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or disbarment.²⁰ A belligerent and headstrong attitude on the part of an attorney has been held insufficient to warrant action.²¹ In the case of *In Re Huppe*,²² the attorney referred to the judge as "an arrogant jackass" in a letter to a state representative. The court held that this did not warrant disbarment, absent evidence that the attorney intended the letter to be circulated. Likewise,²³ a proper retraction or apology will be considered in mitigating the offense,²⁴ and in the majority of cases will dismiss the action.²⁵ In a Nebraska case²⁶ the court stated, ". . . we were painfully disappointed that no apology was made."

In the principal case the letter was written for the purpose of advising the defendant's client in regard to the taking of an appeal. There was no intent to bring disgrace to the court.²⁷ The letter was written in the heat of disappointment at the outcome of the client's trial.²⁸ Since the defendant promptly apologized to the judge,²⁹ the court rightly recognized these facts as not warranting disbarment.

It is submitted that the result achieved in this case is just and equitable. The power to disbar is not an arbitrary one to be exercised at the whim of the court,³⁰ but should be used only in a clear case for the most weighty reasons.³¹ An attorney may feel at various times that the court is biased. He may feel that the court has certain idiosyncrasies which should be taken into account in the proceeding of his case. The attorney should be free to discuss these factors with his client without fear of exposing himself to punishment.

Irwin G. Christie.

CONSTITUTIONAL LAW—EFFECT OF TRANSPORTATION ACT— LIMITATION OF ACTIONS

Alleging negligent damage to an interstate shipment of goods, shipper sued carrier in a state court within the two year period prescribed by the uniform express receipts which were in strict conformance with the

20. *In re Rockmore*, 127 App. Div. 499, 111 N.Y.S. 879 (1908); *Matter of Mannheim*, 113 App. Div. 136, 99 N.Y.S. 87 (1906).

21. *People v. A'Brunswick*, 315 Ill. 442, 146 N.E. 483 (1925).

22. 92 Mont. 211, 11 P.2d 793 (1932).

23. See note 19, *supra*.

24. *In re Snow*, 27 Utah 278, 75 Pac. 741 (1904); *In re Robernson*, 48 Wash. 153, 92 Pac.929 (1907).

25. *In Matter of Carrao*, 170 App. Div. 545, 156 N.Y.S. 379 (1915).

26. *In re Dunn*, 85 Neb. 606, 124 N.W. 120, 130 (1909).

27. See note 15, *supra*.

28. See note 20, *supra*.

29. See note 24, *supra*.

30. *People v. McCallum*, 341 Ill. 579, 173 N.E. 827 (1930); *In re Lemisch*, 321 Pa. 110, 184 Atl. 72 (1936).

31. *State v. Ledbetter*, 127 Okla. 85, 260 Pac. 454 (1927).

Transportation Act.¹ Plaintiff's action was dismissed for want of seasonable prosecution; her petition for reinstatement was granted. On appeal, the Supreme Court of Florida reversed² the lower court for error in reinstating the case without good cause. The plaintiff brought a new action—after the expiration of the two year limitation—under a saving statute.³ *Held*, reversed.⁴ This new action was not barred by the two year limitation since the federal act has not superseded the state statute. *Hoagland v. Railway Express Agency Inc.*, 75 So.2d 822 (Fla. 1954).

In the final analysis, the ascertainment of the validity of a state statute affecting interstate commerce involves a balancing of national as opposed to local interests.⁵ Notwithstanding, a general set of rules has been developed by which the challenged state action may be scrutinized. Pursuant to the formula evolved, where the subject matter is one of national concern, requiring uniformity of regulation, the enactment of a statute by Congress shall be exclusive, superseding state law on the matter.⁶ On the other hand, where the subject is one of local concern, adapted to diversity of treatment, the power of the states is said to be concurrent with that of Congress; state regulation being permissible unless it conflicts with federal laws governing the subject.⁷ However, even in the absence of conflict, should the state statute be found to have entered a field which Congress intended to preempt through some affirmative act of legislation, the state rule will be rendered ineffective.⁸ In determining whether a federal act has superseded a state law, its entire scheme must be considered, and that which is implied within statutory

1. 41 STAT. 491 (1920), 49 U.S.C. §20(11) (1946) "Any common carrier, railroad, or transportation company . . . receiving property from a point in one state . . . to a point in another state . . . shall issue a receipt or bill of lading therefore, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property . . . *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years . . . from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim . . ."

