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What Payments Interrupt the Statute of Limitations

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WHAT PAYMENTS INTERRUPT THE STATUTE OF LIMITATIONS

Plaintiff is assignee of four promissory notes executed by defendants in 1937. A stock certificate with interest coupons attached was pledged to the creditor in 1938 following on oral agreement, whereby the creditor was directed to collect the interets of the coupons as it became due and credit the amount so collected on the indebtedness. When the assignee filed this complaint upon the notes in 1945, the defendants set up the affirmative defense of the statute of limitations. Plaintiff contends that the application of the income interrupted the running of the statute, his theory being that the agreement constituted the creditor the defendant's agent for the purpose of collection and application of the income, which amounted to a voluntary payment of interest on the part of the defendants. From judgment for plaintiff, defendants appeal. *Held,* that the payment was not made under such circumstances as to show an intentional and voluntary acknowledgment by the debtors of their liability for the whole debt as of the date of payment. Judgment reversed and cause remanded. *Easton v. Bigley,* 183 P. (2d) 780 (Wash. 1947).

By judicial decision the courts have reasoned that a part payment of a debt will interrupt the operation of the statute of limitations on the theory that such payment amounts to a voluntary acknowledgment of the existence of the debt from which the law implies a new promise to pay the residue;[1] and it is established that a part payment, whether made before or after a debt is barred by the statute, does not interrupt the running of the statute or revive the debt unless made by the debtor himself or someone having authority to make a new promise for the residue of the debt.[2]

When the requirement of possession of the pledged property is met by the pledgee,[3] the general rule is that the pledgee is entitled to the profits,[4] dividends[5] and interest earned by the pledged property, but must see to the proper application of such income to the secured debt.[7] This is true in the case of capital stock even though the pledgee has failed to procure registration in his name on the books of the corporation.[8] It is also the general rule that a mortgagee in possession under

1. United States v. Wilder, 13 Wall. 254, 20 L .Ed. 681 (U. S. 1872); Smith v. Smith, 39 Wyo. 107, 270 Pac. 174 (1928).
2. Howard v. Pritchett, 207 Ala. 415, 92 So. 782, 25 A. L. R. 55 (1922); Holmquist v. Gilbert, 41 Colo. 113, 92 Pac. 232 (1907); Smith v. Smith, 39 Wyo. 107, 270 Pac. 174 (1928).
3. Casey v. Cavaroc, 96 U. S. 467, 24 L. Ed. 779 (1877); Fourth St. Nat. Bank v. Millbourne Mills Co.'s Trustee, 172 Fed. 177, 30 L. R. A. (N. S.) 552 (C. C. A. 3rd 1909); Fletcher American Nat. Bank v. McDermaid, 76 Ind. App. 150, 128 N. E. 685 (1920).
4. Geron v. Geron, 15 Ala. 558, 50 Am. Dec. 143 (1849); Plucker v. Teller, 174 Pa. 529, 34 Atl. 208 (1896).
5. Detroit Trust Co. v. First Nat. Bank—Detroit, 7 F. Supp. 117 (E. D. Mich. 1934); First Nat. Bank of Anniston v. Wellborn, 237 Ala. 183, 186 So. 549 (1939); Womack v. DeWitt, 40 Del. 304, 10 A. (2d) 504 (Super. Ct. 1939).
6. Androscoggin Railroad Co. v. Auburn Bank, 48 Me. 335 (1861); McCrea v. Yule, 68 N. J. L. 465, 53 Atl. 210 (Sup. Ct. 1902); Jones on Pledges, Sec. 399 (1883).
7. McCrea v. Yule, 68 N. J. L. 465, 53 Atl. 210 (Sup. Ct. 1902); Leggat v. Palmer, 39 Mont. 302, 102 Pac. 327 (1909); Maxwell v. Nat. Bank of Greenville, 70 S. C. 532, 50 S. E. 195 (1905); Womack v. De Witt, 40 Del. 304, 10 A. (2d) 504 (Super. Ct. 1939).
8. Johnston v. Laflin, 103 U. S. 800, 26 L. Ed. 532 (1881); O'Neil v. Wolcott Mining Co., 174 Fed. 527, 27 L. R. A. (N. S.) 200 (C. C. A. 8th 1909); Gemmell v. Davis, 75 Md. 546, 23 Atl. 1032, 32 Am. St. Rep. 412 (1892); Brady v. Irby, 101 Ark. 573, 142 S. W. 1124 (1912).

