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Time Limitations On Actions Against Administrators Or Executors

*Chandlee v. Shockley*¹

The appellant, Clara Chandlee, was injured by an auto negligently driven by Homer Shockley, who died on October 8, 1956, from injuries sustained in the accident. Appellee, who qualified as decedent's administratrix on October 18, 1956, admitted liability to appellant but requested her to refrain from filing suit, explaining that once the extent of her injuries was ascertained, a settlement could be reached. No settlement having been offered, appellant filed suit against appellee on June 25, 1957, by virtue of Article 93, Section 112 of the Code.² Appellee demurred on the grounds that the suit had not been filed within the time limitation of the statute requiring such claims to be filed within six months from the date of the qualification of the administratrix. The trial court sustained the demurrer. In reversing the judgment of the lower court by a 3 to 2 decision, the Court of Appeals held that if the fraudulent statements of the administratrix had delayed earlier prosecution of appellant's claim, she was estopped from asserting the statutory time limitation, and the appellant had the right to have the case heard on its merits.

In dissenting, Judges Henderson and Horney felt that a statutory time limitation, contained in a statute creating the right to sue, constituted a condition precedent to the plaintiff's right of action, and noncompliance with the limitation destroyed all rights that the statute could confer.

The earliest time limitations on actions were found in Roman law which limited the right to recover property.³ Under the common law, the Act of 21 Jac. 1, c. 16, enacted in 1623 ". . . was the first comprehensive statute to adopt the modern method of arithmetical computation, instead of the earlier method of referring to certain well-known historical events."⁴ This Act was the forerunner of present day Statutes of Limitation which ". . . are such legislative

¹ 219 Md. 493, 150 A. 2d 438 (1959).

² 8 MD. CODE (1957) Art. 93, § 112 provides:

"Executors and administrators . . . shall be liable to be sued in any court of law or equity, in any action (except slander) which might have been maintained against the deceased . . . provided, however, that any such action for injuries to the person to be maintainable against an executor or administrator must be commenced within six calendar months after the date of the qualification of the executor or administrator of the testator or intestate."

³ *Developments — Statutes of Limitations*, 63 Harv. L. Rev. 1177 (1950).

⁴ Dawson, *Undiscovered Fraud and Statutes of Limitation*, 31 Mich. L. Rev. 591, 597 (1933).

enactments as prescribe the periods within which actions may be brought upon certain claims or within which certain rights may be enforced. . . ."⁵ Their purpose is to encourage prompt ascertainment of legal rights and the suppression of fraud which may be the outgrowth of stale claims.⁶ Courts have adopted the principle that, since the purpose of the Statute of Limitation is to suppress fraud, they will not allow the Statute to become a means for perpetrating fraud.⁷ Therefore, fraud will toll the running of the Statute in common law actions against one who has committed the fraud, yet asserts the Statute as a bar to the innocent party's claim.⁸

Paralleling the growth of modern Statutes of Limitations was the emergence of many remedies unknown in the common law. The accuracy of Lord Mansfield's maxim *actio personalis moritur cum persona* was challenged by statutes creating remedies for wrongful death and rights of actions against decedents' estates. These statutes, creating new remedies, also created their own time limitations. Writers and courts interpreted these limitations as conditions precedent, and noncompliance with the limitation resulted in the loss of the entire right.⁹ The leading case is

⁵ 1 WOOD, LIMITATIONS OF ACTION (4th ed.) 1, 2.

⁶ Osbourne v. U. S., 164 F. 2d 767, 769 (2d Cir. 1947).

"All Statutes of Limitations are based on the assumption that one with a good cause of action will not delay in bringing it for an unreasonable period of time. . . ."

⁷ First Massachusetts Turnpike v. Field, 3 Mass. 201, 206 (1807):

"If this knowledge is fraudulently concealed from [the plaintiff] by the defendant, we should violate a sound rule of law, if we permitted the defendant to avail himself of his own fraud."

⁸ Sherwood v. Sutton, 5 Mason 143, 154 (1st Cir. 1828):

"Every statute is to be expounded reasonably, so as to surpress, and not to extend, the mischiefs, it was designed to cure. The statute of limitations was mainly intended to surpress fraud, by preventing fraudulent and unjust claims from starting up at great distances of time, when the evidence might no longer be within the reach of the other party, by which they could be repelled. It ought not, then, to be so construed, as to become an instrument to encourage fraud, if it admits of any other reasonable interpretation, and cases of fraud, therefore, form an implied exception. . . ."

⁹ 34 AM. JUR. 16, Limitation of Actions, § 7:

"A statute of limitations should be differentiated from conditions which are annexed to a right of action created by statute. A statute, which in itself creates a new liability, gives an action to enforce it unknown to the common law, and fixes the time within which that action may be commenced, is not a statute of limitation. It is a statute of creation, and the commencement of the action within the time it fixes is an indispensable condition of the liability and of the action which it permits. The time element is an inherent element of the right so created, and the limitation of the remedy is a limitation of the right."

See also State v. Parks, 148 Md. 477, 482, 129 A. 793, 797 (1925); Dunningan v. Cobourn, 171 Md. 23, 26, 187 A. 881, 883 (1936).

