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FEDERAL COURTS-FORUM NON CONVENIENS APPLIED IN NEGLIGENCE ACTION

Edward S. Tripp S.Ed.
University of Michigan Law School

FEDERAL COURTS—FORUM NON CONVENIENS APPLIED IN NEGLIGENCE ACTION—In a Federal District Court in New York, plaintiff, a resident of Virginia, sued defendant, a Pennsylvania corporation doing business in New York and Virginia, for negligent destruction of plaintiff's warehouse in Virginia. Defendant moved to dismiss on the ground that suit in New York would not be proper because neither plaintiff nor defendant was a resident of New York, the cause of action arose in Virginia, and because suit in New York would work great hardship on defendant since it would be unable to compel the attendance of material witnesses resident in Virginia, nor could it join, as defendant, an independent contractor in Virginia who, rather than the principal defendant, might prove to be liable for the loss. The district court granted defendant's motion,[1] but the Second Circuit Court of Appeals reversed, one justice dissenting.[2] On certiorari to the United States Supreme Court, *held*, reversed, four justices dissenting. *Gulf Oil Corporation v. Gilbert*, (U.S. 1947) 67 S. Ct. 839.

[1] (D.C. N.Y. 1945) 62 F. Supp. 291.
[2] (C.C.A. 2d, 1946) 153 F. (2d) 883.

While it has been broadly stated that a federal court must exercise jurisdiction when it has it,[3] the rule has never been held to be absolute. However, prior to the decision in the principal case and in *Koster v. American Lumbermens Casualty Co.*[4] the exceptions to the rule had been rather narrowly limited. The right of a court to decline to accept jurisdiction in admiralty cases between foreigners is well established.[5] It is also proper for a court to refuse to take jurisdiction when the case would involve interference with state activities.[6] The great majority of cases, however, have been concerned with the problem of corporations foreign to the state where the court is sitting. It has been recognized that a court may decline to take jurisdiction when the "internal affairs" of a foreign corporation would be involved,[7] although, in most of these cases other considerations have appeared to be more important to the lower federal courts.[8] However, a federal court may not decline to accept jurisdiction merely for its own convenience [9] though state courts have frequently refused to hear cases on this ground.[10] It is noteworthy that no case seems to have arisen in which a federal court declined jurisdiction in a suit at law merely on the ground that the suit

[3] Suydam v. Broadnax, 14 Pet. (39 U.S.) 67 (1840); Union Bank of Tennessee v. Jolly's Administrators, 18 How. (59 U.S.) 503 (1855); Hyde v. Stone, 20 How. (61 U.S.) 170 (1857); Chicot County v. Sherwood, 148 U.S. 529, 13 S. Ct. 695 (1893).

[4] The Koster case, (U.S. 1947) 67 S. Ct. 828, decided the same day as the principal case, is discussed p. 104, infra.

[5] The Belgenland, 114 U.S. 355, 5 S. Ct. 860 (1885); Carter Shipping Co., Ltd. v. Bowring Jones & Tidy, Ltd., 281 U.S. 515, 50 S. Ct. 400 (1930); Canada Malting Co., Ltd. v. Paterson Steamships, Ltd., 285 U.S. 413, 52 S. Ct. 413 (1932).

[6] Spielman Motor Co. v. Dodge, 295 U.S. 89, 55 S. Ct. 678 (1935) (interference with state criminal prosecution); Matthews v. Rodgers, 284 U.S. 521, 52 S. Ct. 217 (1932) (interference with collection of taxes); Central Kentucky Gas Co. v. Railroad Commission, 290 U.S. 264, 54 S. Ct. 154 (1933) (interference with local rate fixing activity); Burford v. Sun Oil Co., 319 U.S. 315, 63 S. Ct. 1098 (1943) (interference with state administrative agency).

[7] Rogers v. Guaranty Trust Co., 288 U.S. 123, 53 S. Ct. 295 (1933); Cohen v. American Window Glass Co., (C.C.A. 2d, 1942) 126 F. (2d) 111. But see Williams v. Green Bay & W. R. Co., 326 U.S. 549, 66 S. Ct. 284 (1946).

[8] The courts have considered various factors, most of which go to the question of whether or not it would be possible to hand down an effective decree. The problem is discussed in 46 COL. L. REV. 413 (1946).

