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Substantive Law - Private Law: Insurance

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in a previous issue of this REVIEW.²⁵ The result of the decisions, however, was very clear. The requirement of a previous acknowledgment or adjudication of parenthood, as a prerequisite to criminal law liability for nonsupport, served to prevent the direct and simplified use of criminal law procedures and sanctions which was contemplated by the proponents of the statute.

Discussion of these cases would not be complete without mention of a subsequent further amendment of the criminal neglect of family article.²⁶ A 1952 statute seeks to make it abundantly clear that the parent of an illegitimate child is under an immediate statutory duty to support that child and that failure to provide such support will result in criminal liability. The language employed maintains a clear distinction between the Civil Code procedures for establishing the civil obligations of a parent to the illegitimate child and the basic general duty to support such child which is imposed and enforced under the criminal law. In view of this latest expression of legislative intent it seems appropriate to review the policy considerations involved in this somewhat controversial enactment. Its fundamental purpose is to shift the very substantial burden of supporting illegitimate children from the state's welfare agencies to the shoulders of those who fathered this unfortunate group. The professed danger that this law will be used as an instrument of blackmail is largely obviated by the fact that district attorneys, many of whom are not very sympathetic with the law because of the extra work it places on their offices, will probably not prosecute these cases unless they are completely satisfied of the alleged parenthood. The sometimes cited possibility that the criminal law dockets will be crowded by such cases is also more imagined than real—for many fathers who formerly flaunted their obligation will now be more cooperative as the result of a penal sanction immediately available. Moreover, if a multitude of these cases is expectable, that further serves to point up the need for more effective measures to combat such social irresponsibility.

INSURANCE

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The court disposed of six cases involving insurance problems during this term. It found unanimously that an insured had set

25. Comment, 12 LOUISIANA LAW REVIEW 301 (1952).

26. La. Act 368 of 1952, discussed 13 LOUISIANA LAW REVIEW 59 (1952).

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fire to his own house in order to collect the insurance thereon.¹ It permitted a tenant to recover against his landlord's insurer for injuries sustained by the tenant in falling down a stairway when the lights were suddenly extinguished by the landlord's wife. The insurer contended that the injury did not arise out of the ownership, maintenance, or use of the premises.² It refused to extend the doctrine that an unreasonable and unnecessary delay in acting on an application for insurance will constitute an actionable wrong to a situation where the delay was neither unreasonable nor prejudicial.³ It applied the rule that although an insured is not absolutely helpless he will be considered totally disabled as long as he is unable to do substantially all the material acts necessary to the prosecution of his business or occupation in his customary and usual manner.⁴

Under the Insurance Code an agent is not entitled to recover commissions for procuring insurance in companies that the agent has not been licensed to represent. The court applied this provision against an agent in *Logan v. Schuler*.⁵ But in order to give the plaintiff an opportunity to become licensed to represent certain companies in question so that he might claim the agreed commissions on the policies issued by them, the court dismissed the action as of nonsuit. Justice McCaleb dissented, saying that the license required by the Insurance Code must have been issued prior to the time the agent acts as agent. And he expressed the belief the majority opinion will permit circumvention of the law.

The case of *Wright v. National Surety Corporation*⁶ constitutes an additional example of the practice of resolving all doubts against the insurer. The principle was followed despite the fact that the doubts in question were created not by an insurance policy but by the provisions of the Insurance Code. The court held that an employee is the insured within the meaning of R.S. 22:658 and is entitled to twelve per cent damages and attorney fees when a workmen's compensation insurer arbitrarily refuses to pay what is due the employee. This was based largely on the language of R.S. 23:1162, relating to workmen's compensation insurance, requiring payment by the insurer to "the person

1. *Sumrall v. Providence Washington Ins. Co.*, 60 So. 2d 68 (La. 1952).

2. *Moses v. Metropolitan Cas. Ins. Co. of New York*, 221 La. 364, 59 So. 2d 421 (1952).

3. *Thomas v. Life Ins. Co. of Georgia*, 219 La. 1099, 55 So. 2d 705 (1951).

4. *Ayres v. New York Life Ins. Co.*, 219 La. 945, 54 So. 2d 409 (1951).

5. 220 La. 580, 57 So. 2d 193 (1952).

6. 221 La. 486, 59 So. 2d 695 (1952).

entitled to compensation" and making the contract of insurance a direct obligation in favor of such person. The court was undoubtedly pursuing the spirit of the law, but Justices LeBlanc and Hamiter dissented on the theory that R.S. 22:658 was not applicable to workmen's compensation insurance and that the provision in question, being penal in nature, should be strictly construed.

LEASE

*J. Denson Smith**

The court had to deal with only two cases involving leases of immovable property.¹ Both of these cases presented problems of interpretation, and in each instance the opinion was well reasoned and adequately supported by the provisions of the contract of lease.

MINERAL RIGHTS

Harriet S. Daggett†

*Taylor v. Kimbell*¹ was a suit for cancellation of a lease, the primary term of which had expired. The suit was successful, since the proof adduced convinced the court that gas could not be produced in paying quantities. Had the preponderance of evidence on this point been to the contrary and facilities for marketing gas been unavailable, then the clause of the lease pleaded by defendants for continuation of the life of the lease by payment of shut-in gas well royalties would have been availing.

In *Oil Well Supply Company v. Independent Oil Company*² Act 68 of 1942³ was held to give a furnisher of supplies a privilege upon an oil and gas lease, when the supplies in question had actually been used on the lease in connection with drilling, even though no contractual relation had been proved between the furnisher on the one hand and the owner, operator, producer or driller, on the other.

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1. *Dean v. Pisciotta*, 220 La. 725, 57 So. 2d 591 (1952); *Lorraine, Inc. v. DiMartino*, 221 La. 571, 59 So. 2d 887 (1952).

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1. 219 La. 731, 54 So. 2d 1 (1951).

2. 219 La. 936, 54 So. 2d 330 (1951).

3. La. R.S. 1950, 9:4861-4867.