2. *Railway Express Agency, Inc. v. Hoagland*, 62 So.2d 756 (Fla. 1952).

3. FLA. STAT. § 95.06 (1953) "If an action shall be commenced within the time prescribed therefore, and a judgment therein for the plaintiff be reversed on appeal or writ of error, the plaintiff . . . may commence a new action within one year after the reversal."

4. Three justices dissenting: Mathews, Sebring and Thomas.

5. See Frankfurter, *Taney and the Commerce Clause*, 49 HARV. L. REV. 1286 (1936).

6. *Cooley v. Board of Wardens*, 12 How. 299, 319 (U.S. 1851) "Whatever subjects . . . are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress."

7. *Wilson v. Black Bird Creek Marsh Co.*, 2 Pet. 245 (U.S. 1829) (state's authorization of the construction of a dam over a navigable creek held valid); *Minnesota Rate Cases*, 230 U.S. 352 (1913) (fixing of reasonable rates for intrastate commerce was within power of state); *California v. Thompson*, 313 U.S. 109 (1941) (state statute requiring transportation agents to obtain license assuring their fitness was held valid).

8. *Oregon - Washington R.R. & Nav. Co. v. Washington* 270 U.S. 87 (1926), 74 U. OF PA. L. REV. 852 (1926) (state quarantine of diseased plants held invalid).

scope and intent has no less effect than that which is expressed.⁹ But the intent to supersede is not to be inferred unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state, or shows a purpose to take possession of the whole field.¹⁰

The instant case turns on the question of whether the effect of F.S. 95.06¹¹ interferes with the operation and policy of Title 49 U.S.C. § 20(11)¹² so as to require an inference that the federal act has superseded the state statute. In holding that there is no inconsistency between the two statutes, the court grounds its decision on a number of cases,¹³ the more significant of which are hereinafter discussed. In the case of *Louisiana & Western R.R. v. Gardiner*,¹⁴ the bill of lading required that suit be brought within a period that was unlawful under the federal act. The Supreme Court of the United States held that the state limitation period governed, notwithstanding that it was shorter than the minimum time provided in § 20(11). The court held that § 20(11) was not intended to operate as a statute of limitations, but merely as a restriction on the freedom of carriers to fix periods within which suit may be brought. It is submitted, however, that this case is inapplicable from a factual standpoint, because the bill of lading was not in compliance with the federal act, whereas in the principle case, the bill of lading is in complete accord with § 20(11). Consequently it is not necessary to treat the act as authorizing a federal statute of limitations, but merely as a congressional expression of a reasonable time in which to sue; the time was compiled with in the instant case. Another case relied on by the majority of the court is that of *Missouri, K. & T. Ry. of Texas v. Harris*,¹⁵ in which it was held that a state statute allowing recovery of a moderate attorney's fee as a part of costs is not inconsistent with the commerce act, since it only incidentally affects the remedy for enforcing the carrier's responsibility. However, it seems

9. *Savage v. Jones*, 225 U.S. 501 (1912); *Levy, Aronson & White v. Jones*, 208 Ala. 140, 93 So. 733 (1922); *State v. Atlantic Coastline R.R.*, 77 Fla. 366, 81 So. 498 (1919).

10. *Savage v. Jones*, *supra* note 9; *Gilway v. Cuyahoga Valley Ry.*, 292 U.S. 57 (1934); *State v. Atlantic Coast Line R.R.*, *supra* note 9; *Western Union Telegraph Co. v. Bailey*, 108 Tex. 427, 196 S.W. 516 (1917).

