Because the exceptions to the general rule that the federal courts will follow the state court's interpretation of state statutes are not yet crystallized, it is not surprising to find the lower federal courts differing as to the mode of handling Uniform Laws. One view is that inasmuch as the Uniform Laws do make certain substantial changes in the pre-existing law, the construction adopted by the state tribunal should prevail. *Savings Bank v. National Bank*, 3 F. (2d) 970 (C.C.A. 4th 1925); cf. *Niagara Fire Ins. Co. v. Raleigh Hardware Co.*, 62 F. (2d) 705 (C.C.A. 4th 1933). But the fact that Uniform Laws in the main merely codify pre-existing law has led one federal court to adopt an independent construction of the Negotiable Instruments Law. *Jockmus v. Claussen & Knight, Inc.*, 47 F. (2d) 766 (D.C.S.D.Fla. 1930). The present case aligns itself with that decision.

Since the main purpose of the Uniform Laws is to create uniformity between jurisdictions, it would seem that the desire for uniformity in the federal courts which led to the evolution of the doctrine of *Swift v. Tyson*, would also lead to the application of that doctrine to the construction of Uniform Laws. But in view of the insecure foundation of the rule of *Swift v. Tyson*, there is much to be said for restricting it wherever possible. See Warren, New Light on the History of the Federal Judiciary Act of 1789, 37 Harv. L. Rev. 49, 81–88 (1923). Moreover, at least one court has interpreted "uniformity" in the Uniform Laws to mean uniformity between state and federal courts in a particular state. *Savings Bank of Richmond v. National Bank*, 3 F. (2d) 970 (C.C.A. 4th 1925); cf. Fordham, Federal Courts and the Construction of Uniform State Laws, 7 N.C.L.Rev. 423, 429–430 (1929). Finally, it may be doubted whether independent construction of Uniform Laws by the federal courts will actually lead to uniformity within the federal judicial system, in view of the recent stringent limitations on appeal as of right to the Supreme Court. Judicial Code §§ 239, 240 as amended [43 Stat. 938 (1925), 28 U.S.C.A. §§ 346, 347 (1928)]. This is indicated by the conflicting decisions of federal courts as to the proper mode of construing Uniform Laws, a point first raised almost a decade ago.

KARL HUBER

Insurance, Public Liability—Concealment—Extent of Duty of Disclosure—[Federal]. —Defendant's application for public liability insurance on his automobile was made to a broker on October 16, 1930, and was sent by him to the Netherlands Insurance Company, who forwarded it to plaintiff insurance company. Plaintiff received the application on October 21, and on that same day issued the policy dated, in compliance with defendant's request, to take effect on October 18. On October 19, defendant negligently collided with another automobile. He notified the broker that afternoon, and the broker informed the Netherlands Company the next morning. Plaintiff did not receive the information from the Netherlands Company until one day after the policy was issued and brought this action to rescind. *Held*, decree for plaintiff affirmed. *Strangio v. Consolidated Indemnity and Insurance Co.*, 66 F. (2d) 330 (C.C.A. 9th 1933).

Two conflicting rules have been applied in those branches of insurance in which the issue of concealment has been adjudicated. Either there is (1) an absolute duty to disclose all facts which might reasonably influence the insurer in granting insurance, or (2) the insured's only obligation is to act bona fide. Vance, Insurance (2d ed. 1930), 344 ff. The absolute duty is consistently applied only in marine insurance. *Sun Mutual Insurance Co. v. Ocean Insurance Co.*, 107 U.S. 485, 27 L. Ed. 337 (1882); *Burritt v. Saratoga County Mutual Fire Insurance Co.*, 5 Hill 188 (N.Y. 1843); *Clinchfield Fuel Co.*

v. Aetna Insurance Co., 121 S.C. 305, 114 S.E. 543 (1922). In life insurance, the insured's absolute duty is confined to information received after he has applied but before the insurer accepts. *Stipcich v. Metropolitan Life Ins. Co.*, 277 U.S. 311, 72 L. Ed. 895 (1927); *Forrester v. Southland Life Insurance Co.*, 42 S.W. (2d) 127 (Texas 1931). Even here, in *Armand v. Metropolitan Life Ins. Co.*, 235 N.Y.S. 726 (1929), the court only required good faith. The insured need only act in good faith as to facts known at the time the application is made. *Penn. Mut. Life Ins. Co. v. Mechanics' Savings Bank*, 72 Fed. 413, 19 C.C.A. 286 (1896). The rule of good faith is applied to fire insurance both as to information known before the application was made and that discovered later. *Springfield Fire and Marine Ins. Co. v. National Fire Ins. Co.*, 51 F. (2d) 714 (1931); *Davis Scofield Co. v. Agricultural Ins. Co.*, 109 Conn. 673, 145 Atl. 38 (1929); *Great American Ins. Co. of New York v. Clayton*, 247 Ky. 612, 57 S.W. (2d) 467 (1932). It is applied in fidelity insurance. *Magee et al. v. Manhattan Life Ins. Co.*, 92 U.S. 93, 23 L. Ed. 699 (1875); *Star Ins. Co. v. Carey*, 126 Kan. 205, 267 Pac. 990 (1928). There is no duty to disclose information discovered after the contract of insurance has been consummated, *Pendergast v. Globe and Rutgers Fire Ins. Co.*, 246 N.Y. 396, 159 N.E. 183 (1927). Where the insured has failed to fulfil the duty of disclosure, the insurer may rescind, *Fales v. New York Life Ins. Co.*, 128 Cal. App. 201, 17 P. (2d) 174 (1932). The Civil Code of California states, "A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance," Cal. Civ. Code (1931) § 2562.

