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AN ARBITRATION, if completed, results in an award. That award must be enforced. In order to do so, it is necessary to enter judgment with respect thereto. The first problem is the acquisition of personal jurisdiction over the defendant for this purpose, in the event that it has not already been acquired previously in connection with proceedings to compel arbitration. The subject of acquiring jurisdiction will not be dealt with in this note because it does not differ too much from the general problems of acquiring jurisdiction in personam with respect to proceedings to compel jurisdiction.

We shall therefore be concerned particularly with the problems of conflicts of laws in the enforcement of the award or judgment on the award.

Conflict of Laws Problems

The general rule is that an award which is valid according to the place where it is rendered *and* legal by the law of the place where it is to be enforced, is enforceable in the forum.[1] The second half of the aforesaid proposition represents the old doctrine of public policy of the forum, as transcending the lex loci contractus. The award after all is not a judgment, and not entitled to full faith and credit. While it cannot be attacked on the merits of the controversy, nevertheless, when it is sought to be enforced, all of the procedural questions as to the conduct of the arbitrators and the parties, as well as the substantive questions of the making and validity of the arbitration contract, are available for review. All this would not be any different with respect to a foreign award than with respect to an intrastate award. However, where questions can arise (and not all of these have been answered) is where the award is sought to be enforced in a state which no longer recognizes the common law method of enforcement. In such circumstances, the foreign award very likely will not be

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[1] 73 A. L. R. 1460 n. and cases cited.

eligible for enforcement as a statutory award in the forum either, since statutory awards within the forum must arise out of a compliance with statutory procedure throughout, and generally with the holding of the arbitration within the forum, and often with the prior making of the submission a rule of the court. Hence, apparently the only remedy would be to secure a judgment on the award in the jurisdiction where rendered and then sue on the judgment in the forum. This may not be easy if personal jurisdiction cannot be had over the defendant in the original jurisdiction.

The New York Cases

The New York courts have had occasion to rule both on enforcement of a foreign award by a common law action for judgment on the award, and by a statutory motion to confirm the award. The law in the former situation has been clearly enunciated in *Gilbert v. Burnstine.*[2] There, it was held that where parties had agreed to arbitrate in England according to its laws, an award rendered could be enforced by an action on the award. The court stated, however, that it reserved the right to examine the English proceeding to ascertain if there had been compliance with such procedure. This is, of course, the classic right. Even in an action on a judgment, questions of jurisdiction in the original forum can be properly raised and litigated.

On the other hand, it seems equally clear that New York will not permit the entry of judgment on an award by the mere statutory motion to confirm.

Thus, in *United Artists' Corp. v. Gottesman,*[3] the Supreme Court, New York County, refused to grant a motion to confirm a Massachusetts award. In doing so it relied on *Skandinaviska Granit Aktiebolaget v. Weiss.*[4] This latter case, however, was not really in point, as it involved an action in New York on a Swedish judgment based on an arbitration award rendered without jurisdiction over the person of the defendant, and did not really involve a question of enforcing a foreign award in New York.

However, in 1948, in *United Electrical Radio and Machine*

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[2] 255 N. Y. 348, 174 N. E. 706 (1931).

[3] 135 Misc. 92; 236 N. Y. S. 623 (Sup. Ct. N. Y. 1929).

[4] 226 App. Div. 56, 234 N. Y. S. 202 (2d Dep't 1929).

Workers of America (U.E.) v. General Electric Co.[5] the New York County Supreme Court again refused to permit statutory confirmation of a Massachusetts award despite the execution of the original contract in New York. The court also cited the *California Packing* case[6] which, in support of a refusal to direct arbitration in a foreign jurisdiction, had stated: "no award taken without the State may be the basis of a judgment" in this State. The court, there, was of course referring to a judgment via a statutory motion.

Again, in *Landerton Co., Inc. v. Public Service Heat and Power Co., Inc.,*[7] the Queens County Supreme Court refused to confirm an award which the parties by stipulation had designated a Connecticut award, despite the fact that the arbitrators had held many of the hearings in New York and rendered and acknowledged the award in New York.

Thus, it is now settled in New York that the statutory procedure is not available to enforce a foreign award, but that an action on the award will lie.

