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Limitation of Actions - Nature, Validity, Construction - Unconstitutional Deprivation of Remedy

Edward E. Dessert

LIMITATION OF ACTIONS — NATURE, VALIDITY, CONSTRUCTION — UNCONSTITUTIONAL DEPRIVATION OF REMEDY. The defendant, a Connecticut gun manufacturer, shipped a rifle to a Pennsylvania sporting goods store in May, 1946, receiving payment for the sale on June 6, 1946. The plaintiff's cousin purchased the rifle and on July 3, 1950, loaned it to the plaintiff who lost an eye the same day due to the rifle's backfiring. Plaintiff sued charging negligent manufacture. It was *held* that the Connecticut statute of limitations [1] for negligence actions barred the suit since the statute required the action to be brought within one year after the negligent act or omission, and the negligence constituting the tort occurred when the defective rifle was sold. Nor could the action be maintained upon the basis of a breach of implied warranty, to which a six year statute of limitations applied, because the Connecticut court requires privity of contract between the parties to an action of that nature. A strong dissent asserted that the cause of action did not accrue until the injury, and that the statute of limitations could not have run before the cause of action came into existence.[2] *Dincher v. Marlin Firearms Co.*, 198 F.2d 821 (6th Cir. 1952).

At common law there were no rules specifically directed at limiting the time in which actions could be brought,[3] but other rules to some extent imposed limitations.[4] Statutes of limitations are intended to preclude litigation which would, because of lapse of time, produce unjust results.[5] These statutes penalize prospective plaintiffs for sleeping on their rights.[6]

Statutes of limitations may be "substantive" or "procedural". If they are substantive, they usually go to the qualification of a statutory cause of action.[7] In that event it is necessary to comply with the statutory time requirement in order to receive the benefits of the cause of action.[8] On the other hand, if the statute is a "pure" statute of limitations, it is one

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1. Conn. Gen. Stat. §8324 (1949) "No action to recover damages for injury to the person, . . . caused by negligence . . . shall be brought but within one year from the date of the *act or omission* complained of. . . ." (Italics supplied).

2. Dincher v. Marlin Firearms Co., 198 F.2d 821, 823 (6th Cir. 1952) "Except in topsy-turvey land, you can't die before you are conceived, or be divorced before ever you marry, or harvest a crop never planted, or burn down a house never built, or miss a train running on a non-existent railroad. For substantially similar reasons, it has always heretofore been accepted, as a sort of legal 'axiom,' that a statute of limitations does not begin to run against a cause of action before that cause of action exists. . . ."

3. State Board of Adjustment v. State, 231 Ala. 520, 165 So. 761, 762 (1936) "There was no such thing as a limitation of action at common law. The right is wholly statutory. . . ."; Hart v. Desnong, 1 Terry 218, 8 A.2d 85, 86 (Del. 1939) "At early common law time constituted no bar to an action . . . Statutes of Limitations had their origin in 1623 in the Statutes of 16 Jas. 1, ch. 16."

4. I Wood, Limitations 4 (2nd ed. 1893) "In the case of torts the maxim, *'actio personalis moritur cum persona,'* applied, and therefore were only limited by the duration of the life of either party. The want of a limitation was supplied, in a measure, by a doubtful doctrine of presumption, (presumption after twenty years that debt had been paid) and also by the trial by wager of law, which is believed to have operated as a check on stale demands." (parentheses added.)

5. Charles Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945).

6. Shonts v. Hirliman, 28 F.Supp. 478, 485 (S.D. Cal 1939) "The law should aid the diligent, and not him who sleeps on his rights."

7. See Wilson v. Missouri Pac. R. Co., 58 F.Supp. 844, 847 (E.D. Ark. 1945) (noting and explaining the distinction); Ritter v. Franklin, 50 Cal.App.2d 844, 123 P.2d 866, 869 (1942) "Those statutes which merely restrict a statutory or other right do not come under this head (i.e., under the head of statutes of limitations), but rather are conditions put by the law upon the right given."

