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FEDERAL COURTS - FEDERAL RULES OF CIVIL PROCEDURE - STATUTES OF LIMITATIONS - COMMENCEMENT OF ACTION

Harry M. Nayer
University of Michigan Law School

FEDERAL COURTS — FEDERAL RULES OF CIVIL PROCEDURE — STATUTES OF LIMITATIONS — COMMENCEMENT OF ACTION — Plaintiff brought suit on some promissory notes in the federal district court in Michigan. The complaint was filed before the expiration of the six-year Michigan statute of limitations, but although the plaintiff used due diligence he was unable to get personal service on defendant until the statutory period had elapsed. Defendant pleaded the statute of limitations. Both the Michigan [1] and the federal procedures provide that "a civil action is commenced by filing a complaint with the court." [2] *Held*, that the filing of the complaint tolled the running of the statute and the plaintiff should therefore be allowed to maintain his action. *Schram v. Koppin*, (D. C. Mich. 1940) 35 F. Supp. 313.

For over a hundred years the federal courts, in applying state statutes of limitations in law actions, have followed the state practice as to what is required to "commence" a suit to toll the running of these statutes. They have done so either on the theory that this matter is so closely related to substance as to be governed by the Rules of Decision Act,[3] or on the theory that it is a matter of procedure under the Conformity Act.[4] However, the practice in equity has

[1] Christe v. Springfield Fire & Marine Ins. Co., 207 Mich. 12, 173 N. W. 341 (1919).

[2] Rule 3, Federal Rules of Civil Procedure, under 28 U. S. C. (Supp. 1939), § 723c.

[3] 1 Stat. L. 92, § 34 (1848), 28 U. S. C. (1934), § 725; 3 OHLINGER, FEDERAL PRACTICE 18 et seq. (1939). See also Bauserman v. Blunt, 147 U. S. 647, 13 S. Ct. 466 (1893).

[4] 17 Stat. L. 197, § 5 (1872), 28 U. S. C. (1934), § 724; 3 OHLINGER, FEDERAL PRACTICE 18 et seq. (1939). And see 1 MOORE, FEDERAL PRACTICE UNDER THE FEDERAL RULES 241 (1938), for a persuasive argument to the effect that the definition of a "commencement" of an action is a procedural matter to be governed by the federal rules, and that Michigan Ins. Bank v. Eldred, 130 U. S. 693, 9 S. Ct. 690 (1889), which held that the state procedure governs, has lost much of its force.

been consistently different and there the federal courts have applied their own rules to determine what is necessary for the "commencement" of an action.[5] Rule 3 of the Federal Rules of Civil Procedure is clear in its language that merely filing a complaint is commencement of suit as far as the procedure of the federal court is concerned. There exists considerable controversy, however, as to whether this provision has any effect whatsoever on the question of what constitutes a commencement of suit for the the purpose of tolling the statute of limitations.[6] The crux of the matter seems to be whether the manner of commencing a suit for the latter purpose is a question of procedure to be determined by the law of the forum [7] or a question of substance. If deemed to be a matter of substantive law, not only would the federal courts be bound by the state statute and statutory interpretation, but the Supreme Court of the United States in the exercise of its rule-making power would lack competence to make any change. Under such a view, Rule 3 would have no effect on the operation of state statutes of limitations. This would seem to be in line with the philosophy expressed by the Supreme Court in *Erie Railroad v. Tompkins* [8] and would preclude the anomalous situation where an action might be barred by limitations in the state court and not barred on the same facts in the federal court sitting in that state. On the other hand, such an interpretation would require the federal courts, sitting in states where the procedure for tolling the statute differed at law and in equity, to distinguish between legal and equitable proceedings, when one of the principal objectives of the new federal rules is to obliterate the distinction between the two. Moreover, this interpretation would destroy uniformity among the federal courts in the method of tolling the statute. In a jurisdiction like Michigan the problem would never become acute, since the state practice seems to be similar to that indicated in Rule 3 [9] and the instant decision was reached without any express declaration whether it was rested on the state or federal rules. The conflict of procedures really becomes critical in those states where there is a specific statutory requirement of personal service to toll the running of the statute of limitations.[10] The principal case does little to dispel

[5] Linn & Lane Timber Co. v. United States, 236 U. S. 574, 35 S. Ct. 440 (1915); Equitable Life Assur. Soc. v. Schwartz, (C. C. A. 5th, 1930) 42 F. (2d) 646.

[6] It is significant that the advisory committee did not take a definite stand on this matter, but seemed to consider that the solution depended upon whether the question was one of procedure or substance. See also A. B. A., PROCEEDINGS OF THE CLEVELAND INSTITUTE ON FEDERAL RULES 202 (1938), and Mitchell, "Some of the Problems Confronting the Advisory Committee," 23 A. B. A. J. 966 at 967 (1937), where it was stated that the drafting committee sought to obviate some of the present difficulty by requiring the clerks of the court in rule 4A to issue the summons for service forthwith so as to cut down on the amount of time elapsing between filing the complaint and getting personal service.

[7] "The law of the forum determines at what moment action is begun." CONFLICTS OF LAWS RESTATEMENT, § 591 (1934), and note especially comment a.

[8] 304 U. S. 64, 58 S. Ct. 817 (1938).

[9] Christe v. Springfield Fire & Marine Ins. Co., 207 Mich. 12, 173 N. W. 341 (1919).

[10] Ohio is such a state. Ohio Gen. Code (Page, 1938), § 11230. In Gallagher v. Carroll, (D. C. N. Y. 1939) 27 F. Supp. 568, it was held in an action brought

the doubt existing around this question and it is to be hoped that the Supreme Court will hand down a definitive ruling in the near future. An ideal but rather improbable solution to this whole matter would be to have all of the states uniformly adopt the federal rules.

Harry M. Nayer

in the federal district court in New York to recover for injuries suffered in Pennsylvania that the question of whether or not the suit was "commenced" so as to toll the Pensylvania statute was to be determined by the federal procedure under Rule 3, rather than by the New York practice.