

UNITED STATES of America, Plaintiff-Appellee,
v.
Herman UEBER, Defendant-Appellant.

No. 14530.

United States Court of Appeals Sixth Circuit.

February 27, 1962.

1. *Statute of Limitations.* Section 235, Title 31 U.S.C.A., provides that, "Every such suit (for false claims) shall be commenced within six years from the commission of the act, and not afterward." The practice of charging the time of Baitinger, Shirilla and Wilber began in July, 1951. Ueber testified that at that time he directed such employees to so charge their time. He contends that if he did violate § 231, the violation occurred at that time, to wit: in July, 1951, which was more than six years prior to commencement of this action on September 4, 1957. Ueber argues that if he "committed an act" proscribed by § 231, it was accomplished in July, 1951, and the limitation period then began to run.

The government meets Ueber's contention by asserting, first, that Ueber's offense was fraudulently concealed by him and not discovered until December of 1954, so that the statute was tolled until that time; and, second, that the statute did not begin to run until the first false voucher was actually presented to the United States in October of 1951, because *313 only then did plaintiff have a cause of action.

We are satisfied that the government's second position is sound, namely, that the causes of action sued upon did not come into being, nor was there an actual violation of § 231, until the first voucher seeking payment of the false claims was presented to the United States. The first of such vouchers was presented on November 16, 1951, less than six years prior to the commencement of the action. Section 231 gives a cause of action to the government against any person who "shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the * * * service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious or fraudulent * * *." The clear import of this language is that no offense is committed until a false claim is made or presented, or caused to be made or presented, to a department of the government. Ueber admits that he decided to charge, and directed the charging of, the work of the three employees involved, as direct labor. Such decision and direction was made in July 1951, and Ueber testified that he was responsible for the action of the company's billing department which implemented his decision. His conception of the plan and the preparation of false invoices within the company did not ripen into a violation until false vouchers based upon false invoices were caused to be presented to the government in November of 1951. Had Ueber changed his mind at any time prior to that date and not caused any false vouchers to be submitted, no violation would have occurred and no cause of action would have arisen. We hold that no act of violation occurred and no cause of action arose prior to November 21, 1951. [United States v. McNinch, 356 U.S. 595, 78 S.Ct. 950, 2 L.Ed.2d 1001](#); [Smith v. United States, 287 F.2d 299, 304 \(CA 5, 1961\)](#); [United States v. Globe Remodeling Co., 196 F.Supp. 652, \(D.C.Vt., 1961\)](#).

If we should consider that the delivery of invoices to Kaiser and Chase was the event that started the running of the statute, Ueber's position would not be aided. The first of such invoices was so presented on October 19, 1951.