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## Federal Courts-Choice of Law-Refusal to Apply State Limitation to Federally-Created Right

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## RECENT DECISIONS

FEDERAL COURTS—CHOICE OF LAW—REFUSAL TO APPLY STATE LIMITATION TO FEDERALLY-CREATED RIGHT—Plaintiffs, two corporations and a joint venture, brought suit in a federal district court in California for damages arising from alleged unfair labor practices by defendant unions. Jurisdiction was based primarily on section 303(b) of the Labor-Management Relations Act<sup>1</sup> which creates a private right of action in persons injured by unlawful secondary boycott activities.<sup>2</sup> Defendants moved to dismiss,<sup>3</sup> contending that the action was barred by the applicable statute of limitations, which, in the absence of any federal limitation specifically pertaining to actions under section 303, was the appropriate California statute.<sup>4</sup> Plaintiffs, on the other hand, maintained that the pervasiveness of Congress' coverage of the labor field indicated an intent to make diverse state statutes inapplicable, arguing that either an analogous federal statute<sup>5</sup> must be used or the federal courts should apply no period of limitations until Congress has acted. Ruling on defendant's motion to dismiss, *held*, motion denied. A state statute of limitations will not be applied to a federally-created cause of action if the effect is to defeat the legislative purpose. *Fischbach & Moore, Inc. v. International Union of Operating Eng'rs*, 198 F. Supp. 911 (S.D. Cal. 1961).

During the past century Congress has created a substantial number of statutory rights of action which do not specify periods of limitations.<sup>6</sup> This remedial detail has been left to judicial determination and the result is a well-settled, albeit cumbersome, legal hybrid. Since 1895,<sup>7</sup> the Supreme Court has adhered to the view that in actions at law, or where the remedy may be either legal or equitable,<sup>8</sup> the federal courts are compelled by the

<sup>1</sup> 61 Stat. 158 (1947), 29 U.S.C. § 187(b) (1958).

<sup>2</sup> LMRA § 303(a), 61 Stat. 158 (1947), 29 U.S.C. § 187(a) (1958).

<sup>3</sup> The issue of limitations is normally an affirmative defense to be raised in the answer. FED. R. CIV. P. 8(c). However, where the passage of time is apparent from the face of the complaint, the defense may be raised by motion to dismiss. *E.g.*, *Anderson v. Linton*, 178 F.2d 304, 309 (7th Cir. 1949); *Wilson v. Illinois Cent. R.R. Co.*, 147 F. Supp. 513, 516 (N.D. Ill. 1957).

<sup>4</sup> CAL. CODE CIV. P. § 338(1) places a three-year limit on actions "upon a liability created by statute, other than a penalty or forfeiture."

<sup>5</sup> Plaintiffs suggested Mutual Security Act of 1955, 69 Stat. 283, 15 U.S.C. § 15(b) (1958), which provides a four-year limitation period in cases arising under the Clayton Act, 38 Stat. 731 (1914), as amended, 15 U.S.C. § 15 (1958).

<sup>6</sup> *E.g.*, Perishable Agricultural Commodities Act, 46 Stat. 534 (1930), 7 U.S.C. § 499e (1958); Trademark Act, 33 Stat. 728 (1905), 15 U.S.C. § 1115 (1958); Civil Rights Act, REV. STAT. § 1979 (1875), 42 U.S.C. § 1983 (1958); Merchant Marine Act of 1936, 49 Stat. 2015, 46 U.S.C. § 1227 (1958); Communications Act, 48 Stat. 1072 (1934), 47 U.S.C. § 206 (1958). See Note, *Federal Statutes Without Limitations Provisions*, 53 COLUM. L. REV. 68 (1953).

<sup>7</sup> *Campbell v. Haverhill*, 155 U.S. 610 (1895). See 2 MOORE, FEDERAL PRACTICE ¶ 3.07(2) (2d ed. 1961).

<sup>8</sup> *Cope v. Anderson*, 331 U.S. 461, 463 (1947).

