

**MORATORY LEGISLATION
RELATING TO
BILLS AND NOTES AND
THE CONFLICT OF LAWS**

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Moratory Legislation Relating to Bills and Notes and the Conflict of Laws by Ernest G. Lorenzen

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ERNEST G. LORENZEN

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With the compliance of ^D
E. G. Lorenzen. ⁹⁻¹⁶
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BY
ERNEST G. LORENZEN

Yale University School of Law

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MORATORY LEGISLATION RELATING TO BILLS AND NOTES AND THE CONFLICT OF LAWS¹

ERNEST G. LORENZEN

Professor of Law, Yale University

In Roman law a debtor might obtain through a rescript of the emperor an extension of time (moratorium) within which to pay a debt, upon giving security.² Following the example of the Roman law a number of the modern continental codes authorized the granting of a judicial moratorium under certain conditions. Such legislation existed also with respect to bills and notes.³ In most of the countries such a power is no longer generally vested in the Courts.⁴ In times of great emergency, however, it is conferred upon them for a limited period of time. The present world war has also given rise to legislation of this kind.

Emergency legislation of a different sort granting time to a debtor to pay has been passed in various countries as the result of wars, revolutions, floods and other conditions vitally affecting the economic situation of the country or a particular section thereof.⁵ At times it has taken the form of a general moratorium which postpones all pay-

¹ A bibliography of the special literature on moratory legislation and the conflict of laws will be found in Appendix D, *infra*.

² Code I, 19, 2, 4.

³ Pöhl, *Darstellung des gemeinen deutschen und des hamburgischen Handelsrechts*, 385. See also Bills of Exchange Act of Vienna of Sept. 10, 1717, art. 51 (1 Siegel,—*Corpus Juris Cambialis*, 1742, p. 118); Bills of Exchange Act of Silesia of 1738, art. 38, sec. 2 (Siegel, *op. cit.* 313); Bills of Exchange Act of Brunswick of August 1, 1715, art. 56 (Siegel, *op. cit.* 261); Allgemeine Landrecht of Prussia, I, tit. 16, sec. 356, which was changed by sec. 14, no. 4, of the Introductory Law to the Code of Civil Procedure (1 Förster-Eccius, *Theorie und Praxis des heutigen gemeinen preussischen Privatrechts*, sec. 91, no. 42).

⁴ In Austria such power was taken from the courts through sec. 353 of the Allgemeine Gerichtsordnung, of May 1, 1781.

⁵ Such legislation has been frequently passed on the continent before the present war, especially in Italy. Attention may be called to the following:

Austria. Decrees of 1848 and 1866 (mentioned by Fick, p. 11).

France. Decrees of 1830 and 1848. See Duvergier, *Collection complète des lois, décrets, etc.*, 1830, p. 155; 1848, pp. 61, 63, 72, 125, 134, 366.

Germany. See Prussian decree of 1854, made at the time of the destruction of the city of Memel by fire (mentioned by Swoboda in *Oesterreichische Gerichtszeitung*, 1870, p. 200) and the decree of 1870 with respect to Alsace-Lorraine (mentioned by Fick, *Ueber internationales Wechselrecht in Beziehung auf Fristbestimmungen, insbesondere die französischen Wechsel-Moratoriumsgesetze und Dekrete*, 11).

Italy. Decrees of 1848, 1849, 1859, 1866, 1870. See also the later decrees of

ments for a designated period, excepting those specifically enumerated by the law. More frequently it has had a more limited scope and has applied only to the payment of bills and notes. In case of war special moratory legislation is frequently passed for the benefit of members of the army and the navy; this is intended to protect the interests of those in the service of their country who are consequently unable to look after their affairs at home. Such legislation often prohibits suits against them while they are in active service and modifies the ordinary statutes of limitations.

Moratory legislation in its various forms may give rise to a multitude of questions in the conflict of laws. The present article proposes to consider the moratory legislation of the various countries enacted during the present war so far as it has attempted to postpone either directly or indirectly the time of payment of bills, notes and checks. The international character of such instruments makes the consideration of this problem of the greatest practical importance.

The moratory legislation of the principal countries enacted during the present war and relating to bills and notes, has taken a very considerable variety of forms. It, as well as the French legislation of 1870-1871, will be found in its detail in Appendix A, *infra*. The existing Belgian legislation follows the French decree of August 10, 1870, in postponing the "time for protesting." The original decrees of France and of Germany speak likewise of the postponement of the "time for protesting," but the subsequent decrees postpone the day of "maturity." In England the "due date" of bills re-accepted at the time of original maturity was extended. Italy from the beginning postponed the "maturity." In Austria the "time for payment" (*Zahlungszeit*)^o was postponed. The original decree of the Swiss Federal Council granted thirty "days of grace." Subsequently the principle of reciprocity was adopted. Interest for the time during which the holder was deprived of his money on account of the extensions granted was allowed by the legislation of all countries except Switzerland. Some of the decrees extended the time within which the protest might be made or suit brought.

1894, 1909 and 1915 (mentioned by Ghiron, *Moratorie e regressi nel diritto internazionale privato*, *Rivista de diritto internazionale*, 1915, p. 152).

Switzerland. See decree of Oct. 12, 1846, by the provisional government for the canton of Geneva (see *Recueil authentique des lois et actes du gouvernement et de la république et canton de Genève*, 1846, p. 207), and decree of 1870 (mentioned in the opinion of the Court of Appeals of Geneva in its decision of Mar. 25, 1872); see *JOURNAL DE GENÈVE*, Apr. 10, 1872, no. 84; *Sirey*, 1872, 2, 217; *Belgique judiciaire*, 1872, col. 524; 7 *Annali*, 1, 47.