his mortgage acquires a right to rent sand profits for the purpose of applying them to the debt.[9]

Some courts have held that the creditor, in thus collecting and applying the income from collateral security, acts as agent of the debtor in so doing,[10] and likewise when the creditor applies the proceeds from the sale of security.[11] However, there is a split of authority, even among these courts, as to whether or not this authority is broad enough to constitute such acts a voluntary acknowledgment of the debt on behalf of the debtor for the purpose of interrupting the running of the statute.

The oft cited case of *Brown v. Latham*,[12] relied upon in the instant case, held that the creditor is merely exercising an absolute contract right and this, without more, cannot serve as an implied promise made by the debtor to pay the residue. The court dismissed the agency doctrine on the ground that the creditor cannot be made the agent of the debtor to such an extent as to make an act done by him operate as a new promise to himself, without which element a payment can never operate to remove the bar of the statute.

The contrary viewpoint is well expressed in the case of *Bosler v. McShane*,[13] where the court, dealing with facts identical with those of the instant case, held that the debtor, by delivering to his creditor stock certificates and authorizing him to collect the dividends and indorse the amount collected on the original note, thereby constituted him his agent, and everything that the creditor did in the premises was, in effect, the act of the maker of the note. The court said that it was not necessary that the debtor have actual knowledge of the exact time and amount collected from collateral, nor that he positively acquiesce in the indorsement at the time it is made. This being true, the court reasoned that any payment made through the arrangement of the debtor, or such as is the natural and reason-

9. Niccols v. Peninsular Stove Co., 48 Ill. App. 317 (1892); Elliott v. C. C. Slaughter Co., 236 S. W. 1114 (Tex. Civ. App. 1922); Larocque v. Baker, 295 Ill. App. 1, 14 N. E. (2d) 503 (1938); James v. Wingate, 179 Okl. 224, 65 P. (2d) 452 (1937).
"Under the mortgage lien theory prevailing in our state and in many other states, it appears to be well-settled law that a mortgaging of real property gives no right to the mortgagee to have applied towards the payment of the mortgage debt the rents or income of the mortgaged property; this, manifestly, because the mortgage is nothing more than a lien upon the property to secure payment of the mortgage debt, and in no sense a conveyance entitling the mortgagee to possession or enjoyment of the property as owner." In these states there must be a specific stipulation in the mortgage whereby the mortgagee is delivered into possession, Western Loan and Bldg Co. v. Mifflin, 162 Wash. 33, 297 Pac. 743 (1931).

10. Larocque v. Baker, 295 Ill. App. 1, 14 N. E. (2d) 503 (1938); see Wolford v. Cook, 71 Minn. 77, 73 N. W. 706 (1898).

11. Brown v. Latham, 58 N. H. 30, 42 Am. Rep. 568 (1876).

12. Brown v. Latham, 58 N. H. 30, 42 Am. Rep. 568 (1876); accord, Zaks v. Elliott, 106 F. (2d) 425 (C. C. A. 4th 1939); Nilsson v. Kielman, 17 N. W. (2d) 918 (S. D. 1945) (no intention to acknowledge the continued existence of the debt); Adams v. Holden, 111 Iowa 54, 82 N. W. 468 (1900) (part payment of the debt from rents and profits is involuntary and does not establish recognition of the debt by the grantor); Brooklyn Bank v. Barnaby, 197 N. Y. 210, 90 N. E. 834 (1910); Wanamaker & Brown v. Plank, 117 Ill. App. 327 (1904).

