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Article 6

Federal--State Statute of Limitations in Federal Equity Suits (Holmberg v. Ambrecht, 90 L.Ed. 590 (1946))

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statement of the existence in that trade of a custom so general, uniform, and unvarying as to furnish a fixed and definite standard by which to ascertain the intention of the parties.[4]

It has been held that where an agreement is indefinite or incomplete in respect to one or more of its vital terms, and is still executory, generally no recovery can be had for its breach.[5] Terms of an agreement must be definite and complete. For if they are not, there is only an indefinite obligation to be performed, and in the case of legal dispute arising therefrom, there is no way for the court to determine what the parties' obligations are, or whether they have been properly performed. The court can not and will not make a contract for the parties if they have failed to make their agreement definite and complete.[6]

B. H. A.

FEDERAL—STATE STATUTE OF LIMITATIONS IN FEDERAL EQUITY SUITS.—The petitioners are creditors of a joint-stock land bank which closed its doors in 1932; the respondent was a shareholder of that bank. Eleven years after the bank closed, the petitioners learned that Jules S. Bache had concealed his ownership of one hundred shares of the stock under the name of the respondent. Suit was brought in the District Court of the United States for the Southern District of New York against the respondent and Bache to enforce the liability imposed upon shareholders of the bank by § 16 of the Federal Farm Loan Act which imposed upon shareholders a liability of one hundred per cent of their holdings for all contracts, debts and engagements of the bank. As defenses the respondents set up the statute of limitations of New York and laches. *Held,* for petitioners. Where the action is to enforce a federal right, the federal statute of limitations and not the state statute applies. Where a plaintiff has been injured by fraud and has used reasonable diligence to ascertain the truth, the statute of limitations does not begin to run until the fraud is discovered. *Holmberg v. Ambrecht,* — U. S. —, 90 L. ed. 590 (1946).

The respondent, relying upon *Guaranty Trust Co. v. York,*[1] contended that the New York statute of limitations [2] was controlling and that the mere lapse of ten years had barred the action. The court, however, distinguished and limited the *York* case. The *York* case was a case brought into federal court merely because of diversity of citizenship. It was a case involving a state-created right, and for

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[4] Wise & Co., Inc. v. Wecoline Products, Inc., 286 N. Y. 365, 36 N. E. (2d) 623 (1941).

[5] Fairplay School Township v. O'Neal, 127 Ind. 95, 26 N. E. 686 (1891).

[6] WHITNEY, CONTRACTS (3d ed. 1937) § 19.

[1] 326 U. S. 99, 89 L. ed. 2079 (1945).

[2] N. Y. CIV. PRAC. ACT § 53—"An action, the limitation of which is not specifically prescribed in this article, must be commenced within ten years after the cause of action accrues."

purposes of diversity suits a federal court is, in effect, "only another court of the State." [3] The present case, however, concerns not a state-created right but one created by Congress for which the only remedy is in equity. The alleged fraud of the respondents prevented the petitioners from being diligent and makes it unfair to bar appeal to equity because of mere lapse of time. The court long ago adopted the chancery rule that the statute does not begin to run until the discovery of the fraud.[4] This equitable doctrine is read into every federal statute of limitations. If the Federal Farm Loan Act had an express statute of limitations, the time would not have begun to run until after petitioners had discovered, or had failed to exercise reasonable diligence to discover, the alleged deception by Bache.[5]

The court, in rejecting the defense of the state statute of limitations, stated succinctly that "It would be too incongruous to confine a federal right within the bare terms of a State statute of limitations unrelieved by the settled federal equitable doctrine as to fraud, where even a federal statute in the same terms would be given the mitigating construction required by that doctrine." [6]

It is interesting to note that what the Circuit Court of Appeals labeled as a statement of historical background rather than present law, the Supreme Court has stated as living law, *viz.*, federal courts, when sitting as a court of equity, are not obligated to apply local statutes of limitations in cases concerning a federal right where such statutes conflict with equitable principles. This case has redefined the line demarking the separation of purely federal actions and federal diversity actions.

K. F.

JURISDICTION—ARBITRATION—CONTRACT PROVIDING ARBITRATION IN NEW YORK.—The appellant, a Canadian corporation, and the respondent, a New York corporation, negotiated a contract in New York under which disputes were to be settled by arbitration in New York. The parties agreed that the award of the arbitrators was to be final and binding on both parties, and that settlement under an arbitration award was to be made within ten days from the date of such award. If the award was not so settled, the contract provided that *"judgment may be entered thereon in accordance with the practice of any Court having jurisdiction."* An award was made in favor of respondent pursuant to an arbitration of which the appellant had

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[3] Guaranty Trust Co. v. York, 326 U. S. 99, 108, 89 L. ed. 2079, 2086 (1945).

[4] Bailey v. Glover, 21 Wall. 342, 22 L. ed. 636 (U. S. 1875).

[5] Bailey v. Glover, 21 Wall. 342, 22 L. ed. 636 (U. S. 1875); Exploration Co. v. United States, 247 U. S. 435, 62 L. ed. 1200 (1918); United States v. Diamond Coal & Coke Co., 255 U. S. 323, 65 L. ed. 660 (1921).

[6] Holmberg v. Armbrecht, — U. S. —, 90 L. ed. 590, 593, 594 (1946).