Rules of Decision Act<sup>9</sup> to apply the appropriate state statute of limitations. Only in suits which are exclusively equitable has the Court refused to consider the state limitation provisions controlling; in such suits the federal doctrine of laches applies instead.<sup>10</sup> Although many treatise writers have expressed dissatisfaction with these judicial decisions,<sup>11</sup> the courts, in general, have consistently adhered to their position.<sup>12</sup> Congress has shown no willingness to make any sweeping changes either, despite some individual requests for action.<sup>13</sup>

The California district court, in the principal case, dealing with an action traditionally considered legal in nature,<sup>14</sup> declined to follow the well-entrenched rule. It attempted to justify its position by reference to several Supreme Court opinions<sup>15</sup> which express the view that variegated state laws must necessarily yield to a general federal statute if the application of such state laws would destroy the intended uniformity of federal labor legislation. This argument would appear to beg the question. The crucial question is whether the *particular* uniformity desired by Congress would be disrupted by the application of the appropriate state limitations to otherwise unlimited federal rights of action. At best, the court assembles sparse legal justification for its conclusion. Of the three cases cited as authority, two are clearly distinguishable<sup>16</sup> on their facts and the third apparently is misread by the court.<sup>17</sup> Moreover, the realities of the legislative process appear to work against the court. In an area as basic and as well-settled as this, it seems reasonable to infer that Congress is aware

<sup>9</sup> 28 U.S.C. § 1652 (1958).

<sup>10</sup> *Holmberg v. Armbrecht*, 327 U.S. 392 (1946); *Russell v. Todd*, 309 U.S. 280, 289 (1940).

<sup>11</sup> See, e.g., Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 LAW & CONTEMP. PROB. 216 (1948).

<sup>12</sup> E.g., *Cassell v. Taylor*, 243 F.2d 259, 261 (D.C. Cir. 1957). See generally *Developments in the Law—Statutes of Limitations*, 63 HARV. L. REV. 1177 (1950).

<sup>13</sup> 91 CONG. REC. 2926 (1945) (remarks of Representative Gwynne); 2 *Hearings on H.R. 2738 Before a Subcommittee of the House Committee on the Judiciary*, 79th Cong., 1st Sess. 155, 185 (1945) (remarks by Representative Springer and Solicitor Maggs of the Department of Labor).

<sup>14</sup> Section 303(b) gives only the right to recover damages which, historically, would entitle the plaintiff to an action at law.

<sup>15</sup> *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959); *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957); *Garner v. Teamsters Union*, 346 U.S. 485, 490 (1953).

<sup>16</sup> *McAllister v. Magnolia Petroleum Co.*, 357 U.S. 221 (1958), involved two claims, both aspects of a single cause of action, and the court applied the federal statute of limitations which was an integral part of one of these claims. *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943), involved the rights and duties of the federal government on commercial paper it issued and the court concluded this constitutional function should not be dependent upon state law.

<sup>17</sup> *Davis v. Rockton & R.R.R.*, 65 F. Supp. 67 (W.D.S.C. 1946), stands for the proposition that a state statute of limitations cannot specifically discriminate against a federally-created right. The case, however, affirms the use of those state limitations provisions which apply to state and federal causes of action alike. The California statute in the principal case is clearly of the latter type.

of the existing law as formulated by the courts. A congressional act which does not specifically, or by clear implication, repudiate that judicial interpretation could well be deemed to accept it, particularly when Congress has at times affirmatively "corrected" the judicial interpretation of its silence.<sup>18</sup>

The very weakness of the argument accepted by the court in the principal case<sup>19</sup> may indicate that dissatisfaction with the state of the law in this area has reached such proportions that some courts are willing to grasp at straws to avoid the result which precedent seems to require. It is indeed arguable that the application of a wide variety of state statutes of limitations<sup>20</sup> to federally-created rights produces an apparent anomaly. Further, the use of state limitations may raise practical problems, such as forum-shopping, which hamper the efficient administration of justice.<sup>21</sup> Despite these considerations, however, it seems certain that this attempt, and any future attempts by lower federal courts to avoid the established rules, will prove as abortive as have the few past attempts.<sup>22</sup> Nevertheless, the underlying dissatisfaction is likely to continue to force its way to the surface until Congress ultimately finds it necessary to face the problem squarely.<sup>23</sup>

There are several possible legislative solutions. First, Congress might amend each of the numerous federally-created rights<sup>24</sup> to provide it with a specific limitation provision. This approach would completely eliminate the apparent anomaly of conditioning a federal right upon a state limita-

<sup>18</sup> *E.g.*, Mutual Security Act of 1955, 69 Stat. 283, 15 U.S.C. § 15(b) (1958); Portal-to-Portal Act, 61 Stat. 87 (1947), 29 U.S.C. § 255 (1958). It is interesting to note that the latter statutory amendment, the Portal-to-Portal Act, was passed during the same session of Congress as the Labor-Management Relations Act.

<sup>19</sup> The court ends up utilizing a combination of the equitable doctrine of laches and no period of limitations at all. See principal case at 915. Even assuming that laches can properly be used in a traditionally legal action, this conclusion produces at least as great a lack of uniformity and uncertainty as the application of state limitations.

