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FEDERAL RULES OF CIVIL PROCEDURE-STATUTE OF LIMITATIONS NOT TOLLED BY FILING COMPLAINT UNDER RULE 3

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FEDERAL RULES OF CIVIL PROCEDURE—STATUTE OF LIMITATIONS NOT TOLLED BY FILING COMPLAINT UNDER RULE 3—Plaintiff's cause of action arose out of a highway accident that occurred on October 1, 1943. Basing jurisdiction on diversity of citizenship, he brought suit in a United States District Court in Kansas. The complaint was filed on September 4, 1945, and defendant was served on December 28, 1945. In Kansas, the two-year statute of limitations applicable to such tort claims is tolled by service on the defendant, not by filing the complaint. *Held,* plaintiff is barred by the Kansas statute of limitations. *Ragan v. Merchants Transfer & Warehouse Co., Inc.,* (U.S. 1949) 69 S.Ct. 1233.

Rule 3 of the Rules of Civil Procedure for the District Courts of the United States provides: "A civil action is commenced by filing a complaint with the court."[1] This rule has been construed by federal district and circuit courts as governing not merely how an action is commenced, but also when it is commenced.[2] The reason for the Supreme Court's holding becomes clear when the history of the governing law and procedure in federal courts is examined. In 1938, the Supreme Court re-interpreted the Rules of Decision Act[3] and held that state decisional as well as statutory law should govern "substantive" matters in the federal courts.[4] In the same year, the Supreme Court promulgated the Rules of Civil Procedure.[5] For purposes of determining whether a given rule is "substantive" or "procedural," and hence whether it is binding upon a federal court, the Supreme Court has demonstrated that conflict of laws characterizations do not control.[6] For all practical purposes, the substance-procedure dichotomy seems to have disappeared. The controlling factor now appears to be whether application of the state rule will significantly affect the outcome of the litiga-

[1] Promulgated by the Supreme Court under authority of the Enabling Act of 1934, 48 Stat. L. 1064 (1934), as revised, 28 U.S.C. (1948) §2072. The Rules became effective Sept. 16, 1938.

[2] Cases cited note 8, infra. The Advisory Committee's note to Rule 3 left open the question whether filing the complaint would toll a state statute of limitations. Note that the Enabling Act provided, "Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant."

[3] "The laws of the several states . . . shall be regarded as rules of decision . . . in the courts of the United States, in cases where they apply." Judiciary Act of 1789, c. 20, §34, 1 Stat. L. 92 (1848), as revised 28 U.S.C. (1948) §1652.

[4] Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817 (1938). Formerly, under the interpretation given the act by Swift v. Tyson, 16 Pet. (41 U.S.) 1 (1842), the federal courts were required to follow state statutes and court decisions pertaining to matters of local law only; they were free to make their own decisions on questions of general law.

[5] Note 1, supra. Prior to adoption of the Rules, federal courts were required to follow the procedure of the courts of the state in which they were sitting "as near as may be." Conformity Act of 1872, 17 Stat. L. 197 (1873), repealed by P.L. 773, 80th Cong., 2d sess., c. 646 (June 25, 1948).

[6] Burden of proof has usually been labeled "procedural" for conflicts purposes. Yet the state rule regarding burden of proof has been held binding on federal and district courts: Cities Service Oil Co. v. Dunlap, 308 U.S. 208, 60 S.Ct. 201 (1939); Palmer v. Hoffman, 318 U.S. 109, 63 S.Ct. 477 (1943).

tion; if so, the federal court must apply it.[7] While the federal courts have applied state statutes of limitations in legal actions, they have generally held that filing the complaint tolled the statute, regardless of the state rule on this point.[8] In actions equitable in nature they have applied state statutes of limitations, or the doctrine of laches, depending upon the circumstances of the case.[9] The procedure in equity suits was changed by *Guaranty Trust Co. v. York*.[10] Therein, the Supreme Court characterized a United States District Court, having jurisdiction merely by reason of diversity of citizenship, as "only another court of the State"[11] and held that it was required to apply the state statute of limitations.[12] The principal case requires a district court, in legal actions, to apply not only the state statute of limitations but also the state rule governing the manner in which it is tolled.[13] It is clear, then, that the "outcome of the litigation" test continues to be the guide in determining whether a state rule, which might be classified as procedural for some purposes, must be applied by a district court in diversity cases.[14] Whatever may be said of the propriety of the test,[15] it effectuates the

