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any reason inadequate, equity will enjoin such interference by a third party. The court, however, further said, "If a member should voluntarily sever his relations with the pool, by breaching his contract, and withdrawing his membership therein, and placing his tobacco for sale upon the market, no reason is perceived why appellants should be denied the privilege of buying his crop," and the injunction granted in that case was modified in keeping with that idea.

However, that case does not govern in this instance, as in the opinion of the court the Wisconsin Co. aided the Western Co. in the breach complained of, as due to the continuing character of the contract, there was an inducement of the breach by the Wisconsin Co. Up to the time the Western Co. attempted to sell syrup to the Wisconsin Co. it had not violated its negative covenant. As to this part of the contract, there was little doubt, at least as far as the court was concerned, but what the breach was induced by the Wisconsin Co., the only kind of breach probably with reference to which the plaintiff could obtain equitable relief.

As long as the Western Co. failed to object to Hustings Co. not selling the required quantity of product for a number of years, they could not take advantage of the default after terminating the old contract and making the new one. Furthermore, after requesting that sales be curtailed, the seller could not object to the agents not pushing the sales.

The plaintiff's idea of making a substitute for Coca Cola to mitigate the damages, was not proper, but in view of the fact that plaintiff did not manufacture the substitute until after the breach by the Western Co., it did not make the plaintiff come into court with unclean hands. 3 Williston, Contracts, p. 2615, 155 N.Y. 466; 82 Mich. 661.

From this case it appears that if one voluntarily breaches his contract, it is permissible for others to deal with him and purchase goods which it would be illegal for them to purchase if the contract was in full force and effect, but if a third party induces such breach, he is liable either for damages or to an action in equity to enjoin him from further dealings.

ARNO J. MILLER.

INSURANCE—PARTIES—JOINDER. The proposition that a plaintiff cannot proceed directly against an Insurance Company under a liability policy prohibiting action against such insurance company until the plaintiff has obtained a judgment against the insured is borne out by the recent case of Fulleylove v. Holmes, et al., 237 N.W. (Wis.). This

case is in conformity with a growing line of cases interpreting Sec. 85.93, Wis. Stat. (1929) which provides that an insurance company is directly liable, under a liability policy, to persons injured by the act of the insured.

The plaintiff in this case, an infant, was injured by the defendant, Holmes, while walking along a highway. The suit was brought by his guardian ad litem, Thomas Fulleylove, who is also his father, against Albert Holmes and the Constitution Indemnity Company, but, since Holmes had disappeared, a summons and complaint were only served on the insurance Company.

The insurance company's answer cited the "no action" clause in Holmes' policy and declared that Holmes had breached a stipulation of the policy to the effect that the policy-holder must cooperate with the insurance company in assisting in the defense of actions arising out of his acts, by his failure to keep in touch with the company and inform them of his whereabouts. From a judgment dismissing the complaint, based on the grounds that Holmes had not cooperated with the insurance company, the plaintiff appealed.

The Supreme Court reversed the judgment of the lower court but held for the appellee on the different grounds that the action was barred by the "no action" clase in the policy.

The appellant in his appeal relied on Elliot v. Indemnity Insurance Company, 201 Wis. 445, 230 N.W. 87 ,which held the insured was not a necessary party to the maintenance of the action. The policy in that case, however, did not contain a "no action" clause, and that case was further distinguished from the one being discussed by the fact that the policyholder was dead and his estate insolvent at the commencement of the action. Hence, if Sec. 85.93, Wis. Stat. (1929) would not apply, Sec. 204.30, Wis. Stat. (1929) would.

The case which did apply here was Morgan v. Hunt, 196 Wis. 298, which held that Sec. 85.93, Wis. Stat. (1929) does not apply to policies which contain "no action" clauses and in a suit brought under such a policy the insurance company may not be joined as a party defendant.

Earlier cases which interpret the statute similarly are Bro v. Standard Accident Insurance Co., 194, Wis. 293, 215 N.W. 431, and Fanslan v. Federal Mutual Accident Insurance Co., 194, Wis. 8, 215 N.W. 589. In the latter case Justice Owens declared: "It was recognized that the damages for which recovery was sought must be brought within the terms of the policy as written. We did not then and do not now entertain any thought that it was the legislative purpose to deprive the insurance companies of the right to limit their coverage or to issue such contracts of insurance or indemnity as they may choose."

As for the allegation in the insurance companies answer that Holmes

breached his agreement in the policy to assist in the defense of actions arising out of his acts, the Supreme Court declared that there had been no breach, because the insurance company had never requested Holmes to assist it.

After the accident he simply gave notice to the insurance company and disappeared without being requested to give aid, and so, Bachhuber v. Boosalis, 200 Wis. 274, 229 N.W. 117, which held that a provision for cooperation in defense in a liability policy is a condition precedent to the maintenance of an action on the policy, did not apply.

CHARLES ROWAN.

MUNICIPAL CORPORATION—POLICE POWER—ZONING. The City of La Crosse vs. Elbertson, a Wisconsin case reported in 277 N.W. 99, although not deciding any particularly new law, is interesting because it pertains to the right of a municipal corporation under its police powers to regulate zoning within its boundaries. The case is not radical; it makes no fresh departures; it evolves no new principles; it merely applies fundamental rules of municipal and constitutional law. Nevertheless, the case is attractive because it adds to the already somewhat fecund law of city zoning which in this day of increasing aestheticism commands immediate and ardent interest.

In this case the defendant appealed from a conviction before a police justice court in La Crosse of violating the Consolidated Zoning Ordinance Number 846 by operating a funeral parlor and undertaking business within a district set aside by the ordinance for residential purposes. The grounds of the appeal were four-fold; namely, (a) that the provisions of the ordinance were unreasonable and oppressive as to the defendant and his rights, (b) that the ordinance was void because it was an amendment to an invalid ordinance, (c) that it provided no penalty, and (d) that it reserved for the council of the city arbitrary power.

The court disposed of these arguments in the following manner:

To the first argument it replied, "Under the rules long since established, recognized, and set forth in the cases just cited, when municipal legislative action proceeds from authority expressly granted and such action is based on apparent reason, the decision of the legislative body is controlling." The court then proceeded to find that the legislative body was warranted in zoning as it did in view of the general character of the surroundings, stating that if different conclusions as to just where the line of the district should be, may be drawn from the evidence submitted, the conclusion adopted by the legislative body cannot be interfered with as long as that body acted within reason. (State