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George P. Doyle

not hear taxpayers' claims. Also, there was a genuine dispute present. The petitioner actually was seeking relief. All interested parties presented arguments to the Court. This would have been an opportunity to make an exception to the long established court-made rule of standings, *i.e.*, allow a taxpayer capacity to bring an action under these circumstances, especially where such a large fiscal matter is involved. But even though the Court does not choose to overrule the standing doctrine, it is still within the power of the Legislature to pass a statute permitting standing for constitutional issues of great public importance.

Anthony S. Kowalski

CONSTITUTIONAL LAW—PRIVATE BILL TO NEGATIVE STATUTE OF LIMITATIONS HELD UNCONSTITUTIONAL.

On September 21, 1954, the State of New York issued its check for $6,053.29 to the Homer Engineering Company. This check represented full payment for certain work performed by the company on a state hospital building. While the offices of Homer Engineering Company were being moved from one city to another, this check was inadvertently lost.[1] More than six years elapsed before the check was discovered. Due to this extensive lapse of time, the state comptroller would not have honored the check.[2] Thereafter, the State Legislature passed a private bill[3] conferring jurisdiction on the Court of Claims to hear the Homer Engineering Company's claim even though it might be barred by lapse of time. The Court of Claims heard the claim and granted Homer Engineering Company judgment in the sum of $6,053.29. Judge Scileppi, speaking for a unanimous Court of Appeals, overruled the Court of Claims. An enabling act purporting to grant jurisdiction for a claim against the state which would have been barred had it been a claim between private citizens, violates the New York State Constitution. *Homer Engineering Co., Inc. v. State of New York* 12 N.Y.2d 508, 191 N.E.2d 455, 240 N.Y.S.2d 973 (1963).

At common law, in the absence of a specific statute, there was no fixed time in which a cause of action had to be brought.[4] The first such statute was passed in 1623.[5] At present it is the policy of the State that there shall be a fixed limit to the time in which any legal or equitable cause of action can be brought.[6] The statutes are founded, at least partially, on the policy of preventing litigation which may be commenced long after records relating thereto are lost and the memories of the parties have grown vague.[7] There is also a notion that failure to

1. Record, vol. 1, p. 20.
2. N.Y. Fin. Law § 102.
3. N.Y. Sess. Laws 1961, ch. 537.
4. Hart v. Deshong, 40 Del. (1 Terry) 218, 8 A.2d 85 (1939).
5. An Act for Limitation of Actions, 1623, 21 Jac. 1, c. 16.
6. Glover v. National Bank of Commerce, 156 App. Div. 247, 141 N.Y. Supp. 409 (1st Dep't 1913).
7. Schmidt v. Merchants Despatch Transp. Co., 270 N.Y. 287, 200 N.E. 824 (1936).

press a claim in a timely fashion creates a presumption against the validity of the claim.[8] Statutes of limitation are frequently termed statutes of repose[9] since they are designed to set at rest, after a definite period, the right to proceed with a cause of action.[10] The statute of limitations is, of course, available only as a defense.[11] It is not strictly a technical defense,[12] however, as it serves the beneficient purpose of barring the assertion of state claims.[13] It is frequently emphasized that the statute of limitations does not affect the substantive rights claimed but rather serves as a positive bar to litigation.[14] The statute operates against natural as well as artificial persons.[15] Admittedly, it may at times bar the assertion of a just claim and thereby cause hardship. These occasional hardships have been found, however, to be outweighed by the advantage of inhibiting the prosecution of untimely law suits.[16]

A claim based on an implied or expressed contract must be brought within six years after the cause of action has accrued or it will be barred by the statute of limitations.[17] When a contractual claim is represented by an ordinary check or bill of exchange, the cause of action accrues as of the date of the issuance and delivery of the instrument.[18] Provisions in the New York State Finance Law recognize this by providing that a record of all unpaid checks must be retained for a period of six years.[19] However, the State Legislature generally has control over the statute of limitations as applied to litigation either between citizens or between a citizen and the state.[20] The Legislature may also enact a statute of limitations which has the effect of reviving a cause of action barred by a previously applicable statute of limitations.[21] This emphasizes the importance of the principle that the statute of limitations does not affect the right but only bars the remedy.[22] In addition to the Legislature's power to change the statute of limitations it may also legalize claims which, although technically invalid, are nevertheless morally and equitably binding.[23] They are not prohibited from

