CIVIL PROCEDURE—LIMITATION OF ACTIONS—STATUTE TOLLED DURING PERIOD OF UNCONSCIOUSNESS—*Sobin v. M. Frisch & Sons*, 108 N.J. Super. 99, 260 A.2d 228 (App. Div. 1969), *cert. denied*, 55 N.J. 448, 262 A.2d 702 (1970).

On April 12, 1966, John Sobin, Jr. fell from a tree he was trimming when a rope he had purchased from M. Frisch & Sons snapped, causing him to be thrown more than thirty feet to the ground. As a consequence of the fall, Sobin was hospitalized for more than 100 days, during which time his mental awareness fluctuated between total and semi-unconsciousness.[1]

Sobin instituted an action grounded on negligence and breach of warranty in August, 1967, naming M. Frisch & Sons as the sole defendant. Subsequently, Sobin's counsel discovered that the quality of the rope had been misrepresented by the distributor,[2] Jones & Laughlin Steel Corporation, and permission was sought to amend the complaint to include that company as a co-defendant. Although leave to amend was granted and the amended complaint was filed May 16, 1968, a summary judgment was decreed the distributor because the two year statute of limitations had run.[3] Plaintiff argued that his mental condition was such that it constituted insanity, and that an extension of time should have been granted for the period of unconsciousness under the disability provisions of the New Jersey statute of limitations.[4] The

1 Upon his admittance to Middlesex General Hospital, Sobin was examined and listed as suffering from brain trauma, right side hemiplegia and aphasia, multiple fractures of the facial bones, fractures of the ulna styloid with displacement of the head of the humerus and comminuted subtrochanteric fracture with displacement of the right hip. Brief for Appellant at 2, Sobin v. M. Frisch & Sons, 108 N.J. Super. 99, 260 A.2d 228 (App. Div. 1969).

2 The rope was represented to be manila, while actually it was of sisal fiber, which is significantly lower in tensile strength. Brief for Appellant at 4, Sobin v. M. Frisch & Sons, 108 N.J. Super. 99, 260 A.2d 228 (App. Div. 1969).

3 Sobin v. M. Frisch & Sons, No. L-40002-66 (L. Div. Jan. 17, 1969); N.J. STAT. ANN. § 2A:14-2 provides:

> Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this state shall be commenced within 2 years next after the cause of any such action shall have accrued.

It should be noted that N.J. STAT. ANN. § 12A:2-725 (1962), which established a four year limitation period on actions for breach of sales contracts covered by the UNIFORM COMMERCIAL CODE, was disregarded in *Sobin*, and the two year personal injury statute, mentioned above, was held to apply. This comports with the theory that a breach of warranty is grounded on negligence and the cause of action accrues, not when the duty is breached by the manufacturer, but rather when the injury actually occurs. Rosenau v. New Brunswick, 51 N.J. 130, 141-44, 238 A.2d 169, 174-76 (1968).

4 N.J. STAT. ANN. § 2A:14-21 (1952) provides:

> If any person entitled to any of the actions or proceedings specified in Sec-

trial judge rejected plaintiff's contention, and held that the disability provisions of the statute were not intended to cover unconsciousness.[5] The appellate division overturned the lower court's interpretation of the statute, and held that unconsciousness for 100 days was sufficient to constitute "insanity" under the provisions of N.J. STAT. ANN. § 2A:14-21.[6] This decision supplied a long awaited answer to the problem of unconsciousness and its effect on the New Jersey statute of limitations.

Historically, limitations of actions arose when the English Parliament could no longer endure the abuses resulting from outdated litigation. In creating these statutes of repose, it sought to force parties to act promptly on their claims. American legislatures have endorsed the policy reasons behind the English provisions and, accordingly, have enacted similar statutes.[7]

The term statute of limitations has been defined as "any law which fixes the time within which parties must take judicial action to enforce rights or else be thereafter barred from enforcing them."[8] The primary purpose of such a law is "to limit the time within which an action may be brought"[9] by compelling "the exercise of a right of action within a reasonable time so that the opposing party has a fair opportunity to defend."[10]

Since a statute of limitations achieves its purpose of preventing the litigating of stale claims by stimulating diligence and punishing tardiness, the disabilty exception which tolls the statute in certain circumstances is a necessary inclusion.[11] Without it, blameless parties might be stripped of their right to bring an action.

