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Some Practical Applications of the Doctrineof Laches in Equity in Pennsylvania

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highways, as in the principal case, its extent must be more limited than if sustained on the broader theories above suggested. For example, can a requirement that a contract carrier furnish a bond and insurance to cover injuries to goods in transit be sustained as a provision for the preservation of the highways?[40] The aura of uncertainty still hovers over contract carrier legislation and any further or novel method of regulation will have to run the gauntlet until the Supreme Court makes a more definite pronouncement delineating the penumbra of valid regulation.

F. E. Reader.

SOME PRACTICAL APPLICATIONS OF THE DOCTRINE OF LACHES IN EQUITY IN PENNSYLVANIA

"Vigilanibus, non dormientibus subveniunt leges" ("Equity serves the vigilant, and not those who sleep upon their rights"). It was said by Lord Cadman in a famous English case,[1] "A court of equity has always refused its aid to stale demands, where the party has slept upon his rights, and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence; where these are wanting the court is passive and does nothing. Laches and neglect are always discountenanced and therefore, from the beginning

[40]The causal connection between compulsory insurance and preservation of the highways is probably no more remote than the fixing of rates. Any regulation of a contract carrier could conceivably tend to discourage his entry into the business and thus divert traffic from the highways. Carried to its ultimate conclusion the doctrine would seem to permit a requirement that the contract motor carrier must serve all. Yet the rule of the Duke and Frost cases plainly forbids that, for that would be converting a private carrier into a common carrier. Somewhere between the regulations of the Texas statute and complete commission control, the line must be drawn.

[1]3 Bro. C. C. 640.

of this jurisdiction, there was always a limitation to suits in this court."

The doctrine of laches is in the nature of a limitation to the right to pursue a remedy in courts of equity. It is synonymous with "remissness", "dilatoriness", "unreasonable or unexpected delay", and means a want of activity and diligence in making a claim or moving for the enforcement of a right in equity.

Laches does more than raise a bar to a remedy as do the statutes of limitations on the law side of the courts. It destroys both the right and the remedy. As we know, statutes of limitations are those legislative enactments which prescribe the period of time after which certain actions can not be brought or certain legal rights enforced.[2] While the statute of limitations affects the remedy only and not the right,[3] nevertheless, the passage of a given period of time will, without more, give the defendant an effective defense in an action at law. On the other hand, a litigant in equity may have so neglected to assert his right that by operation of the doctrine of laches he loses it.

The Supreme Court of the United States has stated the reason on which the rule is based as being:

> " - - - not alone the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court of equity finds that the position of the parties has so changed that the equitable relief cannot be afforded without doing injustice or that intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect."[4]

The application of the doctrine of laches in a given situation is frequently a major question for the court. While laches may not be imputed to the Federal Gov-

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[2]3 Blackstone's Commentaries 306.

[3]Michigan Bank v. Eldred, 130 U. S. 693.

[4]Penn Mutual Insurance Co. v. Austin, 168 U. S. 685.

ernment,[5] it may be asserted against the Commonwealth of Pennsylvania and its municipal sub-divisions. In *Bradford v. New York & Pennsylvania Telephone & Telegraph Company*,[6] the court said:

> "While the authorities with us are not numerous in holding that laches may be imputed to the Commonwealth and municipalities in denying them equitable relief which might otherwise be granted, the rule that it can be imputed to the public is clearly laid down in several cases. 'Laches may be imputed to the Commonwealth as well as to an individual': *Com. v. Bala & Bryn Mawr Turnpike Co. 153 Pa. 47*".[7]

The court may of its own accord find laches though the defense is not raised by the respondent. For example in *Clark v. Edwards*[8] the court said:

> "The defense of laches may be enforced in proper cases wherein the facts appearing call for it, whether they arise upon the bill and pleadings or upon the whole case as presented by the evdence. The court will often take notice of it even though the objection is not made by the parties." (Citing cases.)

The key to the problem so far as the chancellor is concerned is whether there has been a change of condition of the defendant so that it would be inequitable to grant the relief sought. Thus, it is not so much whether a certain period of time has elapsed since the plaintiff's right accrued, but whether the plaintiff's lack of diligence in asserting his claim has produced this change of circumstance. The courts of equity do not disregard the statutes of limitations applicable to claims at law, however, but use them in their discretion as standards, applying them in proper cases by way of analogy. Thus, in *Dalzell v. Lewis*,[9] the Pennsylvania Supreme Court said:

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[5]U. S. v. Dalles Road Co., 140 U. S. 599.