8. Lincoln Joint Stock Land Bank v. Barnes, 143 Neb. 58, 8 N.W.2d 545 (1943).
9. Arnold v. Mayal Realty Co., 299 N.Y. 57, 85 N.E.2d 616 (1949); Gregoire v. G. P. Putnam's Sons, 298 N.Y. 119, 81 N.E.2d 45 (1948).
10. Gorowitz v. Blumenstein, 184 Misc. 111, 53 N.Y.S.2d 179 (Sup. Ct. 1944).
11. People v. Durey, 126 Misc. 642, 653, 214 N.Y. Supp. 418, 429 (Sup. Ct. 1926).
12. Curtiss-Wright Corp. v. Intercontinental Corp., 277 App. Div. 13, 97 N.Y.S.2d 678 (1st Dep't 1950).
13. See, *e.g.*, Gregoire v. G. P. Putnam's Sons, 298 N.Y. 119, 81 N.E.2d 45 (1948).
14. Schenck v. State Line Telephone Co., 207 App. Div. 454,457, 202 N.Y. Supp. 378, 380 (2d Dep't 1923); Santasieri v. Crane, 175 Misc. 375, 23 N.Y.S.2d 455 (Sup. Ct. 1940).
15. Wehrenberg v. New York, N.H., & H. R.R., 124 App. Div. 205, 108 N.Y. Supp. 704 (1st Dep't 1908).
16. Schmidt v. Merchants Despatch Transp. Co., 270 N.Y. 287, 302, 200 N.E. 824, 827-28 (1936).
17. N.Y. Civ. Prac. Act § 48(1), N.Y.CPLR § 213(2).
18. Donlon v. Davidson, 7 App. Div. 461, 39 N.Y. Supp. 1020 (4th Dep't 1896); Farrell v. City of New York, 197 Misc. 1059, 98 N.Y.S.2d 56 (Sup. Ct. App. T. 1950).
19. N.Y. State Fin. Law § 102.
20. Rexford v. Knight, 11 N.Y. 308 (1854).
21. Denkensohn v. Ridgway Apts., 13 Misc. 2d 389, 180 N.Y.S.2d 144 (Sup. Ct. App. T. 1958).
22. Application of Addesso, 69 N.Y.S.2d 702 (Sup. Ct. 1947).
23. Stone v. Graves, 258 App. Div. 381, 17 N.Y.S.2d 379 (3d Dep't 1940), *aff'd*, 283 N.Y. 470, 28 N.E.2d 919 (1940).

doing on behalf of the State that which a sense of justice and equity would dictate to an honorable person.[24] The test generally is whether the claim appears to the judicial conscience to belong to the class of claims which the Legislature in its exercise of wide discretion might reasonably say is founded in equity.[25] The circumstances should be so exceptional as to satisfy the court that serious injustice would result if the intentions of the Legislature were not effectuated.[26] The Legislature is, however, constitutionally forbidden from auditing, allowing, or paying a claim which as between citizens of the state would be barred by lapse of time.[27] This provision is construed to set the outer limit with respect to the age of a claim against the State.[28] The Legislature may only waive its temporal requirements within that limit.[29]

The reasoning of the Court in this case is clear and compelling. If this claim had existed between private citizens, it would clearly have been barred by the six-year statute of limitations.[30] The constitutional provision involved in this case has been construed to prohibit the Legislature from subjecting the State to a less favorable time limitation than the one enjoyed by private citizens.[31] The enabling act, by allowing the Court of Claims to hear this claim even though it would be barred if it were between citizens, is violative of the State Constitution and is therefore void. The Court admits that the result reached in the instant case may seem harsh and unfair but insists that well established authorities compel the result. In an attempt to ameliorate the harshness of the decision, the Court points out that the claimant could have acquired a duplicate of the mislaid check at any time during a six-year period by making application to the Comptroller.

