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Constitutional Law -- Direct Action Statute vs. "No Action" Clause -- Impairment of Contract

in a California case[15] in which the court was called upon to decide between conflicting decrees of New York and Philippine Islands courts. Certain other cases seem to have taken no cognizance of this rule.[16] The "latest in time" solution has been hinted at in the *Restatement of Conflicts*,[17] and inchoately appears in two older cases.[18]

There have not yet evolved any clear standards for the determination of such issues as these—nor even any clear cut divisions of authority. The instant court, while giving other reasons for its decision, actually moved along the same lines as the "latest in time" cases. This is a particularly muddy portion of a whole field greatly in need of clarification, and hope is expressed that the Illinois district court in its forthcoming decision "may let in more light to the student."[19]

CONSTITUTIONAL LAW — DIRECT ACTION STATUTE VS. "NO ACTION" CLAUSE — IMPAIRMENT OF CONTRACT

The plaintiff brought suit directly against a foreign insurer for injuries resulting from the use of the insured's product. In accordance with a Louisiana statute, the defendant had filed written consent to be sued directly as a condition precedent to doing business in that state. Upon suit, the defendant moved to dismiss on the ground that the policy, valid in the state where made, stipulated that the insurer could not be sued for indemnification until the claim against the insured was liquidated. *Held*, that the statute depriving defendant of this valuable contract right is unconstitutional. *Bish v. Employers' Liability Assur. Corp. Ltd.*, 102 F. Supp. 343 (W.D. La. 1952).

The problem of whether a state can enlarge contractual obligations made outside its borders appears when dealing with foreign corporations doing local business. While a state may completely exclude foreign corporations,[1] impose certain conditions on their entry and operation[2] and regulate their local business,[3] the Fourteenth Amendment[4] forbids state legislation

15. Perkins v. Benguet Consolidated Mining Co., 55 Cal. App. 2d 720, 132 P.2d 70 (1939); see McKee v. McKee, 239 Iowa 1093, 32 N.W.2d 379 (1948)) (Texas modification of Iowa decree entitled to full faith and credit); Darraugh v. Carrington, 62 N.Y.S.2d 241 (App. Div. 1946).

16. Hammel v. Britton, 19 Cal. 2d 72, 119 P.2d 333 (1942) (California court refused full faith and credit to Colorado's setting aside of a Colorado decree upon which a California judgment was based); Passailaigue v. Herron, 38 F.2d 775 (5th Cir. 1930). (Federal court in Florida refused to recognize a Louisiana decree cancelling a Louisiana divorce).

17. RESTATEMENT, CONFLICT OF LAWS § 450, comment *b*, illustration 1 (1934).

18. Piedmont Coal Co. v. Green, 3 W. Va. 54, 98 Am. Dec. 799 (1868); Peet v. Hatcher, 112 Ala. 514, 21 So. 711 (1896).

19. STORY, THE CONFLICT OF LAWS ix (3d ed. 1846).

1. Bothwell v. Buckabee-Mears Co., 275 U.S. 274 (1927).
2. Robertson v. California, 328 U.S. 440 (1946).
3. Palmetto Fire Ins. Co. v. Connecticut, 272 U.S. 295 (1926).
4. U. S. CONST. AMEND. XIV, § 1.

which arbitrarily impairs valid rights contained in foreign contracts.[5] The state's interest in the subject matter of the contract measures the degree of impairment that will be constitutionally tolerated.[6]

The "no action" clause in an insurance contract is designed to prevent unwarranted influence on juries in favor of claimants by not disclosing the defendant's coverage.[7] The direct action statute, on the other hand, is intended to expedite matters when the insured is not readily available for suit and to lessen the possibility that the non-resident insurer will be unavailable or insolvent after liability has been established.[8]

Louisiana state courts hold their direct action statute procedural and apply the conflict of laws rule whereby the *lex fori*, rather than the law where the policy was issued, governs.[9] In certain cases the United States Supreme Court and lower federal courts have given substantive effect to such statutes.[10] The federal district courts sitting in Louisiana have in the past wavered between these two views, the Western District agreeing with the state courts[11] and the Eastern District with the United States Supreme Court.[12] This split saw the conflict in sharp focus in 1950, when each opposed the other under identical fact situations.[13] It is of interest that the Eastern District, while basing its decision on the unconstitutionality of the statute, judicially noted that because in Louisiana there is an appeal on the facts as well as on the law, most damage suits are tried without a jury. Consequently, state court awards are lower than jury awards in similar cases brought in federal courts through the diversity of citizenship between the claimant and the non-resident insurer.[14]

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5. Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143 (1934); Home Ins. Co. v. Dick, 281 U.S. 397 (1930); Aetna Life Ins. Co. v. Dunken, 266 U.S. 389 (1924).

