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## LIMITATION OF ACTIONS - CONTEMPT PROCEEDINGS

Menefee D. Blackwell  
*University of Michigan Law School*

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LIMITATION OF ACTIONS — CONTEMPT PROCEEDINGS — The application of statutes of limitation to proceedings for criminal or civil contempt involves some obscurity and confusion in the modern cases. Legislation has rarely provided expressly for the limitation of contempt proceedings, and their hybrid character has made it difficult to rely with confidence on analogies. The modern tendency of courts has been to differentiate between criminal and civil contempts for many purposes.<sup>1</sup> While the tests for distinguishing civil and criminal proceedings are not yet clear, it seems that the application of limitation acts depends very largely on this distinction.

Should the proceeding be established as one for criminal contempt, the law has heretofore been thought fairly well settled. If there is a limitation on contempt itself, or if contempt is made a crime by statute, neither authority nor logic seems to deny that the proceeding would be barred.<sup>2</sup> In other situations, however, there is some confusion. Where

<sup>1</sup> For some of the other results which flow from the distinction, see 31 MICH. L. REV. 1161 (1933), and cases cited.

<sup>2</sup> There are only two jurisdictions having statutes which specifically provide for contempt, and apparently only one case has raised the point squarely. The Clayton Act [38 Stat. L. 740 (1914), 28 U. S. C. (1934), § 390] contains such a provision,

the act is independently criminal, the usual course has been to say that the contempt is barred with the crime;<sup>3</sup> if the contemptuous act is not a distinct crime and there is no statute directly applicable, the common residuary limitation has been held to preclude the proceedings.<sup>4</sup> In the last year, however, at least one court has taken a different approach and said that criminal contempts were *sui generis*, and that even though a statute might bar a prosecution for the criminal act constituting the offense, the court could still punish for the contempt.<sup>5</sup>

In the field of civil contempt, results are more uncertain. The general problem is whether the statutes which are held applicable to enforcement procedure in general will carry over to contempt pro-

and while there has been some litigation under the section, most of it has been only as to its inclusiveness rather than its effect. See *United States v. Whiffen*, (D. C. Ohio 1927) 23 F. (2d) 352, reversed by *United States v. Goldman*, 277 U. S. 229, 48 S. Ct. 486 (1927). *Odell v. Bausch & Lomb Optical Co.*, (C. C. A. 7th, 1937) 91 F. (2d) 359, recently decided, seems to be a square decision that the proceedings would be barred. See also, *Ariz. Rev. Code* (Struckmeyer, 1928), § 4475.

In a jurisdiction where contempt is made a crime by statute, the proceeding would be barred by the statute relating to the class of crimes in which contempt was placed. *Gordon v. Commonwealth*, 141 Ky. 461, 133 S. W. 206 (1911). Apparently there are no cases to the contrary, though of course it could be said that the mere fact of making contempt a crime did not remove the court's inherent right to punish, but only added another possible penalty.

<sup>3</sup> *Beattie v. People*, 33 Ill. App. 651 (1889); *Goodall v. Superior Court of Santa Barbara County*, 37 Cal. App. 723, 174 P. 924 (1918). In the latter case the court seems to say that the adoption of the statutory period is permissive, but it does proceed to adopt it.

<sup>4</sup> *Gompers v. United States*, 233 U. S. 604, 34 S. Ct. 693 (1914), reversing *In re Gompers*, 40 App. D. C. 293 (1913). The statute here is a typical one. It reads: "No person shall be prosecuted, tried, or punished for any offense, not capital . . . unless the indictment is found, or the information is instituted, within three years next after such offense shall have been committed. . . ." *Rev. Stat.*, § 1044, 18 U. S. C. (1934), § 582.

See also *Pate v. Toler, J.*, 190 Ark. 465, 79 S. W. (2d) 444 (1935), construing *Ark. Stat.* (Crawford & Moses, 1921), § 2887 [Dig. (Pope, 1937), § 3703]; *State v. Phipps*, 174 Wash. 443, 24 P. (2d) 1073 (1933), construing *Wash. Comp. Stat.* (Remington 1922), § 2005.

<sup>5</sup> *State ex rel. Wright v. Barlow*, 132 Neb. 166, 271 N. W. 282 (1937), discussed in 15 *NEB. L. BUL.* 387 (1937). In this case the limitation act in force referred only to a "felony," "misdemeanor or other indictable offense below the grade of felony," and "any fine or forfeiture under any penal statute," none of which the court held would encompass contempt. *Neb. Comp. Stat.* (1929), § 29-110. The only suggestion of a limitation given by the Nebraska court is found in the language, "unless there is a showing of special circumstances by which delay in instituting the suit has prejudiced the rights of the defendant, the action is not barred by lapse of time."