[6]206 Pa. 582 at 586.

[7]See also Bailey's Estate, 241 Pa. 230 at 232.

[8]58 Pa. Super. Ct. 456, at 460.

[9]252 Pa. 283 at 287.

> "While a court of equity is not bound by the statute of limitations, it will frequently adopt and apply the statute to corresponding rights and remedies as in a court of law - - -- ; and will refuse relief to parties who have slept upon their rights or have been negligent in asserting them."

Where the right in suit is one over which both law and equity have concurrent jurisdiction, the statute will be applied in equity and at law with equal force.[10] The federal courts regard the statutes of limitations as raising presumptions in this respect:

> "When a suit is brought within the time fixed by the analogous statute, the burden is on the defendant to show either from the face of the bill or by his answer, that extraordinary circumstances exist which require the application of the doctrine of laches; and, when such a suit is brought after the statutory time has elapsed, the burden is on the complainant to show by suitable averments in his bill, that it would be inequitable to apply it to his case."[11]

Frequently the theory of laches is confused with the theory of "stale demands". The latter term connotes great lapse of time,[12] but laches need not be long continued. The essence of laches is change of circumstances, rather than duration of time. The Superior Court of Pennsylvania in *Hansell v. Downing,*[13] states the rule as follows:

> "Laches is not to be imputed to a party from the mere lapse of time alone; it is an implied waiver, arising from knowledge of existing conditions *and* an *acquiescence* in them. The question is one involving equitable principles and is determinable from the particular facts in each case." (Italics ours).

In determining whether the complainant is barred in his action by laches there are many elements to consider. "In such cases the lapse of time during which the plaintiff has knowingly and without reasonable excuse neglected or

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[10]Altoona Ry. Co. v. Pittsburgh Ry. Co., 203 Pa. 102.

[11]Kelly v. Boetcher, 85 Fed. 55, at 62.

[12]Ashurst v. Peck, 101 Ala. 499, 14 Southern 541.

[13]17 Pa. Super. Ct. 235 at 240.

omitted to assert his right, is to be considered in connection with the general nature of the proceeding, the nature of the transaction involved, the remedy at law, the altered conditions, if any, and all the attendant circumstances . . . "[14] Other elements to be considered are the duration of the delay in asserting the claim,[15] which includes the question of reasonableness of delay; the sufficiency of the excuse offered in extenuation of the delay;[16] whether during the delay the evidence of the matters in dispute has been lost or become inaccessible;[17] whether the conditions have so changed as to render the enforcement of the right inequitable;[18] whether third persons have acquired intervening rights;[19] the nature of the duty or obligation sought to be enforced;[20] whether plaintiff or defendant was in possession of the property in suit during the delay;[21] and whether the plaintiff had an opportunity to act sooner than he did.[22]

But the question of change of condition has the most vital effect upon the outcome. "Equity will not relieve a party—when his application for relief is postponed to a time when it is beyond his power to restore to the other party the situation he occupied before the contract was entered into." An excellent illustration of the application of these equitable principles in practical affairs is afforded in the law of nuisances and their attempted restraint. In the case of *Harris v. Susquehanna Collieries Co.*,[23] the Supreme Court said:

> "In the present case, the question is, Did plaintiffs, by waiting eight years before instituting these proceed-

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[14]Youse v. McCarthy, 51 Pa. Super. Ct., 306, 311.

[15]Mellish's Estate, 1 Pars. Eq. Cas. 482.

[16]Northern Pacific Ry. Co. v. Boyd, 228 U. S. 482.

[17]N. Y. Land Co. v. Weidner, 169 Pa. 359; McBrann v. Hopkins, 291 Pa. 574; Sebring v. Sebring, 43 N. J. Eq. 59, 10 Atl. 193; In re Ridgway, 206 Pa. 587.

[18]Felin v. Futcher, 51 Pa. Super. Ct. 233.

[19]Pottsville Bank v. Minersville Water Co., 211 Pa. 566.

[20]In re Hoerr, 31 Pitts. Leg. Journal N. S. 337.

[21]Master v. Roberts, 244 Pa. 342.

[22]Gallaher v. Cadwell, 145 U. S. 368.

