The Effect Of The Omission Of The Statute Of Limitation From The Rules Of Court

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Pursuant to the rule-making power vested in it by the Constitution, the Supreme Court has promulgated the New Rules of Court. The promulgation of these new rules has operated to repeal the provisions of the Code of Civil Procedure in so far as they do not have the effect of regulating substantive rights. "It should be borne in mind that these rules of procedure (*Rules of Court*) should never affect substantive rights for these are matters for the legislature to deal." (*Sinco, Phil. Govt. & Pol. Law, 5th Ed. p. 274*).

It is a familiar rule that where a statute is revised, or a series of acts on the same subject is revised and consolidated into one, all parts and provisions of the former act or acts that are omitted from the revised act are repealed, even though the omission may have been the result of inadvertence. (*Notes 88 A. S. R. 289; 5 Ann. Cas. 203*) A comparison of the provisions of the New Rules of Court with those of the Code of Civil Procedure will reveal that a great number of the provisions of the latter have not been incorporated by the Supreme Court in its New Rules. Has the omission operated as a repeal of the provisions thus omitted? The answer to the question naturally depends on whether the provisions thus omitted are purely remedial or essentially substantive in character. If substantive, they are still in force; but if not, they have been converted into mere rules of court (*Art. VIII, Sec. 13, Phil. Const.*) which, because of their omission from the New Rules, must be deemed as repealed. It is the purpose of this article, to consider only the effects of the omission of the statute of limitations (*Chapter III, Code of Civil Procedure*) from the New Rules of Court.

Is the statute of limitations substantive or remedial in nature? Holland makes this distinction between substantive and remedial law: "Substantive law prescribes the rights and duties of all who are subject to the law. Adjective (remedial) law relates to the remedies available for the enforcement of such rights and the redress of their invasion. So far as it defines and creates rights and duties, the law is substantive. So far as it provides a method of aiding and protecting, it is adjective." (*Holland, Jurisprudence, 12th Ed. p. 89*).

The difficulty in determining the real nature of the statute of limitations arises from the use of the term "prescription" as its synonym. "The word 'prescription' as used in law, is used to cover both the idea of acquisition of a right by the lapse of time and the time within which an action must be brought after the right of action has accrued." (*U. S. vs. Serapio, 23 Phil. 584*) The first concept is the one embodied in Section 41 of the Code of Civil Procedure under which title to land may be acquired by

possession for 10 years under the conditions prescribed in the said section. This is, therefore, clearly substantive because a title or right is vested by law. "Title acquired by prescription is superior to a mere title by composition with the State not accompanied by possession." (*Fortuna vs. Corrales, 17 Phil. 370*). The second concept of prescription relates not to acquisition of rights but to the extinction of a remedy. This concept is embodied in Sections 40, 42, 43, 44, and 45 of the Code of Civil Procedure. "The acquisitive prescription of ownership and the prescription of an action cannot and should not be confounded. They are two different and distinct things." (*Bargayo vs. Camumot, 40 Phil. 857*). We shall limit our discussion to the second concept of prescription, rightly and strictly called statute of limitations.

To illustrate clearly the nature of the statute of limitations let us consider a specific instance. For example: A owes B the sum of ₱500 payable on Jan. 15, 1930. If this contract is oral, under section 43 of the Code of Civil Procedure the period of bringing the action is six years. If B brings his action to recover payment of the debt on Feb. 15, 1938, A may set up the defense that B's remedy is barred, and B's action will be dismissed. If A does not set up this defense and B proves his claim, judgment can be rendered against A, inspite of the lapse of six years from the date of the maturity of the debt. This simply means that the right is not extinguished by the lapse of time; for if the right is lost by the lapse of time, B can never recover even if A does not allege the statute of limitations. It seems, therefore, that statute of limitations is purely remedial and not substantive. In fact, our Supreme Court has impliedly, though not expressly, recognized the remedial nature of the statute of limitations when it held in the case of *Sunico vs. Ramirez, 14 Phil. 500*, "that the mere lapse of the period within which personal action to recover a debt or enforce an obligation prescribes does not extinguish or discharge the debt or obligation. It merely takes away the remedy by a personal action when the debtor sees fit to claim the privilege secured him by the statute."

