WHEN IS A FOREIGN CAUSE OF ACTION BARRED BY LIMITATIONS IN MISSOURI?

Since the decision of the cases of *Christner v. Chi., R. I. & P. Ry. Co.* by the Kansas City Court of Appeals[1] and *Wright v. New York Underwriters Insurance Co.* by Judge Reeves of the United States District Court for the Western District of Missouri[2] the question of when a foreign cause of action is barred by limitations in Missouri has become a live one.

The first declaration of the law of limitations applicable to foreign causes of action which were sued on in Missouri was made in 1841. The rule was then stated to be that it was no defense to show that under the law of the place in which the cause of action arose the remedy thereon had been barred by lapse of time.[3] The counterpart of the rule was declared in 1865 to be that it was a good defense to an action in Missouri on a foreign cause of action to show that, because of the lapse of time, the *right* of the plaintiff had been extinguished by the law of the place where the cause of action arose.[4] The final refinement of the rule was reached in 1870 when it was held that unless the law of the place where the cause of action arose *expressly* extinguished the *right* of the plaintiff because of lapse of time with no action having been brought thereon, the laws of Missouri relating to limitations of actions would be applied in every case.[5] The rule was justified on two grounds, first, that so long as the right of the plaintiff continued to be alive it was of no consequence that the laws of Missouri allowed him more time in which to force the defendant to do his duty than the laws of the place where the cause of action arose and, second, that the limitation laws of the place where the cause of action arose could have no extraterritorial effect.

The distinction made by the Missouri courts between limitation laws which merely bar a remedy and those which extinguish the right is of no consequence at the present time. It is submitted that in any event it would seem to be a distinction without a difference, as a practical matter, to say that the abolition of the remedy whereby a right may be enforced is not also an abolition of the right. It would seem that a right without a remedy is exactly equal in amount to Shakespeare's two grains of wheat.[6]

In 1855 the Missouri legislature added a new element to the

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[1] (1933) 228 Mo. App. 220, 64 S. W. (2nd) 752.
[2] (1933) 1 Fed. Supp. 663.
[3] King v. Lane (1841) 7 Mo. 241.
[4] Baker v. Stonebraker (1865) 36 Mo. 338.
[5] Carson v. Hunter (1870) 46 Mo. 467.
[6] Merchant of Venice.

limitation laws of the state by providing that "If any action shall have been commenced within the times respectively prescribed in the preceeding articles, and the plaintiff therein suffer a non-suit, or after verdict for him, the judgment be arrested, or after judgment for him, the same be reversed on appeal or error such plaintiff may commence a new action from time to time, within one year after such non-suit suffered or judgment arrested or reversed . . ."[7] This section has continued to be a part of the statutory law of Missouri from the time of its enactment until the present. It appears as R. S. Mo. 1929, §874 in the same words as quoted above except that as R. S. Mo. 1929, §874 it is worded "If any action shall have been commenced within the times respectively prescribed in articles 8 and 9 of this chapter . . ." This statute has been construed to be a saving clause and not to have provided additional limitations on the right of a plaintiff to sue. Thus it is held that R. S. Mo. 1929, §874 applies only to save the new action provided for in it from the bar of the statutes of limitations that would otherwise be applicable at the time of the non-suit, arrest of judgment or reversal of judgment.[8]

For the sake of clarity it is well at this point to summarize the law of limitations applicable to foreign causes of action as it existed in Missouri in 1899. It was as follows: If the law of the place where the cause of action arose did not expressly provide that the lapse of a certain length of time without suit having been brought would extinguish plaintiff's right, then the time within which the action could be maintained in Missouri depended on the law of Missouri relating to limitations of actions. If, having the right to do so, a person brought suit in Missouri on a foreign cause of action and, after such an action had been barred by the Missouri limitation laws, such person suffered a non-suit, arrest of judgment, or reversal of judgment therein, then, because of what is now R. S. Mo. 1929, §874, he could bring a new action within a year from the date of the non-suit, arrest or reversal of judgment.