See also *In re Jibb*, 121 N. J. Eq. 531, 191 A. 552 (1937), a similar case, but the act here was the filing of a false affidavit, which the court treats as a direct contempt and thus on a somewhat different footing.

ceedings, no provision having been made for them in terms. Modern codes commonly allow money decrees in chancery to be enforced in the same manner as law judgments,<sup>6</sup> and enforcement of law judgments often may be effected by procedure traditionally belonging to equity.<sup>7</sup> Merger of law and equity has sometimes gone further, and provisions may be found which require enforcement of all judgments of certain types by execution and allow enforcement of the remainder by proceedings which amount to contempt.<sup>8</sup> This type of statute simplifies the problem in that under such provisions it is apparent the equitable or legal nature of the adjudication on which the proceeding is brought will not control, but rather the character of the remedy sought will be scrutinized in applying the limitation statutes.<sup>9</sup>

The form which the limitation takes may be a controlling factor in determining its applicability to contempt proceedings.<sup>10</sup> A common form is that which bars actions on judgments after a specified period of time.<sup>11</sup>

<sup>6</sup> Ill. Rev. Stat. (1937), c. 22, § 47. The contempt power is provided for by § 42 of the same chapter. See also, Mich. Comp. Stat. (1929), § 14685.

<sup>7</sup> Mo. Rev. Stat. (1929), § 1102.

<sup>8</sup> N. Y. Civ. Prac. Act (Cahill, 1937), §§ 504, 505: "a final judgment may be enforced by execution: 1. Where it is for a sum of money in favor of either party; or directs the payment of a sum of money. 2. Where it is in favor of the plaintiff in an action of ejectment or for dower. 3. In an action to recover a chattel, where it awards a chattel to either party." It may be enforced by contempt "1. Where the judgment is final and cannot be enforced by execution, as prescribed in the last section. 2. Where the judgment is final and part of it cannot be enforced by execution. . . . 3. Where the judgment is interlocutory and requires a party to do or refrain from doing an act, except in a case specified in the next subdivision. 4. Where the judgment requires the payment of money into court, or to an officer of the court. . . ." Holding that where an execution can issue contempt proceedings cannot be used: *People ex rel. Sarlay v. Pope*, 230 App. Div. 649, 246 N. Y. S. 414 (1930). *Walters v. Reinhoudt*, 130 Misc. 745, 225 N. Y. S. 123 (1927).

For a statutory provision similar in effect to the New York statute above referred to, see N. C. Code (1931), § 663.

<sup>9</sup> "Unless statute provides otherwise, a judgment for alimony is subject to the same incidents as any other judgment in regards being barred by limitation statute." *Eubank v. Eubank*, (Mo. App. 1930) 29 S. W. (2d) 212.

<sup>10</sup> One type of "limitation" which would not be applicable here is that which comprises the various formal requirements for preserving the right to take out execution. For instance, New York requires renewal every five years or permission from the court (Civ. Prac. Act, §§ 650, 652); Illinois requires a scire facias or a "civil action" after seven years. Ill. Rev. Stat. (1937), c. 77, § 6, c. 110, § 179. In other states nothing is required so long as the judgment exists. *State ex rel. Meyer v. Buford*, (Mo. App. 1929) 18 S. W. (2d) 526, construing Mo. Rev. Stat., (1929), §§ 1113 and 886.

<sup>11</sup> "Within ten years an action [must be brought] 1. Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its rendition. . . ." N. C. Code (1931), § 437. For a similar provision, see Mich.

This is held to bar executions,<sup>12</sup> supposedly whether they are on equity decrees or common-law judgments.<sup>13</sup> The primary question under this type of statute seems to be whether contempt proceedings are "actions" within the meaning of the legislature, or whether their origin as extraordinary proceedings will serve to keep them as something apart.<sup>14</sup>

Many jurisdictions have failed to provide a limitation on actions on a judgment, but rather gain their objective by providing a conclusive presumption of satisfaction of the judgment itself.<sup>15</sup> Should the statute "conclusively presume" that judgments or decrees had been satisfied after the expiration of a certain term, on the face of it one may be justified in saying that the form of the action brought would be immaterial, and the decree would be as satisfied whether the plaintiff used contempt or some other form of enforcement.<sup>16</sup> But this type

Comp. Stat. (1929), § 13976 (1). Also see Ill. Rev. Stat. (1937), c. 77, § 6, c. 83, § 26.

Limitations on actions on a judgment may arise by analogy. See *Graham v. Simon*, 76 Ohio St. 77, 81 N. E. 170 (1907), and *Stewart v. Campbell*, 97 Ohio St. 335, 120 N. E. 175 (1918), construing Ohio Gen. Code, §§ 11648, 11227.