"Insanity" has been defined as an unsoundness of mind, an incapacity to reason and, in a legal sense, such a want of reason, memory and intelligence, as prevents a man from comprehending the nature of

tions 2A:14-1 to 2A:14-8 . . . of this title is or shall be, at the time of any such cause of action . . . accruing, under the age of 21 years, or insane, such person may commence such action . . . within such time as limited by said sections, after his coming to or being of full age or of sane mind.

5 Sobin v. M. Frisch & Sons, 108 N.J. Super. 99, 102-03, 260 A.2d 228, 230 (App. Div. 1969), *cert. denied*, 55 N.J. 448, 262 A.2d 702 (1970).

6 *Id.* at 104, 260 A.2d at 231.

7 Kyle v. Green Acres at Verona, Inc., 44 N.J. 100, 103, 207 A.2d 513, 514 (1965); *see also* H. WOOD, A TREATISE ON LIMITATIONS OF ACTIONS AT LAW AND IN EQUITY (4th ed. 1916).

8 City of Atlanta v. Barrett, 102 Ga. App. 469, 471, 116 S.E.2d 654, 657 (1960).

9 Industrial Comm'n v. Weaver, 81 Colo. 191, 193, 254 P. 444, 445 (1927).

10 Union City Housing Auth. v. Commonwealth Trust Co., 25 N.J. 330, 335, 136 A.2d 401, 403-04 (1957).

11 For an excellent summary of the development of the disability provision in the New Jersey statute of limitations, *see* Kyle v. Green Acres at Verona, Inc., 44 N.J. 100, 103-06, 207 A.2d 513, 514-16 (1965).

his acts.[12] Webster defines the condition of insanity as implying a mental disorder resulting in an inability to manage one's affairs and perform one's social duties.[13] Since insanity is a broad generic term,[14] properly defining it for a specific application necessarily entails a review of its use in previous related cases. Such a review discloses a consistency in the treatment of the word that clearly supports its use in *Sobin*.

In 1948, the Supreme Court of Georgia found a person insane under the Georgia statute of limitations,[15] where he did not have the mental capacity to understand simple subjects or to transact any business.[16] That definition was recently affirmed when it was held that mental incapacity to comprehend the contents or effect of a property deed constituted insanity and tolled the statute of limitations.[17]

Browne v. Smith[18] defined insanity under the limitations of actions statute in Colorado[19] as a condition which prevents a person from being able to properly transact his business affairs. More recently, the Supreme Court of Colorado held that the statute was tolled by a tortious injury rendering the party unable to conduct her business affairs due to brain damage and severe headaches.[20] The court considered the purpose of the statute of limitations, and decided that to rigidly apply it, where a party had been intentionally injured by another and this injury had prevented a timely action, "would result in callous injustice."[21]

Oklahoma, in 1963, recognized that insanity under its statute of limitations[22] resulted when a person did not understand the nature or

---

12 BLACK'S LAW DICTIONARY 929 (4th ed. 1957).

13 MERRIAM-WEBSTER NEW INTERNATIONAL DICTIONARY 1294 (2d ed. 1924).

14 Aponte v. State, 30 N.J. 441, 450, 153 A.2d 665, 669 (1959): "Insanity" has many meanings. A man may be insane for one purpose and sane for another.

15 GA. CODE ANN. § 3-801 (1935) provides:

> Infants, idiots, or insane persons, or persons imprisoned, who are such when the cause of action shall have accrued, shall be entitled to the same time, after the disability shall have been removed, to bring an action, as is prescribed for other persons.

16 Mullins v. Barrett, 204 Ga. 11, 48 S.E.2d 842 (1948).

17 Spearman v. Jones, 226 Ga. 27, 172 S.E.2d 602 (1970).

18 119 Colo. 469, 205 P.2d 239 (1949).

19 COLO. REV. STAT. ANN. § 102-1-16 (1935) stated:

> If any person entitled to bring any of the actions before mentioned in this chapter shall, at the time when the cause of action accrues, be within the age of twenty-one years, or a married woman, insane, imprisoned, or absent from the United States, such person may bring the said actions, within the time in this chapter respectively limited, after the disability shall be removed.