In 1899 the Missouri legislature passed a statute relating expressly to limitations applicable to foreign causes of action which were sued on in Missouri. This entire enactment is here set out in order that its intended effect may be more clearly observed. This section provided as follows:

"LIMITATIONS OF ACTIONS: PERSONAL ACTIONS

"An Act to amend chapter 103 of the Revised Statutes of Missouri 1899, entitled 'Limitations of Actions' by adding a

[7] Laws of Missouri (1855) Ch. 103, Article 3, Section 3, page 1051.
[8] Billion v. Walsh (1870) 46 Mo. 492.

new section thereto, to be known as section 6779a, and relating to limitations of actions when barred by the laws of the states, territory or country in which it originated and defense thereto.

"Section 1. When bar to action is complete defense. Be it enacted by the General Assembly of the State of Missouri as follows:

"(Section 1) §6779a. Whenever a cause of action has been fully barred by the laws of the state, territory or country in which it originated, said bar shall be a complete defense to any action thereon in any of the courts of this state."[9]

This section has continued to be a part of the statutory law of Missouri from the date of its enactment to the present day. It appears as R. S. Mo. 1929, §869. It is the final declaration of the legislature with regard to limitations applicable to foreign causes of action which are sued on in Missouri.

It is in attempting to decide what effect this statute had that the modern difficulty in determining when a foreign cause of action is barred by limitations in Missouri has been occasioned.

The question of whether a cause of action is barred by limitations arises only at the time of the institution of a suit thereon. In considering when a foreign cause of action is barred by limitations in Missouri it is well to consider the question presented at the time of the institution of the original action on a foreign cause of action separately from the question which is presented at the time of the institution of successive actions on the same cause of action.

At the time of the institution of the original action in Missouri on a foreign cause of action the question becomes, by what law is the right of the plaintiff to maintain such action to be governed? As was pointed out herein prior to the enactment of what is now R. S. Mo. 1929, §869, if the law of the place had not, due to lapse of time, extinguished the right of the plaintiff, then the law of Missouri relating to limitations of actions controlled. Since the passage of what is now R. S. Mo. 1929, §869, the Missouri courts hold that the time limited by the law of the place where the cause of action arose is the law which governs the right of the plaintiff to maintain his action in Missouri.[10] It must be here noted that §869 does not provide, except indirectly, the time within which foreign causes of actions must be sued on in Missouri. By providing that "whenever a cause of action shall have been fully barred by the laws of the place in

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[9] Laws of Missouri (1899) page 300.

[10] Theis v. Wood (1911) 238 Mo. 643, 142 S. W. 431; Thompson v. Lyons (1920) 281 Mo. 430, 220 S. W. 942; St. Joe & G. I. Ry. Co. v. Ellenwood Grain Co. (1918) 199 Mo. App. 432, 203 S. W. 680; Deal v. St. L. & S. F. Ry. Co. (1914) 176 Mo. App. 8, 162 S. W. 760.

which it originated said bar shall be a complete defense[10a] to any action thereon in any of the courts of Missouri," the legislature thereby implied the rule which is now announced by the courts as above stated. For the purposes of this article the rule may well be worded as follows: Foreign causes of action must be sued on in Missouri within the same time as would be required if suit were to be brought thereon in the state in which they originated. It will be observed that R. S. Mo. 1929, §869 had the effect of abolishing the distinction between limitation laws of the place wherein the cause of action arose which extinguished the *right* and those which merely extinguished the *remedy* and made foreign causes of action subject to the same limitations in Missouri to which they were subject in the state of their origin.

To the rule that the time within which suit must be brought in Missouri on foreign causes of action is governed by the limitation laws of the state in which it originated, there has been added a qualification. In cases where the law of the place in which the cause of action originated allows *more* time for the institution of a particular class of litigation than is allowed therefor by the laws of Missouri, the courts of Missouri hold that the law applicable is the law of Missouri. The reasons given for this qualification of the general rule is that R. S. Mo. 1929, §869 was intended as a further limitation on suits in Missouri on foreign causes of action[11] and was not intended to relieve a suitor from the operation of the laws of Missouri.