11. See note 3 *supra*.

12. See note 1 *supra*.

13. *Leigh Ellis & Co. v. Davis*, 260 U.S. 682 (1923) (shipper brought suit in federal district court for Georgia to recover upon two bills of lading. Supreme Court of United States would not apply remedial statute of Georgia to alter the contractual time limitation). A majority of the court, in the principal case, argues that the federal court followed the laws of the state, since Georgia would not have applied the remedial statute either. A *contra* interpretation, that the holding is bottomed on federal rather than state law, is possible. *Leithauser v. Hartford, Ins. Co.*, 124 F. 2d 117 (6th Cir. 1949), *cert. denied*, 316 U.S. 663 (1942) (insured's action was not barred by policy limitation where state statute allowed one year after reversal). It is submitted that Congress has not seen fit to legislate on the subject of contract periods of limitation in insurance policies.

14. 273 U.S. 280 (1927).

15. 234 U.S. 412 (1914).

that this case is also distinguishable on the facts, since, as expressed by the court: "The local statute . . . deals only with a question of costs, *respecting which Congress has not spoken*"¹⁶ (emphasis supplied), whereas the instant case involves a contractual period of limitations which has been prescribed by the federal legislation on the subject.

Dissenting Judge Mathews sets forth the opposing theory that the federal statute has preempted the field in cases involving express receipts which comply with the act. He argues that a contrary state statute must yield to the federal statute whether the conflict is between a contract in compliance with the act and a longer state period,¹⁷ or one in compliance with the act and a shorter state period.¹⁸

It is this writer's conclusion that the majority holding in this case too liberally interprets the Transportation Act. It would seem that the requirement of uniformity, which was a guiding star in this legislation, demands that one period of limitation be fixed.¹⁹ The writer is of the opinion that the result of the instant case deprives the federal restriction of much of its practical effect.

It is submitted that an affirmative federal statute of limitations would be desirable.

Herbert E. Saks

INJUNCTIONS—NUISANCE—CEMETERIES

The appellant home-owners sought to enjoin the operation of a cemetery adjacent to their homes. The facts failed to show injury or probable injury to health and the injunction was refused. *Held*, in reversing the lower court, a cemetery in a residential section constitutes a nuisance. *Jones v. Trawick*, 75 So.2d 784 (Fla. 1954).

It is well settled that a cemetery is not a nuisance per se.¹ A cemetery

16. *Id.* at 422.

17. *Cf. Schiebel v. Agwilines*, 156 F.2d 636 (2d Cir. 1946) (similar statutory provision applicable to ocean carriers). As said by this court on p. 638: "§183b . . . is a declaration of Congressional policy as to lawful contractual time limitation and one which in the interest of uniformity should be construed to exclude state statutes of limitations."

18. *Atlantic Coast Line R.R. v. Chase*, 109 Fla. 50, 146 So. 658 (1933) (case involved bill of lading identical with that in case at bar). The court held: "Such contractual limitation . . . is valid and enforceable according to the intent of the federal law. The federal law on the subject has superseded all state statutes to the contrary in so far as interstate shipments of goods are concerned." *cf. Atlantic Coast Line R.R. v. Wauchula Truck Growers' Ass'n*, 95 Fla. 392, 118 So. 52 (1928).

19. *Cf. Phillips Co. v. Grand Trunk Western R.R.*, 236 U.S. 662, 667 (1915); *Kansas City S.Ry. v. Wolf*, 261 U.S. 133, 139 (1923).

1. *Byran v. Birmingham*, 154 Ala. 447, 45 So. 922 (1908); *McDaniel v. Forrest Park Cemetery Co.*, 156 Ark. 571, 246 S.W. 874 (1923); *Los Angeles County v. Hollywood Cemeteries Ass'n*, 124 Cal. 344, 57 Pac. 153 (1899); *Harper v. Nashville*, 136 Ga. 141, 70 S.E. 1102 (1911); *Rosehill Cemetery Co. v. Chicago*, 352 Ill. 11, 185 N.E. 170; *Villa Park v. Wanderer's Rest Cemetery Co.*, 316 Ill. 226, 147 N.E. 104 (1925); *Begein v. Anderson*, 28 Ind. 79 (1867); *Payne v. Wayland*, 131 Iowa 659,