8. State v. Aetna Casualty & Surety Co. 138 Conn. 363, 84 A.2d 683 (1951); see Guy v. Stoecklein Baking Co., 133 Pa. Super. 38, 1 A.2d 839, 842 (1938) (Workmen's Compensation Statute).

of repose affecting the remedy as distinguished from the right.[9] The statute of the forum usually applies to an action brought within its jurisdiction, even though the cause of action arose in another jurisdiction.[10] However, where a statute of limitations of the place of the tort goes to the substance of the action, the statute of the place of the tort controls and compliance with it is a condition precedent to the right of action, while non-compliance completely extinguishes the right of action.[11] The Federal Court, in the instant case, was duty bound to interpret the unique statute [12] in the light of Connecticut decisions.[13]

It is perhaps elementary that a tort based on negligence consists of four elements:[14] (1) the duty, (2) the breach of duty, (3) the causal connection and (4) the resultant damage. The second element is the "act or omission",[15] while the first and second combined are often thought of as the negligence.[16] If the statute of limitations is thought of as applying to the time within which an action may be properly brought from the date of the "act or omission" as these terms are used in the second element of the tort, a limit is in effect being imposed upon the time within which an action may be brought after the negligence has occurred. In other words, the statute restricts the period of proximate cause, the third element of the tort, to the extent that if the damage, the fourth element of the tort, occurs within the satutory period of limitations, the person suffering the damage has a cause of action for which he has a remedy. But if the damage does not occur within the statutory period, the injured party has no recourse. This apparently was the manner in which the statute was applied in the instant case.[17]

An application of this nature limits the time in which a judicial determination that a causal connection exists between act and injury will be deemed proper. It lays down a rule that although the negligence proximately caused the damage, under the common law rule, if the time intervening between the negligence and the damage is greater than the statutory limit, the proximate cause is too remote and the action will not lie. It restricts the common law standard for determining proximate cause.[18]

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9. Empire Tractor Corp. v. Time, 10 F.R.D. 121, 122 (E.D. Pa. 1950). "A 'pure' statute of limitations goes to the ability of the platintiff to enforce his right. A statute of limitations provides a procedural limitation but does not deal with substantive rights!"

10. Thomas Iron Co. v. Ensign-Bickford Co., 131 Conn. 665, 42 A.2d 145, 146 (1945) "It is undisputed that, as a principle of universal application, remedies and modes of procedure depend upon the *lex fori.*"; Ley v. Simmons 249 S.W.2d 808 (Ky. 1952).

11. Lewis v. Reconstruction Finance Corp., 177 F.2d 654, (D.C. Cir. 1949); Thomas Iron Co. v. Ensign-Bickford Co., 131 Conn. 665, 42 A.2d 145, 146 (1945) "The general rule . . . is subject to a well-recognized exception. . . . Where the 'foreign remedy is so inseparable from the cause of action that it must be enforced to preserve the integrity and character of the cause and when such remedy is practically available.' . . . In such a case the *lex loci* . . . governs."

12. The language of statutes of limitations varies among the states, but most provide that the statute shall begin to run from the time the cause of action accrued. See Note, 63 Harv. L. Rev. 1177, 1179.

13. Guaranty Trust Co. v. York, 326 U.S. 99 (1945).

14. Prosser, Torts 177 (1941).

15. Prosser, Torts 190 (1941).

16. Prosser, Torts 177 (1941).

17. *See* Dincher v. Marlin Firearms Co., 198 F.2d 821, 823 (6th Cir. 1952).

