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Constitutional Law-Vested Right in Remedy

CONSTITUTIONAL LAW—VESTED RIGHT IN REMEDY—The appellant was indicted on September 12, 1930, for the alleged robbery of a bank on August 26, 1927. At the time of the commission of the alleged offense section 20, c. 6, Acts of 1905—Section 2052, Burns' 1926—provided that prosecutions for such offenses must be commenced within two years. On May 19, 1929, the above statute was repealed by section 1, c. 198, Acts of 1929, which provided that the period of limitation should be enlarged to five years. The appellant contends that the prosecution was barred by the statute of limitations that was in effect at the time of the commission of the offense. *Held,* the prosecution is not barred; statutes of limitations pertain to remedy, and there is no vested right in a remedy or mode of procedure.[1]

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[8] See further, on 70a (4) *In re Mullen* (1900), 101 Fed. 413, where the court held that 70e (4) did not preclude the gaining of rights superior to the trustees; this is mentioned only to show that 70a (4) does not confer an unlimited right.

[1] *Streepy v. State,* Supreme Court of Indiana, October 13, 1931, 177 N. E. 897.

Undoubtedly this decision is upheld by the weight of authority. The cases seem to establish the universal rule that a person has no vested right in a remedy or mode of procedure, and that the legislature may impair, modify, or remove either. The cases asserting this doctrine have allowed the legislature to modify and impair existing remedies, to remove particular remedies, to substitute one remedy for another, to make one of several remedies the exclusive remedy, to change a legal proceeding to one in equity, and the converse.[2] In furthering the doctrine, courts have allowed pending cases on appeal to be transferred from one court to another, and justified their decisions on the grounds that an individual has no vested right in a remedy or mode of procedure, and that such may be changed at any time before the final adjudication of the suit.[3]

The courts have generally held that a person has no vested right in the operation of a statute of limitations. Under this category the cases have distinguished between cases where the statute has not completely run, and those where it has completely run. Under the first class of cases the courts hold that the legislature may enlarge, shorten, or remove the period of limitation altogether; while in the second class of cases the courts say that the person has a vested right, and that such right can not be taken away by a subsequent change or removal of the statutory bar.[4]

The cases establishing this doctrine say also that even though an individual has no vested right in a remedy or mode of procedure, the legislature cannot remove all remedy or mode of procedure, but that it must leave or substitute some real substantial remedy or mode of procedure.[5] It is at least contradictory to say that a person has no right in a remedy or mode of procedure, and that change of such remedies is within the discretion of the legislature, and then in the same doctrine add that the legislature cannot remove the entire remedy and substitute no other, but that they must leave the person a real and substantial remedy. This seems arbitrary in itself.

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[2] *Sage v. State* (1890), 127 Ind. 15, 26 N. E. 667; *Ex parte France* (1911), 176 Ind. 72, 95 N. E. 515; *In re Petition to Transfer Appeals* (1931), 202 Ind. 349, 174 N. E. 812; *Crane v. Hahlo* (1921), 258 U. S. 142, 42 S. Ct. 214; *Thorne v. Silver* (1910), 174 Ind. 504, 92 N. E. 339; *Bost v. Cabarrus County* (1910), 151 N. C. 531, 27 S. E. 1066; *Rich v. Flanders* (1859), 39 N. H. 304; *Rhines v. Clark* (1865), 51 Pa. 96; *Lockett v. Usry* (1859), 28 Ga. 345; *Williar v. Baltimore* (1876), 45 Md. 546; *Ryan v. Allen* (1924), 312 Ill. 250, 143 N. E. 852; *Irvine v. Elliot* (1913), 203 Fed. 82; *Martin v. Pittsburgh, etc., Ry. Co.* (1906), 203 U. S. 284, 27 S. Ct. 100; *Ettor v. Tacoma* (1912), 228 U. S. 148, 33 S. Ct. 428; *Lake Superior v. Auditor* (1890), 79 Mich. 351, 44 N. W. 616; *George v. Everhart* (1883), 57 Wis. 397, 15 N. W. 387; *Shickel v. Berryville* (1901), 99 Va. 88, 37 S. E. 813.