Supposing that an original action was filed within the time allowed therefor by the foregoing rules, and subsequently, after the expiration of the time limited for the filing of such a suit, the plaintiff therein suffered a non-suit, arrest of judgment or reversal of judgment. His right to bring another action on the same cause of action is to be determined under the law as it existed prior to the enactment of R. S. Mo. 1929, §869 which, as heretofore explained, was governed by the law of Missouri, and thus by R. S. Mo. 1929, §874. Since the enactment of R. S. Mo. (1929) §869 the rule has been changed. The first case dealing with the question after the passage of §869 was the case of *McCoy v. C. B. & Q. Ry. Co.* in which the Kansas City Court of Appeals per Judge Ellison held that the right of a plaintiff to commence a new action in Missouri on a foreign cause of action, after suffering a non-suit in a prior suit which was timely brought, was to be determined by the law of the place where the cause of action originated, and if, according to that law, the plaintiff did not have the right to commence a new action, he

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[10a] Italics supplied.

[11] Farthing v. Sams (1922) 296 Mo. 442, 247 S. W. 111.

did not, because of R. S. Mo. 1929, §869, have the right to do so in Missouri.[12]

The rule stated by Judge Ellison was followed by the Missouri Supreme Court in the case of *Handlin v. Burchett*[13] which is now the last controlling decision of the Supreme court, and is thus the law of Missouri at the present time.

This construction of R. S. Mo. 1929, §869 is in accord with the obvious intent of the legislature. By its express wording it applies *whenever* a cause of action originating in a foreign state has been fully barred by the laws of that state and applies to *any* action on the foreign cause of action. The law applicable in all cases of suits in Missouri on foreign causes of action prior to its enactment was, as herein shown, that of Missouri; and after non-suit, arrest of judgment, or reversal, of a prior action which had been timely brought, but which, at the time of the non-suit, etc., was barred by the law of Missouri, a new action was allowed by R. S. Mo. 1929, §874. Being fully cognizant of the law as it then existed, it is a fair inference that the legislature intended to negative any effect which §874 may have had in such a case by making §869 applicable to *any* action on a foreign cause *whenever* it was fully barred by the law of the foreign state.

The question of which law governs the right of a plaintiff to commence a new suit in Missouri on a foreign cause of action after having suffered a non-suit in a prior action which had been timely brought thereon, was presented to Judge Reeves of the United States District Court for the Western District of Missouri.[14] Saying that the rule of the *McCoy* case[14a] did not seem tenable to him, he held that when an original action was commenced in Missouri on a foreign cause of action within the time allowed therefor by the law of the state in which it originated, then §869 was satisfied, and if subsequently the plaintiff therein suffered a non-suit, his right to commence a new suit on the same cause of action in Missouri was governed by R. S. Mo. 1929, §874. In making this ruling the learned Judge fell into grievous error. His ruling does not accord with the obvious intent of R. S. Mo. 1929, §869 because it restricts the application of the statute to the original action in Missouri on a foreign cause of action when the statute expressly applies *whenever* a cause of action which originates in another state has been fully barred by the laws of the state etc., wherein it originated, said bar shall be a complete defense to *any action thereon* etc. Further,

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[12] (1909) 134 Mo. App. 622, 114 S. W. 1124.

[13] (1917) 270 Mo. 114, 192 S. W. 1016.

[14] Wright v. New York Underwriters Insurance Co. (1932) 1 Fed. Supp. 663.

[14a] Supra, note 12.

it has long been held by the Federal courts that in the construction of state statutes, the Federal courts will follow the construction placed thereon by the courts of the particular state.[15] In refusing to follow the *McCoy* case, and in failing to follow *Handlin v. Burchett* Judge Reeves did not do his duty as required by the Conformity Act. Hence, this opinion cannot be regarded as good law in Missouri.