18. *Cf.* Di Gironimo v. American Seed Co., 96 F.Supp. 795, 797 (E.D.Pa. 1951); White v. Schnoebelen, 91 N.H. 273, 18 A.2d 185, 187 (1941) "Causation . . . is like a connecting bridge between the negligence and the harm that gives rise to the cause of action. If the bridge be unbroken from negligence to harm, the right of action will

There can be no question that such a limitation of the time of causal connection could be properly imposed. No man has a vested right in a common law rule of law entitling him to insist that it remain unchanged.[19] However it should be realized that this statutory limitation would go to a substantive element of the action,[20] that of proximate cause. That the damage occur within the specified time after the negligence would then be a condition precedent to the accrual of a cause of action, and an indispensable part of the action. This was not the purpose of the Connecticut statute involved. Precedent establishes this statute as one of procedure and remedial in nature.[21] To construe the statute as the Federal Court did here is to change it from one of procedural law to one of substantive law in derogation of its previous construction by the Connecticut Court.

A statute of limitations may run from the time of the negligence, the act or omission, but when this is true the legal injury must be present.[22] That is, the negligence and the resulting injury must have been, for all practical purposes, simultaneous. The rule that requires the act or omission to include the legal injury or cause of action is not new. Although the words in comparable old statutes were not indentical, they were of the same import.[23] No particular cause of action need be present to satisfy the rule. Any existing legal injury whether based upon contract,[24] trespass,[25] or negligence [26] is sufficient. Connecticut had previously acknowledged the merits of this rule.[27]

The very lack of privity of contract which precludes the plaintiff's recovery under breach of warranty in contract, in the case under consideration,[28] might have been decisive in allowing him to recover under

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accrue when the injury is suffered. . . . Usually the bridge is so short as to be crossed in a matter of months or even for moments. But if the bridge be long and the passage slow, these seems to be no logical reason for saying that a right of action can accrue prior to the injury. A long lapse of time may make difficult or even impossible proof that the bridge of causation is unbroken, but if it appear on the balance of probabilities to be intact, it will bear the necessary weight of conveying negligence to harm, so that the two may merge into a cause of action. This appears to be the reasonable view to which the authorities are now tending. . . . Otherwise, in extreme cases, a cause of action might be barred before liability arose."

19. *See* Grasse v. Dealer's Transport Co., 412 Ill. 179, 106 N.E.2d 124, 130 (1952).

20. *Accord* White v. Schnoebelen, 91 N.H. 273, 18 A.2d 185, 186 (1941) "Causation is thus more than a method of measuring damages; it is an element of the cause of action."

21. Antinozzi v. D. V. Frione & Co., 137 Conn. 577, 79 A.2d 598 (1951); Morris Plan Bank v. Richards, 131 Conn. 671, 42 A.2d 147, 148 (1945) "The law of the forum applies since statutes of limitations relate to the remedy. . . ."; see Tuohey v. Martinjak, 119 Conn. 500, 177 Atl. 721 (1935) (general history of statutes of limitation).

22. Miller v. Bean, 87 Cal. App.2d 186, 196 P.2d 596 (1948) (Statute did not run against action for breach of covenant until damage resulted); *see* Blondeau v. Sommer, 139 S.W.2d 223, 225 (Tex. Civ. App. 1940). *Contra*: Hooper v. Carr Lumber Co., 215 N.C. 308, 1 S.E.2d 818 (1939) (authority cited does not support the decision).

23. *See, e.g.*, Gillon v. Boddington, 1 Car. & P. 540, 171 Eng. Rep. 1308, 1309 (1824) (*act committed*); Roberts v. Read, 16 East 215, 104 Eng. Rep. 1070, 1071 (1812) (*fact committed*).

24. *See* Shonts v. Hirliman, 28 F.Supp. 478, 485 (S.D. Cal. 1939).

25. Houston Water-works Co. v. Kennedy, 70 Tex. 233, 8 S.W. 36 (1888) (defendant cut arch in plaintiff's house).

26. Powers v. Planters Nat. Bank & Trust Co., 219 N.C. 254, 13 S.E.2d 431, 432 (1941) (negligent failure to warn that premises had been occupied by tubercular).

