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BILLS AND NOTES - RULE OF DECISION IN FEDERAL COURTS - APPLICATION OF SWIFT v. TYSON TO THE UNIFORM NEGOTIABLE INSTRUMENTS LAW

BILLS AND NOTES — RULE OF DECISION IN FEDERAL COURTS — APPLICATION OF SWIFT V. TYSON TO THE UNIFORM NEGOTIABLE INSTRUMENTS LAW — Plaintiff, the transferee after maturity of certain promissory notes made by defendant in Florida, sued in his own name on the notes in the Federal District Court for Pennsylvania. Under the Pennsylvania practice, an assignee after maturity could not sue in his own name unless the notes were negotiable. The District Court concluded that the notes, which contained a provision for interest on overdue interest payments, were non-negotiable and sustained a demurrer. This was affirmed by the Circuit Court of Appeals for the Third Circuit on the ground that although the Florida Negotiable Instruments Law was the law of the case and was alleged to have been interpreted by the courts of that State as making this type of note negotiable, the federal court was free to adopt its own view of state statutes declaratory of the general commercial law. *Held*, that the case should be reversed because the federal courts are bound to follow state decisions interpreting statutes declaratory of commercial law as well as other statutes. *Burns Mortgage Co., Inc. v. Fried*, (U. S. 1934) 54 Sup. Ct. 813.

Since the case of *Swift v. Tyson*[1] the federal courts have been free to adopt their own interpretation of the unwritten commercial law of the state whose rules are applicable under the principles of conflict of laws. But the status of this rule as applied to the law of commercial paper has been in some confusion since the reduction of that body of law to statutory form in the Uniform Negotiable Instruments Law. This is an aspect of the larger question of how far the federal courts will be bound by state decisions interpreting the ever-increasing number of uniform state laws.[2] Some lower federal courts, treating the distinction between general commercial law and local law as decisive of the applicability of section 34 of the Judiciary Act,[3] have held that they are still free to treat the state decisions

[1] 16 Pet. (41 U. S.) 1 (1842). A searching criticism of the basis of Story's decision, namely that there is a single general law, is found in the dissenting opinions of Mr. Justice Holmes in the cases of the Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab and Transfer Co., 276 U. S. 518, 48 Sup. Ct. 404 (1928), and Kuhn v. Fairmont Coal Co., 215 U. S. 349, 30 Sup. Ct. 140 (1909).

[2] Fordham, "The Federal Courts and the Construction of Uniform State Laws," 7 N. C. L. REV. 423 (1929); Dobie, "Seven Implications of Swift v. Tyson," 16 VA. L. REV. 225 (1930).

[3] U. S. C. tit. 28, sec. 725, p. 97: "The laws of the several States, except where

as mere evidence of the law.[4] Others have felt bound by the state decisions [5] on the well-recognized ground that federal courts are required to follow the interpretation given to state statutes by the courts of the state.[6] Still others hold that where the statute involved is declaratory of the common law the general rule requiring conformity does not apply.[7] The present case,[8] adopting the second view and holding that there is no difference between declaratory statutes and those which change existing rules, settles the question for the Negotiable Instruments Law and will undoubtedly control when other uniform laws are involved. This decision will lead to one set of rules within a single state, a more desirable result than the remote possibility that a different rule in the federal courts will cause uniformity throughout the country.[9] The elimination of a motive for creating fraudulent bases for federal jurisdiction [10] and the avoidance of the

the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply." Historically it has been shown that Story's view that this section called for conformity only to state statutes was not the view of the framers of the Judiciary Act. Warren, "New Light on the History of the Federal Judiciary Act of 1789," 37 HARV. L. REV. 49 at 81-88 (1923). And the Supreme Court recognized in Gelpcke v. Dubuque, 1 Wall. (68 U. S.) 175, 17 L. ed. 520 (1863), that state courts do declare the law and not merely provide evidence of it.

[4] Mutual Life Ins. Co. v. Lane, (C. C. Ga. 1907) 151 Fed. 276; Capital City State Bank v. Swift, (D. C. Okla. 1923) 290 Fed. 505; Jockmus v. Claussen & Knight, (D. C. Iowa 1930) 47 F. (2d) 766; Manufacturers' Finance Corp. v. Vye-Neill Co., (C. C. A. 1st, 1933) 62 F. (2d) 625.

[5] Savings Bank of Richmond v. Nat. Bank of Goldsboro, (C. C. A. 4th, 1925) 3 F. (2d) 970; Niagara Fire Ins. Co. v. Raleigh Hardware Co., (C. C. A. 4th, 1933) 62 F. (2d) 705; Kobey v. Hoffman, (C. C. A. 8th, 1916) 229 Fed. 486; Crittenden v. Widrevitz, (C. C. A. 2d, 1921) 272 Fed. 871; Mack v. Dailey, (C. C. A. 2d, 1924) 3 F. (2d) 534; Queensborough Nat. Bank of New York v. Kelley, (C. C. A. 2d, 1931) 48 F. (2d) 574; Bank of United States v. Cuthbertson, (C. C. A. 4th, 1933) 67 F. (2d) 182.

[6] See cases cited in U. S. C. tit. 28, sec. 725, n. 8.

[7] Byrne v. Kansas City, Ft. S., & M. R. R., (C. C. A. 6th, 1894) 61 Fed. 605; Peterson v. Metropolitan Life Ins. Co., (D. C. Iowa 1926) 19 F. (2d) 74.

[8] The decision in the case was complicated by the absence of an authoritative decision by the Florida Supreme Court on the negotiability of notes containing this sort of an interest provision. The court followed the well-recognized rule that where a state decision is lacking, it will decide the case according to its own views, subject to alteration after the state court passes on the matter. Portneuf-Marsh Valley Canal Co. v. Brown, 274 U. S. 630, 47 Sup. Ct. 692 (1927); Wabash Valley Electric Co. v. Young, 287 U. S. 488, 53 Sup. Ct. 234 (1933). See U. S. C. tit. 28, sec. 725, n. 12, for cases holding that federal courts will disregard prior decisions when there has been a contrary interpretation by the state courts.

[9] It is interesting to note that the Uniform Negotiable Instruments Law was required to change the New York rule regarding antecedent debts as value which was disapproved in Swift v. Tyson. See a discussion of the effectiveness of that rule in 77 UNIV. PA. L. REV. 105 at 109 (1928).

[10] *Cf.* the device used in the Black & White Taxicab case where one party dissolved and reincorporated in another state in order to get into the federal court.

anomalous condition in which the result depends on which system of courts a fortunate litigant is able to have try the case, recommend the result reached.[11]

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[11] Dobie, "Seven Implications of Swift v. Tyson," 16 VA. L. REV. 225 (1930).