St. John's Law Review

Volume 18, April 1944, Number 2 Article 11

Limitations--Interstate Commerce Act--Invalidity of Agreement by Shipper Not to Plead (Mid State Horticultural Co., Inc. v. Pennsylvania R.R., 320 U.S. 356 (1943))

St. John's Law Review

as it sufficiently appears that taxpayer did not act with a view to defeat the intent and purposes of the tax law.[3] It has been held that the test of the good faith of the taxpayer is whether a prudent business man would have acted as the taxpayer did in ascertaining the worthlessness of the debt.[4] Although the debt must be deducted in the year in which the taxpayer ascertains it to be worthless, the law does not impose upon the taxpayer the absolute risk of selecting the year when it actually becomes so.[5] The real question is not when did the debt become worthless, but when did the taxpayer ascertain it to be worthless.[6] In answering that question the taxpayer must be allowed a fair degree of latitude.[7]

J. L. G.

LIMITATIONS—INTERSTATE COMMERCE ACT—INVALIDITY OF AGREEMENT BY SHIPPER NOT TO PLEAD.—Respondent, carrier, sued to recover the amount of freight charges on twenty-one carloads shipped by petitioner over its own and connecting carriers' lines. The issue is whether the action was brought in time under Section 16(3)(a) of the Interstate Commerce Act which provided: "All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after." Three days before the expiration of the term allowed, the petitioner agreed not to plead in any suit the defense of any general or special statute of limitations in consideration of respondent's forbearance to sue for a specified time. Two months later, respondent brought this action. Petitioner contends that the statute prohibits maintenance of the action notwithstanding its agreement. Respondent insists that the act has merely modified its common-law contractual right and that the provision may be waived, and it attempts to distinguish between cases like this one and others in which the shipper sues the carrier to recover excess charges paid or damages for the charging of unreasonable rates.[1] *Held,* the agreement is invalid as being contrary to the intent and effect of the section and the Act. The primary intention

[3] Moore v. Commissioner of Internal Revenue, 101 F. (2d) 704 (C. C. A. 2d, 1939).

[4] Peyton Du-Pont Securities Co. v. Com'r, 66 F. (2d) 718 (C. C. A. 2d, 1933).

[5] Rosenthal v. Helvering, 124 F. (2d) 474 (C. C. A. 2d, 1941).

[6] Jones v. Com'r, 38 F. (2d) 550 (C. C. A. 7th, 1930).

[7] Blair v. Com'r, 91 F. (2d) 992 (C. C. A. 2d, 1937).

[1] A. J. Phillips Co. v. Grand Trunk Western Ry., 236 U. S. 662, 35 Sup. Ct. 444 (1915). There the Court held that the objection to the timeliness of the shipper's suit was properly raised by demurrer and said: "the lapse of time . . . destroys the liability." *See* Galveston H. & S. Ry. v. Webster, 27 F. (2d) 765, 124 P. (2d) 906 (1928); Kansas City Southern R. R. v. Wolf, 261 U. S. 133, 43 Sup. Ct. 259 (1923).

of Section 16 was to secure promptness of payment in order to avoid discriminatory practices. Legislative history clearly indicates a tendency toward placing the carrier and shipper on an equal footing. The decision should not turn on refinements over whether the residuum of freedom to contract which the Act leaves to the parties, or the quantum or restrictions it imposes, constitutes the gist of the action. *Mid State Horticultural Co., Inc. v. Pennsylvania R. R.*, 320 U. S. 356, 64 Sup. Ct. 128 (1943).

This decision expressly overrules the only other case in which this precise question was before the federal courts.[2] The principal case is in line with the finding of *Finn v. United States*[3] which held that the general rule that the limitation does not operate by its own force as a bar, but is a defense, and that the party making such a defense must plead the statute if he wishes the benefit of its provisions has no application to suits in the Court of Claims against the United States.[4] The cause of action is deemed to accrue on delivery or tender of delivery of the shipment by the carriers and not after.[5] However, if claim for the overcharge is presented in writing to the carrier within the period of limitations, said period is extended to include six months from the time notice in writing is given by the carrier to the claimant for disallowance of the claim.[6] An agreement by the carrier to reconsider a previously declined claim cannot have the effect of extending the period of limitation.[7] In an action after the federal limitation was changed to two years, the court held that the new statute would not be given retroactive effect.[8] The statute has been construed to affect not only causes of action arising out of actual movement of property, but also causes of action for storage and demurrage charges.[9] The fact that the limitation period against carrier's action for recovery of freight charges ran while dispute as to charges was being considered by the Interstate Commerce Commission at shipper's request did not estop the shipper from setting up the defense of the statute of limitations.[10] There is no similar limitation with respect to motor carriers and freight forwarders. Some decisions hold that a contractual provision is lawful if the period is