27. *See* Bank v. Waterman, 26 Conn. 323, 332, 335 (1857).

28. Dincher v. Marlin Firearms Co., 198 F.2d 821, 822 (6th Cir. 1952) "Actions for breach of implied warranties . . . may be brought only by . . . parties to the contract. . . ."

the applicable statute of limitations. The duty owed the plaintiff was not imposed because of any special relationship between the parties, but was a duty which the defendant owed the plaintiff as one of the mass of human beings who inhabit the earth. One may be negligent toward the whole world without legal liability until his negligence results in legal injury.[29] The gravamen of such an action is the injury which must be present in order for the statute to run. On the other hand, if a contract relationship were present, the gravamen would be the breach, and a cause of action would arise in the form of nominal damages for the breach, in which event the statute would properly have run.[30]

This appears to be the rule recognized by the Connecticut Court in the case upon which the instant opinion places its reliance and cites as controlling,[31] but absent the initial legal injury at the time of the act or omission, there are indications that the Connecticut Court would find that the statute would not run.[32] Connecticut has previously denounced a result such as that reached here, as divesting the plaintiff of his remedy before his right to redress ever existed.[33]

It may well be, had the constitutional question been raised,[34] that the court would have reached a conclusion permitting a recovery in the instant case.[35] The Connecticut Constitution guarantees each individual his day in court for injury to his person,[36] while the Federal Constitution assures persons that they shall not be deprived of property by any state without due process of law.[37] It has been said that a claim for damages,[38] a right of action created solely by statute and not perfected by final judgment,[39] and the right to the benefit of a common law rule,[40] are not vested property rights. However it appears to be every where held that a right of action or a cause of action [41] based upon *common law*, unadulterated

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29. Prosser, Torts 178 (1941).

30. 1 Wood, Limitations 447 *et seq.* (2d ed. 1893) "In the case of torts arising *quasi e contractu*, the statute usually commences to run from the date of the tort, not from the occurrence of actual damage. . . . It is necessary that the wrongdoing should be such that nominal damages may be immediately recovered."; see Note, 63 Harv. L. Rev. 1177, 1200 (1950) "If the defendant's conduct in itself invades the plaintiff's right, so that suit could be maintained regardless of damage—as with a breach of contract and most intentional torts—the statute commences upon completion of the conduct."

31. *Cf.* Kennedy v. Johns-Manville Sales Corp., 135 Conn. 176, 62 A.2d 771 (1948) (faulty work resulted in legal damages immediately).

32. *See* Bank v. Waterman, 26 Conn. 324, 330 (1857).

33. *Ibid.* "If we are wrong, some strictly legal injuries might never for a moment be capable of redress. . . . he might be barred of his remedy before his right to redress ever vested. . . ."

34. See Kenmike Theatre v. Moving Picture Operators, 139 Conn. 95, 90 A.2d 881, 884 (1952) "A constitutional question . . . should be lodged in the case at the earliest moment . . . and must thereafter be kept alive by appropriate steps; otherwise, it will be waived."

35. *Cf.* Duke Power Co. v. South Carolina Tax Comm., 81 F.2d 513, 517 (4th Cir. 1936) (courts avoid interpretations which render statutes unconstitutional).

36. Conn. Const. Art 1, §12 "Every person, for an injury done him in his person, property or reputation, shall have remedy by due course of law. . . ."

37. U.S. Const., Amend. XIV; Truax v. Corrigan, 257 U.S. 312, 332 (1921) "The due process clause . . . requires that every man shall have the protection of his day in court. . . ."

38. *See* Carson v. Gore-Meenan Co., 229 Fed. 765, 767 (D.Conn. 1916).

39. *See* Roberson v. Roberson, 193 Ark. 669, 101 S.W.2d 961, 966 (1937).

