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FEDERAL PROCEDURE-LIMITATION OF ACTIONS-SUSPENSION OF STATUTE OF LIMITATIONS AS TO CITIZEN OF ENEMY-OCCUPIED TERRITORY IN WAR TIME

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FEDERAL PROCEDURE—LIMITATION OF ACTIONS—SUSPENSION OF STATUTE OF LIMITATIONS AS TO CITIZEN OF ENEMY-OCCUPIED TERRITORY IN WARTIME—Plaintiff, a Filipino, loaned money to a recognized guerilla unit in the Philippine Islands in 1943, during the period of the Japanese occupation of the Islands. He filed suit in the United States Court of Claims on December 31, 1952, to recover the amount of the loan. Defendant United States moved to dismiss on the ground that the claim was barred by the six-year statute of limitations applicable to the Court of Claims.[1] *Held,* petition dismissed. Plaintiff's cause of action first accrued at the earliest moment when suit might have been legally instituted upon it. No circumstance in the case prevented commencement of such suit immediately upon delivery of the money to the guerillas, except the fact that Japanese occupation of the Philippines had closed the courts of the United States to plaintiff. They were reopened by September 2, 1945, the date of formal surrender of the Japanese,[2] and the statute commenced to run against plaintiff on that date. *Sese v. United States,* (Ct. Cl. 1953) 113 F. Supp. 658.[3]

[1] 28 U.S.C. (Supp. V, 1952) §2501, bars a claim unless the petition is filed within six years "after such claim first accrues."

[2] Choice of this date involved a reconsideration of the court's recent holdings in Marcos v. United States, 122 Ct. Cl. 641, 102 F. Supp. 547 (1952); Tan v. United States, 122 Ct. Cl. 662, 102 F. Supp. 552 (1952), cert. den. 344 U.S. 895, 73 S.Ct. 275 (1952).

[3] Decided on the same day, on facts substantially similar to those in the principal case, were: Porras v. United States, (Ct. Cl. 1953) 113 F. Supp. 664; Angeles v. United States, (Ct. Cl. 1953) 113 F. Supp. 665; Tabacug v. United States, (Ct. Cl. 1953) 113 F. Supp. 666; Land Settlement and Development Corp. v. United States, (Ct. Cl. 1953) 113 F. Supp. 666; De Rubin v. United States, (Ct. Cl. 1953) 113 F. Supp. 668; Martin v. United

The court treated the principal case as involving two distinct and independent questions: (1) when plaintiff's cause of action first accrued, and (2) when the statute of limitations, tolled by the Japanese occupation of the Philippines, recommenced running on plaintiff's claim. It would perhaps be more nearly correct to say that the second of these is an adjunct of the first, for accrual of a cause of action seems to require not only a delict or breach, but also the legal means of pursuing a remedy—a court to sue in.[4] At least this is true of accrual for purposes of commencing the running of a statute of limitations.[5] But in any event there is a sound basis for the court's decision to look to the time when plaintiff first regained access to the courts of the United States for its signal to relight the fires under him, and not, as plaintiff maintained, to some point in international affairs when a legal state of war had ceased to exist. It is the rationale of a statute of limitations that a party has lost his claim, however just it may have been, through his own negligence and laches in failing to prosecute it. If the tribunal in which he should have sued has been closed to him, it is not reasonable to penalize him for the delay.[6] It may be closed because he is an alien enemy, and the rules of international law forbid non-hostile intercourse between the citizens of belligerent powers.[7] Or it may be simply that he finds himself in enemy-occupied territory, unable to communicate with his homeland, and barred from its courts while he is under enemy control.[8] If the latter is the

States, (Ct. Cl. 1953) 113 F. Supp. 669; Silva v. United States, (Ct. Cl. 1953) 113 F. Supp. 670; Lindayag v. United States, (Ct. Cl. 1953) 113 F. Supp. 671; Ramcar v. United States, (Ct. Cl. 1953) 113 F. Supp. 672; Anno v. United States, (Ct. Cl. 1953) 113 F. Supp. 673.

[4] Collier v. Goessling, (6th Cir. 1908) 160 F. 604; Parmenter v. State, 135 N.Y. 154, 31 N.E. 1035 (1892); City of Buffalo v. State of New York, 116 App. Div. 539, 101 N.Y.S. 595 (1906); 54 C.J.S., Limitation of Actions §109 (1948). See a spirited controversy over the meaning of the term "cause of action" in Gavit, "A 'Pragmatic Definition' of the 'Cause of Action'?" 82 UNIV. PA. L. REV. 129 (1933); Clark, "The Cause of Action," 82 UNIV. PA. L. REV. 354 (1934); Gavit, "The Cause of Action—A Reply," 82 UNIV. PA. L. REV. 695 (1934).

[5] 34 AM. JUR., Limitation of Actions §113 (1941). Blume and George, "Limitations and the Federal Courts," 49 MICH. L. REV. 937 at 950 (1951), point out that the terms "cause of action," "accrual," and "arose," may have different meanings for different purposes.

[6] Hanger v. Abbott, 6 Wall. (73 U.S.) 532 (1867); Brown v. Hiatts, 15 Wall. (82 U.S.) 177 (1872); annotation, 137 A.L.R. 1454 (1942). In New York, for a long time, the suspension statute was construed so as not to toll the statute in favor of an enemy alien, if his cause of action had already accrued when the war started. Nathan v. Equitable Trust Co., 250 N.Y. 250, 165 N.E. 282 (1929). The illogical distinction between causes of action accruing just prior to, and those accruing just after, commencement of a war was removed by amendments to the New York Civil Practice Act in 1949 and 1950. Now the statute of limitations is tolled for both. N.Y. Civ. Prac. Act (Cahill-Parsons, 1953 Supp.) §§27, 28, 28-a.

[7] Ex parte Colonna, 314 U.S. 510, 62 S.Ct. 373 (1942); Frabutt v. New York, C. & St. L. R., (D.C. Pa. 1949) 84 F. Supp. 460. Suspension of statutes of limitations in wartime in eleven major western nations is discussed in Thayer, Schoch, and Ireland, "The Effect of a State of War Upon Statutes of Limitation or Prescription," 17 TULANE L. REV. 416 (1943). The cases growing out of the American Civil War are reviewed in Gregory, "The Effect of War on the Operation of Statutes of Limitation," 28 HARV. L. REV. 673 (1915).

[8] Osbourne v. United States, (2d Cir. 1947) 164 F. (2d) 767 (internment as a

case, there is no reason to continue his immunity from the statute of limitations after communications are restored and enemy control is broken. His right and his ability to seek redress are again complete.

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prisoner in Japan); Gallewski v. H. Hentz & Co., 276 App. Div. 219, 93 N.Y.S. (2d) 546 (1949) (citizen of Holland sent to a Nazi concentration camp); Salvoni v. Pilson, (D.C. Cir. 1950) 181 F. (2d) 615, cert. den. 339 U.S. 981, 70 S.Ct. 1030 (1950) (United States citizen residing in Italy); Peters v. McKay, 195 Ore. 412, 238 P. (2d) 225 (1951) (for resident of Holland statute recommences to run as of the date of unconditional German surrender). But see Standard-Vacuum Oil Co. v. United States, 112 Ct. Cl. 137, 80 F. Supp. 657 (1948) (resident of the United States having property in the Philippines, who could have filed a tentative claim during the Japanese occupation).