---

[2] Pennsylvania R. R. v. Susquehanna Collieries Co., 23 F. (2d) 499 (1927).

[3] Cited *infra* note 4.

[4] Munro v. United States, 303 U. S. 36, 58 Sup. Ct. 421, 82 L. ed. 633 (1938); Finn v. United States, 123 U. S. 227, 8 Sup. Ct. 82, 31 L. ed. 128 (1887).

[5] 49 U. S. C. § 16(3)(e).

[6] *Id.* § 16(3)(c).

[7] L. M. Kirkpatrick Co. v. Illinois Central R. R., 190 Miss. 157, 195 So. 692 (1940).

[8] United States v. St. Louis, S. F. & T. Ry., 270 U. S. 1, 46 Sup. Ct. 182, 70 L. ed. 435 (1925).

[9] Pennsylvania R. R. v. Carolina Portland Cement Co., 16 F. (2d) 760 (1927).

[10] Wisconsin Bridge & Iron Co. v. Illinois Terminal Co., 88 F. (2d) 459 (1937).

reasonable even though the specified period is shorter than the statutory term of limitation of the state.[11] In the event there is no contractual provision, the statutes of limitation of the states govern the action. In a suit by the carrier to collect an undercharge in express rates on interstate shipments, a defense was the prescription of two years under the Louisiana statute, but it was held that the three-year federal statute applied.[12] In an action by a carrier to recover an excessive refund, the action was held to be one on implied contract to refund money and not barred by the statute.[13]

A. J. D.

NEGOTIABLE INSTRUMENTS—ACTION AGAINST ACCOMMODATION PARTY—PROMISE NOT TO ENFORCE THE INSTRUMENT.—In an action brought by the payees against an indorser of a promissory note (the end note of a series of renewals), the indorser set up the specific defense that the indorsement was without consideration and for the accommodation of the payees upon the understanding that he would not be liable to them. Defendant testified that when the maker asked him to indorse the original note, defendant, before doing so, called the payees and asked them why the indorsement was wanted; that payees replied they intended to discount the note and needed another name because they were "afraid the bank wouldn't take it" with the only indorsement it then bore, that of the maker's wife; that there was an agreement that as between defendant and payees, defendant would not be liable; that with this agreement in mind he signed the renewal notes; and that at no time had he received any consideration. The note had been discounted by the bank and the proceeds credited to the payees' account. At maturity it had not been paid, but renewed, and further renewals had thereafter been made, the defendant indorsing the note on each occasion. The end note had been protested and charged into the account of the payees, who thereupon brought the action. The jury returned a verdict favorable to the defendant, upon which verdict judgment was entered dismissing the complaint. The Appellate Division of the Third Judicial Department, by a non-unanimous order,[1] reversed the judgment of the Trial Term upon the law [2] and the facts, holding that denial of plaintiffs' motion for a directed verdict was error, inasmuch as there was no

[11] Adams v. Standard Accident Ins. Co., 124 Cal. 393, 12 P. (2d) 464 (1932); Provident Fund Society v. Howell, 110 Ala. 508, 18 So. 311 (1895). *Contra:* Aetna Casualty Co. v. U. S. Gypsum Co., 239 Ky. 247, 39 S. W. (2d) 234 (1931).

[12] Strawberry Growers' Selling Co. v. American Railway Express, 31 F. (2d) 947, 83 A. L. R. 246 (1929).

[13] T. M. Partridge Lumber Co. v. Michigan Central R. R., 26 F. (2d) 615 (1928).

[1] Callery v. Lyons, 265 App. Div. 604, 42 N. Y. S. (2d) 191 (1943).

[2] *See* NEGOTIABLE INSTRUMENTS LAW § 55.