6. *See* Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 150 (1934).

7. *See* Belanger v. Great American Indemnity Co. of N.Y., 89 F. Supp. 736, 740 (E.D. La. 1950).

8. *See* Bish v. Employers' Liability Assur. Corp. Ltd., 102 F. Supp. 343, 347 (W.D. La. 1952).

9. Graham v. American Employers' Ins. Co., 171 So. 471 (La. App. 1937); Robbins v. Short, 165 So. 512 (La. App. 1936); Stephenson v. List Laundry & Dry Cleaners, 182 La. 383, 162 So. 19 (1935); Gager v. Teche Transfer Co., 143 So. 62 (La. App. 1932); Rossville Commercial Alcohol Corp. v. Dennis Sheen Transfer Co., 18 La. 725, 138 So. 183 (1931). *Contra*: Lowery v. Zorn, 157 So. 826 (La. App. 1934).

10. *See* Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143 (1934) (statute of limitations); Home Ins. Co. v. Dick, 281 U.S. 397 (1930) (statute of limitations); Aetna Life Ins. Co. v. Dunken, 266 U.S. 389 (1924) (penalty for failure to pay within statutory period); Wells v. American Employers' Ins. Co. 132 F.2d 316 (5th Cir. 1942) (direct action); Martin v. Zurich Gen. Accident & Liability Ins. Co., 84 F.2d 6 (1st Cir. 1936) (direct action); Springfield Fire & Marine Ins. Co., 32 F. Supp. 964 (D. Mont. 1940) (full commission to local agents).

11. Rogers v. American Employers' Ins. Co., 61 F. Supp. 142 (W.D. La. 1945).

12. Wheat v. White, 38 F. Supp. 796 (E.D. La. 1941).

13. *Compare* Bouis v. Aetna Casualty & Surety Co., 91 F. Supp. 954 (W.D. La. 1950), *with* Belanger v. Great American Indemnity Co. of N.Y., 89 F. Supp. 736 (E.D. La. 1950).

14. Belanger v. Great American Indemnity Co. of N.Y., 89 F. Supp. 736, 740 (E.D. La. 1950).

In 1951 the Western District began to shift its position when it limited the earlier statute[15] to contracts made within the state.[16] In the instant case, the same court was faced with new statutes which expressly extend the right of direct action to policies written and delivered outside the state[17] and require foreign insurers to consent to direct suit as the price of doing business locally.[18] The court held the "no action" clause a valuable property right in that it (1) prevents exposure of a foreign insurer to a jury, and (2) fosters cooperation by the insured in defending the action. Completely reversing its former stand, the court held these laws to contravene the due process clause of the Fourteenth Amendment.[19] Although the districts are thus harmonized, this opinion does not discuss the previous discord and makes only perfunctory reference to cases controlling the Eastern District. Instead, it stresses the exposure of foreign insurers to "all of the dangers of bias and prejudice of which human nature is capable in determining both liability and the amount of recovery."[20]

The reasonableness of a jury award is an unusual test in determining whether such a contract right has been unconstitutionally impaired. Does the instant court mean to imply that the same contract right which is impaired because the suit was brought in federal court would have remained unimpaired if the action had been brought in a state court? It is submitted that the United States Supreme Court and Eastern District Court test, that of inquiring whether the statute confers unwarranted extraterritorial power,[21] is the sounder and more durable one.

CONSTITUTIONAL LAW — ELECTIONS — DISCRIMINATION IN PARTY PRIMARIES

Plaintiffs sought to enjoin defendants from prohibiting Negroes from voting in defendants' private political association primary which greatly affected the subsequent state-regulated primary and general election. *Held*, that where a state-regulated primary exists, a private political association is not governed in its party primary by constitutional and statutory provisions

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15. La. Rev. Stat. tit. 22 § 655 (1950).

16. Bayard v. Traders & General Ins. Co., 99 F. Supp. 343 (W.D. La. 1951); Recent Case, 65 Harv. L. Rev. 688 (1952).

17. La. Rev. Stat. tit. 22 § 655 (1950).

18. La. Rev. Stat. tit. 22 § 983 (1950).

19. U. S. Const. Amend. XIV, § 1.

20. Bish v. Employers" Liability Assur. Corp. Ltd., 102 F. Supp. 343, 347 (W.D. La. 1952).

21. Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143 (1934); Home Ins. Co. v. Dick, 281 U.S. 397 (1930); Aetna Life Ins. Co. v. Dunken, 266 U.S. 389 (1924); Belanger v. Great American Indemnity Co. of N.Y., 89 F. Supp. 736 (E.D. La. 1950); Wheat v. White, 38 F. Supp. 796 (E.D. La. 1941).