

the due process clause of the Fourteenth Amendment. *New York Life Ins. Co. v. Dodge* (1918) 246 U. S. 357; *Aetna Life Ins. Co. v. Dunken* (1924) 266 U. S. 389; see *Comment* (1925) 38 Harv. L. Rev. 826. The Court also mentioned impairment of the obligation of contract and the full faith and credit clause in *New York Life Ins. Co. v. Head* (1914) 234 U. S. 149. The commerce clause was applied to nullify a telegraph mental anguish statute in *Western Union Tel. Co. v. Brown* (1914) 234 U. S. 542. But see *Fox v. Postal Tel. Cable Co.* (1909) 138 Wis. 648, 120 N. W. 399, where Wisconsin law was applied in a suit for the negligent transmission of a telegram from New York to Chicago. The application of the due process clause is probably preferable in that it is less restrictive upon the courts. The chief value in bringing such cases into the federal courts would be uniformity of conflict rules. See *Note* (1930) 40 Yale L. J. 291. After all, uniformity, rather than the intrinsic superiority of any particular rule, is the real aim of conflict of laws. N. P., '34.

CONTRACTS—ILLEGALITY—COMPOUNDING FELON.—Plaintiff Insurance Co. seeks to recover \$81,014.36, part of the amount paid to the Defendant Bank under a robbery insurance contract. In the contract there was a stipulation that in case of recovery of the stolen items from any source other than insurance or security the net amount, less the actual cost of making the recovery, should be applied to reimburse the insured in full for the loss, and the excess, if any, should be paid to the insurer. Part of the stolen items were recovered as a result of negotiations with the criminals on the part of both the Insurance Co. and the Bank, whereby the robbers received \$140,000. The lower Court refused to allow the Insurance Co. a recovery on the grounds that the contract whereby the items were recovered from the robbers, was void as against public policy and *R. S. Mo.* (1929) sec. 3894, *Fidelity and Deposit Co. v. Grand National Bank of St. Louis* (D. C. 8, 1933) 2 F. Supp. 666—commented upon in 18 *St. Louis Law Rev.* 352. The bank's counterclaim based on the expenditure of the ransom money in obtaining the return of the stolen bonds was also held invalid.

The Circuit Court of Appeals reversed the District Court's decision on the grounds that, the ransom contract being completed, and the recovery being based solely upon the insurance contract stipulation, no taint of invalidity from the ransom contract existed which would prevent the Insurance Co.'s recovery on the Insurance contract. *Fidelity and Deposit Co. v. Grand National Bank of St. Louis* (C. C. A. 8, 1934) 69 Fed. (2d) 177. In the light of the provision in the insurance contract (*supra*) and the well established principle of law that an action is maintainable as long as the illegal transaction is not required to establish the cause of action, *Brooks v. Martin* (1864) 2 Wall. 70; *Thompson v. Lyons* (1920) 281 Mo. 430, 220 S. W. 942, it seems that the conclusion reached by the Appellate Court is sound. The substantiating dicta, however, to the effect that the ransom contract itself is not invalid as against public policy in that there is no express or implied agreement to suppress, stifle or stay criminal prosecution as part of the consideration appears to be of doubtful application in the present case.

It is settled principle in American jurisprudence that a civil action may be maintained against a thief to recover stolen property or its value before prosecution. *Downs v. Baltimore* (1910) 111 Md. 674, 76 Atl. 861, 41 L. R. A.

(N. S.) 255; 2 Restat. of Contracts, sec. 548. And, therefore, by inference, a ransom contract between the person robbed and the robber is not void unless it involves the compounding of a felony or the suppressing of prosecution. *Schirm v. Wieman* (1906) 103 Md. 541, 63 Atl. 1056. From a practical standpoint it is hard to see how a victim could get the criminals into Court to defend a breach of the "valid" ransom contract. And it is equally difficult to think that any Court would allow the malefactors to recover.

The District Court regarded the "ransom" contract invalid in the light of the Missouri Statute against "Compounding Felonies" (ante) which reads "Every person having a knowledge of the actual commission of any—penitentiary offense—who shall take money or property of another, or gratuity or reward, or any promise, undertaking or engagement therefore, upon agreement or understanding express or implied, to compound or conceal such crime,"—or refrain from prosecuting or withholding evidence, etc. The Appellate Court held that this Statute was not broader than the Common Law principles applicable and that, regardless, the Bank was not accepting "property of another" or a "reward," but was only receiving back what belonged to it. However, the Court did not rest here; it went on to demonstrate that the agreement between the bank and the robbers was not express, and that, although an agreement may be implied from the evidence, facts and circumstances (*Mississippi Valley Trust Co. v. Begley* (1923) 298 Mo. 684, 252 S. W. 76) yet there was nothing in this transaction to warrant the inference that the bank had agreed to suppress prosecution or evidence, or to interfere with the police in bringing the criminals to justice. There are a number of presumptions that must be overcome before an illegal agreement may be implied. There must be a manifestation of assent of all the parties to the unlawful agreement. *Fosdick v. Vanarsdale* (1889) 74 Mich. 302, 41 N. W. 931. The presumption of good faith and proper motive always exists. *Mo. Pac. R. R. v. Prude* (1924) 265 U. S. 99. Where either one of two motives may be implied, that which is honest is preferred. *Alexander v. Fidelity Trust* (C. C. A. 3, 1917) 249 F. 1. But the reasoning of the District Court to the effect that only one motive may be implied in a transaction of this sort is compelling. It is difficult to conceive how the bank in the instant case could have taken part in long and haggling negotiations with the malefactors without gaining some information which would assist the police in tracking down the criminals. The negotiation necessarily hinged on an understanding that such information would not be divulged.

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CONTRIBUTORY NEGLIGENCE—RAILROAD CROSSINGS—THE STOP, LOOK AND LISTEN RULE.—The plaintiff approached railroad tracks in his ice truck, going slowly, and stopped about ten or twelve feet from a sidetrack. On the sidetrack was a string of freight cars which shut off his view of the main track to the north. He heard no bell or whistle and so proceeded across the tracks. He was struck by a train coming from the north at a speed of about thirty miles an hour. The District Court held he had been guilty of negligence and directed a verdict for the defendant. Affirmed by the Circuit Court of Appeals and reversed by the Supreme Court of the United States. *Held*, a driver of a truck struck by a train at a crossing is not contributorily negligent as a matter of law in failing to stop, leave the truck and survey the