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Civil Procedure: Running of Litigation Period Not Tolled by Supplementary Proceedings

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CASE COMMENTS

CIVIL PROCEDURE: RUNNING OF LIMITATION PERIOD NOT TOLLED BY SUPPLEMENTARY PROCEEDINGS

Young v. McKenzie, 46 So.2d 184 (Fla. 1950)

Plaintiff, in 1940, was assigned a judgment entered against defendant in May 1929. In 1949 he secured a writ of scire facias, execution of which was returned unsatisfied. Thereupon, in March of that year, he instituted supplementary proceedings for discovery of the judgment debtor's property. In these proceedings the court directed to the judgment debtor and parties to whom certain of his assets had been transferred a rule nisi to show why those assets should not be subject to execution. A motion to quash the rule was granted June 1, 1949, on the ground that the limitation period had expired. On appeal, HELD, supplementary proceedings not completed prior to the expiration of the statutory period are barred by the statute, regardless of their date of commencement. Judgment affirmed.

Proceedings supplementary to execution, although governed by statute in Florida,[1] were recognized as a bill of discovery in early England.[2] Today statutes permit such proceedings at law as a substitute for a creditor's bill in equity.[3] The proceeding, which is brought after the sheriff is unable to satisfy execution, is directed to the discovery of the judgment debtor's property as well as to the application of that property to the debt for which execution was issued.[4]

Supplementary proceedings are designed to empower the court to enforce its judgment, thereby obviating the necessity of an indepen-

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[1]FLA. STAT. §§55.52-55.59 (1949).

[2]*E.g.*, Angell v. Draper, 1 Vern. 399, 23 Eng. Rep. 543 (Ch. 1686).

[3]*E.g.*, Florida Guaranteed Securities v. McAllister, 47 F.2d 762 (S.D. Fla. 1931); Smith v. Smith, 51 Cal. App.2d 29, 124 P.2d 117 (1942); Sebring Co. v. O'Rourke, 101 Fla. 885, 134 So. 556 (1931); Wickwire Spencer Steel Co. v. Kemkit Scientific Corp., 292 N.Y. 139, 54 N.E.2d 336 (1944); Dillard v. Walker, 204 N.C. 67, 167 S.E. 632 (1933); Cleverly v. District Ct., 85 Utah 440, 39 P.2d 748 (1935).

[4]Richard v. McNair, 121 Fla. 733, 164 So. 836 (1935); *In re* Maltbie, 223 N.Y. 227, 119 N.E. 389 (1918); Balch v. Wastall, 1 P. Wms. 445, 24 Eng. Rep. 465 (Ch. 1718).

dent suit to reach property that legally should be applied in satisfaction.[5] Section 95.11(1) of *Florida Statutes 1949* provides that "An action upon a judgment or decree of a court of record in the State of Florida . . ." must be commenced within twenty years.[6] American jurisdictions are not in agreement, however, as to whether supplementary proceedings should be classified as an action upon the judgment or as a mere ancillary proceeding. If classified as the former, they toll the running of the limitation period; but if considered as the latter they must be completed before such period has run.

Other jurisdictions, as well as Florida, have been faced with the issue of construing supplementary proceedings in relation to limitation statutes.[7] One view is that they constitute an action upon the judgment and as such need only be initiated within the limitation period.[8] Proponents of this view contend that supplementary proceedings are as much a means of enforcing the judgment as is the ordinary writ of execution.[9] Some jurisdictions, however, regard them as an ancillary step in the collection of judgments; hence their pendency fails to keep the judgments alive after the limitation period has run.[10]

With the decision in the instant case, Florida adopts the rule that the judgment creditor must both commence and complete his supplementary proceedings within the period prescribed for enforcing the judgment. The decision is based in large part upon the principle that the life span of an execution does not exceed twenty years.[11] The judgment creditor can still protect himself, however, as against

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[5]Virginia-Carolina Chem. Corp. v. Smith, 121 Fla. 720, 164 So. 717 (1935).

[6]Massey v. Pineapple Orange Co., 87 Fla. 374, 100 So. 170 (1924) (20-year period begins to run on date judgment is rendered and not when execution is issued).

[7]Day, *The Period during which a Judgment Remains a Lien on Realty in Florida*, 2 U. OF FLA. L. REV. 315, 326 (1949).

[8]High v. Bank of Commerce, 95 Cal. 386, 30 Pac. 556 (1892); H. A. Thieman Co. v. Wolff, 125 Ky. 832, 102 S.W. 843 (1907); Fino v. Municipal Ct. of Boston, 93 N.E.2d 558 (Mass. 1950).

[9]Coates Bros. v. Wilkes, 94 N.C. 174 (1886).

[10]Ring v. Palmer, 309 Ill. App. 333, 32 N.E.2d 956 (1941); McAfee v. Reynolds, 130 Ind. 33, 28 N.E. 423 (1891); Newell v. Dart, 28 Minn. 248, 9 N.W. 732 (1881); Merchants Nat. Bank v. Braithwaite, 7 N.D. 358, 75 N.W. 244 (1898).

[11]*See* Young v. McKenzie, 46 So.2d 184, 186 (Fla. 1950). *But cf.* Day, *supra* note 7, at 315 *et seq.*