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Statutes of Limitations in California

By JACOB J. LIEBERMAN

(This is the third of the series of articles written specially for the Denver Bar Association Record on comparisons between Colorado and California procedure and certain aspects of the California laws which might be of interest to Denver lawyers. These articles are being written by Mr. Lieberman, of the Los Angeles Bar, who was formerly a member of the Denver Bar and Trustee of the Denver Bar Association.)

ONE of the most frequent difficulties confronting the California lawyer in the matter of claims forwarded by Colorado Attorneys is the handling of claims based upon promissory notes which are more than four years old. In view of the Statute of Limitations of Colorado running six years before barring most claims, including claims upon contracts and promissory notes, a Colorado lawyer naturally does not expect to be confronted with a Statute of Limitations in California which bars such claims at the end of four years.

The following are some of the limitations of actions in California:

1. An action upon a judgment or decree of any Court of the United States and an action for mesne profits of real property are barred within five years.

2. Actions upon any contract, obligation or liability founded upon an instrument in writing and actions to recover upon book accounts and actions upon an account stated, and actions for balances due upon mutual open and current accounts are barred within four years.

3. An action upon a liability created by statute, other than a penalty or forfeiture, and an action for trespass upon or injury to real property and an action for taking, detaining or injuring chattels including actions for the specific recovery of personal property and an action for relief on the ground of fraud or mistake are barred within three years.

4. An action upon a contract, obli-

gation or liability not founded upon an instrument of writing (other than book accounts, accounts stated and balances upon open accounts) is barred within two years. This is likewise true of an action based upon a contract, obligation or liability evidenced by a certificate or abstract or guaranty of title of real property or by policy of title insurance. An action against a sheriff, coroner or constable upon a liability arising out of an official act or omission (excepting action for escape) is also barred within two years.

5. An action upon a statute for a penalty or forfeiture is barred within one year, except where the statute imposing the penalty prescribes another limitation. Also actions for libel, slander, assault, battery, false imprisonment, seduction or for injury to or for the death of one caused by the wrongful act or neglect of another or by a depositor against a bank for the payment of a forged or raised check, are also barred within one year.

(Note that personal injury suits are barred within one year.)

6. An action against an officer for the recovery of property seized by the officer in his official capacity as tax collector or to recover the value of the property so seized or for damages for such seizure, detention or sale and actions to recover stock sold for delinquent assessments authorized by the Corporation laws of the State of California, and actions to set aside or invalidate the act of a majority of the trustees of a corporation which has been dissolved by operation of law, in-

cluding the revivor of any such Corporation, are barred within six months. Actions or claims against a county which have been rejected by the Board of survivors must be commenced within six months after the first rejection thereof by such board.

7. Actions to recover personal property left in a hotel are barred within ninety days after the date of the departure of the owner of said personal property from the hotel or lodging house.

8. In the matter of actions for the recovery of real property no action for the recovery of real property can be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the property in question within five years before the commencement of the action.

In actions for fraud, the time commences to run from the discovery of the fraud, and in actions based upon accounts consisting of more than one item the statute begins running from the time when the last item became due.

The California Code of Civil Procedure provides that if, when the cause of action accrues against a person, he is out of the State, the action may be commenced within the term limited after return to the State, and if, after the cause of action accrues, he departs from the State, the time of his absence is no part of the time limited for the commencement of the action. Furthermore, if a person is entitled to bring an action, but at the time the cause of action accrued he is either a minor or insane or imprisoned on a criminal charge or is a married woman where her husband is a necessary party with her in commencing such action, the time of such disability is not a part of the time limited for the commencement of the action and the statute of limitations is tolled during such period.

If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of that time and within six months from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement of such action, and the cause of action survive, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration. No person can, of course, avail himself of a disability unless it existed when his right of action accrued.

An important and troublesome provision of the California Code of Civil Procedure relating to limitations of actions is that providing that no acknowledgment or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operation of the statutes of limitations, unless the same is contained in some writing signed by the party to be charged thereby. In other words, *an oral acknowledgment of indebtedness is not sufficient*. There must be a written acknowledgment of the indebtedness or a written promise to pay in order to toll the statute, and the written acknowledgment must at least imply a promise to pay. *Part payment alone is not a sufficient acknowledgment of the indebtedness which will extend the time of limitation*. The acknowledgment or implied or express promise to pay must likewise be made to the creditor himself or to someone duly authorized to act for him in that respect. An acknowledgment to a stranger is not sufficient.

When a cause of action has arisen in another State or in a foreign country and by the laws of that jurisdiction an action thereon cannot there be

maintained against a person by reason of the lapse of time, an action thereon cannot be maintained against him in California except in favor of one who has been a citizen of California and who has held the cause of action from the time it accrued. In other words, if a cause of action is barred in an-

other State, where the Statute of Limitations of that other State fixes a shorter period of limitation than the laws of California, the action is barred in California unless the claim be held by a citizen of California who has held the claim or cause of action from the time it accrued.

In Re Capper Resolution

March 12, 1928.

H. H. Wolff, Esq.
1515 E. 9th Avenue,
Denver, Colorado.

My dear Mr. Wolff:

My friend, Carl Whitehead, handed me a copy of the March issue of the Denver Bar Association Record, containing an article in reply to Frazer Arnold. I turn first to your debate with Doctor Nicholas Murray Butler, and find it most interesting because it shows how utterly futile it is to try to come to any agreement between two men, one of whom would make so many reservations in interpreting the Capper resolution that its passage by the Senate would mean nothing, and the other, who is so fully committed to the war system that he would not entertain any proposal to avoid war which, in his estimation, would affect the "honor, the safety and the welfare of his country." I wish to congratulate you on the completeness of your reply to Doctor Butler. In my judgment, the reason you have not heard from him in answer to your letter is because there is no reply to make. He tries to defend the Capper Resolution by reading into it something that is not there, and you point this out conclusively.

Of course, Mr. Wolff, you must concede that under your defense of war there can never be a proposal made which will "lead us forward", to use

your expression. The only way out of war is to renounce it as an instrument of national policy, to outlaw it. This is Briand's proposal, and the reason why Secretary Kellogg did not answer this proposal with equal frankness is because America is not yet ready "to renounce war as an instrument of national policy" It is perfectly clear that the *causes* of war can never be removed. Nations, as with men, will always fall out, dispute and quarrel, but if war is ever to be abolished these nations must agree, as with men, that they will *never* go to war about their difficulties. Gun-play between men, either in the defense of property or in its acquisition, has been outlawed. Between nations force is still honored, respected and made perfectly legal under national law.

There are two types of men opposed to the Capper Resolution, one whom Admiral Plunkett well represented in his late declaration that "the penalty of national efficiency, either in commerce or in arms, is war." "If I read history aright," he says, "we are nearer war today than ever before, because we are pursuing a competitive trade policy and crowding other nations into the background. A policy of this kind inevitably leads to war." I recently rode from Denver to Colorado Springs with a former Colorado banker who defends Admiral Plunkett's position absolutely. This is the policy of the United Fruit Company, whose manager