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The Virginia "Stay Law"

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Section 8-31 of the Virginia Code of 1950 which pertains to the suspension of statutes of limitations by death reads as follows:

> The period of one year from the death of *any party* shall be excluded from the computation of time within which, by the operation of any statute or rule of law, it may be necessary to commence any proceeding to preserve or prevent the loss of any right or remedy. (Emphasis added)

The ambiguity concerning the words "any party" has been partially resolved by an extremely strict interpretation on the part of the Supreme Court of Appeals.[1] The old "Stay Law" which was passed on March 3, 1866 was even more comprehensive than the present statute.[2] However, there were two amendments to the "Stay Law," the first of which contained the following provision: ". . . the period of one year from the qualification of a *personal representative*."[3] (Emphasis added) Although this wording was subsequently deleted, it nevertheless furnished the straw for which the Court grasped in order to limit the present statute to personal actions alone. The second amendment struck the words of the foregoing provision and substituted in its place ". . . the period of one year from the death of *any* party. . ."[4] But in the case of *Steffey* v. *King*[5] it was flatly stated that the statute did not apply to real actions. The first amendment was to carry decisive weight even though it had been wiped off the books. In the case of *Virginia Mining and Improvement Co.* v. *Hoover*[6] it was held that the original "Stay Law" applied to actions of ejectment; therefore it was arguable in the subsequent case of *Steffey* v. *King, supra,* that in substituting the present phraseology "any party" for "personal representative" the General Assembly meant that Section 8-31 apply to real actions as well. The Court, however, held that the first amend-

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[1] Williams v. Dean, 144 Va. 831, 845, 131 S.E. 1, 5 (1935): ". . . the construction which this statute should receive today is that . . . which was proper when it was first written. It has not been changed by the fact that some of the older provisions . . . have since been eliminated."
[2] For an historical discussion, see Johnson v. Gills, 27 Gratt. (68 Va.) 587, 595 (1876).
[3] Va. Acts 1887-8, p. 345, Va. Code §2919 (1904).
[4] Va. Acts 1895-6, p. 331, Va. Code §2919 (1904). Emphasis added.
[5] 126 Va. 120, 101 S.E. 62 (1919).
[6] 82 Va. 449, 4 S.E. 689 (1886).

ment ". . . must have been intended to apply only to personal actions. . . . The parties to ejectment suits are often numerous, and such a construction of the statute as here contended for might result in great inconvenience."[7]

Inconvenience has resulted, but in most cases it has been at the expense of the party attempting to avail himself of the statute. On the one hand a party should not be allowed to slumber forever on his rights, but in turn one should be able to rely reasonably on this statutory provision. According to the decision in *Boggs* v. *Fatherly*,[8] "the object to be attained in excluding a year (under the statute) . . . is to give the personal representative of . . . a party the benefit of a year in which to acquaint himself with the claims for and against the estate, and to give the creditors of the estate a corresponding extension of time."[9] Thus, in Virginia, the one year extension applies to actions for or against a party,[10] with the qualification that the right must have existed or at least have been capable of coming into existence during the life of a party *having* a right and cause of action.[11] Through the use of the phrase "personal actions" it has been determined that Code Section 8-31 does not apply to suits to enforce liens on land,[12] or to the death of a trustee in a deed of trust who also would not fit the description of "any party" since he ". . . has no right or remedy to lose or preserve within the meaning of this section."[13] The net result is that in only two cases, both involving personal actions,[14] has the Virginia Supreme Court of Appeals applied this one year extension provision. Obviously there is no way of knowing how often attorneys have resorted to this statute in lower courts, but its nebulous

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[7] 126 Va. 120, 128, 101 S.E. 62, 64 (1919).
[8] 177 Va. 259, 13 S.E.2d 298 (1941).
[9] *Id.* at 264, 13 S.E.2d 298, 300.
[10] In most jurisdictions, even in the absence of "stay laws," statutes of limitations will not begin to run until administration is taken out on a decedent's estate or his executor has qualified. However, statutes have been required in most jurisdictions to allow causes of action to lie *against* estates of deceased persons as the general rule is that statutes of limitations apply to them as though they were alive. See 54 C.J.S., Death of Person Entitled to Sue §243, Death of Person Liable to Suit §246 (1948).
[11] Steffey v King, 126 Va. 120, 128, 101 S.E. 62, 64 (1919); Boggs v. Fatherly, 177 Va. 259, 265, 13 S.E.2d 298, 300 (1941).
[12] Boggs v. Fatherly, 177 Va. 259, 13 S.E.2d 298 (1941).
[13] *Id.* at 265, 13 S.E.2d 298, 301. The reason given by the Court was that such a trustee has no right of his own to foreclose a deed of trust.
[14] Harper v. Harper, 159 Va. 210, 169 S.E. 490 (1932) involving a creditor's suit against an administrator, and Archer v. National Bank of Fairfax, 194 Va. 641, 74 S.E.2d 153 (1953) in which the three year statute was extended to four years in a cause of action to recover for services rendered decedent who had made plaintiff an oral promise to make a will in her favor.