A collateral question is of interest. Under Section 1458 of the New York Civil Practice Act, a failure to move for a stay subsequent to service of a statutory notice to arbitrate thereafter precludes the raising, as a defense, of the making of the arbitration contract and the failure to comply therewith. If then, such a notice has been served in New York, should not a foreign forum give effect to the New York procedure and likewise prevent the raising of these issues? To date there has been no decision on this point, but it would appear that a state like Washington[8], which has a similar provision, would give effect to the New York procedure; and of course, New York should hold so with respect to a Washington award. Further, the modern jurisdictions would probably do likewise, though this is somewhat conjectural.

Other State Jurisdictions

With respect to the enforcement of foreign awards in state jurisdictions other than New York, the cases are generally liberal in favor of the enforcement of such awards.

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[5] 193 Misc. 146; 83 N. Y. S. 2d 768, (Sup. Ct. N. Y. 1948); Affd. 275 App. Div. 908; 90 N. Y. S. 2d 273.

[6] 121 Misc. 212, 201 N. Y. S. 158 (Sup. Ct. N. Y. 1923).

[7] 118 N. Y. S. 2d 84 (Sup. Ct. Q. 1952).

[8] Rev. Code of Wash., Tit. 7, Sec. 7.04.060.

In Alabama it has been held[9] that an action could be brought to enforce an award rendered pursuant to arbitration hearings held partly in Alabama and partly in Tennessee and pertaining to realty partly in Tennessee, where the award was made in conformance with Alabama Law.

On the other hand, the Georgia courts in *Wright Graham & Co. v. Hammond*[10] refused to permit the enforcement of an English award as a common law award, because the award had been rendered subject to the English statute and was thus statutory. It was, however, not made pursuant to Georgia Statutes, and thus not enforceable as a statutory award there either.

Earlier, in Georgia, however, in the case of *Green v. The E. Tennessee & Georgia Railroad,*[11] it was held that an award in Tennessee based on an oral submission valid in Tennessee was available as a bar to an equity unit in Georgia, although Georgia, the forum, required a written submission, on the ground that a mere failure to comply with the formalities of the lex fori is not a disqualification of an otherwise valid submission and award.

On the question of public policy and illegality, the Georgia courts have held, in *Benton v. Singelton,*[12] that an award valid in New York where rendered, was not enforceable in Georgia, in an action on the award. This was for the reason that the underlying futures transaction was illegal as a gaming transaction in Georgia. The Court thus declared without doubt that an award did not have the sanctity of a judgment, and that the courts could and should deny enforcement on public policy grounds in the forum.

In *Titus v. Scantling,*[13] an action was brought in Indiana on an arbitration bond executed in Ohio which, however, failed to include a provision that the submission be made a rule of the court as required by the Indiana and Ohio statutes. The court pointed out that at common law this was not required, and in the absence of evidence to the contrary it was presumed that the common law was in force in Ohio. Hence the bond and submission were valid as a common law bond and submission and enforceable as such in Indiana.

In a 1916 case in Missouri, the parties had executed a sub-

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9 Edmundson v. Wilson, 108 Ala. 118, 19 So. 367 (1936).

10 41 Ga. Appl. 738, 154 S. E. 649 (1930).

11 37 Ga. 456 (1867).

12 114 Ga. 548, 40 S. E. 811, 58 L. R. A. 181 (1902).

13 4 Blackf. (Ind.) 89 (1835).

mission in Indiana for arbitration in Indiana by The National Hay Association.[14] The Missouri arbitration statute did not require a submission to be made a rule of the court. In Indiana the submission had to be made a rule of the court or it was not statutory. The Missouri court permitted an action on the Indiana award because it recognized that in Indiana such a submission was valid at common law.

Prior to the enactment of the modern arbitration statute in Ohio, the courts there, in the *Shafer* case,[15] refused to enforce a New York award rendered pursuant to an agreement providing that it was to be construed in accordance with the laws of New York and the award to be enforced by any court of competent jurisdiction. The defendant revoked before the rendering of the award, on the ground that in Ohio the agreement was only a common law agreement and hence revocable before the award. The distinguishing feature here, of course, was that the defendant revoked the agreement to arbitrate in time. Had he not done so, the Ohio courts very likely would have enforced the award.

Washington, too, has held in accordance with the general rule. In *Taylor v. Basye*,[16] an arbitration was held in Oregon which did not comply with the formalities of Washington or Oregon. While Washington did not recognize common law arbitrations, it nevertheless allowed the award as a valid defense to a suit in Washington, since it was valid as a common law award in Oregon, the place where made.