[9] "The diversity jurisdiction was not conferred for the benefit of the federal courts or to serve their convenience. . . . In the absence of some recognized public policy or defined principle guiding the exercise of the jurisdiction conferred, which would in exceptional cases warrant its non exercise, it has from the first been deemed to be the duty of the federal courts, if their jurisdiction is properly invoked, to decide questions of state law whenever necessary to the rendition of a judgment." Stone, C. J. in Meredith v. Winterhaven, 320 U.S. 228 at 234, 64 S. Ct. 7 (1943).

[10] Douglas v. N.Y. N.H. & H. R. Co., 279 U.S. 377, 49 S. Ct. 355 (1929); Anglo-American Provision Co. v. Davis Provision Co. No. 1, 191 U.S. 373, 24 S. Ct. 92 (1903). In these cases it has been felt that the state should not have to provide facilities for litigation of matters between non-residents, since they do not bear any of the burden of maintaining the courts of the state. Of course, this reasoning cannot be applied when one federal court merely shunts the parties to another federal court.

would be vexatious and oppressive to the defendant. In *Williams v. Green Bay & W. R. Co.*[11] the court unanimously recognized that jurisdiction might be declined if the suit would be "vexatious and oppressive" [12] to the defendant, but, in that case, the exercise of discretion on the part of the district court in declining to hear the case was held to be improper because there was no such hardship as would justify the refusal. The majority in the present case was of the opinion that this was the type of case in which the discretion should be exercised. Previous cases [13] in which the federal courts had refused to enjoin oppressive and vexatious suits brought under the Federal Employers Liability Act[14] were distinguished. Those actions were controlled by an express venue statute [15] and, therefore, the defendant could not defeat plaintiff's choice of forum. It appears that the New York courts might have declined to accept jurisdiction in the principal case on the ground of forum non conveniens [16] but the question of whether or not the district court was bound, under *Erie R. Co. v. Tompkins*,[17] to follow the New York rule of forum non conveniens seems to be left open.[18] While the doctrine of the inconvenient forum probably should have its place in the federal courts, it would seem that the Court would have been on sounder ground had it compelled the lower court to accept the case, in view of the established policy of limiting the exceptions to the general rule that a federal court must exercise jurisdiction when it has it. It was on this point that the dissenting justices took issue. They thought that the Court should leave the matter to be provided for by Congress rather than fly in the face of the general venue statute [19] according to which the plaintiff was properly in the New York District Court.[20]

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[11] 326 U.S. 549, 66 S. Ct. 284 (1946).

[12] Id. at 553.

[13] Baltimore and Ohio R. Co. v. Kepner, 314 U.S. 44, 62 S. Ct. 6 (1941); Miles v. Illinois Central R. Co., 315 U.S. 698, 62 S. Ct. 827 (1942).

[14] 35 Stat. L. 65, c. 149 (1908), 45 U.S.C. (1940) § 51 et seq.

[15] 35 Stat. L. 65, c. 149, § 6 (1908); 45 U.S.C. (1940) § 56.

[16] Travis v. Knox Terpezone Co., 215 N.Y. 259, 109 N.E. 250 (1915); Murnan v. Wabash R. Co., 246 N.Y. 244, 158 N.E. 508 (1927).

[17] 304 U.S. 64, 58 S. Ct. 817 (1938).

[18] In the principal case, Jackson, J., speaking for the majority, after noting that the New York standards in applying the doctrine of forum non conveniens were the same as those used in the federal courts, stated at p. 843 "It would not be profitable, therefore, to pursue inquiry as to the source from which our rule must flow." In Weiss v. Routh, (C.C.A. 2d, 1945) 149 F. (2d) 193, it was held that a federal court is bound, under Erie R. Co. v. Tompkins, supra, note 17, to follow the local rule as to forum non conveniens. The question was expressly left open in the Williams case, 326 U.S. 549, 66 S. Ct. 284 (1946). In the Koster case, (U.S. 1947) 67 S. Ct. 828, the court indicates that it would follow the New York rule.

[19] 49 Stat. L. 1213 (1936), 28 U.S.C. (1940) § 112.

[20] Neirbo v. Bethlehem Shipbuilding Corp., Ltd., 308 U.S. 165, 60 S. Ct. 153 (1939).