The reason given for absolute duty in the marine insurance is that here the relevant facts are peculiarly within the knowledge of the insured and the underwriter must necessarily rely on him for information, *Carter v. Boehm*, 3 Burrow 1906 (1766). In life insurance, facts acquired after the application is made are also said to be peculiarly within the insured's knowledge. But as to facts known before the application is made it is suggested that the insured is justified in assuming all material information has been covered by the comprehensive questions asked and hence need only act bona fide, *Stipcich v. Metropolitan Life Ins. Co.*, 277 U.S. 311, 72 L. Ed. 895 (1927). In fire insurance, the company may readily determine the character of the risk and should be sufficiently protected by the obligation to act in good faith. But in fidelity insurance, only good faith is required, and yet the relevant facts are more apt to be within the insured's peculiar knowledge, and it is doubtful if the insured can justifiably believe that the insurer has acquired all necessary information. Only one case previous to the present has come up in which the insured's duty in public liability insurance was involved, *Royal Indemnity Co. v. May and Ball*, 222 Ky. 157, 300 S.W. 347 (1927), and there absolute duty was imposed. Since public liability is more analogous to marine insurance than to other types with respect to the peculiar knowledge of the insured and lack of justifiable grounds for believing that the insurer has been able to anticipate all relevant information, it is probable that this case and the principal one will be followed and an absolute duty of disclosure of material facts applied.

But even if there is an absolute duty of disclosure of known facts, there is the further problem of what acts will satisfy that duty. In marine insurance, if the insured has made a reasonable effort to communicate the information in due time, he is not barred from recovery by his failure to get the information to the company before the policy is issued. *M'Lanahan v. Universal Insurance Co.*, 1 Pet. (U.S.) 170, 7 L. Ed. 98 (1828); *Green v. Merchants' Insurance Co.*, 10 Pick. 402 (Mass. 1830); *Snow v. Mercantile Mu-*

tual Ins. Co., 61 N.Y. 160 (1874); *Pendergast v. Globe and Rutgers Ins. Co.*, 246 N.Y. 396, 159 N.E. 183 (1927). Reasonable effort in due time suffices in life insurance, *Stipcich v. Metropolitan Life Ins. Co.*, 277 U.S. 311, 72 L. Ed. 895 (1927), and it has been indicated that if there is an absolute duty in fire insurance that duty is satisfied by the insured using reasonable means to transmit the information in due time, *Springfield Fire and Marine Ins. Co. v. National Fire Ins. Co.*, 51 F. (2d) 714 (C.C.A. 8th 1931). Whether a reasonable effort has been made is at law a question of fact for the jury, *M'Lanahan v. Universal Insurance Co.*, 1 Pet. (U.S.) 170, 7 L. Ed. 98 (1828); *Green v. Merchants' Insurance Co.*, 10 Pick. 402 (Mass. 1830), but it is said that the use of means ordinarily employed is required, *Proudfoot v. Montefiore*, L.R. 2 Q.B. 511 (1867), but suffices when used, *Snow v. Mercantile Mutual Insurance Co.*, 61 N.Y. 160 (1874). It is not clear whether the court in the present case meant to require more than a reasonable effort to get the information to the insurer in due time, or adhered to that rule and found the defendant's conduct unreasonable in that he sent the information to his broker and not to the insurer, or limited the rule to apply only when the information is sent directly to the insurer or his agent. It would seem, however, that the effort of the broker to transmit the information to the plaintiff through the Netherlands company should have been considered.

SAMUEL EISENBERG

International Law—Extradition—Necessity of Criminality in the Asylum State—[Federal].—The petitioner was held for extradition from Illinois to England upon a charge of having received money knowing it to have been fraudulently obtained. The act alleged was not a crime in Illinois. The article of the extradition treaty (Webster-Ashburton Treaty of 1842, 8 Stat. 572, supplemented by the Blaine-Pauncefote Convention of 1889, 26 Stat. 1508) covering this offense did not specifically require that it be criminal in both states, although such was the requirement in articles covering other crimes. *Held*, that the writ of habeas corpus be denied, the treaty not requiring that the offense be a crime in both states. *Factor v. Laubenheimer*, 54 Sup. Ct. 191, 78 L. Ed. 151 (1933). Butler, Brandeis, and Roberts JJ. dissenting.

The right to demand extradition and the duty to surrender depend on treaty rather than international law. *United States v. Rauscher*, 119 U.S. 407, 7 Sup. Ct. 234, 30 L. Ed. 425 (1886); 1 Phillimore, International Law (3d ed. 1879), 517; Pomeroy, International Law (Woolsey's ed. 1886), 236. But the principles of international law often throw light upon the intent of the treaty framers and determine to a great extent the construction to be given the extradition treaty. Thus it was held in *United States v. Rauscher*, 119 U.S. 407, 7 Sup. Ct. 234, 30 L. Ed. 425 (1886), though there was no relevant provision in the pertinent treaty, that a person could not be tried for an offense other than the one for which he was extradited, in accordance with the principle of international law to that effect. 1 Moore, Extradition (1891) 218; Lawrence, The Extradition Treaty, 14 Alb. L. Jour. 85 (1876). It is a principle of international law that there will be no extradition for political offenses. 1 Phillimore, International Law (3d ed. 1879), 521; 1 Moore, Extradition (1891), 303. Hence it has been held that though the applicable treaty does not prohibit such extradition, it will nevertheless be denied. *In re Ezeta*, 62 Fed. 972 (D.C.N.D. Cal. 1894).

Of particular significance in the present case is the "accepted principle that the acts for which extradition is demanded must constitute an offense according to the laws of both countries." 1 Moore, International Law (1891), 112–113; Byron and Chalmers,