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## Limitations of Actions Waiver by Corporations

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Aeronautics and the aid being extended in the drafting of the new Aeronautical code covering the field of Aeronautical law.

There were also some very fine section meetings held, including the Junior Bar Conference and the section meeting on taxation which was well attended.

It is fairly well understood that the next meeting of the American Bar Association will occur very likely in the City of Detroit, Michigan. It is some years ago, in 1925 I believe, since the American Bar Association held a meeting there.

In the program of entertainment afforded visiting lawyers was a visit to the home of James Whitcomb Riley, the Hoosier Bard, author of "The Old Swimmin' Hole" and other poems.

HARRISON A. BRONSON, President.

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#### LIMITATIONS OF ACTIONS WAIVER BY CORPORATIONS

A corporation can speak only through its officers and agents, and their declarations made in the course of their employment, and relating to the immediate transaction in which they are engaged, are always competent against the corporation. So thus it would be reasonable to say that if a corporation can waive the statute of limitation it would have to do so through its officers.

Where the directors of a corporation representing its entire stock and ownership, on recovering money by litigation, turned it over to the president to pay bills, without specifying any particular bill, and he paid the claim which was barred by the statute of limitations, it was held that the corporation cannot recover the payment of this claim in an action of money had and received. The president of a corporation may be expressly authorized, or may have authority by virtue of his being entrusted generally with the management of the business, to pay claims, and by such authority he may pay claims that are barred by the statute of limitations. And in an action for money had and received the corporation will not be successful.

Whether a corporate officer or agent is acting within the apparent scope of his authority is a question of fact, and is a question to be decided by the jury on all the evidence in the particular instance. However, the question of authority need not be submitted to the jury where the undisputed evidence shows that the officer or agent had general and special authority to do the acts in question. Whether an implied authority arises from certain facts is a question of law which should not be submitted to the jury, but to the court. Ordinarily, authority of corporation's agents to waive the statute of limitations will not be proved. Thus the authority of an officer or agent of a corporation to waive the statute of limitations rests on the principal of implied or express agency. A president of a corporation by mere virtue of his office has no authority to waive the statute of limitations, or to

bind the corporation by his promise not to plead the statute. But according to the more modern authorities, the president of a corporation has power to institute suits on its behalf, to accept service of citation, or other legal process, and to waive legal delays. Such a trend would suggest that a president could waive the statute of limitations without implied authority, or at least only very little implication of such authority would be needed to bind the corporation in the execution of such waiver.

Where the president of a bank had managed its affairs with little assistance from directors for five years previous to the suspension of the bank, and upon the suspension of the bank without being authorized by the directors the president issued scrip to the creditors payable in three years, and wound up the affairs of the bank, collected assets and applied them to payment of scrip until remaining assets were levied upon under execution, and the stockholders had not fully paid their subscriptions which were payable upon calls by the directors which they never made, the court held that, although upon the bank's suspension a cause of action arose in favor of creditors against the bank's stockholders for the unpaid subscription, the running of the statute of limitations was postponed for three years by the issuance of the scrip, and that the bank was bound by the issuance of such scrip. Also a waiver of the right to plead the statute of limitations to an action to enforce the liability of a bank as a stockholder in a corporation in consideration of extension of time, is binding on the bank when signed for its best interest by its president who was its general manager, and allowed to act for it according to his judgment, under a by-law giving him general supervision of the business of the corporation and power to perform duties which its interest might require, although the directors never knew of its execution. Where D bank was indebted to P Company, and P Company threatened to bring action on the debt, and upon seeing the president of the D bank, the president assured P Company that D bank would not plead the statute of limitations if more time were given to raise the money to pay the debt and that D bank would pay the debt as soon as it could raise the money, and P Company allowed the D bank more time, and the debt was not paid as promised, P Company brought action against the D bank which then pleaded the statute of limitations, the court held that the action and promise of the president of the D bank revived the debt and that the same was not barred by the statute of limitations.

