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Civil Procedure And Evidence—Corporation as a Citizen

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the finality rule and appeal was of right. This decision extends the third party finality rule to one named as a party to an action or proceeding but over whose person no jurisdiction has been obtained even though he was the only party named.

The three dissenters were of the opinion that the notice of the proceedings had been given to the corporation by virtue of a demand for arbitration sent to its sole stockholder and that the notice of motion to confirm the award complied with both their agreement and New York Civil Practice Act §1461. They therefore concluded the corporation was a party and appeal lay only by permission; since this had not been obtained they would have dismissed.

Corporation as a Citizen

The Constitution of New York State declares that timber in the Forest Preserve shall not be "sold, removed or destroyed."[8] In a proceeding under section 4 of that article[9] for permission to institute a suit to restrain the Conservation Commissioner from contracting for cutting blown-down timber in the Preserve, on the ground that the statute[10] authorizing such contracts is unconstitutional, it was *held,* for purposes of bringing suit to enjoin violations of that portion of the Constitution the petitioner membership corporation is a citizen within the meaning of that clause.[11]

This decision was based on the finding by the Court that there is no absolute and inflexible rule that a corporation, especially a membership Corporation, may not be deemed a citizen for various purposes.[12] The Appellant's contention that a corporation has no justiciable interest that makes it an appropriate champion of constitutional principles was shown by the Court to be of no weight, in that the issue is whether or not the plaintiff has a justiciable interest in the controversy rather than whether or not it is a corporation. This is apparent from the cases which have upheld the right of a membership corporation to sue for the

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8. N. Y. CONST. art. XIV, §1.

9. *Violations of Article—How Restrained:* ". . . or with the consent of the Supreme Court Appellate Division, on notice to the attorney general at the suit of any *citizen.*" (emphasis supplied).

10. N. Y. Conservation Law §250 (36).

11. *Oneida County Forest Preserve Council v. Wehle,* 309 N. Y. 152, 128 N. E. 2d 282 (1955).

12. *Anglo-American Provision Co. v. Davis Provision Co.,* 169 N. Y. 506, 62 N. E. 587 (1902); *Fire Department v. Stanton,* 28 App. Div. 334 51 N. Y. Supp. 242 (1st Dept. 1898); *Salem Trust Co. v. Manufacturer's Finance Co.,* 264 U. S. 182 (1924).

benefit of its members or for the people of the state generally.[13] The decision, in the words of the court, is another in the liberal trend permitting associations or corporations to champion constitutional rights.[14]

Statute of Limitations—Constructive Trust

In a suit by a wife against her husband to impress a constructive trust on a house for which she allegedly paid part of the consideration in reliance on husband's promise to place title in both names, the court, unanimously affirming the Appellate Division and Special Term, *held,* the cause of action was barred by the statute of limitations because wife brought suit more than ten years after husband placed title in his own name. There was no estoppel, notwithstanding husband's subsequent oral promises to place title in both names.[15]

An action to impress a constructive trust is governed by the ten year statute of limitations.[16] This is not questioned[17] and has long been recognized.[18] The court in the instant case applied the well settled rule that where an action is instituted against a trustee ex malificio or by implication or construction of law the statute begins to run from the time the wrong was committed by which the party became chargeable in equity as trustee.[19] It again answered in the negative[20] the question of whether the doctrine of estoppel may be invoked to give effect to parol representations or promises in the face of the statute requiring a written acknowledgment or promise to establish a new or continuing contract.[21] They also found the statute of limitations is not tolled merely because the parties are husband and wife.[22]

On the ground that an extension is without support in authority, logic, or policy, the Court refused to extend to this case the equity doctrine that the statute

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13. *United Press Ass'n. v. Valente,* 308 N. Y. 71, 123 N. E. 2d 777 (1955); *Association for Protection of Adirondacks v. MacDonald,* 253 N. Y. 234, 170 N. E. 902 (1930). (Although this issue was not raised in this case, the court felt there was no compelling reason why they should not adhere to the practice followed in the case.)

14 *Pierce v. Society of the Sisters,* 268 U. S. 510 (1925); *Joint Anti-fascist Refugee League Comm. v. McGrath,* 341 U. S. 123 (1950).

15. *Scheuer v. Scheuer,* 308 N. Y. 447, 126 N. E. 2d 555 (1955).

16. C. P. A. §253.

17. *Geller v. Schulman,* 110 N. Y. S. 2d 862, *aff'd* 280 App. Div. 933, 115 N. Y. S. 2d 824 (2d Dep't 1952).

18. Cf. *Higgins v. Higgins,* 14 Abb. N. C. 13 (1883).

19. *Lammer v. Stoddard,* 103 N. Y. 672, 9 N. E. 328 (1886).

20. *Shaply v. Abbott,* 42 N. Y. 443 (1870).

21. Civil Practice Act §659.

22. *Dunning v. Dunning,* 300 N. Y. 341, 90 N. E. 2d 884 (1950).