

Statute of Limitations

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MORALITY IN LEGAL PRACTICE

The printing of readers' views and the opinion of experts on problems which have appeared in the two preceding issues will commence with the next issue. As a necessary preliminary to a full coverage of the first basic problem which concerned in part the morality of pleading the Statute of Limitations, a further Statute of Limitations problem has been added, to extend the discussion to the area of real property.

STATUTE OF LIMITATIONS

On December 1, 1928, John Jones purchased property from ABC, Inc., a close corporation. He executed a purchase money second mortgage to the corporation in the face amount of \$5,000, in partial payment for this property. The president and stockholder of ABC, Inc., was Richard Roe.

Richard Roe died intestate on August 1, 1935, leaving as sole survivors his two brothers, Alfred and Thomas Roe. Prior to August, 1935, mortgage payments were mailed to the office of the corporation. After that date, the mail was returned with the notation that the corporation was out of business. John Jones, therefore, had no one from that time on to whom to make payment under the mortgage.

In 1943, the attorneys for Alfred Roe approached John Jones, asking him to settle the mortgage debt for \$1,000, although the balance was approximately \$3,500, since the six-year period applicable in that state to actions on a bond or mortgage secured by realty had already expired. This offer was subject to the consent of Thomas Roe, who at that time was unavailable. Although Jones was willing to make such settlement, the transaction was never completed. Thomas Roe, because of a personal resentment which he had toward his deceased brother, refused to accept any payment or be a party to any discharge. In 1950, John Jones received a letter from the Secretary of State advising him that ABC, Inc., was dissolved by public proclamation.

A statute of the state wherein the property is located permits an action by a person claiming an interest in real property to compel the determination of any claim adverse to that of the plaintiff which appears from the public records, even though such claim appears to be invalid on its face.

May John Jones, through his attorney, in good moral conscience bring a proceeding under this statute to have the lien of record discharged, although no payments have been made since 1935, and \$3,500 plus interest is still outstanding?