As a judgment is sometimes regarded as a contract, the limitation on contracts could conceivably bar actions on judgments even if there were no statute which did so in terms. Holding, however, that a limitation on "actions of debt grounded upon any lending or contract" does not limit actions on a judgment is *Vincent v. Watson*, 40 Pa. 306 (1861), construing a provision which is now contained in Pa. Stat. Ann. (Purdon, 1930), tit. 12, § 31.

<sup>12</sup> Holding that a motion for an execution is barred by the North Carolina statute cited in note 11: *McDonald v. Dickson*, 85 N. C. 248 (1881); *Ex parte Smith*, 134 N. C. 495, 47 S. E. 16 (1904). To the same effect under the Michigan statute, see *Jerome v. Williams*, 13 Mich. 521 (1865); *Parsons v. Wayne County Circuit Judge*, 37 Mich. 287 (1877); *Ludeman v. Hirth*, 96 Mich. 17, 55 N. W. 449 (1893).

<sup>13</sup> *Eubank v. Eubank*, (Mo. App. 1930) 29 S. W. (2d) 212; *Arrington v. Arrington*, 127 N. C. 190, 37 S. E. 212 (1900), decided under the statute referred to in note 11. *Kaiser v. Kaiser*, 213 Mich. 660, 181 N. W. 993 (1921), was decided under a Michigan statute limiting actions "founded on judgments or decrees." The case was a contempt proceeding to compel payment of installments of alimony in arrears. The court held that the action was maintainable at least for those payments which accrued in the ten years next preceding the action, but in so doing indicated that all other payments would be uncollectible.

<sup>14</sup> N. Y. Civ. Prac. Act (Cahill, 1937), § 10: "The word 'action' contained in this article is to be construed, when it is necessary so to do, as including a special proceeding or any proceeding therein or in an action." See note 22 for application of this to the residuary clause.

<sup>15</sup> E.g., Mo. Rev. Stat. (1929), § 886: "Every judgment, order, or decree . . . after the expiration of ten years . . . or if the same has been revived . . . then after ten years from and after such revival . . . such judgment shall be conclusively presumed to be paid, and no execution, order, or process shall issue thereon, nor shall any suit be brought, had or maintained thereon for any purpose whatever."

<sup>16</sup> The Missouri provision in the previous note seems comprehensive. While a contempt proceeding never seems to have raised the point under this statute, it was held in *Eubank v. Eubank*, (Mo. App. 1930) 29 S. W. (2d) 212, to devitalize an

of statute is not universal. Indeed there may be no legislative limitation at all,<sup>17</sup> and the conclusive presumption of payment may be combined with the limitation on actions to enforce judgments<sup>18</sup> or it may exist alone.<sup>19</sup> It may also be provided that certain types of judgments shall be presumed satisfied, and the others left unmentioned.<sup>20</sup>

If there is neither a provision which deals with actions on judgments nor a presumed satisfaction of the particular type of judgment in question, an enforcement of judgment in the usual way may be prohibited by a residuary limitation found in some jurisdictions.<sup>21</sup> Thus in New York, where the disabling statute operates only on money judgments, other methods of enforcement are cut off by the ten-year residuary clause.<sup>22</sup> Here there is only the old problem in a new dress, the court having to decide whether to conclude the contempt proceeding by virtue of the statute as to actions; and again about the only guides are the cases in which other proceedings for the same end are barred.<sup>23</sup>

A final possible restriction on the time in which contempt proceed-

equity decree so that it could not be enforced by an execution. There seems to be no room for doubt that an ordinary suit would be barred. The intermediate appellate court in Missouri has held this provision to be applicable only to money decrees, and while the case was that of an injunction and thus could have been decided on the ground that the decree was a continuing decree, such probably is the general view of similar provisions. *Kelly v. City of Cape Girardeau*, 230 Mo. App. 137, 89 S. W. (2d) 693 (1936). See 34 C. J. 693 (1924).

Of course, before there could be any dispute over the type of action brought, it would have to be decided whether the judgment was enforceable for any purpose. Courts have construed statutes of similar import to be only rules of evidence. *Ind. Stat. Ann.* (Burns, 1933), § 2-614, so construed in *Odell v. Green*, 72 *Ind. App.* 65, 121 N. E. 304, 122 N. E. 791 (1918).

<sup>17</sup> See *Barber v. International Co. of Mexico*, 74 *Conn.* 652, 51 A. 857 (1902).

<sup>18</sup> *Ind. Stat. Ann.* (Burns, 1933), §§ 2-602, 2-614.

<sup>19</sup> *N. C. Code* (1931), § 437.

<sup>20</sup> The statutory provision in New York refers to money decrees. Actions to enforce judgments and decrees other than those would apparently be barred by *N. Y. Civ. Prac. Act* (Cahill, 1937), § 53: "An action, the limitation of which is not specifically prescribed in this article, must be commenced within ten years after the cause of action accrues."

