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Limitation of Actions- Substantive and Remedial Statutes - Extension of Statutory Period for Fraud

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LIMITATION OF ACTIONS—SUBSTANTIVE AND REMEDIAL STATUTES—EXTENSION OF STATUTORY PERIOD FOR FRAUD—Plaintiff brought an action under the Federal Employers' Liability Act to recover damages from the defendant employer for an industrial disease allegedly contracted more than three years prior to bringing suit. Plaintiff alleged that defendant misrepresented the time within which this action could be brought and thereby tolled the three-year statute of limitations in the FELA.¹ *Held*, defendant's motion to dismiss granted. The time limitation is an integral part of the statute creating a substantive right and is not extended by fraud or misrepresentation. *Glus v. Brooklyn Eastern District Terminal*, (S.D. N.Y. 1957) 154 F. Supp. 863.

Traditionally courts have distinguished between a period of limitations in a statute creating a cause of action unknown at common law and a general statute of limitations.² Compliance with the former is deemed a condition precedent to the exercise of the new right and the period of limitations cannot be waived or tolled,³ so that the running of the statutory period extinguishes the right.⁴ This result has been criticized as being both a product of a misapplication of principles from the field of conflicts of law⁵ and, arguably, unnecessary.⁶ In a few cases this distinction between substantive and remedial types of statutes either has been treated as not controlling or has been explained away, and the courts have tolled the running of statutes limiting substantive rights by applying the same equitable principles that toll a general remedial statute of limitations.⁷ Apart from legislation, the granting of relief from the remedial statutes on grounds of fraud developed in equity courts and has carried over into actions at law.⁸ But the majority of courts in denying relief on grounds of fraud from substantive statutes appear to have disregarded the purposes behind periods of limitation, the principal one being fairness to the

¹ 35 Stat. 66 (1908), as amended, 45 U.S.C. (1952) §56 provides: "No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued."

² E.g., *Bement v. Grand Rapids & Ind. Ry. Co.*, 194 Mich. 64 at 68, 160 N.W. 424 (1916).

³ See generally 15 A.L.R. (2d) 500 (1951).

⁴ E.g., *The Harrisburg*, 119 U.S. 199 at 214 (1886).

⁵ See 132 A.L.R. 292 at 333 (1941).

⁶ "Developments in the Law: Statutes of Limitations," 63 HARV. L. REV. 1177 at 1188 (1950), points out that the purpose of the limitation may only be to describe the *effect* of the expiration of the time limit set out, rather than to state the *time* at which the limitation bars the action; that is, that while the cause is extinguished when the period runs, usual equitable doctrines may be used to determine when that occurs.

⁷ *Toran v. N.Y., N.H. & H. R. Co.*, (D.C. Mass. 1952) 108 F. Supp. 564, and *Scarborough v. Atlantic Coast Line R. Co.*, (4th Cir. 1949) 178 F. (2d) 253, cert. den. 339 U.S. 919 (1950), held that fraud tolled the statute of limitations in the FELA. See also the cases collected in 63 HARV. L. REV. 711 (1950).

⁸ See generally Dawson, "Undiscovered Fraud and Statutes of Limitation," 31 MICH. L. REV. 591 at 597-606 (1933).

defendant.⁹ This purpose would not be frustrated if a defendant were held accountable for his misrepresentations through a suspension of the statutory period.¹⁰ One area in which tenuous conceptual distinctions have given way to effectuating legislative intent is in actions to obtain workmen's compensation benefits. Courts have been sympathetic toward these statutes' underlying purpose of enlarging upon the relief available at common law, and allow a plea of fraud to toll the period of limitations.¹¹ Another solution to the problem of tolling under either type of statute of limitations has been suggested by medical malpractice cases in which there has been an intentional concealment of the cause of action. The decisions that do grant relief in such cases indicate that the statute begins to run only when the cause of action is discovered.¹² But this theory of relief appears to be based upon public policy favoring the tolling of the statute in such situations, rather than upon treating the cause of action as not accruing until sometime after the act of negligence has occurred.¹³ Even this solution, however, appears to be unavailable where, as in the principal case, the plaintiff knows of his injury and of the defendant's connection with it, but the defendant by stating that plaintiff had seven years in which to sue has merely withheld a legal element of liability.¹⁴ Judicial intervention on equitable grounds has made even fewer inroads in the area of federal legislation containing built-in statutes of limitation. The probable purpose of Congress in inserting a period of limitations in a statute does not seem to be to extinguish one's rights completely when the statutory period has expired, but rather to adopt a uniform statutory period of limitation for

⁹ "Developments in the Law: Statutes of Limitations," 63 HARV. L. REV. 1177 at 1185 (1950), points to such additional considerations as increasing the effectiveness of the courts by barring the adjudication of tenuous claims, avoiding the disrupting effect unsettled claims exert upon commercial activities, varying the statutory period with the degree of permanence of the relevant evidence, and other variables depending upon particular parties and particular types of claims.

¹⁰ Dawson, "Undiscovered Fraud and Statutes of Limitation," 31 MICH. L. REV. 591 at 605 (1933), points out, however, that if limitations serve only to bar stale claims, the slightest tolling would undermine the statutes' purpose.

¹¹ See 15 A.L.R. (2d) 500 at 520 (1951). But see the cases collected in 67 A.L.R. 1070 (1930) which reach the opposite result in actions based upon death statutes which appear to be a product of the same type of legislative intent. An equitable solution, however, was finally reached in *Desmarais v. People's Gas Light Co.*, 79 N.H. 195, 107 A. 491 (1919), when the court found that fraudulent concealment did not toll the limitation in the Death Act, but that the plaintiff was not precluded from an action for damages for defendant's deceit which resulted in the loss of the cause of action.

¹² See 42 IOWA L. REV. 97 (1956).

¹³ *Ibid.*

¹⁴ *Ogg v. Robb*, 181 Iowa 145, 162 N.W. 217 (1917). See also Dawson, "Fraudulent Concealment and Statutes of Limitation," 31 MICH. L. REV. 875 (1933). Even in *Scarborough v. Atlantic Coast Line R. Co.*, (4th Cir. 1949) 178 F. (2d) 253, cert. den. 339 U.S. 919 (1950), where fraud tolled the limitations in the FELA, the court emphasized the fact that the plaintiff was an infant.

this particular legislation.¹⁵ This purpose would not be defeated by judicial extension of the period on traditional equitable grounds.¹⁶ Persuasive reasoning lies behind the decisions which make no distinction between types of statutes of limitations for purposes of applying equitable doctrines to toll the running of the statute.¹⁷ Thus the results reached through the tenuous distinction traditionally drawn between so-called statutes that condition the exercise of a new right and general remedial statutes of limitation indicate a need for a re-determination of legislative intent in cases involving fraud or misrepresentation by one seeking to take advantage of the statute.

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¹⁵ *Toran v. N.Y., N.H. & H. R. Co.*, note 7 *supra*, at 566. See also 63 *HARV. L. REV.* 711 (1950).

¹⁶ *Ibid.*

¹⁷ The court in the principal case noted the persuasive reasoning that underlies the decisions that toll the built-in period of limitations in federal statutes, but felt bound by the decisions of the Court of Appeals for the Second Circuit. Principal case at 866.