[23]304 Pa. 550 at 555.

> ings, place defendant in such position that it would now be inequitable to the latter to grant the injunction? It is to be remembered that 'relief by injunction is not controlled by arbitrary or technical rules but the application for its exercise is addressed to the conscience and sound discretion of the court. Where a party seeks the intervention of a court of equity to protect his rights by injunctions, the application must be seasonably made, or the rights may be lost, at least so far as equitable intervention is concerned. It is a rule practically without exception that a court of equity will not grant relief by injunction where the party seeking it, being cognizant of his rights, does not take those steps to assert them which are open to him, but lies by and suffers his adversary to incur expenses and enter into burdensome engagements which would render the granting of an injunction against the completion of his undertaking, or the use thereof when completed, a great injury to him': *Stewart Wire Co. v. Lehigh Coal & Navigation Co., 203 Pa. 474.*
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> "An examination of the record shows plaintiff's eight-year delay in bringing this action has rendered it impossible for a court of equity to grant the relief prayed for without imposing great and inequitable hardship and injury upon defendant. The record shows that plaintiffs have been fully cognizant of the damage caused them by blowing silt since 1918."

In the above mentioned case, the court affirmed the action of the lower court in refusing to grant relief because of laches. The plaintiffs in their bill in equity praying for equitable relief by way of injunction alleged that coal silt or fine dust was carried by the wind from the defendant's culm banks to and upon the plaintiffs' greenhouses. The evidence disclosed that the plaintiffs had been raising flowers at this point since 1897. The colliery of the defendant was located upon adjacent coal lands which it purchased in 1917, and which had been operated for more than 40 years prior thereto by defendant's predecessors in title. It was also shown that there were large culm banks on this tract before the first greenhouses of the plaintiffs were erected. The plaintiffs first discovered that silt and fine material were being carried by the wind from the defendant's culm banks in 1918 and, complained to defendant in 1918 and

again in 1923. The defendant company neither gave nor promised relief to the plaintiffs. In denying relief to the plaintiffs the court said:

> "Whatever the merit of the plaintiffs' case was in 1918 when the silt began to be carried by wind into plaintiffs' property, we are now faced with the fact that they have waited eight years before asking for relief. Accordingly we pass directly to the controlling question of laches. If it must be decided against plaintiffs, this decision renders unnecessary discussion of other issues here involved."

In holding the plantiffs guilty of laches the court further said:

> "We agree with the lower court that if the expense to which defendant would be put would be the same at the present time as a determination of the difficulties between the parties would have entailed in 1918, the defense of laches would fall. The expense however has been greatly increased by the delay. This delay has placed defendant in a position that, to grant the injunction now, would cause it added expense and great injury, as it would be obliged to bear not only the considerable expense already incurred in depositing the silt, which might have been sold and shipped immediately, where it has been placed from time to time since 1918, but the additional expense of its removal. Had plaintiffs legally asserted their rights at the time the silt banks first became an annoyance to them, a great part of the expense necessary to remove the trouble would have been avoided and their damage very much lessened."

The court shows very clearly that passage of time alone is not the controlling feature:

> "*Quinn v. American Spiral Spring & Mfg. Co., 293 Pa. 152,* urged by plaintiffs in support of their contention that relief should not be withheld on the basis of laches, is not in point, as an examination of that decision shows the fourteen months' delay there involved did not, unlike the present one, increase defendant's burden in removing the offending matter complained of. In *Sullivan v. Jones & Laughlin Steel Co., 208 Pa.*

540, also a 'dust case' there was no such harmful delay as is here involved."

Another case arising out of an attempt to restrain an alleged nuisance was *Quinn v. American Spiral Spring Co.*[24] In that case plaintiff sought to restrain defendant from operating large and heavy pieces of machinery on adjacent property which caused such noise and vibration that plaintiff was no longer able to live in his home. In 1919, the plaintiff had purchased his home and in 1924 the defendants bought a vacant lot adjoining thereto for the purpose of building a plant for manufacturing iron and steel springs. The plaintiff was warned by defendants of their intention to build such a plant as would cause noise and vibration. The defense of laches was raised but the court refused to recognize it. The basis of the decision appears to be that the defendants' position had not changed by reason of delay of the plaintiff. Said the court:

"Nor is plaintiff to be deprived of relief because of his alleged laches. If we were deciding whether or not defendants should have been permitted to erect and operate the plant, much might be said in favor of the contention that plaintiff was barred by his laches, for he had sufficient knowledge, at the time of his first interview with defendants' president, to call upon him to then object to the construction, if he intended to do so. But the law is otherwise, where, as here, the available objection is only to the continued use of the improperly located machinery which causes the excess injury. Where this was to be placed plaintiff did not know at the time of that interview. As he had no knowledge of defendants' wrongdoing until after the plant had been constructed and was in operation, his failure to immediately seek redress by legal proceedings cannot have harmed defendants, since 'laches will not be imputed to a plaintiff, where no injury results to defendant by reason of the delay': *Montgomery*

[24]293 Pa. 153.

Bros. v. Montgomery, 269 Pa. 332; Selmer v. Smith, 285 Pa. 67, 70. The nuisance in this case being of a continuous and progressive character, equity has jurisdiction to compel defendants to right the wrong, before they continue operating the plant: *Hustleton v. Park, 256 Pa. 255; Gray v. Phila. & Reading Coal & Iron Co., 286 Pa. 11.*"

A comparison of these two cases emphasizes the distinction between mere duration of time and change of condition. The late Mr. Justice Sadler of the Pennsylvania Supreme Court, whose opinions were always a clear and simple statement of the law, said in *McGrann v. Allen:*[25]

> "Delay which injures no one will not furnish reason for refusing relief (Citing cases); but when by reason of a failure to exercise due diligence the rights of the parties have been adversely affected by reason of altered circumstances the contrary is true."[26]

In every instance the matter is within the sound discretion of the chancellor. At the same time he must exercise that discretion in accordance with certain fixed principles. The phrase, "of grace", predicated of a decree in equity, had its origin in an age when kings dispensed their royal favors through their chancellors. Although it continues to be repeated occasionally, it has no rightful place in the jurisprudence of a free commonwealth, and ought to be relegated to the age in which it was appropriate. It has

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[25]291 Pa. 574 at 578.

[26]The following sentence from 10 Ruling Case Law 396 is significant: "Laches in legal significance is not mere delay but delay that works disadvantage to another". See also, note in 6 A. L. R. 1098 entitled "Effect of delay in seeking equitable relief against nuisance"; also, note in 61 A. L. R. 924 at page 934 entitled "Doctrine of comparative injury in suit to enjoin nuisance". Other pertinent cases are Clark v. Boyson, 39 Fed. (2d.) 800; Finch v. Barr, 132 Atl. 889 (Del.); Brink v. Shepard, 184 N. W. 404, 18 A. L. R. 116; Hey v. Seifert, 123 Atl. 106 (N. J.); Van Courtland v. New York Ry. Co., 250 N. Y. S. 298; Lowell v. Pendleton Co., 261 Pac. 415; McDonald v. Home Oil Corp., 241 S. W. 274 (Tex.); Oliver v. Forney Oil Co., 226 S. W. 1094 (Tex.).

been said that equity has its law as law has its equity. This is another way of saying that equitable remedies are administered in accordance with rules as certain as human wisdom can devise, leaving their application to the discretion of the chancellor in doubtful cases only. Even in those cases the chancellor is charged with the duty of balancing rights rather than permitted to grant favors "of grace".[27]

Thus, the lawyer when confronted with a case of this kind must examine the facts surrounding the defendant's case with the same care as he examines those of his own client. Otherwise, how can he tell whether the delay of the plaintiff, if any there be, has existed sufficiently long to have allowed the defendant to have been placed at a disadvantage by reason of a change of position or condition?

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LIABILITY OF THEATER OWNERS FOR INJURIES TO PATRONS ON THE PREMISES

(PENNSYLVANIA CASES)

It is interesting to note that the Pennsylvania judiciary did not enunciate the rule concerning liability of theater owners for injuries sustained by patrons until 1926. Three years prior to that time, the Superior Court, in the case of Leckstein vs. Morris, 80 Pa. Super. 352, was confronted with a case involving the liability of theater owners, but the Court did not avail itself of the opportunity to expound the applicable principles.

From the plaintiff's testimony in that case, it appeared that she and her grandchild attended the defendant's theater. Since the child had occasion to use the toilet, the plaintiff made an inquiry of an attendant, who directed her to the public lavatory in the basement. The steps were

[27]Sullivan v. Steel Co. 208 Pa. 540 at 554.