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Statute of Limitations--Adequate Remedies--Equity (Hanover Fire Insurance Company v. Morse Dry Dock and Repair Company, 270 N.Y. 86 (1936))

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fourteen, and fifteen years respectively. Why condemn the plaintiff for laches, or for "slumbering upon his rights" when his legal lethargy was superinduced by the clever concoction of the defendant? The learned court denied rescission because awarding the plaintiff the purchase price and interest without diminution for the value of the use of the piano for two years, would work too great a hardship on the defendant. But rescission is an equitable remedy for the benefit of the defrauded, and it would be more equitable to rescind the transaction, rather than to thrust the seven-year-old piano on the unwilling shoulders of the guiltless plaintiff. "A party seeking rescission must put the other party in *status quo* as nearly as possible. But this rule is wholly an equitable one; impossible things which do not tend to accomplish equity in the particular transaction, are not required." [12]

A. F.

STATUTE OF LIMITATIONS—ADEQUATE REMEDIES—EQUITY.—Petitioner, insurance company, issued to defendant, a corporation engaged in repairing vessels, a policy of liability insurance in July, 1924. Defendant requested that the insurance date from June 15, 1924, and fraudulently concealed from petitioners that an accidental injury to a vessel had occurred on June 24, 1924. Defendant on September 24, 1932 made claim under the policy for the above mentioned loss. Actions were begun on November 7, 1932 to reform the policy so as to exclude liability for loss resulting from the accident on the grounds that defendant's failure to disclose facts which it was under a duty to disclose vitiated the policy even if there were no intent to defraud. Defendant's contention that the action was barred by the six-year Statute of Limitations was not sustained by the court which held that the availability of the defense of fraud was not the equivalent of an affirmative remedy in an action at law and thus the case did not fall in the category of concurrent jurisdiction. On appeal, *held,* affirmed. Since the only adequate affirmative remedy lay in equity, the ten and not the six-year Statute of Limitations was applicable. *Hanover Fire Insurance Company* v. *Morse Dry Dock and Repair Company,* 270 N. Y. 86, 200 N. E. 589 (1936), *aff'g,* 244 App. Div. 780, 272 N. Y. Supp. 792 (1st Dept. 1934).

THE UNIFORM SALES ACT § 69; see Lawley v. Park, 138 Fed. 31, 70 (C. C. A. 1st, 1905) (yacht returnable, although seriously injured, due to defective construction material); Rosenthal v. Rambo, 165 Ind. 584, 76 N. E. 404 (1905) (horse returnable even though in a worse condition than when sold, contrary to the provision in the contract, that it may not be returned unless it is in as sound a condition as when sold); Smith v. Hale, 158 Mass. 178, 33 N. E. 493 (1893).

[12] Sloane v. Shiffer, 156 Pa. 59, 64, 27 Atl. 67 (1893).

In cases where a complete and adequate remedy at law exists, the six-year Statute of Limitations is applicable [1] and the time cannot be enlarged [2] by proceeding in equity under the ten-year statutory period.[3] When the jurisdiction of equity has been challenged because of an alleged adequate remedy available at law, courts have held that such adequate remedy deprives the plaintiff of relief in equity.[4] But where the relief sought in equity is challenged [5] because of an alleged outlawing of the action in that the remedy at law was not utilized for six years, the courts hold that the remedy or relief at law must be an affirmative one in order for the six-year period to apply.[6] The rule is well established that the Statute of Limitations does not apply to *defenses* at law; [7] the purpose of the Statute of Limitations is to establish a period within which a cause of action in law or in equity must be prosecuted. Thus, the remedy at law being only a defense, there is no limitation to apply in equity other than the proper ten-year limitation period. The court in the instant case followed the above reasoning though basing its decision largely on its reluctance to further limit the application of the ten-year limitation by denying equity jurisdiction because a defense at law had been available for six years.

A. O'D.

REAL PROPERTY—RECORDING ACT—BURDEN OF PROOF.—Plaintiff's grantor unconditionally executed a deed to plaintiff and delivered it in escrow, to take effect upon grantor's death. This deed was not

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[1] N. Y. CIV. PRAC. ACT § 48: "any action to procure a judgment on the grounds of fraud must be commenced within six years after the cause of action has accrued."

[2] Rundle v. Allison, 34 N. Y. 180 (1866); Keys v. Leopold, 213 App. Div. 760, 210 N. Y. Supp. 406 (1st Dept. 1925), *rev'd on other grounds*, 241 N. Y. 189, 149 N. E. 828 (1925).

[3] N. Y. CIV. PRAC. ACT § 53: "an action, the limitation of which is not specifically prescribed in this article must be commenced within ten years after the cause of action accrues." See also Dodds v. McColgan, 125 Misc. 405, 211 N. Y. Supp. 371 (1925); Ford v. Clendenin, 155 App. Div. 433, 137 N. Y. Supp. 54 (2d Dept. 1911); Gilmore v. Ham, 142 N. Y. 1, 36 N. E. 826 (1911); Pitcher *et al.* v. Sutton, 238 App. Div. 291, 264 N. Y. Supp. 488 (4th Dept. 1933); Clarke v. Gilmore, 149 App. Div. 445, 133 N. Y. Supp. 1047 (1st Dept. 1912).

[4] Town of Venice v. Woodruff, 62 N. Y. 462, 20 A. L. R. 495 (1895); Pennsylvania Mutual Life Insurance Co. v. McCarthy, 245 App. Div. 784, 280 N. Y. Supp. 948 (3d Dept. 1935); New York Life Insurance Co. v. Sisson, 19 F. (2d) 410 (W. D. Pa. 1926).

[5] As in the instant case, the sole defense of the Statute of Limitations concedes that equity has jurisdiction but alleges that the action is barred. Bidiwell & Banta v. Astor Mutual Insurance Co., 16 N. Y. 263 (1857).

[6] Clarke v. Boorman's Executors, 85 U. S. 493, 21 L. ed. 904 (1875); Pattir v. Walker, 159 Misc. 339, 287 N. Y. Supp. 806 (1936).

[7] Maders v. Lawrence, 49 Hun 360, 2 N. Y. Supp. 159 (1888); People v. Faxon, 111 Misc. 699, 182 N. Y. Supp. 242 (1920).