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Jurisdiction--Arbitration--Contract Providing Arbitration in New York (Red Line Commercial Co. v.Pastene Co., 269 App. Div. 632 (1st Dep't 1945))

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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).

notice, but in which the appellant did not participate. Respondent then moved for an order confirming the arbitration award and for the entry of judgment thereon, serving the motion papers upon appellant by mail. Appellant defaulted on this motion and an order was entered confirming the award and directing entry of judgment. Appellant thereupon moved to vacate the judgment and proceedings supplementary to judgment which had been commenced by respondent. This motion was denied. *Held,* reversed. The appellant did not consent to the jurisdiction of the New York court by consenting to arbitration in New York. *Red Line Commercial Co. v. Pastene Co.,* 269 App. Div. 632, 58 N. Y. S. (2d) 143 (1st Dep't 1945).

It was the appellant's contention that the New York court never obtained personal jurisdiction over it and therefore could not render a money judgment against it. The majority of the appellate court sustained this contention. Ordinarily a court can acquire jurisdiction of the person of a defendant only by service of process within the jurisdiction of the court.[1] However, jurisdiction over the person of the defendant may be acquired by his consent. This consent may be given either before or after action has been brought;[2] the statute[3] does not provide the exclusive methods of obtaining personal jurisdiction over a foreign corporation.[4]

The majority of the court held that the appellant did not consent to the jurisdiction of the New York court. They relied on *Sargent v. Monroe*[5] as determinative of the issue involved in the instant case. In that case it was said: "While the defendant participated in the arbitration and authorized Foster to act as his representative for the purposes of the arbitration, it cannot be said that the authority so conferred extended to a proceeding in the English courts for the enforcement of the award as a judgment. Once the award became final, the authority ceased unless the defendant submitted to the jurisdiction of the English courts personally or through his duly authorized agent." However, *Sargent v. Monroe* is distinguishable from the instant case, for in that case the contract made no provision for entry of judgment upon an award.

Two of the five judges believed that the words of the contract were tantamount to a consent by the appellant to the jurisdiction of the New York court. They relied on the case of *Gilbert v. Burn-*

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[1] Pohlers v. Exeter Manufacturing Co., 293 N. Y. 274, 56 N. E. (2d) 582 (1944); Howard Converters v. French Art Mills, 273 N. Y. 238, 7 N. E. (2d) 115 (1937); Geary v. Geary, 272 N. Y. 390, 6 N. E. (2d) 67 (1936).

[2] Wilson v. Seligman, 144 U. S. 41, 44, 36 L. ed. 338, 339 (1892); Pennoyer v. Neff, 95 U. S. 714, 735, 24 L. ed. 565 (1878); Gilbert v. Burnstine, 255 N. Y. 348, 174 N. E. 706 (1931).

[3] NEW YORK CIVIL PRACTICE ACT §§ 229, 235.

[4] Howard Converters v. French Art Mills, 273 N. Y. 238, 7 N. E. (2d) 115 (1937); Esperti v. Cardinale Trucking Co., 263 App. Div. 46, 31 N. Y. S. (2d) 253 (2d Dep't 1941).

[5] 268 App. Div. 123, 49 N. Y. S. (2d) 546 (1st Dep't 1944).

stine,[6] where the Court of Appeals held: "Defendant's agreement without reservation to arbitrate in London according to the English statute necessarily implied a submission to the procedure whereby that law is there enforced. Otherwise the inference must be drawn that they never intended to abide by their pledge. They contracted that the machinery by which their arbitration might proceed would be foreign machinery operating from the foreign court." *Gilbert v. Burnstine* is similar to the instant case in that the defendant did not participate in the arbitration and was served without the territorial jurisdiction of the court. It differs in that the defendant agreed to be found by arbitration in London pursuant to the arbitration law of Great Britain. Whereas in the instant case the appellant agreed that judgment could be entered on an award in accordance with the practice of any court having jurisdiction.

The meaning of the latter clause is the real question involved in this case. If it means, as appellant contended, that a New York court could enter judgment against it only if that court could obtain personal jurisdiction after the arbitration award was made, then the judgment must be vacated. However, such a construction at its very best is extremely narrow and strained, and the clause, if such a construction were intended, might just as well have been omitted from the contract. It seems more logical to assume that the words had meaning and significance, and that the parties intended that if an award was made, the proper New York court would have jurisdiction by consent, and judgment could be entered thereon by such court. To hold otherwise frustrates the only purpose the clause could serve.

I. K.

LABOR—FAIR LABOR STANDARDS ACT—OVERTIME COMPENSATION—BONUSES REGULARLY PAID.—Defendant, engaged in the manufacture of building construction materials, employs some 65 employees who are admittedly covered by the Fair Labor Standards Act.[1] In April, 1942, defendant's board of directors adopted a resolution providing that, commencing in June, 1942, all of the company's employees, with the exception of certain finishers, should be paid a monthly bonus, in war stamps, of 10% of their weekly base salaries for the previous month. The finishers were placed on an incentive bonus plan. For some two and one-half years, the bonuses were received by the employees. The employer was not legally obligated to pay such bonus, and the employees knew that it was not contractual and that it could be discontinued had the company's finances so dictated. The defendant company always considered the bonus payments as wages for purposes of computing social security, unemployment insurance, with-

[6] 255 N. Y. 348, 174 N. E. 706 (1931).
[1] 52 STAT. 1060, 29 U. S. C. A. §§ 201-219 (1938).