^oIn Austria and Germany a distinction is often made between "maturity" (*Fälligkeit*) and "time of payment" (*Zahlungstag*). If a bill or note falls due on a Sunday that day would constitute its day of maturity. The day of payment would be the succeeding business day.

The principal problem to be solved is the following: Is the moratory legislation of the above countries relating to bills and notes which are payable therein effective with respect to persons who became parties to such instruments in the United States? And if it is effective, what is its effect?

The problem thus presented aroused an international interest after the Franco-Prussian War. The validity of the French moratory legislation relating to bills and notes came at that time before the courts of a number of countries for decision. By most of them the French legislation was upheld even as regards local⁷ indorsers. A contrary conclusion was reached by the Supreme Commercial Court of Leipsic⁸ and by the Commercial Court of Zurich.⁹ A considerable literature on the subject arose at that time both in decisions and in juristic opinion; a summary of this according to countries will be found in Appendix B, *infra*.

A review of the decisions and the juristic opinion on the recognition of moratory legislation enacted by a foreign state shows that no agreement was reached with respect to the French moratory legislation of 1870-1871. Although most of the decisions and text-writers sustained the legislation even as regards local indorsers, there was the greatest variety of opinion concerning the basis upon which such recognition should rest. The emphasis placed by most of the courts upon the fact that the French legislation merely extended the time for protesting, and prohibited any action on the instrument until the expiration of the moratory period, raises the question whether the courts which recognized that legislation as valid would reach the same conclusion as regards the legislation of the present war which extends the maturity of bills and notes. The great majority of jurists have expressed the opinion that a postponement of maturity by the law of the place where the bill or note is payable cannot be recognized with respect to local drawers and indorsers.¹⁰ Inasmuch as most of

⁷ The term "local" indorser in this article refers to a person who indorsed the instrument in the state or country in which the suit arises.

⁸ Decision of Feb. 21, 1871, 1 R O H G, 286; 1 Clunet, 185; Dalloz, 1872, p. 481, note. An abstract of the case may be found in 18 Goldschmidt's *Zeitschrift*, 628.

⁹ Decree of May 22, 1871, 22 *Zeitschrift für Kunde und Fortbildung der zürcherischen Rechtspflege*, 371. A summary of the case may be found in 17 Goldschmidt's *Zeitschrift*, 301.

¹⁰ Audinet, *Principes élémentaires de droit international privé* (2d ed.), 614; Bar, *Private international law*, 683; Bernstein, *Allgemeine deutsche und allgemeine österreichische Wechselordnung*, 360; Despagnet, *Précis de droit international privé* (5th ed. by de Boeck), 997; Fick, *Ueber internationales Wechselrecht in Beziehung auf Fristbestimmungen, insbesondere die französischen Wechsel-Moratoriums-Gesetze und Dekrete*, pp. 67-70; Goldschmidt, *System des Handelsrechts* (4th ed.) 268; 2 Grünhut, *Wechselrecht*, 584, n. 52; Hovy, M. A. J., *Iets over de gevolgen der Fransche wet van 13 Augustus 1870 met*

the current legislation has taken this form, instead of merely postponing the time for protesting, it is of the utmost importance to determine whether any distinction based upon the form in which the legislation is expressed should properly be drawn between the various kinds of moratory legislation. So far as the countries considered in this article are concerned, the moratory legislation passed shows in this respect the following varieties:

- (1) Legislation extending the time for protesting (Belgium);
- (2) Legislation granting days of grace (Switzerland);
- (3) Legislation extending the time for payment (Austria);
- (4) Legislation postponing the maturity (England, France, Germany, Italy).

An attempt will be made in the following pages to show that moratory legislation enacted by the law of the place where a bill or note is payable can and should be recognized without reference to the form in which it is expressed, as regards all parties to the instrument, including local drawers and indorsers.

I. VALIDITY OF MORATORY LEGISLATION AS BETWEEN THE HOLDER AND THE MAKER OR ACCEPTOR

Let us assume that *X* is the holder of a note which was executed by *A* in New York on May 10, 1914, and was payable in Paris three months after date. By a decree of the French Government of July 31, 1914, the time for protesting and for all other acts required for the preservation of recourse of negotiable instruments issued before August 1, 1914, and falling due between August 1 and 15, was extended thirty days. By subsequent decrees the maturity of these instruments was further extended. Let us assume that demand for payment was made on August 10 and that payment was refused. Can suit be brought against *A* in the United States before the expiration of the time for payment granted by the French moratory legislation?

Suppose in the next place that *X* is the holder of a bill that was drawn in New York on May 10, 1914, upon *A* in Paris, payable in Paris three months after date, and that *A* accepted the bill. Demand

betrekking tot de wisselverbindtenissen buiten Frankrijk aangegaan. Magasin van handelsregt, 1870. Mengelinen, 48; Jacques, H., *Die durch die französischen Moratorienverfügungen hervorgerufenen Regressfragen. Allgemeine österreichische Gerichtszeitung*, 1871, 401; Keysser, 17 *Goldschmidt's Zeitschrift für das gesamte Handelsrecht*, 298; Kist, 18 *Goldschmidt's Zeitschrift*, 643; Lehmann, *Lehrbuch des Wechselrechts*, 132; 4 Lyon-Caen & Renault, *Traité de droit commercial* (4th ed.), no. 663; Norsa, *Monitore dei tribunali*, 418; Ottolenghi, *La cambiale nel diritto internazionale*, 435; Staub, *Kommentar zur deutschen Wechselordnung*, art. 86, n. 9; Surville & Arthuys, *Cours élémentaire de droit international privé* (6th ed.), 736.