The Harrisonburg,¹⁰ in which suit was brought for a wrongful death after a twelve month statutory time limitation had expired. The Supreme Court, in reversing the Circuit Court's allowance of the claim, held:

" . . . The statutes create a new legal liability with a right to a suit for its enforcement, provided suit is brought within twelve months and not otherwise. The time within which the suit must be brought operates as a limitation of the liability itself as created, and not of the remedy alone. It is a condition attached to the right to sue at all. . . . Time has been made an essence of the right, and the right is lost if the time is disregarded. The liability and the remedy are created by the same statute, and the limitations of the remedy are therefore to be treated as limitations of the right."¹¹

As a result of decisions following this statutory construction propounded in *The Harrisonburg* case, many statutes expressly include provisions stating that fraud is to toll the running of statutory time limitation. The Maryland Workmen's Compensation statute provides:

"Filing after fraud or estoppel — When it shall be established that failure to file claim by an injured employee or his dependents was induced or occasioned by fraud, or by facts and circumstances amounting to an estoppel, claim shall be filed within one year from the time of the discovery of the fraud or within one year from the time when the facts and circumstances amounting to an estoppel cease to operate and not afterwards."¹²

Also courts have created implied exceptions for enemy aliens during time of war,¹³ and for American citizens who were prisoners of the enemy.¹⁴ These cases were the basis for the opinion of the court in *Scarborough v. Atlantic Coast Line Railway Co.*¹⁵ This case is heavily relied upon by the

¹⁰ 119 U. S. 199 (1886).

¹¹ *Ibid.*, 214 (1886). Many decisions citing this case fail to give weight to the closing statement in the opinion:

"No question arises in this case as to the power of a court of admiralty to allow an equitable excuse for delay in suing, because no excuse of any kind has been shown." *Ibid.*

¹² 8 Md. CODE, (1957) Art. 101, § 39.

¹³ *Hangar v. Abbott*, 6 Wallace, 532 (U. S. 1867).

¹⁴ *Supra*, n. 6.

¹⁵ 178 F. 2d 253, 15 A.L.R. 2d 491, cert. den. 339 U. S. 919 (1949).

majority opinion in the principal case. In that case, a seventeen year old boy was injured by the defendant and the defendant's agent induced the boy to wait until he reached the age of twenty-one to bring his claim in order that his injuries might be more accurately ascertained. When suit was brought, defendant claimed plaintiff was barred because the Federal Employers' Liability Act¹⁶ contained a three year limitation. The defense contended this constituted a condition precedent to plaintiff's suit as the Federal Employers' Liability Act created a right unknown in the common law. The court rejected this defense and held that the defendant's fraud estopped him from asserting the statutory time limitation. This view was upheld by the Supreme Court in *Glus v. Brooklyn Eastern District Terminal*,¹⁷ decided shortly after the decision in the principal case was rendered. In holding that fraud by the defendant stopped the running of a statutory time limitation, the Supreme Court added: ". . . we need look no further than the maxim that no man may take advantage of his own wrong."¹⁸

The Maryland Court of Appeals has also distinguished procedural and substantive remedies and has held that non-compliance with a statutory time limitation on a remedy created by the legislature results in the destruction of the entire right.¹⁹ But closer in point to the principal case is *Bogart v. Willis*,²⁰ in which the plaintiff brought his claim after the statutory limitation had elapsed. There the Court held a letter from the administrator of the estate, admitting the claim, before the period had elapsed tolled the statute.

"Any other construction would permit a defendant to play fast and loose, and claim the benefits of the statute while at the same time leading the plaintiff to believe that he proposed to pay the claim."²¹

The dissent in the principal case is based upon the grounds that the Court cannot "properly write in exceptions to the condition imposed by the Legislature, on general

¹⁶ 45 U.S.C.A. (1954) § 56, provides:

"No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued."

¹⁷ 359 U. S. 231 (1959).

¹⁸ *Ibid.*, 232.

¹⁹ *State v. Parks and Dunnigan v. Cobourn*, *supra*, n. 9.

²⁰ 158 Md. 393, 148 A. 585 (1930).

²¹ *Ibid.*, 407.

equitable grounds.²² The cases cited in the dissent refer to an excerpt from Chief Judge Marshall's opinion in *McIver v. Ragan*:²³

"Wherever the situation of a party was such as, in the opinion of the legislature, to furnish a motive for excepting him from the operation of the law, the legislature has made the exception. It would be going far, for this court to add to those exceptions. . . . If this difficulty be produced by the legislative power, the same power might provide a remedy; but courts cannot, on that account, insert in the statute of limitations, an exception which the statute does not contain."²⁴

The dissent distinguishes the *Osborne*²⁵ and *Hanger*²⁶ cases as being decided on the principle of international law that during war, "no court was available to which jurisdiction could be ascribed."²⁷

The reasoning of *Bogart v. Willis*²⁸ and *Scarborough v. Atlantic Coast Line*²⁹ seems more compelling and more in point as to the effect of fraud. While an express exception concerning fraud would have made the Court's decision easier, the writer believes that the Court has properly decided the principal case. The decision seems in accord with the modern trend of decisions, which give no effect, insofar as the question of fraud waiving the time limitation, to the distinction between common law Statutes of Limitation and time limitations on statutory remedies unknown to the common law. Statutory rights and limitations must be considered in the light of the body of the law of which they are to become a part. As common law time limitations are tolled by fraud, no adequate reason can be presented for applying a different interpretation as to statutory time limitations.

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²² 219 Md. 493, 503, 150 A. 438 (1959).

²³ 2 Wheat. 25 (U. S. 1816).

²⁴ *Ibid.*, 29, 30.

²⁵ *Osbourne v. United States*, 164 F. 2d 767, 769 (2d Cir. 1947), see *supra*, n. 6.

²⁶ *Hangar v. Abbott*, 6 Wallace, 532 (U. S. 1867), see *supra*, n. 13.

²⁷ *Supra*, n. 22, 505.

²⁸ *Supra*, n. 20.

²⁹ 178 F. 2d 253, 15 A.L.R. 2d 491, *cert. den.* 339 U. S. 919 (1949).