

# Soldiers' and Sailors' Civil Relief Act - Eviction of Soldiers' Business from Commercial Premises

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W. F. M. M. Jr., *Soldiers' and Sailors' Civil Relief Act - Eviction of Soldiers' Business from Commercial Premises*, 4 La. L. Rev. (1942)  
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templated legislative enactment on prior statutes cannot be doubted.<sup>23</sup> But raising a potential constitutional objection to amendments by implication presents almost insurmountable barriers to effective legislative action,<sup>24</sup> particularly in a civil law jurisdiction where the vast majority of litigation involves recourse to legislative enactment. No judge or lawyer, and few laymen, need be told that virtually every statute changes prior law.<sup>25</sup> Bringing all change which does not amount to repeal within the scope of the constitutional provision will make compliance with the mandate a practical impossibility in many situations.

A thorough judicial reconsideration of the constitutionality of amendments by implication with a more complete analysis of the legal and practical problems involved is imperative. Certainly some clear statement concerning if, when, and to what extent amendment by implication is permissible is indispensable to effective legislative action at the approaching session.

A.B.R.

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SOLDIERS' AND SAILORS' CIVIL RELIEF ACT—EVICTION OF SOLDIERS' BUSINESS FROM COMMERCIAL PREMISES—Action was brought to evict Streiffer from his leased business premises on the ground that he handled and sold children's wear and hardware in viola-

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23. The problem of giving notoriety to the substance of the proposed change has received attention. See Horack, *Cases and Materials on Legislation* (1940) 657. Generally accepted methods adopt various means of bringing changes to the legislator's attention on final printing of a proposed bill and to the attention of the public in the official publication of the statute passed. Among the methods adopted: (1) Deleted matter is printed in brackets and a line drawn through it. New matter is italicized. Upon final publication the italics remain and omissions are indicated by asterisks. (2) Excised matter is published in brackets. (3) Changes are indicated in footnotes. (4) Blind amendment is used but the act as amended is also published in full. See Note (1931) 43 *Harv. L. Rev.* 1143, 1146. These methods are helpful, so far as they go. But are they not, in substance, rather inadequate attempts to deal with the more fundamental problem of achieving skillful preparation and thorough consideration of all legislation? Query, whether it would not be more helpful to have the aid of a well-prepared committee report on each statute, indicating its nature and policy, and changes it will effectuate in existing law *whether or not it is framed as an amendment*.

24. Merrill, *supra* note 13, at 106-107. See also *State ex rel. Normile v. Cooney*, 100 *Mont.* 391, 47 *P.*(2d) 637 (1935).

25. See Merrill, *supra* note 13, at 126: "unfortunately, the corpulence of the statute-books, the catholicity of legislative activity, the inevitable interjacency of all the human concerns of which the law and lawmaker take cognizance, all combine to insure that very rarely is it possible to enact a statute which does not, often in the most unforeseen manner, impinge upon prior legislation." See also Horack, *supra* note 9, at 307.

tion of the express terms of the lease. At the time the action was instituted, the lessee was in the army and sought a stay of proceedings under the Soldiers' and Sailors' Civil Relief Act of 1940.<sup>1</sup> Under Section 201 of the act, which gives the court wide discretion in staying actions, the lower court granted the stay since, in its view, the lease contract was ambiguous and the presence of the lessee essential. The supreme court rested its reversal upon the narrow ground that the terms were not ambiguous<sup>2</sup> and thus afforded no basis for the stay. *Tolmas v. Streiffer*, 5 So. (2d) 372 (La. 1941).

This case presents one of the numerous problems affecting a selectee's rights in civil actions. Protective legislation for the soldier has long been the rule. In 1802 a federal statute was passed prohibiting the arrest of any soldier for a debt of less than twenty dollars contracted before enlistment, or for any debt contracted after enlistment.<sup>3</sup> Similar state legislation was passed during the Mexican War.<sup>4</sup> During World War I, in 1918, a Civil Relief Act was passed.<sup>5</sup> The 1940 act, with few and minor exceptions, is identical with the 1918 law; hence it is possible to analyze the 1940 legislation in light of the decisions interpreting the 1918 act.<sup>6</sup>

The purpose of the statute, briefly, is to suspend civil remedies, in federal and state courts, against enlisted men where a proper defense is hampered by military service, and to prevent prejudice to their interests in all foreclosures, forfeitures, and evictions previously pursued by summary proceedings.<sup>7</sup> The court

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1. 54 Stat. 1178 (1940), 50 U.S.C.A. App. §§ 501-585 (Supp. 1940).

