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PASSAGE OF TIME AS LACHES

Will mere passage of time ever constitute laches? The answer to this question depends largely on which scholars or on which cases one chooses to rely. No attempt is made in this discussion to include the many cases where the equity court has applied the statute of limitations by analogy, an entirely different problem from the one at hand.

In 1892, a suit of foreign attachment was brought on a note payable on demand, where more than twenty-six years had elapsed between the maturity of the note and institution of the suit. The West Virginia Supreme Court of Appeals held that "a court of equity will readily presume that the testator had waived and abandoned all thought of collecting this note."¹ In 1955, in a suit to enforce a lien, where two time notes were secured by a deed of trust, and enforcement had been delayed forty and twenty-nine years after due date, the court held that delay alone did not constitute laches, and allowed enforcement of the notes.²

Has there been a change in the rule as to whether passage of time alone will constitute laches, or is this simply another instance of the wide discretion of the equity court in deciding cases which are similar but not identical, without regard to past decisions?

Will mere passage of time constitute laches? An examination of the treatises of three leading scholars discloses the following disagreement:

(1) "Equity does not impute laches to a party for delay alone, but only for a delay which is unreasonable under the circumstances and which has resulted in harm to the other party. Where no prejudice has resulted, a long delay has been held not to amount to laches."³

(2) "There can be no doubt, however, that laches may be established as a defense, and equity will refuse relief on that ground, though no important change of position has taken place, if the delay on the plaintiff's part has been very extended."⁴

(3) "There are no hard and fast rules as to what amounts to laches; it is a question to be determined upon all the facts by the court in the exercise of its judicial discretion."⁵

¹ Maslin's Ex'rs v. Hiett, 37 W. Va. 15, 23, 16 S.E. 437, 439 (1892).
³ MCINTYRE, EQUITY § 28, at 71 (2d ed. 1948).
⁴ WALSH, EQUITY § 102, at 473 (1930).
⁵ CLARK, EQUITY, § 81, at 47 (1954).
A cursory glance at the horde of West Virginia cases concerning laches would indicate that the rule in this state is quite absolute. The court has often stated that mere delay will not constitute laches.\(^6\) The court has also held that mere lapse of time, unaccompanied by circumstances which create a presumption that the right has been abandoned, does not constitute laches.\(^7\) In holding fifteen years delay in enforcing a lien against a tract of coal not to constitute laches, delay which places another at a disadvantage was required.\(^8\) Sixteen years' delay in bringing suit to account for money received from sale of land, without prejudice to the defendant, does not constitute laches.\(^9\) The court stated in an early case that laches did not exist in a suit to set aside a fraudulent conveyance since the parties to the transaction still survived.\(^10\) Lapse of time has been said to be an element, but not the controlling factor of laches.\(^11\) It has also been held that mere delay, if explained, is not laches.\(^12\)

After being struck by this salvo of cases, even many cautious observers may be ready to concede that the rule is well settled in this state that passage of time alone does not constitute laches. However, hidden among these many cases are several others which tend to modify, if not to entirely impeach the credibility of the general rule.

Often, our court has defined laches as a delay in the assertion of a known right which works to the disadvantage of another, or such delay as will warrant the presumption that the party has waived his right.\(^13\) Since this principle is stated in the disjunctive, it seems proper to assume that delay alone is sufficient if the delay creates a presumption that the right has been waived. But what constitutes waiver of a right? In *Maslin's Exrs v. Hiett*,\(^14\) twenty-six years' delay after maturity, without enforcing a note was held to be a waiver. But waiver was not mentioned in the comparatively recent case of *Kuhn & Hoover v. Shreeve*.\(^15\) However, waiver has not

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11 Bank v. McLaughlin, 121 W. Va. 41, 1 S.E.2d 251 (1939).
14 Note 1 supra.
15 Note 2 supra.
been forgotten, for in 1955, the same year as the *Kuhn & Hoover* case, in a suit to enjoin maintenance of a gate across a road, our court held that twenty-six years without bringing such suit constituted laches. The court stated that “delay in the assertion of a right may operate in equity as evidence of assent, acquiescence or waiver unless satisfactorily explained.”\(^{16}\) An earlier case by dicta noted that the rule later stated in *Monk v. Gillenwater*\(^{17}\) is well settled in this jurisdiction.\(^{18}\) Laches defined as a claim which has been for a long time undemanded was endorsed by the court in 1927.\(^{19}\) In an early case, in a suit for reformation of a deed, the court held ten years’ delay after conveyance to constitute laches, stating “a court of equity will not assist one who has slept upon his rights and shows no excuse for his laches in asserting them.”\(^{20}\) In denying an annulment, where the husband claimed that his wife refused sexual intercourse, the court held that six and one-half years was too long a time of deliberation, mentioning neither waiver or laches.\(^{21}\)

It seems plausible to presume that the court will continue to state and apply in many cases the rule that mere lapse of time does not constitute laches. If passage of time alone is to be used as the basis for laches, it is likely it will continue to be disguised as acquiescence, waiver, or abandonment of right. There seems to be no indication what path the court will follow in any given case, as long as the court continues to exercise its wider-than-usual discretion.

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\(^{17}\) Ibid.

\(^{18}\) Maze v. Bennett, 114 W. Va. 169, 171 S.E. 249 (1933). In this case a change of conditions, i.e., death of the original parties to a conveyance and failure of both parties to execute conveyances in the agreement, aided the court in finding laches in an action to remove cloud on title.

\(^{19}\) McMullin v. Matheney, 104 W. Va. 317, 140 S.E. 10 (1927). Here, death of certain parties and loss of evidence aided the court in finding laches, but the court stressed the want of reasonable diligence and lack of activity on the plaintiff’s part.