20 Klamm Shell v. Berg, 165 Colo. 540, 441 P.2d 10 (1968).

21 *Id.* at 546, 441 P.2d at 13.

22 OKLA. STAT. tit. 12, § 94 (1960) provides:

> Any person entitled to bring an action for the recovery of real property,

legal effect of his act.[23] However, it was decided that chronic alcoholism did not constitute a mental derangement sufficient under the insanity provision to toll the statute.

In 1929, *Valisano v. Chicago & Northwestern Ry. Co.*[24] held that, under Michigan law, insanity as set down in the statute of limitations[25] meant a condition of mental derangement that actually prevented the sufferer from comprehending rights he would otherwise have been bound to know. This definition was affirmed in 1964 when it was held that the new Michigan statute[26] was tolled due to the presence of a condition of unsound mind conforming to the *Valisano* standard.[27]

As early as 1918, the Supreme Court of California held in *Pearl v. Pearl*[28] that a party's inability to care for his property, transact business, or understand the nature or effect of his acts, was equivalent to his being insane and suspended the statute.[29] This definition was affirmed in 1959 by a decision which touched upon the particular problem of unconsciousness.[30] In that decision, the district court of appeals maintained that insanity is fundamentally the equivalent of *non compos mentis*, and that the incompetency of the party in question to manage and take care of his property, coupled with only partial rationality and sixty days of unconsciousness, constituted insanity and barred the stat-

---

who may be under any legal disability when the cause of action accrues, may bring his action within two years after the disability is removed.

23 Roberts v. Stith, 383 P.2d 14 (Okla. 1963).

24 247 Mich. 301, 225 N.W. 607 (1929).

25 MICH. COMP. LAWS § 12315 (1915) provided:

If any person entitled to bring any of the actions mentioned in this chapter shall, at the time when the cause of action accrues, be . . . insane . . . such person may bring the action within the times in this chapter respectively limited after the disability shall be removed.

26 MICH. COMP. LAWS § 609.5 (1948) provides:

If at the time when any right of entry, or of action, as aforesaid, shall first accrue or have accrued, the person entitled to such entry or action shall be or shall have been . . . insane, . . . such person, or any one claiming from, by or under him, may make such entry, or bring such action, at any time within 5 years after such disability shall be or shall have been removed, although the time limited therefore in the first section of this chapter may have expired.

27 Emery v. Chesapeake & O. Ry., 372 Mich. 663, 127 N.W.2d 826 (1964).

28 177 Cal. 303, 177 P. 845 (1918).

29 CAL. CIV. PROC. CODE § 352 (West Supp. 1969) states:

If a person entitled to bring an action, mentioned in chapter three of this title, be, at the time the cause of action accrued . . .

. . . .

2. Insane; . . .

. . . .

the time of such disability is not a part of the time limited for the commencement of the action.

30 Gottesman v. Simon, 169 Cal. App. 2d 494, 337 P.2d 906 (Dist. Ct. App. 1959).

ute from running.[31] In 1968, the *Pearl* definition was made even more comprehensive when the criteria for insanity were expanded to include incomprehension of the right to hire an attorney and institute legal action.[32]

Although insanity has been included as a disability in the New Jersey statute since its inception,[33] judicial comment concerning it has been sparse. In 1834, the supreme court observed that the current New Jersey statute of limitations was identical to an early English statute[34] dealing with personal actions, except for a provision in the latter for persons beyond the seas.[35] Then, in 1897, it was held that the New Jersey statute of limitations would not begin to run against an insane party until he is restored to sound mind.[36] Finally, a meaningful determination defining insanity in the statute was set down in 1965 when, in *Kyle v. Green Acres at Verona, Inc.*,[37] the supreme court considered in depth the entire problem of insanity and the statute of limitations, and decided that insanity, as used therein, means a condition of mental derangement which prevents the sufferer from realizing his rights under the law and enforcing them through legal action.

At first blush, the doctrine of the *Sobin* case might appear to be a very free interpretation of the statute, or perhaps even an attempt at judicial legislation. However, a review of the decisions at hand, coupled with a careful analysis of the statute and its purpose of preventing stale litigation, seems to entirely justify the decision. It should be noted by

---

31 *See also* Weinstock v. Eissler, 224 Cal. App. 2d 212, 36 Cal. Rptr. 537 (Dist. Ct. App. 1944).