The Court, in this case, felt compelled to follow a constitutional mandate by disallowing an apparently just claim. While it is apparent that the claimant in this action was negligent in not noticing a shortage in his accounts of over $6,000, it is equally apparent that as a result of this decision, the State is unjustly enriched by that same amount. In enforcing the statute of limitations and the constitutional provision related thereto, the Court has never adverted to the underlying purposes of either. The statute of limitations is aimed at preventing the injustice of forcing a defendant to litigate a claim which is far removed in time from the present.[32] This would be unjust in that the defendant may no longer be able to acquire either oral or documented evidence because of the extensive lapse of time.[33] This possible injustice does not appear to be present

24. Ausable Chasm Co. v. State, 266 N.Y. 326, 194 N.E. 843 (1935).
25. Campbell v. State, 186 Misc. 586, 62 N.Y.S.2d 638 (Ct. Cl. 1946).
26. Gallewski v. H. Hentz & Co.. 301 N.Y. 164, 93 N.E.2d 620 (1950).
27. N.Y. Const. art. III § 19.
28. Oswego & Syracuse R.R. Co. v. State, 226 N.Y. 351, 361, 124 N.E. 8, 12 (1919); *accord*, City of Buffalo v. State, 116 App. Div. 539, 101 N.Y. Supp. 595 (3d Dep't 1906), *aff'd*, 191 N.Y. 534, 84 N.E. 1110 (1908); Coish v. State, 23 Misc. 2d 117, 203 N.Y.S.2d 748 (Ct. Cl. 1960) (wrongful death action).
29. *Ibid.*
30. N.Y. Civ. Prac. Act § 48(1).
31. Oswego & Syracuse R.R. Co. v. State, 226 N.Y. 351, 361, 124 N.E. 8, 12 (1919).
32. Gregoire v. G. P. Putnam's Sons, 298 N.Y. 119, 81 N.E.2d 45 (1948).
33. Schmidt v. Merchants Despatch Transp. Co., 244 App. Div. 606, 280 N.Y. Supp. 836 (4th Dep't 1935).

in the instant case for there are no disputed facts.[34] The claimant has possession of the appellant's check. The State admittedly owes the claimant the sum demanded, and thus the purpose of the statute of limitations is not being served. On the other hand, the purpose of the constitutional provision limiting claims to those which would not be barred if occurring between private citizens is to prevent grossly unjust claims from being allowed by a special act of the Legislature.[35] In the instant case, there is no reason to believe that this is such a claim. The contract was faithfully performed by claimant for his work. The Court's decision, then, does not appear to follow the spirit of either the statute of limitations or the constitutional provision. To hold otherwise, however, the Court would have had to disregard the clear mandate of both.

George P. Doyle

CRIMINAL LAW—INCULPATORY STATEMENTS GIVEN BEFORE ARRAIGNMENT WHERE CONSULTATION WITH COUNSEL REFUSED, NOW INADMISSABLE.

Defendant Donovan was arrested as a suspect in connection with the killing of a guard shot during a payroll robbery. The arrest was accomplished at about 7:30 p.m. on Thursday, May 11, 1961.[1] Defendant was thereafter questioned continuously until 3:00 a.m. of May 12.[2] Interrogation was resumed later the same morning, and, at 10:00 a.m., Donovan admitted complicity in the crime.[3] In mid-afternoon of the same day, counsel retained by defendant's family requested access to the defendant but was turned away by the officers in charge.[4] On the heels of this incident, an assistant district attorney conducted a question and answer session with the defendant.[5] This conversation yielded a lengthy inculpatory statement which the defendant signed in the closing hours of the day.[6] On the morning of May 13, approximately one and one half days after arrest, defendant was arraigned. All evidence acquired during this period, including defendant's written statement, was admitted at trial. The jury returned a verdict of guilty against Donovan and one co-defendant without recommendation of leniency.[7] Both defendants were then sentenced to death. On direct appeal to the Court of Appeals, *held*, reversed, with three judges joining in the majority opinion, one concurring and three dissenting. Under the New York Constitution, both the provision assuring right to counsel and the guarantee of due process, require exclusion of inculpatory statements given by the accused during informal, pre-arraignment proceedings if, prior to the time the damaging statement was

34. Instant case at 510, 191 N.E.2d at 456, 240 N.Y.S.2d at 974.
35. Cayuga County v. State, 153 N.Y. 279, 47 N.E. 288 (1897).

1. Record, vol. 1, pp. 179-80.
2. Record, vol. 2, p. 992.
3. Record, vol. 1, pp. 233-39.
4. Record, vol. 2, pp. 1017-18.
5. Record, vol. 2, p. 787.
6. Record, vol. 2, pp. 790-91.
7. Record, vol. 1, pp. 15-16.