Ill. 350, 109 N. E. 351 (1915). But see Francke v. Eadie, 373 Ill. 500, 26 N. E. (2d) 853 (1940).

[11] Barnard v. Dettenmaier, 89 Ill. App. 241 (1900).

[12] Parker v. Shannon, 121 Ill. 452, 13 N. E. 155 (1887).

what it is the province of the trial rather than the appellate court to settle the record, including any pertinent amendment thereof, prior to appeal.

Desirable though the section in question may be, no other inference can be drawn than that the Appellate Court possessed no valid warrant for its action in the instant case.[13]

DISCOVERY—DISCOVERY UNDER STATUTORY PROVISIONS—WHETHER OR NOT CIVIL PRACTICE ACT PROVISION CONCERNING JUDICIAL POWER TO ASSESS ADDITIONAL COSTS FOR FAILURE TO ADMIT FACTS IS EXCLUSIVE REMEDY AFFORDED LITIGANT—The plaintiff in a state court negligence action based on the Federal Employer's Liability Act propounded certain interrogatories and obtained a rule on defendant to answer. Defendant failed to answer within the time fixed, apparently on the ground that the court lacked power to order defendant to respond. Plaintiff moved for a default judgment, but in lieu thereof the trial court found defendant in contempt and assessed a fine. Defendant appealed, relying on the contention that the sole remedy afforded was for the court to assess the expenses incurred by plaintiff in proving the matter not admitted as additional costs, in the fashion provided by Section 58(2) of the Civil Practice Act and Rule 18 of the Illinois Supreme Court.[1] It was held, in *Smith* v. *Thompson*,[2] that the provision of the Civil Practice Act and the rule thereunder was not exclusive, had merely provided litigants with an additional remedy,[3] and had not operated to deprive the trial court of its innate power to punish for contemptuous disregard of its orders.

While express statutory sanction exists for the use of contempt process

[13] Rule 50 of the Illinois Supreme Court, Ill. Rev. Stat. 1945, Ch. 110, § 259.50, can provide no better support for that action as it is fundamental law that a court cannot, by rule, add to or detract from a jurisdiction conferred on it by law: Pisa v. Estate of Marie Rezek, 108 Ill. App. 198 (1903), affirmed in 206 Ill. 344, 69 N. E. 67 (1903).

[1] Ill. Rev. Stat. 1945, Ch. 110, § 182(2) and § 259.18(2). Rule 18 was held constitutional in Wintersteen v. National Cooperage & Woodware Co., 361 Ill. 95, 197 N. E. 578 (1935). Relief under it has been granted in O'Connor v. Central Nat. Bank & Trust Co. of Peoria, 306 Ill. App. 414, 28 N. E. (2d) 755 (1940). Allowance of costs has been denied where the request for admission applies to facts of controvertible character, Usalatz v. Pleshe's Estate, 302 Ill. App. 392, 23 N. E. (2d) 939 (1939), or the facts could not be admitted without qualification or explanation: First Trust & Savings Bank v. Town of Ganeer, 296 Ill. App. 541, 16 N. E. (2d) 806 (1938).

[2] 327 Ill. App. 59, 63 N. E. (2d) 613 (1945). That decision was followed in the simultaneous opinion in Knaebel v. Thompson, 327 Ill. App. 21, 63 N. E. (2d) 614 (1945).

[3] The remedy is similar to the one provided in cases where untrue statements are made in pleadings: Ill. Rev. Stat. 1945, Ch. 110, § 165. But see, in that regard, Hausman Steel Co. v. N. P. Severin Co., 316 Ill. App. 585, 45 N. E. (2d) 552 (1942); Palmer v. Gillarde, 312 Ill. App. 230, 38 N. E. (2d) 352 (1942). No allowance can be made where the question is raised simply by motion to strike: Awotin v. Abrams, 309 Ill. App. 421, 33 N. E. (2d) 179 (1941).

to coerce a recalcitrant witness in a deposition proceeding,[4] no such authority is to be found in Section 9 of the Evidence Act[5] which section was, heretofore, the only one permitting a court to require parties to the litigation to produce books and writings in their possession containing evidence pertinent to the issues being tried. The absence of such express authority, however, did not prevent earlier courts from imposing penalties as for contempt for wilful refusal to produce books and the like on order.[6]

The pertinent portion of Section 58 of the Civil Practice Act constitutes an innovation in the law regarding discovery as it clearly makes possible, through rule of court, a much more comprehensive system for obtaining evidence than was possible under any former practice.[7] But there is nothing in it or in the accompanying rules to evidence any intention to limit the earlier coercive methods for compelling discovery, so it would not be unnatural to suppose that such methods remain. The decision in the instant case, the first since the adoption of the Civil Practice Act, now holds that such other methods do remain. By so deciding, the court has assured the bar that a wilful refusal to admit facts without justification may lead to more severe penalties than just the imposition of additional costs.

[4] Ill. Rev. Stat. 1945, Ch. 51, § 36.

[5] Ibid., Ch. 51, § 9.

[6] Swedish-American Tel. Co. v. Fidelity & Casualty Co., 208 Ill. 562, 70 N. E. 768 (1904), affirming a fine of $1,050, and Harrisburg Coal Min. Co. v. Ender Coal & Coke Co., 272 Ill. App. 113 (1933), affirming fines totalling $2,000 as well as imprisonment for thirty days. But see Carden v. Ensminger, 329 Ill. 612, 161 N. E. 137, 58 A. L. R. 1256 (1928).

[7] On the scope of discovery under Section 58, see Finn, "Depositions and Pretrial Discovery under the Illinois Civil Practice Act," 17 CHICAGO-KENT LAW REVIEW 301 (1939).