It seems, therefore, well settled that while an award does not have the sanctity of a judgment, the state jurisdictions will enforce an award if it complies with the laws of the state where rendered or, better yet, if there is no evidence that it does not comply with same. This is subject to the limitation that it must not transgress the public policy of the forum.

Furthermore, the fact that a state does not provide for the enforcement of agreements to arbitrate future disputes should not be a bar to the enforcement of an award rendered elsewhere based on such an arbitration clause, because although such clauses may be revocable and unenforceable in the forum, they are generally not illegal or against public policy, and even in such

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[14] Thatcher Implement & Mercantile Co. v. Brubaker, 193 Mo. App. 627, 187 S. W. 117 (1916).

[15] Shafer v. M. G. M. Dist. Corp., 36 Ohio App. 31, 172 N. E. 689 (1929).

[16] 119 Wash. 263, 205 P. 16 (1922).

forum, if no revocation takes place before the award is rendered, the award is valid.[17]

Cases in the Federal Courts

Under Section 9 of the Federal Arbitration Act, a motion to confirm may be made if the arbitration agreement provides for the entry of judgment on the award. Otherwise, a common law action on the award lies even under the Federal Arbitration Act.

Furthermore, the question in the federal courts will often involve the enforcement of an award made under state law where it is sought to bring an action on the award in a diversity case. Thus, in *Tejas Development Co. v. McGough Bros.*[18] a diversity action was brought on a Texas award not in interstate commerce, wherein the defendant alleged timely revocation of the submission. The court held that the validity of the award should be governed by Texas law, under *Erie v. Tompkins.*[19]

Also in *United Fuel Gas Co. v. Columbian Fuel Corp.*[20] the Fourth Circuit granted a decree in equity enforcing an award rendered in a rate-making case, pursuant to a submission which specifically provided that the award could be entered as a judgment of the Circuit Court of Kanawa County, West Virginia and be enforced in accordance with the West Virginia arbitration statute. The court held that this submission did not preclude the federal courts from enforcing the award as at common law.

In the federal courts, then, regardless of the fact that the arbitration may have been held under state law, if the award is valid where made, the federal courts will permit action on the award in the federal courts in diversity cases. It goes without saying that if there has been federal jurisdiction under the Federal Arbitration Act, each district will enforce awards made in other districts.

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[17] Domke: "On the Enforcement Abroad of American Arbitration Awards." 17 Law & Contemp. Problems 545 (1952) at 554 states that such awards are now enforceable in non-modern forums and cites cases in support of his thesis. All of the cases cited are, however, cases where a judgment had first been rendered on the award and only the judgment was being enforced in the forum. Under the doctrine of Fauntleroy v. Lum, note 29 infra, such judgment would be enforceable constitutionally or by express federal statute in any event and the cases are no authority for his proposition. See note, Commercial Arbitration and The Conflict of Laws, 56 Col. L. R. 902 (1956) in criticism of the Domke thesis.

[18] 165 F. 2d 276 (5th Cir. 1948).

[19] 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938).

[20] 165 F. 2d 746 (4th Cir. 1948).

The enforcement of interstate awards is then fairly liberal in the absence of illegality or public policy reasons, despite the fact that an award is not a judgment within the Full Faith and Credit Clause.[21]

Enforcement of Judgments Entered Outside the Forum

Judgments which have been entered on awards are no different from other judgments. This means that a judgment rendered by a state court enjoys the benefits of enforceability in sister states under the Full Faith and Credit Clause.[22] In addition, such judgment must also be given full faith and credit in the federal courts as a result of federal statute of long standing.[23] Furthermore, such a judgment rendered in a federal court, of course is entitled to enforceability in all the federal courts since these are one judicial system. So too, by judicial decision, a judgment rendered by a federal court must be given the same faith and credit by a state court as a judgment rendered by a court of the state in which the federal court is sitting.[24]

The above rules, however, are no panacea or automatic assurance of enforcement of all judgments rendered on awards. While they mean that the merits of the judgment are not subject

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[21] U. S. Const. Art. IV, Sec. 1: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may be general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

[22] Ibid.

[23] U. S. C., Tit. 28, Sec. 1738: "State and Territorial statutes and judicial proceedings; full faith and credit.