32 Hsu v. Mt. Zion Hosp., 259 Cal. App. 2d 562, 66 Cal. Rptr. 659 (Dist. Ct. App. 1968).

33 *See* note 11 *supra*.

34 21 Jac. I, c. 16, § VII (1623) stated:

> Provided nevertheless, and it be further enacted That if any Person or Persons that is or shall be entitled to such Action of Trespass, Detinue, Action sur Trover, Replevin, Actions of Accounts, Actions of debts, Actions of Trespass for Assault, Menace, Battery, Wounding or Imprisonment, Actions upon the Case for Words, be or shall be at the Time of any such Cause of Action given or accrued, fallen or come, within the Age of Twenty-one Years, *Femme Covert, Non compos mentis,* imprisoned or beyond the Seas; that then such Person or Persons shall be at Liberty to bring the same Actions, so as they take the same within such Times as are before limited, after their coming to or being of full Age, Discovert, or sane Memory, at Large and returned from beyond the Seas, as other Persons having no such Impediment should have done.

See also Valente v. Boggiano, 107 N.J.L. 456, 154 A. 817 (Ct. Err. & App. 1930); Thorpe v. Corwin, 20 N.J.L. 311 (Sup. Ct. 1844).

35 Dekay v. Darrah, 14 N.J.L. 288, 293 (Sup. Ct. 1834).

36 Smith v. Felter, 61 N.J.L. 102, 38 A. 746 (Sup. Ct. 1897), *aff'd*, 63 N.J.L. 30, 42 A. 1053 (Sup. Ct. 1899).

37 44 N.J. 100, 207 A.2d 513 (1965).

those who criticize the *Sobin* holding as judicial legislation, that the court did not create a new definition of insanity. Instead, it merely applied the criteria for insanity as specified in *Kyle*. The accompanying argument that the decision represents an extremely liberal interpretation of the insanity statute is rebutted by the court's rejection of the defendant's contention that the plaintiff was only entitled, under the statute, to a reasonable time in which to bring suit. The court strictly adhered to the language of the statute in granting the plaintiff the full statutory provision of two years.

It might also be argued that allowing an insane plaintiff an unlimited period of time in which to recover his sanity before the statute begins to run will at times contravene the intention of eliminating stale litigation. There might even be a suggestion that a statutory provision be drafted to vest the insane plaintiff's remedy in another party after a certain period of time, in order to avoid the problem.[38] It is submitted, however, that although the resulting period of uncertainty would be undesirable, it is far more equitable than removing the cause of action from a plaintiff due to his continuing insanity. A statute constructed for the sake of expediency would be contingent upon an assumption that, first, the injured party would have someone in a relationship designated by the statute, and, secondly, that the designated party would actively pursue the remedy as diligently as the real party in interest.

In a factual situation similar to that in *Sobin*, where the defendant himself has caused the insanity, the proposed statute would be even more ludicrous. Not only would it be impossible to determine the extent of the damage involved until the full injury had subsided, but by removing the cause of action from the hands of the injured party, thereby risking possible inaction, the statute could confer benefit on the tortfeasor.

The significance of *Sobin* is that unconsciousness, which contains the elements of all the established interpretations of insanity for tolling the statute of limitations, has been determined to constitute insanity under the New Jersey statutory provision. Reference to the definition of insanity as set down in *Kyle* clearly confirms the logic of that result:

> In our view after considering the authorities we conclude that "insane" in the statute of limitations means such a condition of

---

38 For example, a statute might provide that, if after two years have passed and the insane (unconscious) party has not recovered, a member of his family or a close friend may be appointed by the court as a guardian ad litem and be required to bring the action for the injured party within the period allowed by statute after his appointment.

> mental derangement as actually prevents the sufferer from understanding his legal rights or instituting legal action.[89]

Can an unconscious plaintiff truly be expected to fully understand his legal rights and institute legal action?

Thomas W. Cavanagh, Jr.

---

[89] 44 N.J. at 113, 207 A.2d at 521.