[3] *In re Petition to Transfer Appeals* (1931), 202 Ind. 349, 174 N. E. 812; *Teel v. Chesapeake, etc.* (1913), 204 Fed. 918, 123 C. C. A. 240; *Zellars v. Nat'l Surety Co.* (1908), 210 Mo. 86, 108 S. W. 548.

[4] *Davis v. Industrial Accident Comm.* (1926), 198 Cal. 631, 246 Pac. 1046; *Right v. Martin* (1858), 11 Ind. 123; *Snasberry v. Hughes* (1910), 174 Ind. 638, 92 N. E. 783; *Norris v. Tripp* (1900), 111 Iowa 115, 82 N. W. 610; *Milbourne v. Kelley* (1915), 93 Kan. 753, 145 Pac. 816; *Kinsman v. Cambridge* (1877), 121 Mass. 558; *Eingartner v. Ill. Steel Co.* (1899), 103 Wis. 373, 79 N. W. 433; *Edelstein v. Carlile* (1904), 33 Colo. 54, 78 Pac. 680.

[5] Cooley's Constitutional Limitations (8th Edition), p. 757, and p. 761; *Thorn v. Silver* (1910), 174 Ind. 504, 92 N. E. 339; *Crane v. Hahlo* (1921), 258 U. S. 142,

The phrase "vested rights" is a property term, and, when used in connection with one's right to a remedy, is inaccurate, because in this sense, it means those interests which the state must recognize and protect, and which cannot be taken from the individual arbitrarily.

It is undisputed that the Federal Constitution gives the person a right to a remedy and adequate mode of procedure. This, like any other right, may be impaired or taken away in situations where some social interest becomes paramount to the individual right. But, unless some sufficient social interest is shown, the legislature has no power to impair or deprive a person of these rights, and in case the legislature insists on so doing, its effort would be unconstitutional under the due process or equal protection clauses of the Federal Constitution. This doctrine was pronounced in *Truax v. Corrigan*,[6] where a statute that deprived the appellant of the right to an injunction in cases of strikes and boycotts by employees was held unconstitutional.

Since the use of the phrase "vested rights" in connection with the present subject, is in itself an anomalous usage, and the cases promulgating the doctrine of no vested right in a remedy or mode of procedure recognize some sort of a right to some remedy, the rationale along this line seems to be a bit arbitrary. Even if we admit that a person has a vested right in a thing, it would still be capable of being impaired or changed if the legislature could find some social interest, in favor of the impairment or change, which would be sufficient to satisfy the Supreme Court of the United States that the due process clause had been satisfied. It is a treadmill of reasoning to justify the changing of a remedy or mode of procedure by the doctrine of no vested right in such remedy when the same change could be made even though there was a vested right, if the legislature could find a sufficient social interest in the change. The only question in these cases should be; is this right protected under the constitution, and if so, is there sufficient social interest for the modification of such right? This doctrine would be a logical and rational solution of the problem. It would recognize the rights secured in the Constitution, but would allow the reasonable modification of such rights where social interest found it necessary. A. C. J.

CONTRACTS—BREACH DISTINGUISHED FROM RESCISSION—The plaintiff, Rose M. Kirkpatrick, and her husband, John Kirkpatrick, entered into a written contract with the defendant wherein the defendant agreed to sell and the Kirkpatricks to buy a certain vacant lot for the agreed price of $1,774.51, to be paid in printing as demanded from time to time by the defendant. John Kirkpatrick died after there had been paid in printing, the sum of $1,072.93. Rose M. Kirkpatrick qualified as administratrix of his estate and printing services were rendered by the estate and applied upon the contract as follows: March 31, 1928, $317.50; May 16, 1928, $308; August 21, 1928, $76.08. The total amount of the services so rendered was $1,774.51. On April 23, 1928, after the execution of the contract and before the last two payments on the contract were made, the

42 S. Ct. 214; *Rich v. Flanders* (1859), 39 N. H. 304; *Williar v. Baltimore* (1876), 45 Md. 546; *Lockett v. Usry* (1859), 28 Ga. 345; *Rhines v. Clarke* (1865), 51 Pa. 96; *Bost v. Cabbarus County* (1910), 151 N. C. 531, 27 S. E. 1066.

[6] (1921) 257 U. S. 312.