<sup>21</sup> *Mich. Comp. Stat.* (1929), § 13976; *N. C. Code* (1931), § 445. See also, *Strizich v. Zenith Furnace Co.*, 176 *Minn.* 554, 223 N. W. 926 (1929), involving proceedings to enforce compensation payments in arrears, the court construing Minnesota's six year statute.

<sup>22</sup> See note 20 for the New York provision. For an opinion dealing with this in relation to "supplementary proceedings," see *Meinhard v. Millstein*, 159 *Misc.* 889, 289 *N. Y. S.* 206 (1936), reversed 162 *Misc.* 22, 293 *N. Y. S.* 966 (1937).

<sup>23</sup> Should the view be taken that limitations on civil enforcing actions apply to civil contempts, it might be quite proper to say that a statutory limitation on contempt itself referred only to the penal aspect. This seems to recognize the proposition that civil contempts are essentially only enforcing actions. *Odell v. Bausch & Lomb Optical Co.*, (C. C. A. 7th, 1937) 91 *F.* (2d) 359.

ings might be started is the doctrine of laches.<sup>24</sup> It is notable that in New York, where apparently there is no statute relating to judgments which will apply to contempts,<sup>25</sup> courts have held that the civil proceedings are subject to the bar of laches.<sup>26</sup> Even in states in which contempts are limited by an action-on-the-judgment statute,<sup>27</sup> laches may be resorted to as a supplementary form of control.<sup>28</sup>

It is likely that different results would be reached where the contempt is for breach of a continuing order rather than for the enforcement of a decree requiring immediate payment of money or performance of an act. It is manifest that the statute should not run against a plaintiff until a violation of the decree has occurred. Some statutory provisions indicate this by their phrasing, and in this circumstance the limitations would seem as pertinent as in the case of a decree of a present act.<sup>29</sup> Even in the case of provisions which in terms limit the time during which an action may be brought or presume satisfaction after a period of time from the *rendition* of the judgment, courts have held that the period runs from the time the right to proceed accrues to the plaintiff rather than from the rendition itself, and the statute thus seems to apply in this situation.<sup>30</sup>

Limitation provisions of one or the other of the types mentioned are found in nearly every state. As has been suggested, their applica-

<sup>24</sup> In the absence of any statutory regulation, judgments might also be limited by a "common-law presumption" of satisfaction. *Barber v. International Co. of Mexico*, 74 Conn. 652, 51 A. 857 (1902).

<sup>25</sup> See note 20, *supra*.

<sup>26</sup> *Sax v. Sax*, 130 Misc. 696, 224 N. Y. S. 634 (1927). The decree was for the payment of alimony.

<sup>27</sup> *Smith v. Smith*, 246 Mich. 80, 224 N. W. 337 (1929), where the proceedings were not brought for more than twenty years. The ten-year statute had not run because the judgment debtor had been out of the jurisdiction all but eight years of the time.

<sup>28</sup> *Kaiser v. Kaiser*, 213 Mich. 660, 181 N. W. 993 (1921), discussed above, note 13.

<sup>29</sup> The provision as to expiration of judgments in New York, for instance, is, "twenty years from the time when the party recovering it was first entitled to a mandate to enforce it." Civ. Prac Act, § 44.

<sup>30</sup> The Michigan court has said that an action-on-the-judgment provision limiting actions after a specified period of time from the rendition of the judgment does not preclude contempt proceedings for alimony installments which become payable within the statutory period immediately preceding the inception of the proceedings. *Kaiser v. Kaiser*, 213 Mich. 660, 181 N. W. 993 (1921). See also, *Gutowski v. Gutowski*, 266 Mich. 1, 253 N. W. 192 (1934); *Arrington v. Arrington*, 127 N. C. 190, 37 S. E. 212 (1900).

Under Mo. Rev. Stat. (1929), § 886, it has been clearly held in intermediate courts that the limitation operates only from the date of violation. *Kelly v. City of Cape Girardeau*, 230 Mo. App. 137, 89 S. W. (2d) 693 (1936); *Mayes v. Mayes*, (Mo. App. 1937) 104 S. W. (2d) 1019. This statute is one of presumed satisfaction after a specified period of time from the rendition.

tion to contempt proceedings will be determined in part by the tests used to distinguish civil from criminal contempt. While heretofore general limitations on civil proceedings have had little extension into the field of civil contempt, the tendency to distinguish civil from criminal contempt, together with the marked trend of legislatures to merge legal and equitable remedies, may well lead courts to apply such limitations in the future. At the present time there are but few cases indicating that such will be the result, but the treatment accorded analogous enforcing actions seems to point in this direction.

*Menefee D. Blackwell*

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