13. Bosler v. McShane, 78 Neb. 86, 110 N. W. 726 (1907); accord, Nat. State Bank of Boulder v. Rowland, 1 Colo. App. 468, 29 Pac. 465 (1892) (under power of attorney); Vermont-People's Nat. Bank v. Parker, 269 Mass. 287, 169 N. E. 154 (1929); Schiltz v. Wokal, 154 Kan. 677, 121 P. (2d) 240 (1942); First Nat. Bank of Oxford v. King, 164 N. C. 303, 80 S. E. 251 (1913).

able sequence of his own agreement, legal proceeding not benig invoked, will interrupt the running of the statute.

The Louisiana court has held that limitation does not run against a debt secured by a pledge of property placed in the possession of the creditor by the debtor, as the pledge acts as a continuous acknowledgment of the debt.[14]

It has been suggested that if the parties provide, in express terms within the contract that such payment by the creditor is intended to act as a voluntary acknowledgment of the debt by the debtor as of the date of each payment, much of the controversy will disappear.[15]

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INSANE DELUSIONS AFFECTING TESTAMENTARY CAPACITY

In a contest of a will, which left all testatrix's property to the National Women's Party, because of testatrix's purported insane hatred for men, the evidence showed her ability to carry on normal business relations and that her only relatives were cousins of whom she saw very little. *Held,* that testatrix suffered from an insane delusion, and that it was her insane delusions about the male that led her to leave her estate to the National Women's Party. Probate was set aside. *In re Strittmater's Estate,* 53 A. (2d) 205 (N. J. Ct. Err. and App. 1947).

It would seem that testatrix's opinion with regard to her father (a corrupt, vicious savage) and her general opinion of the male sex, was correctly called an insane delusion. There is nothing to indicate that any incident or fact in her life with her parents could give rise to her peculiar belief. No mention is made of disappointing relations with any male. Courts have defined insane delusions in many ways,[1] but the gist of all definitions seems to be that an insane delusion is

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14. Liberty Homestead v. Pasqua, 190 La. 25, 281 So. 801 (1938).
15. Payment on the part of the creditor did not serve as a voluntary act of the debtor. "Had it been intended that such a well known rule of law as the statute of limitations should not apply in its customary sense to these contracts, then express language to that effect would doubtless have been used." Zaks v. Elliott, 106 F. (2d) 425 (C. C. A. 4th 1939).

1. "An insane delusion is the spontaneous production of a diseased mind, leading to the belief in the existence of something which either does not exist, or does not exist in the manner believed, a belief which a rational mind would not entertain, yet which is so firmy fixed that neither argument nor evidence can convince to the contrary." In re Kendrick's Estate, 130 Cal. 360, 62 Pac. 605, 607 (1900); "An insane delusion is a belief in something impossible in the nature of things, or impossible under the circumstances surrounding the afflicted individual, and which refuses to yield either to evidence or reason." Scott v. Scott, 212 Ill. 597, 72 N. E. 708, 710 (1904); "A belief, however unfounded, unreasonable or extravagant, does not constitute an insane delusion if it is based upon any evidence, however slight." Schweitzer v. Bean, 154 Ark 288, 242 S. W. 63, 66 (1922); "If such a belief is entertained against all evidence and probability, and after argument to the contrary, it would afford grounds for inferring that the person entertaining it labored under an insane delusion." Medill v. Snyder, 61 Kan. 15, 58 Pac. 962, 965 (1899); "It was not * * * a delusion, for there was some evidence to sustain it." In re Sturtevant's Estate, 92 Ore. 269, 178 Pac. 192, 195 (1919); "It is well established that when a certain belief of a testator is founded on evidence, though slight and inconclusive, it is not an insane delusion." In re Johnston's Estate, 181 P. (2d) 611, 617 (Wyo. 1947); See also 1 Page, Wills, sec. 141 (Lifetime ed. 1941).