Corporation cannot be heard to say that the president and comptroller in charge of tax matters were unauthorized to execute a waiver. Where waivers of limitations are signed by corporation's taxpayer's secretary and treasurer and bearing the corporate seal, it was held that such was valid and binding on the corporation as against the contention that the secretary and treasurer were without authority to execute the waiver. Where waiver extending time for assessment was filed by secretary and treasurer, who signed original income tax returns, it was held

binding on corporation and receiver. Insurance companies may also waive by their agents or officers the period within which action against the company may be brought, that is, the period allowed in which to file their claim against the company, or to notify the company of the claim. It is also held that the manager of a commercial company charged with its administration has power to acknowledge a debt in the ordinary course of business and thus interrupt prescription. Thus it can be seen that the right of an officer or agent of a corporation to waive the statute of limitations is determined from the facts relating to and leading up to the transaction.

The directors of a corporation, as its board, have the power to waive the statute of limitations as against a debt that is justly due and owing. And the board of directors may also bind the company by admissions and declarations, but a single director cannot do so except as a special agent of the company. Also where a debt is contracted by the directors of the corporation, as such, or a note or obligation is executed by them as such, a payment or new promise made by their successors in that office will keep the debt on foot and save it from operation of the statute of limitations. But where the corporation is insolvent and the directors own the notes which are barred by the statute, payment on notes is deemed void by Bankruptcy Law.

Generally, the powers of the executive committee are in some way stated in the by-laws; and ordinarily such committee is given all the authority of the board of directors, at least in the intervals between the sitting of the board. Thus it would be proper to presume that the executive committee could waive the statute of limitations to a just debt and which is still owing.

From an early ruling of an English court that held that a corporation is entitled to take advantage of the statute of limitations as well as a private person, a fair inference can be drawn that certainly at one time a serious doubt existed whether a corporation could plead the statute of limitations.

As to creditors objecting to the waiver of the statute, it is held, that no creditor can interfere to prevent his debtor from waiving the statute of limitations in regard to other claims. Also, a legatee whose share has been attached by a creditor may confess judgment in favor of the estate on a bona fide debt due the decedent's estate which is barred by limitations, and which more than offsets the legatee's share. Then also a husband may pay an honest debt to his wife, however, ancient and stale it may appear to his creditors, and he is not compelled by law to resort to the statute of limitations as a defense, nor can other creditors insist upon it for him, nor is she estopped to receive payment on the debt. His actions must not be fraudulent, for then it would be void.

As to the question whether directors or agents become personally liable for waiving the statute, it has been held that direc-

tors are not responsible for paying a just debt notwithstanding that the corporation was insolvent at the time; but if the payment was an unlawful preference, the remedy, if any is against the creditor. Where the statute of limitations has commenced to run against the liability of officers for a corporate debt, it seems that the running of the statute is not suspended or affected by the recovery of the judgment against the corporation upon the debt, nor by the renewal of the indebtedness by the corporation. In a court of equity, the court commented that at all events it is not too much to say that a party who claims to have paid a debt by a successful plea of the statute, and seeks an affirmative remedy on the ground of such fortunate venture, is not regarded as a special favorite of the court. The statute of limitations is a personal privilege accorded by law for reason of public expediency; and the privilege can only be asserted by a plea; the statute of limitations only bars the remedy and not the debt, and a debt uncollectable by operation of law taking away the remedy in sufficient consideration for the execution for a new promise to pay.

Although there is a dearth of authority, the cases there are reveal that a corporation can and may waive the statute of limitations by its officers or directors or agents. But as to the question of the liability of the directors and officers for so waiving the statute of limitations, no authority was found that dealt with the situation directly in point. However, there is no question that the moral obligation to pay a debt which has been barred by the statute of limitations still exists. And in light of justice, the performance of moral obligations should be encouraged instead of impeded by imposing the risk of liability. And to label this communicable performance by a manager of a corporation as mismanagement for which a liability can be imposed is analagous to saying that what is right is wrong. Thus it is submitted that no liability should be imposed upon director and officers for so waiving the statute of limitations.

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#### OUR SUPREME COURT HOLDS

In *Mrs. Hester McKinnon, Pltf. and Respt., vs. North Dakota Workmen's Compensation Bureau, Deft. and Applt.*

That the Workmen's Compensation Act does not cover diseases contracted by an employee outside of his employment; and where compensation is sought on the theory that the death of the employee was caused by disease, it must be shown that the disease was approximately caused by the employment.