Following the example set by Judge Reeves, the Kansas City Court of Appeals in a case which appeared to them to involve the question of the right of a plaintiff to bring new action in Missouri on a foreign cause of action after having suffered a non-suit in a prior suit thereon in Missouri, decided, in an opinion written by Judge Bland, that the law of Missouri was the law which determined the plaintiff's right.[16] If this opinion were not wholly dictum it would be subject to the same criticism as that of Judge Reeves, in that such a holding fails to give full effect to the provisions of R. S. Mo. (1929) §869, and thus negatives a part of said statute, and also seeks to overrule the Supreme Court in the case of *Handlin v. Burchett* which, it is submitted, the Kansas City Court of Appeals is without authority to do. The opinion of Judge Bland is wholly dictum for the reason that the cause of action sued on in the particular case was a tort claim for personal injuries sustained by Plaintiff in Kansas. The Kansas statutes barred such actions within two years after they arose. More than two years after the cause of action arose plaintiff filed the original action in Missouri and thereafter voluntarily dismissed it. Within a year after such dismissal a new suit was commenced on the same course of action which suit was prosecuted to judgment for the plaintiff. Defendant contended that the action was barred by R. S. Mo. 1929, §869. In affirming the judgment for the plaintiff, the learned judge held that since in the prior action the plaintiff had suffered a non-suit under R. S. Mo. 1929, §874, she had another year within which to bring the present suit, and since this had been done the action was not barred. Without going into detail, it appears from the facts that the original action brought by the plaintiff was, at the time it was commenced, barred by the two year statute of Kansas and thus under R. S. Mo. 1929, §869 it was also barred in Missouri. This being so, the action was not commenced within the time allowed by the Missouri statute. R. S. Mo. 1929, §874 provides expressly *"If any action shall have been commenced within the times respectively prescribed*

[15] Michigan Central R. R. Co. v. Michigan Ry. Comm. (1915) 236 U. S. 615; Old Colony Trust Co. v. City of Omaha (1913) 230 U. S. 100.

[16] Christner v. Chi. R. I. & P. Ry. Co. (1933) 228 Mo. App. 220, 64 S. W. (2nd) 757.

in articles 8 and 9 *of this chapter and the plaintiff therein suffer a non-suit* etc." R. S. Mo. 1929, §869 is one of the sections in Article 9 referred to R. S. Mo. 1929, §874. Thus, since the original action was not brought within the time allowed therefor in article 9, §874, had nothing to apply to, and hence any remarks concerning its effects are purely dicta.

There being no other deviations from the rule as declared by the Missouri Supreme Court in *Handlin v. Burchett* it stands as the law of Missouri today, the rule being that whenever, under the law of the place where the cause of action arose, further action thereon is barred, the same bar is a complete defense to any action thereon in the courts of Missouri.

J. H. HALEY '26.

DECLARATORY JUDGMENTS WITH RECENT MISSOURI DEVELOPMENTS

The Uniform Declaratory Judgment Act was enacted into law in Missouri on June 22, 1935,[1] thus becoming the sixth Uniform Act to be adopted in Missouri: the Negotiable Instruments Law, the Warehouse Receipts Act, the Reciprocal Transfer Act, the Veterans Guardianship Act, and the Federal Tax Lien Registration Act having been adopted previously. Four of the six acts have been adopted within the last six years. The widespread interest which has been manifested in the Declaratory Judgment Act by legal scholars and by state legislatures merits its discussion.

Historically, the underlying theory of declaratory actions dates back to the time of Moses.[2] From the Bible we learn that Zelophehad, a noble Israelite, died and left five daughters. Indignant over the possibility of having the property pass from the family's control because the father left no male heir to succeed to the heirloom, the daughters insisted upon claiming the right to inherit the estate. The petition was pointed! It simply put to the court the question, "Why should the name of our father be done away from among his family, because he hath no son?"[3]

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[1] Laws of Mo. 1935 p. 218. The wording of section 1 of the Missouri law has substituted the wording, "The Circuit Courts and the Courts of Common Pleas of this state, within their respective jurisdictions, etc." for the phrase, "Courts of record within, etc." contained in the Uniform Act. Sections 16 & 17 were omitted as being unnecessary and Section 15 was reworded to read, "All laws or parts of law in conflict with the provisions of this act are hereby repealed in so far as such laws are in conflict with provisions of this tct."

[2] Clark, And Zelophehad Had Daughters, 10 A. B. A. Journal 133 (1924).

[3] Numbers, 27: 4.