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there were questions of ultimate fact, the lower court's decision should be affirmed.

COMMUNIST PARTY NOT AN EMPLOYER UNDER UNEMPLOYMENT INSURANCE LAW

The refusal of the Unemployment Insurance Appeal Board to honor a claim for Unemployment Insurance gave rise to one of the most unusual cases in the history of the courts of New York, an unsuccessful suit by a taxpayer for the privilege of paying an excise tax, *In re Albertson's Claim*.[16]

In this consolidated proceeding the Industrial Commissioner of New York State as administrator of the Unemployment Insurance Law, Albertson, the claimant, and Albertson's former employers, the Communist Parties of the U. S. A. and of New York were all parties.

In March, 1957, the registration of the Communist Party as an "employer" under the New York Unemployment Insurance Law[17] was suspended and no further payments were accepted from the Party.

Following earlier employment with the Communist Party,[18] Albertson lost his job in a delicatessen and applied for benefits under the New York Unemployment Insurance Law.

Albertson was not employed by the Communist Party at the time of its suspension as an employer. The Industrial Commissioner decided that, since the status of the Communist Party as an "employer" under the Unemployment Insurance Law had been revoked by the Federal Communist Control Act of 1954,[19] the claim for benefits by Albertson was to be rejected since he could not qualify as an ex-employee of a bonafide "employer," although his employment had terminated before the formal suspension of the Party.

Albertson appealed this decision and the Communist Party appealed from the determination that they were no longer to be treated as employers within the definition of the Unemployment Insurance Law.[20] The Appellate Division reversed both decisions and the controversy came before the Court of Appeals upon the appeal of the Industrial Commissioner as administrator of the Unemployment Insurance.[21]

The Court of Appeals held that the fact that Albertson had spent the time required to qualify for unemployment insurance as an employee of the disqualified Communist Party was not enough to bar his claim. The Court of Appeals, however, upheld the refusal of the Industrial Commissioner to treat the Communist Party as an "employer" and his refusal to accept payment of the tax to the unemployment fund.

16. 8 N.Y.2d 77, 202 N.Y.S.2d 5 (1960).
17. N.Y. Labor Law Art. 18.
18. It never appears in the record of this case that Albertson was a member of the Party itself, or served it in any but a minor capacity.
19. 50 U.S.C. §§ 841, 842.
20. N.Y. Labor Law § 512.
21. 8 A.D.2d 918, 187 N.Y.S.2d 200 (3d Dep't 1959).

The dual holdings of these consolidated cases are rather inconsistent, for if the Communist Party was not an employer, it is difficult to see how Albertson could have been an employee. Since the Party is no longer paying taxes to the unemployment fund, in the future, the courts of this State will not grant relief in this type of case, as they would not have granted Albertson's claim had he not some equitable right by virtue of the money paid in during the period of his "employment" by the Party.

Of greater and more lasting significance is the Court's interpretation of the Federal Communist Control Act of 1954.[22] In so far as relevant that statute says:

> The Communist Party of the United States . . . (is) not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party . . . are hereby terminated.

If this Section takes from the Communist Party the right hitherto thought to be inalienable, the right to pay a tax, it may well be asked what rights and privileges are left to the Communist Party, and if there be any such rights, whether the Party has standing in the courts of this State to sue for them.

If the Party can no longer fit into the definition of employer of New York Labor Law Section 512, ". . . any person, partnership, firm, association, public or private, domestic or foreign corporation . . . ," then it must be said that henceforth the Communist Party is a non-entity in the official eyes of the courts of this State.

Nor may it be presumed that such an extreme result will fall on appeal to the U. S. Supreme Court, for in a decision, *Flemming v. Nestor*,[23] handed down within a month after the decision in the instant case, the Supreme Court denied Social Security benefits to an individual deported on account of previous membership in the Communist Party thereby demonstrating again its unarticulated current policy of upholding the constitutionality of anti-Communist legislation whenever even the slightest justification can be found.

If the Federal Communist Control Act of 1954 killed the Communist Party as a legal entity, the decision in the instant case buried it in an unmarked grave. Unfortunately, it seems beyond the purview of the courts to deal effectively with its rather active ghost.

22. Supra note 19.
23. 363 U.S. 603 (1960).