<sup>20</sup> See, *e.g.*, 91 CONG. REC. 2926 (1945); 2 *Hearings on H.R. 2788, supra* note 13, at 185. The state provisions which limit a given type of suit may range from as little as six months to periods in excess of ten years.

<sup>21</sup> See generally *Hearings on S. 1910 Before a Subcommittee of the Senate Committee on the Judiciary*, 81st Cong., 1st Sess. 2 (1949) (statement of Thurman Arnold); Note, *Disparities in Time Limitations on Federal Causes of Action*, 49 YALE L.J. 738 (1940).

<sup>22</sup> See *Cassell v. Taylor*, 243 F.2d 259 (D.C. Cir. 1957) (plaintiff attempting to argue cause of action exclusively equitable); *Kendall v. Keith Furnace Co.*, 162 F.2d 1002 (8th Cir. 1947) (plaintiff attempting to argue application of state statute of limitations would destroy intended federal uniformity); *Tobacco & Allied Stocks v. Transamerica Corp.*, 143 F. Supp. 323 (D. Del. 1956) (terms of federal right rather than language of complaint determine whether remedy is solely equitable).

<sup>23</sup> The prevailing pattern is one of piecemeal legislation. When sufficient pressure builds up in a certain area Congress has usually amended the statutory right of action by a specific limitations provision. For examples of such legislation see statutes cited note 18 *supra*.

<sup>24</sup> Statutes cited note 6 *supra*.

tion. It would also eliminate the administrative problems involved in the determination of the appropriate state statute. On the other hand, the extremely heavy legislative burden imposed upon Congress might outweigh the advantages to be gained.<sup>25</sup> If Congress is unwilling or unable to shoulder a burden of this magnitude, it might instead pass a general federal statute of limitations which would provide a uniform period for all otherwise unlimited federal rights.<sup>26</sup> However, Congress has previously considered and rejected a similar proposal,<sup>27</sup> apparently because it was considered impracticable and inconsistent to subject the widely varied federal rights of action to a single period of limitations.<sup>28</sup> But the bulk of the dissatisfaction with a general statute stemmed specifically from attempts to include within the same limitations period actions under both the Fair Labor Standards Act and the antitrust statutes.<sup>29</sup> Since these areas now have their own limitations provisions<sup>30</sup> it is conceivable that Congress might look with more favor upon a general federal statute. Additionally, it must be noted that in cases where the application of the uniform period might fail to produce a practically desirable result, Congress could remove the particular statutory right of action from the operation of the general statute by providing a specific limitations period for it.

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<sup>25</sup> Some indication of the weight of the legislative burden may be gathered from the fact that the record of the committee hearings on the Portal-to-Portal Act, 61 Stat. 87 (1947), 29 U.S.C. § 255 (1958), was over 1,200 pages long and included the statements of almost 100 interested parties. *Hearings on S. 70 Before a Subcommittee of the Senate Committee on the Judiciary*, 80th Cong., 1st Sess. (1947); 2 *Hearings on H.R. 584 Before a Subcommittee of the House Committee on the Judiciary*, 80th Cong., 1st Sess. (1947).

<sup>26</sup> There is no serious question concerning Congress' power to enact a general statute of limitations. In fact, it was argued in a number of cases that 28 U.S.C. § 2462 (1958), which provides a five-year limitation for "an action . . . for the enforcement of any civil fine, penalty or forfeiture" was such a statute. The provision was read narrowly, however, and it was held to refer only "to something imposed in a punitive way for an infraction of a public law." *Chattanooga Foundry & Pipe Works v. Atlanta*, 203 U.S. 390, 397 (1906).

<sup>27</sup> See generally 2 *Hearings on H.R. 2788*, *supra* note 13.

<sup>28</sup> See *id.* at 121; *Developments in the Law—Statutes of Limitations*, 63 HARV. L. REV. 1177, 1267 (1950). A possible way to avoid some of the harshness of a single period for all federal rights was suggested by Alexander Holtzoff, then Special Assistant to the Attorney General. He recommended the adoption of a general statute which provided a six-year limit for actions sounding in contract and three for those in tort. 2 *Hearings on H.R. 2788*, *supra* note 13, at 183.

<sup>29</sup> The management elements pressed for a very short period for FLSA actions since the decisions of the Wage-Hour Administrator operated retroactively and an employer could be liable to his employees for backpay for a period as long as the applicable period of limitations. See *Hearings on S. 70*, *supra* note 25. On the other hand, it is generally recognized that antitrust suits require a lengthy period for preparation.

<sup>30</sup> Statutes cited note 18 *supra*.