"The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

"The records and judicial proceedings of any court of any such State, Territory or Possession or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

[24] Cf., Crescent City Live-Stock Landing, etc., Co. v. Butchers' Union Slaughter-House, etc., Co., 120 U. S. 141, 7 S. Ct. 472, 30 L. Ed. 614 (1887); Metcalf v. City of Watertown, 153 U. S. 671, 14 S. Ct. 947, 38 L. Ed. 861 (1894); Hancock Nat'l. Bank v. Farnum, 176 U. S. 640, 20 S. Ct. 506, 44 L. Ed. 619 (1900); Supreme Lodge Knights of Pythias v. Meyer, 265 U. S. 30, 44 S. Ct. 432, 68 L. Ed. 885 (1924); Ganow v. Ashton, 32 S. D. 458, 143 N. W. 383 (1913).

to review, nevertheless in all cases judgments may be challenged for want of jurisdiction of the person or subject matter.[25] However, there is a presumption of jurisdiction where the judgment on its face appears to have been rendered by a court of general jurisdiction.[26]

The case of *Jackson v. Kentucky River Mills*[27] is an outstanding illustration of these principles as applied to the field of arbitration. There, the arbitration contract provided that the award could be enforced under the laws of the State, County or Government having jurisdiction, and also provided for arbitration in New York, with a provision that an ex parte arbitration could be had on default. Despite this, the Federal District Court, sitting in Kentucky, refused enforcement of a judgment rendered on the award in New York, because of inadequate personal jurisdiction in the New York courts in connection with the confirmation of the award. In permitting the defendant to challenge the jurisdiction, the Court stated that it was a familiar rule that where judgment is rendered by the courts of one state and is sought to be enforced in another state, such latter state may question the validity of the judgment both for want of jurisdiction over the person and the subject matter.

Sometimes a question may arise as to what is a judgment, but apparently as long as the statute of the state where rendered provides for the entry of judgment in a particular manner, and if that manner has been complied with, the judgment is entitled to full faith and credit. Thus, where the statute of a particular state provides that the mere filing of an award results in a judgment thereunder, such judgment is entitled to full faith and credit.[28]

If however, the judgment is not based on infirmities of jurisdiction, it is practically impregnable even when based on principles contrary to the public policy of the forum where enforcement is sought. The leading case in the arbitration field and perhaps on the entire subject is *Fauntleroy v. Lum*.[29] There, an arbitration was held between two citizens and residents of Mis-

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[25] Milliken v. Meyer, 311 U. S. 457, 61 S. Ct. 339, 85 L. Ed. 278 (1940); Adams v. Saenger, 303 U. S. 59, 58 S. Ct. 454, 82 L. Ed. 649 (1938); Grover & Baker Sewing Machine Co. v. Radcliffe, 137 U. S. 287, 11 S. Ct. 92, 34 L. Ed. 670 (1890); Thompson v. Whitman, 18 Wall. 457, 21 L. Ed. 897 (1874).

[26] Adams v. Saenger, note 25, supra.

[27] 65 F. Supp. 601 (E. D. Ky. 1946).

[28] Wernag v. Pawling, 5 G. & J. 500 (Md. 1833).

[29] 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039 (1908).

sissippi on a transaction involving dealing in futures, which was considered gambling and therefore illegal under the laws of the State of Mississippi, the place of arbitration. In a suit in Mississippi on the award, the claim was dismissed for illegality. Thereafter, the party in whose favor the award had been made brought an action on the award in Missouri, after succeeding in serving the adverse party personally in Missouri, and a judgment was rendered on the award. Subsequently, an action was brought in Mississippi upon such judgment, and after denial of enforcement by the Supreme Court of Mississippi the case went to the United States Supreme Court. Mr. Justice Holmes, citing the familiar rules and cases on the subject of full faith and credit, reversed the Mississippi Supreme Court and held that the Missouri judgment was entitled to full faith and credit, inasmuch as it was a judgment rendered by a sister state and jurisdiction was not being challenged. The defendant was no longer in a position to question the merits of the controversy, as it appeared before the Missouri court. It is interesting to compare this case with the case of *Benton v. Singleton,*[30] because it is a good example of the differences between an award and judgment on an award as regards full faith and credit. While illegality of the lex loci is sufficient to invalidate an award, it cannot, once a judgment has been rendered thereon, constitute a ground for challenging such judgment in a sister state.

The Supreme Court having spoken on the subject quite emphatically, it is now beyond doubt the rule that if the judgment on the award is not subject to attack for lack of jurisdiction, questions of public policy and illegality as well as the merits will not be reviewed when enforcement is sought in a sister jurisdiction or in the federal courts.[31]

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[30] Note 12, supra.

[31] See Domke, op. cit. note 17, supra, and cases cited therein.