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# Contracts--Agent's Right to Commission on Reorders After Termination of His Employment

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*Cases*, saw a distinction here. He wrote a number of the Supreme Court's opinions in which the removal statute was interpreted. *Neal v. Delaware*, 103 U.S. 370 (1880); *Gibson v. Mississippi*, 162 U.S. 565 (1896); *Kentucky v. Powers*, 201 U.S. 1 (1905). Justice Harlan said the denial referred to in the removal statute was, "primarily if not exclusively a denial resulting from the constitution or laws of the state and not one that arose at the trial of the case." In *Neal v. Delaware*, *supra*, the petitioner claimed that he was denied his rights by a provision of the state constitution; however, the Supreme Court held that it must be presumed that the courts of Delaware will now hold that provision void because of the new amendments to the United States Constitution. "The presumption should be indulged in the first instance that the state recognizes an amendment to the federal constitution as binding on all citizens and to be enforced without reference to any inconsistent provision of its own constitution."

Thus, the reason for the strict construction of the removal statute was the procedural requirement of having to swear to the denial of rights before the trial. Rather than being criticized, this interpretation has been considered very reasonable.

It is true that the concept of state action, as required by the interpretation given the fourteenth amendment in the *Civil Rights Cases* has become more inclusive. However, there has been no corresponding tendency to extend the application of the removal statute. Since the reasons for strictly construing each in the first instance were independent and unrelated, the subsequent history of one is not persuasive in arguing for a similar interpretation of the other. As noted in the principal case, it is significant that Congress did not make any changes in the removal statute in the three recent civil rights acts.

*Robert Willis Walker*

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### **Contracts—Agent's Right to Commission on Reorders After Termination of His Employment**

*P*, *D*'s sales representative, after his employment had been wrongfully terminated, brought an action to recover sales commissions for sales between *D* and third parties which *P* had originally secured for *D*. *D* had agreed to pay commissions on all

orders from customers solicited by *P*, "and on all reorders from the same customers at any time in the future, even though you do not write the order." *Held*, recovery denied. This clause gave *P* rights during his tenure in that *D* would pay him commissions on orders from these customers should they order directly from *D* or through another representative. It did not give him any right to continued commissions on reorders after his employment had ceased. *Entis v. Atlantic Wire & Cable Corp.*, 355 F.2d 759 (2d Cir. 1964).

The principal case is in accord with the weight of authority, the courts being reluctant to allow an agent commissions on reorders even though his employment was terminated without cause. This comment is limited to discussing the agent's rights with respect to these future commissions.

The reasoning behind the majority view in disallowing the agent's claim is set out in the early case of *Scott v. Engineering News Pub. Co.*, 47 App.Div. 558, 62 N.Y.Supp. 609 (1900), upon which the court in the principal case relied. In that case the agent was to receive commissions on all orders and advertisements secured by him for the principal's periodical, "and also upon all business that followed the original contracts. . . ." The court held that this agreement covered renewals during his employment and that after his discharge the customers, upon making a reorder, entered into a new contract with the principal. It would be unreasonable, the court felt, to give the contract the interpretation the agent sought since it would bind the customers to him perpetually.

Notwithstanding the line of cases following this view there have been a number of instances both in the United States and England allowing the agent to recover. In *Edmund D. Hewins, Inc. v. Marlboro Cotton Mills*, 242 Mass. 282, 136 N.E. 159 (1922), involving an oral agreement, it was held that the agent was to receive commissions on all sales made thereafter to new customers introduced by him to the principal, and thus the principal could not terminate such a contract at will and deprive the agent of his commissions. The Massachusetts court followed this same reasoning in *Eastern Paper & Box Co. v. Herz Mfg. Corp.*, 323 Mass. 138, 80 N.E.2d 484 (1948), which also involved an oral contract.

In a more recent case, *Reed v. Kurdziel*, 352 Mich. 287, 89 N.W.2d 479 (1958), the contract was oral and for an indefinite period and the court, in allowing a manufacturer's agent to recover

on sales to his former customers subsequent to discharge, said that it appeared the principal was attempting to receive the benefit of the agent's work without paying for it.

The agent's success has been more marked where the contract has been oral. In those cases the courts have stressed the wrongful termination, the benefits the principal would continue to receive, as well as the alleged agreement between the parties. On the other hand when the contract is in writing the results will be almost entirely dependent on the language used and the construction to be given it. *Chesapeake & Potomac Tel. Co. v. Murry*, 198 Md. 526, 84 A.2d 870 (1951).

In the principal case the agent wanted to give a literal interpretation to the term, "all reorders . . . at any time in the future." In at least once instance this has been done. In *Edward S. Mitchell, Inc. v. Dannemann Hosiery Mills*, 258 N.Y. 22, 179 N.E. 39 (1931), the contract allowed termination on four months' notice by either party and after the giving of the notice the agent was "to be entitled to commissions . . . on shipments . . . to any of your customers regardless of whether orders for such shipments are obtained through you or not." The majority held the agent entitled to continued commissions after the expiration of the notice period. Justice Cardozo dissented on the grounds that the proper meaning was that the agent should continue to receive the commissions only for the four-month period. If the majority of this distinguished court could give such a literal interpretation to a contract's terms, when proper and fair notice of termination had been given the agent, a substantial argument can surely be made for such an interpretation where the discharge is without notice or justification as it was in the principal case. However the courts, as a rule, do not go this far.

The law in the United States on this subject can be said to be in substantial accord with that of England as it is expressed in, 1 HALSBURY'S LAWS OF ENGLISH AGENCY Pt. 8, Para. 460 (3rd ed. 1952). An agent is not as a rule entitled to remuneration after termination of his employment for transactions between his principal and third persons introduced by him to the principal, unless "there was an express term in the contract to that effect, or a clear intention to continue . . . can be discovered from the construction of the contract of agency; . . ."

This necessary clear intention was absent in *Crocker Horlock*,

*Ltd. v. B. Long & Co., Ltd.*, [1949] 1 All E.R. 526 (K.B.), involving commissions to be paid a clothing manufacturer's representative, "on all orders, whether received direct or indirect and on all repeats." The court found the remuneration was for the contract period and that the parties had not agreed to continue payments after termination. The issue, reasoning and holding of this case are in complete accord with the principal case.

On the other hand, in *British Bank for Foreign Trade, Ltd. v. Novinex, Ltd.*, [1949] 1 All E.R. 155 (K.B.), the principal promised the agent that in return for putting the principal in contact with the agent's friend they would pay the agent a commission on "any other business transacted with your friends"; the court overruled the trial court and found for the agent. In referring to the trial court's question, "Is the commission to be payable until the crack of doom?" the court's answer was yes, since the principal had agreed to do just that so long as it dealt with the party in question. The court went on to point out that it was within the power of the principal to bring the liability for commissions to a halt by ceasing to do business with this particular customer. In a case of this nature, where the agent induces a potentially large customer, over whom he has some influence, to commence doing business with the principal in return for the principal's promise to pay commissions on all future transactions between them, the likelihood of the agent's success in an action to recover such commissions is much greater.

When, as in the principal case, the contract concerns a selling agent whose duties were to solicit and service customers, such agent usually has no right to commissions on reorders arising after his employment has been terminated unless the terms of the contract clearly provide for it or such an intention can be gathered from the relationship between the parties. The courts have found this intention more often in oral contracts than in written but the instances in either case are rather limited.

*David Gail Hanlon*

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### Constitutional Law—Extension of State Credit—Industrial Development Bond Act

In an original mandamus proceeding, relator, R, alleged that the County Court of Marion County, in accordance with the provisions of the state Industrial Development Bond Act, had adopted