2. It was clearly stated in the lease, "The lessee agrees that he will not offer for sale shoes, children's wear, hardware, and furniture" on the leased premises.

3. 2 Stat. 136 (1802), 10 U.S.C.A. § 610 (1928).

4. Texas Act of Jan. 22, 1836, Hart Dig. § 1267; Texas Act of Jan. 16, 1843, Hart Dig. § 1349.

During the Civil War the federal act protected all persons for acts done under military authority [14 Stat. 46 (1866), 28 U.S.C.A. § 74 (1928)].

5. 40 Stat. 440 (1918), 50 U.S.C.A. §§ 178-186 (1928).

6. It has been consistently held that the 1918 Civil Relief Act is constitutional and that all similar state laws must yield to it. *Pierrard v. Hoch*, 97 Ore. 17, 191 Pac. 328 (1920); *Konkel v. State*, 168 Wis. 335, 170 N.W. 715 (1919). See also Comment (1940) 9 Int. Jurid. Ass'n Bull. 47.

7. "For the purpose of enabling the United States the more successfully to prosecute and carry on the war in which it is at present engaged, protection is hereby extended to persons in military service of the United States in order to prevent prejudice or injury to their entire energy to the military needs of the nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the continuance of the present war." 40 Stat. 440 (1918), 50 U.S.C.A. § 101 (Supp. 1941), made applicable by 54 Stat. 895 (1940), 50 U.S.C.A. § 313 (Supp. 1941) to persons in-

has the discretionary power to order a stay or to suspend proceedings<sup>8</sup> and, if the person in service, or someone on his behalf, requests the stay, it must be granted unless the court feels that military service has no material effect upon his ability to defend the suit.<sup>9</sup> The court is authorized to make any other ruling that will fairly take care of the interests of all the parties involved.

Though the act operates broadly on all civil actions brought against all persons in military service, there are certain provisions in the act dealing with special actions.<sup>10</sup> In Section 121 the act provides relief from eviction of soldiers' or sailors' dependents from a leased house occupied by them for dwelling purposes;<sup>11</sup> but examination of the act reveals no provision at all for business premises, which were involved in the principal case. It has been suggested that the act is most inadequate on the subject

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ducted under the Selective Training and Service Act, and to military personnel ordered to duty by 54 Stat. 860 (1940), 50 U.S.C.A. § 404 (Supp. 1941).

See *Howie Mining Co. v. McGary*, 256 Fed. 38 (C.C.A. 4th, 1919); *Wood v. Vogel*, 204 Ala. 692, 87 So. 174 (1920); *Halle v. Cavanaugh*, 79 N.H. 418, 111 Atl. 76 (1920); *In re Cool's Estate*, 19 N.J. Misc. 236, 18 A.(2d) 714 (1941).

For good discussions of the act, see Bendetson, *A Discussion of the Soldiers' and Sailors' Civil Relief Act of 1940* (1940) 2 Wash. & Lee L. Rev. 1; Jenson, *Civil Relief for Soldiers and Sailors: A Critical Analysis* (1941) 36 Ill. L. Rev. 325; Muench, *A Brief Analysis of the Soldiers' and Sailors' Civil Relief Act from a Credit and Collection Viewpoint* (1940) 46 Com. L. J. 36; Wicker, *A Synopsis of the Soldiers' and Sailors' Civil Relief Act* (1918) 4 Va. L. Reg. (N.S.) 323; Comment (1941) 7 U. of Pitt. L. Rev. 300. For discussion of the 1918 act by three of its draftsmen, see Ferry, Rosenbaum, and Wigmore, *The Soldiers' and Sailors' Civil Rights Bill* (1918) 12 Ill. L. Rev. 449.

8. 54 Stat. 1181 (1940), 50 U.S.C.A. § 524 (Supp. 1941). See also *Fennell v. Frisch's Adm'r*, 192 Ky. 535, 234 S.W. 198 (1921); *Clark v. Klene*, 201 Mo. App. 408, 212 S.W. 55 (1919); *Gilluly v. Hawkins*, 108 Wash. 79, 182 Pac. 958 (1919).