[7] "And so the question is not whether a statute of limitations is deemed a matter of 'procedure' in some sense. The question is whether such a statute concerns merely the manner and the means by which a right to recover, as recognized by the State, is enforced, or whether such statutory limitation is a matter of substance in the aspect that alone is relevant to our problem, namely, does it significantly affect the result of a litigation for a federal court to disregard a law of a State that would be controlling in an action upon the same claim by the same parties in a State court?" Guaranty Trust Co. v. York, 326 U.S. 99 at 109, 65 S.Ct. 1464 (1945).

[8] Gallagher v. Carroll, (D.C. N.Y. 1939) 27 F. Supp. 568; Schram v. Koppin, (D.C. Mich. 1940) 35 F. Supp. 313; O'Leary v. Loftin, (D.C. N.Y. 1942) 3 F.R.D. 36; Reynolds v. Needle, (App. D.C. 1942) 132 F. (2d) 161; International Pulp Equipment Co. v. St. Regis Kraft Co., (D.C. Del. 1944) 55 F. Supp. 860; Isaacks v. Jeffers, (C.C.A. 10th, 1944) 144 F. (2d) 26, cert. den. 323 U.S. 781, 65 S.Ct. 270 (1944); Krisor v. Watts, (D.C. Wis. 1945) 61 F. Supp. 845; Fleming v. Weisberg, (D.C. N.Y. 1947) 7 F.R.D. 47; Robinson v. Waterman S.S. Co., (D.C. N.J. 1947) 7 F.R.D. 51; *contra:* Yudin v. Carroll, (D. C. Ark. 1944) 57 F. Supp. 793; Zuckerman v. McCulley, (C.C.A. 8th, 1948) 170 F. (2d) 1015.

[9] 3 OHLINGER, FEDERAL PRACTICE 20 (1948); 2 MOORE, FEDERAL PRACTICE, 2d ed., 733 (1948).

[10] 326 U.S. 99, 65 S.Ct. 1464 (1945). See also Cope v. Anderson, 331 U.S. 461, 67 S.Ct. 1340 (1947).

[11] 326 U.S. 99 at 108, 65 S.Ct. 1464 (1945).

[12] But see Holmberg v. Armbrecht, 327 U.S. 392, 66 S.Ct. 582 (1946) wherein the suit was to enforce a right created by federal statute, with the sole remedy in equity. Held: district court not bound by the state statute of limitations; the York case was distinguished.

[13] At least where the suit is to enforce a state-created right. The principal case distinguished Bomar v. Keyes, (C.C.A. 2d, 1947) 162 F. (2d) 136, cert. den. 332 U.S. 825, 68 S.Ct. 166 (1947), rehearing den. 332 U.S. 845, 68 S.Ct. 266 (1947). In that case, suit was brought to enforce a right that arose under a federal statute. Held: filing the complaint tolled the state statute of limitations.

[14] It appears that the principle of Erie Railroad Co. v. Tompkins applies only to cases where the federal court has jurisdiction merely by reason of diversity of citizenship, but the Supreme Court has never specifically passed on the point. Stating that it is so limited: 17 HUGHES, FEDERAL PRACTICE 13, §18514 (1940); Parker, "Erie v. Tompkins in Retrospect: An Analysis of its Proper Area and Limits," 35 A.B.A.J. 19 at 85 (1949). *Contra:* Clark, "State Law in the Federal Courts: The Brooding Omnipresence of Erie v. Tompkins," 55 YALE L. J. 267 at 280 (1946).

[15] See Justice Rutledge's dissent to the principal case and others in Cohen v. Beneficial Industrial Loan Corp., 69 S.Ct. 1221 at 1231 (1949).

policy which the Supreme Court has said motivated the *Erie v. Tompkins* decision, namely, uniformity of result regardless of whether suit is brought in a state court or, by reason of diversity of citizenship, in a federal court sitting in that state.[16]

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[16] See, for example, Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487 at 496, 61 S.Ct. 1020 (1941).