text undoubtedly has caused headaches even in personal actions.[15]

When statutes of this type have been enacted in other jurisdictions, the usual phraseology has been: ". . . a *person entitled to bring* or liable to *any* action . . ."[16] (Emphasis added) Query, whether Virginia's statute has been rendered virtually the same through an interpretation of the *Steffey* case which held "any party" to mean a party *having* a right and cause of action? Putting aside any semantic comparison between *having* and *entitled to*, we may note that a North Carolina case held the latter phrase indicated a suspension of the statute not only as to the personal representative, but also as to the heirs.[17]

An additional problem as to the applicability of these extension statutes involves partnership actions. The general rule is that statutes limiting the time within which particular actions must be brought apply to actions for or against the surviving partners or the personal representative of a deceased partner.[18] There is no Virginia authority on this point, but it is submitted that Section 8-31 should apply in actions on behalf of or against surviving partners as a natural result of the prior interpretation given it by the Court of Appeals.

Aside from the restriction of the statute to personal actions and the ambiguity of the words "any party," it seems possible for Section 8-31 to have far-reaching effect, for example, in partnership cases. Yet there seems to be scant reason to have such a statute where the deceased dies in the early part of the statutory period. Virginia has partially remedied this problem by a statute that restricts the time in which actions involving awards and contracts (not unliquidated claims) can be brought against the decedent's estate. In such cases the action cannot continue

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[15] E.g., Was the cause of action "capable of coming into existence during the life of the party"?

[16] Ann. Laws of Mass. §260-10 (1953). Likewise as to "entitled to bring," see N.C. Gen.Stat. §1-22 (1943); Ill.Rev.Stat. §83-10 (1953) as to real actions and §83-20 as to personal ones; and S.C. Code §10-107 (1950).

[17] Woodlief v. Bragg, 108 N.C. 571, 13 S.E. 211 (1891).

[18] Bennett v. Bennett, 91 Me. 80, 42 A. 237 (1898); Irwin v. Harriss, 182 N. C. 656, 109 S.E. 871 (1921); McMahon v. Brown, 219 Mass. 23, 106 N.E. 576 (1914). See 54 C.J.S., Death of Person Entitled to Sue §243, Death of Person Liable to Suit §246 (1948).

longer than five years from the qualification of the personal representative.[19] Further, in death by wrongful act cases where the statute involved creates both the right and the remedy it has been held that Section 8-31 does not apply to extend the original limitation beyond twelve months since this time limit involves a special act of legislative grace not found in the general statutes of limitation.[20]

In light of the modern trend to abolish some of the "magic" features which have heretofore distinguished realty from personalty it would seem advisable that Section 8-31 be extended to actions involving realty. It would nevertheless seem advisable to provide that in no case should a cause of action involving realty continue longer than five years after the death of the decedent.[21] In this way real actions would further be brought in line with personal ones since actions involving awards and contracts already have a similar five year maximum limit. Otherwise, there seems to be no reason except precedent for the Virginia Court to consider this one year extension in the case of death as being limited solely to personal actions.

Montgomery Knight, Jr.

[19] Va. Code §8-13 (1950).

[20] In Manuel Adm'r v. Norfolk and Western Ry., 99 Va. 188, 37 S.E. 957 (1901) the plaintiff was non-suited on his own motion, and brought a second action after the twelve months had passed; it was held that Section 8-31 was not applicable.

[21] For example, should a party die during or after the eleventh year of an adverse claimant's possession, the one year extension would in effect make the Virginia statute of limitations sixteen rather than fifteen years. Whereas, if death were to occur any time before the eleventh year, Code Section 8-31 would not be applicable. [An Illinois statute provides that if the person first entitled to bring a real action dies during the continuance of certain disabilities, then his heirs have an additional *two* years in which to bring an acton. See Ill.Rev.Stat. §83-10 (1953).] The time limit of five years was chosen to coincide with the present limit on personal actions.