9. *Fennell v. Frisch's Adm'r*, 192 Ky. 535, 234 S.W. 198 (1921) (defendant's duties were such as to allow him to spend a part of his time at home and the judge refused to grant stay on grounds that defendant was in military service); *White v. Kimerer*, 83 Okla. 9, 200 Pac. 430 (1921) (lower court was held to have properly exercised its discretion in refusing continuance on grounds of one of defendants being in military service); *Ilderton v. Charleston Consol. Ry.*, 113 S.C. 91, 101 S.E. 282 (1919) (error to refuse stay where only witness for defendant was suddenly sent to France before his deposition could be taken). See also *Clark v. Klene*, 201 Mo. App. 408, 212 S.W. 55 (1919); *Post v. Thomas*, 183 App. Div. 525, 170 N.Y. Supp. 227 (1918); *Dietz v. Treupel*, 184 App. Div. 448, 170 N.Y. Supp. 108 (1918); *Korsch v. Lambing*, 28 N.Y. S.(2d) 167 (1941).

10. 54 Stat. 1178 (1940), 50 U.S.C.A. App. §§ 501-585 (Supp. 1941). Article III deals with rent, installment contracts, and mortgages; Article IV deals with insurance; Article V deals with taxes and public lands.

11. It provides that in all leased dwellings where the rent is not above \$80 per month and is occupied by dependents, the occupants shall not be evicted except upon court order. At its own discretion the court may order stay for not longer than three months or make such order as may be just. Anyone evicting in violation of this provision will be guilty of a misdemeanor and punishable by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both. An allotment of a reasonable portion of the soldier's pay may be made to partially meet the rent. 54 Stat. 1181 (1940), 50 U.S.C.A. § 524 (Supp. 1941).

of rents<sup>12</sup> and that there should be a specific provision for commercial lessees.<sup>13</sup>

In the principal case, after declaring the lease contract in fact unambiguous, the court correctly held that no stay should be granted when the unequivocal terms of a commercial lease have been broken, as the defendant's presence at the action for eviction is not essential.

Although there are a few weaknesses in the act, such as the provision on rents, it does, nevertheless, provide security for men in military service who might otherwise, by reason of their service, be subjected to injustice and oppression in civil actions.

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TORTS—INDEMNIFICATION OF JOINT TORTFEASOR CONSTRUCTIVELY LIABLE—CONTRIBUTION AND INDEMNITY BETWEEN JOINT TORTFEASORS—Due solely to the negligence of the defendant's agent in installing a gas stove sold by the plaintiff's indemnitees, the stove exploded. In an action for personal injuries sustained as a result of the explosion, solidary judgment had been rendered against the defendant and the plaintiff's indemnitee. Plaintiff, as indemnitor, paid one-half the judgment, and, being subrogated to the indemnitee's rights against the joint tortfeasor, seeks restitution. The defendant argued that the judgment rendered against the plaintiff's indemnitee as a joint tortfeasor<sup>1</sup> precluded the plaintiff from showing mere technical liability and recovering the amount paid

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12. See Comment (1940) 9 Int. Jurid. Ass'n Bull. 46, 50.

13. *Ibid.* The English act confers no special privileges upon members of the armed forces as such but applies generally to all persons, including alien enemies. Courts (Emergency Powers) Act, 2 & 3 Geo. VI, c. 67 (1939), as amended by 3 & 4 Geo. VI, c. 37 (1940). Under this act the principle is not established in England that any tenant or mortgagor is entitled to have his ability to pay any particular installment determined by reference to his means at the time it is due. See Comment (1940) 9 Int. Jurid. Ass'n Bull. 46, 50, n. 66; 33 Halsbury's Statutes of England (1940) 547.

1. The term "tortfeasor" is used to describe one who, for any reason, is subject to liability in a delictual action. The word "tort" carries with it, however, the suggestion of wrong-doing. Since in many cases tort liability is imposed on a party where the actual conduct which subjects him to liability is not his own, it is unfortunate that the same broad term is applied to him as to one actually guilty of reprehensible conduct. Bohlen, *Contribution and Indemnity Between Tortfeasors* (1936) 21 Corn. L. Q. 552. See also Leflar, *Contribution and Indemnity Between Tortfeasors* (1932) 81 U. of Pa. L. Rev. 130. Louisiana, however, has adopted, together with common law tort rules, common law term "tort" in the place of the civil law "delict" and "quasi delict."