Our Supreme Court has not squarely passed upon the question whether the statute of limitations (*Chapter III, Code of Civil Procedure*) is substantive or purely remedial in nature. It is true that our Supreme Court has held in the case of *People vs. Parel, 44 Phil. 437*, that, "in the Spanish legal system, provisions for limitations or prescription of actions are invariably classified as substantive and not as remedial law." But this is not on point, for two reasons. First, that doctrine was laid down in a criminal case and our Supreme Court has held that "the rule of interpretation of statutes of limitations of civil actions cannot be applied in construction of laws dealing with prescription of criminal actions, for the two kinds of laws are absolutely different from each other. In litigations of civil nature the Legislature interposes the statute as an impartial arbiter between the two litigating parties, and in the interpretation of law it is not sought to favor either one, or grant any right to the other, and therefore there is no grantor of anything against whom the ordinary presumptions of statutory construction can be applied; but

this is not the case where the state grants a benefit, and as an act of grace, waives its right to prosecute the crime and declares that it is no longer the subject of criminal proceeding." (*People vs. Moran, 44 Phil. 387*). Second, the Code of Civil Procedure has been imported from the States of the American Union. Hence, judicial interpretations as to the nature of statute of limitations under the Spanish legal system is not controlling.

Since the Code of Civil Procedure, is patterned after those of the States of the American Union, it is both pertinent and proper, to inquire into the settled jurisprudence evolved by American courts on the subject. It is a fundamental rule of statutory construction that when a law or provisions of law have been imported from a foreign jurisdiction and embodied into local law, such law or provision must be deemed so incorporated preserving and retaining its original construction or meaning in the country from which it has been borrowed. (*Black, Interpretation of Laws, p. 597*)

Construing the nature of the statute of limitations, Mr. Justice Sawyer of the New York State Supreme Court in the case of *Hopkins vs. Lincoln Trust Co., 155 Misc. 251; 187 N. Y. Supp. 883,* said "Statute of limitations are remedial only. They in no manner partake of the nature of substantive law. They regulate only the methods whereby such law is applied to the affairs of men. *Hulbert vs. Clark, 128 N. Y. 295; 28 N. E. 638; 14 L. R. A. 59; House vs. Carr, 185 N. Y. 453-458; 78 N. E. 171; L. R. A. (N. S.) 510; 113 Am. St. Rep. 936; 7 Ann. Cas. 185.* By the operation of those statutes a debtor obtains nothing; nor is he in fact freed from anything; he goes unharmed by his debt, simply because the law furnishes his creditors no method whereby its collection may be enforced. If, there be however, two ways to that end, only one is barred by the statute, the open may still be used against him."

The difference between statute of limitations and prescription (acquisitive prescription) is that the former takes away a remedy and the latter confers a right. (*Alhambra Addition Water Co. vs. Richardson, 72 Cal. Rep. 598; citing Billings vs. Hall, 7 Cal. Rep. 1*) Statute of limitations relates to the remedies which are furnished in the courts, (*Sturges vs. Crowninshield, 17 U. S. (4 Wheat.) 122; 4 L. Ed. 529*) and does not, after the prescribed period, destroy, discharge, or pay the debt but simply bars a remedy thereon. The debt and the obligation to pay the same remain, and the arbitrary bar of the statute alone stands in the way of the creditor seeking to compel payment. (*Maxwell vs. Cottle, 25 N. Y. Supp. 635; 72 Hun. 529*) It would seem from the settled judicial interpretation in the United States that the statute of limitations is merely remedial in nature.

From a consideration of these various authorities, the writer is of the opinion that statute of limitations is essentially remedial in nature and that the failure of the New Rules of Court to make provisions therefor has operated as a repeal of Chapter III of the Code of Civil Procedure—with the exception of Sec. 41, which, as we have observed, confers a substantive right. It is not claimed that the statute of limitations is done away with for the better.

The reasons which prompted our legislature to enact the statute of limitations still hold good today. Statutes of limitations are statutes of repose. They are necessary to the welfare of society. The lapse of time constantly carries with it the means of proof. (*Edwards vs. Kearzey, 24 U. S. [L. Ed.] 793*) The omission of the statute of limitations from the New Rules of Court is therefore a vital omission, which may give rise to confusion and useless litigation. It is true, indeed, that the omission we have herein pointed out, may ultimately be supplied by judicial construction, for as Mr. Justice Laurel has said, "Ambiguities and defects in the Rules (Rules of Court) will be noted but a great portion of these may be adequately dealt with by judicial construction." (*Laurel, Looking Forward: The Golden Age of Procedure, XX Phil. Law Jour. p. 17, 24; VIII Lawyers Journal, p. 366, 368*) But by an express incorporation of the statute of limitations in the New Rules of Court, the necessity of judicial construction would be obviated, and useless and expensive litigations, averted.

"FAITH always implies the disbelief of a lesser fact in favor of a greater. A little mind often sees the unbelief, without seeing the belief of larger ones."
—OLIVER WENDELL HOLMES.