40. *See* Truax v. Corrigan, 257 U.S. 312, 329 (1921) "No one has a vested right in any particular rule of the common law. . . ."

by statute, is a vested property right which the courts will recognize.[42] It therefore becomes important to determine whether the plaintiff had a cause of action which the Connecticut court would acknowledge as a constitutionally protected property right.

Through evolution of the common law standard of duty,[43] it has become generally recognized that the manufacturer of an inherently dangerous instrumentality, such as a rifle,[44] owes a duty to persons into whose hands it might fall to make certain that the instrumentality is not defectively manufactured. This duty was breached when the gun here involved was put upon the market.[45] The fact that the causal connection was somewhat remote in time does not preclude recovery.[46] When the gun was fired and the injury sustained, the tort was complete, and a common law cause of action arose, unless the Connecticut statute of limitations prevented the action from accruing.[47]

The Connecticut statute was exclusively procedural.[48] It could have no effect upon the creation of the plaintiff's cause of action which apparrently came into existence in Pennsylvania. Its only effect was to bar the remedy for the cause of action in Connecticut. At the time the gun was fired and the injury suffered, a common law cause of action, which ripened into a vested property right,[49] accrued to the plaintiff. A vested property right requires a remedy in the courts of Connecticut in order to satisfy the Connecticut[50] and Federal[51] Constitutions. The Connecticut statute of limitations, as interpreted in the instant decision, deprived the plaintiff of his constitutionally guaranteed remedy. This interpretation gives the statute a force which raises grave doubts of its constitutionality.

EDWARD E. DESSERT

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41. "The right of action is merely the right to pursue a remedy. The cause of action is the concurrence of the facts which give rise to an enforceable claim." United States v. Standard Oil Co. of California, 21 F.Supp, 645, 660 (S.D.Cal. (1937).

42. *See, e.g.,* Martinez v. Fox Valley Bus Lines, 17 F.Supp. 576, 577 (N.D.Ill. 1935); Roberson v. Roberson, 193 Ark. 669, 101 S.W.2d 961, 964 (1937); Siller v. Siller, 112 Conn. 145, 151 Atl. 524, 525 (1930); Devlin v. Morse, 254 Mich. 113, 235 N.W. 812, 813 (1931) *"A common law right of action is property,* and as such is within the rules of constitutional protection. (italics supplied).

43. Prosser, Torts 673 *et seq.* (1941); Restatement, Torts §395 (1934).

44. Herman v. Markham Air Rifle Co., 258 Fed. 475, 478 (E.D. Mich. 1918) (manufacturer liable without privity of contract).

45. See note 17 *supra.*

46. Prosser, Torts 349 (1941).

47. *Cf.* Morris Plan Bank v. Richards, 131 Conn. 671, 42 A.2d 147, 148 (1945) "So far as appears, the plaintiff's cause . . . is a common-law action for fraud, in the creation of which no statute is involved. Therefore the running of the New York statute did not and could not terminate its existence but would only bar the remedy in that state."

48. See note 21 *supra.*

49. See note 42 *supra.*

50. Siller v. Siller, 112 Conn. 145, 151 Atl. 524, 525 (1930) "The common-law right of action for negligence . . . could not be taken away by retrospective legislative action, for that would set the validating act above . . . the Constitution which guarantees a remedy. . . ."; *cf.* Steward v. Houk, 127 Ore. 589, 271 Pac. 998, 999 (1928).

51. Truax v. Corrigan, 257 U.S. 312, 329 (1921); *cf.* Devlin v. Morse, 254 Mich. 113, 235 N.W. 812 (1931); *see* Lindlots Realty Corp. v. Suffolk County, 251 App.Div. 340, 296 N.Y.S. 599, 607 (1937) (dictum that limitation which barred remedy before it vested would be invalid); Osborne v. Lindstrom, 9 N.D. 1, 8, 81 N.W. 72, 75 (1899) (application of statute of limitations to pre-existing right).