Michigan Law Review

Volume 44 | Issue 3

1945

CONFLICT OF LAWS-STATUTE OF LIMITATIONS-STATE STATUTE BINDING ON FEDERAL COURT IN EQUITY CASE WHEN SOLE GROUND OF JURISDICTION IS DIVERSITY OF CITIZENSHIP

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RECENT DECISIONS

This section is divided into two parts: notes and abstracts. The abstracts consist merely of summaries of the facts and holdings of recent cases and are distinguished from the notes by the absence of discussion.

NOTES

CONFLICT OF LAWS—STATUTE OF LIMITATIONS—STATE STATUTE BINDING ON FEDERAL COURT IN EQUITY CASE WHEN SOLE GROUND OF JURISDICTION IS DIVERSITY OF CITIZENSHIP—Defendant trust company was trustee for enforcing the rights of noteholders of the Van Sweringen Corporation. When it became apparent that the Corporation could not meet its obligations, defendant company gave an option to noteholders to sell the notes for 50 per cent cash plus stock in the Van Sweringen Corporation. The donor from whom the plaintiff had received some of these notes as a gift had not accepted the exchange. Plaintiff brings suit for an alleged breach of trust. The circuit court of appeals held,[1] reversing the summary judgment of the district court,[2] "that in a suit brought on the equity side of a federal district court that court is not required to apply the state statute of limitations that would govern like suits in the courts of a state where the federal court is sitting even though the exclusive basis of federal jurisdiction is diversity of citizenship." Reversing the circuit court, the Supreme Court *held*, the rule of *Erie Railroad v. Tompkins*[3] is applicable in such cases so the state statute does bind the federal court. *Guaranty Trust Co. of N.Y. v. York*, (U.S. 1945) 65 S. Ct. 1464.[4]

Seizing on this opportunity[5] to extend further or at least to define further

[1] (C.C.A. 2d, 1944) 143 F.(2d) 503. Certiorari granted on sole question of statute of limitations, 323 U.S. 693, 65 S. Ct. 54(1944).

[2] The district court had rendered this judgment on the ground the suit was barred by a prior case, Hackner v. Morgan, (C.C.A. 2d, 1942) 130 F.(2d) 300.

[3] 304 U.S. 64, 58 S.Ct. 817(1938). Justice Frankfurter on page 1470 of the principal case sets out the principle of the Erie case, "In essence, the intent of that decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of the litigation, as it would be if tried in a State court." See also, 36 MICH. L. REV. 1312(1938); 41 W. VA. L. Q. 131(1935); Ball, "Revision of Federal Diversity Jurisdiction," 28 ILL. L. REV. 356 at 362, 364(1933); Frankfurter, "Distribution of Judicial Power Between United States and State Courts," 13 CORN. L. Q. 499 at 524 (1928); and Holmes' dissent in Kuhn v. Fairmont Coal Co., 215 U.S. 349 at 370, 30 S. Ct. 140(1910). See also, Smith, "Erie Railroad Versus Tompkins: Two Years After," 12 ROCKY MT. L. REV. 184(1940); McCormick and Hewins, "The Collapse of 'General' Law in the Federal Courts," 33 ILL. L. REV. 126(1938); COOK, LOGICAL AND LEGAL BASES OF CONFLICT OF LAWS, c.6, particularly at 163-170(1942); 114 A.L.R. 1500(1938).

[4] Principal case abstracted in 44 MICH L. REV. 165(1945).

[5] As Justice Rutledge points out in his disenting opinion there had been no decision by the court below on the question of whether the New York statute of limitations would actually bar this case. The circuit court of appeals only assumed arguendo that it did.

the extent of the rule of the *Erie* case, the majority of the Court give a new interpretation to the venerable test of "substantive" or "procedural" law. At one time universally and probably still today by many writers,[6] a particular matter would be classified as either substantive or procedural, *per se*, without consideration of the purpose for which the classification was needed.[7] The Court, perhaps as a result of the suggestion of one writer,[8] has now rejected this kind of classification, saying in effect that for some purposes a particular matter may be substantive while for others it may be procedural. The Court now takes the position that in determining when state "law" [9] should be followed by federal district courts in diversity cases, the sole question is, ". . . does it significantly affect the result of a litigation for a federal court to disregard a law of a state that would be controlling in an action upon the same claim by the same parties in a State Court?" [10] If the answer is "yes," then the *Erie* rule requires the federal court to apply state "law." Certainly this position seems to state more clearly the real question in applying the *Erie* rule, and in the present case the Court's answer seems to give the correct result.[11] However, the Court not only had to call substantive what has almost universally been considered procedural; [12] it had several other obstacles to surmount in reaching its holding. Although the case of *Ruhlin v. N.Y. Life Ins. Co.*[13] perhaps foreshadowed application of the *Erie* rule to suits in equity, it did not squarely decide this point.[14] If it is of paramount importance, however, that there be uniformity between state court decisions and those of federal courts situated in that state in cases at law many of the same considerations make it important in equity cases. If there is no com-

[6] See 3 BEALE, A TREATISE ON THE CONFLICT OF LAWS, c. 12 (1935).

[7] For a discussion of these terms see cases and articles cited in the principal case at 1469.

[8] COOK, LEGAL AND LOGICAL BASES OF CONFLICT OF LAWS 163-170(1935).

[9] The Court uses this term to include state decision law as well as statutory law in accordance with the decision in the *Erie* case.

[10] Principal case at 1470, "And so the question is not whether a statute of limitations is deemed a matter of 'procedure' in some sense. The question is whether such a statute concerns merely the manner and the means by which a right to recover, as recognized by the State, is enforced, or whether such statutory limitation is a matter of substance in the aspect that alone is relevant to our problem, namely, does it significantly affect the result . . .?"

[11] Note 15, infra. But see note 12, infra.

[12] See CONFLICT OF LAWS RESTATEMENT, § 604 (1934); 3 BEALE, A TREATISE ON THE CONFLICT OF LAWS, § 604(1935). This view is based on the conception that the statute only goes to the remedy, not the cause of action. That classification, however, is for purposes of certain contractual concepts which have no direct bearing on the effect of the statute as to the conflict question. This would seem to be the very reason of the Court for abandoning the idea that a matter is substantive or procedural in all respects, regardless of the reason for classification.

[13] 304 U.S. 202, 58 S. Ct. 860(1938).

[14] That case, while brought in equity, concerned the construction of an incontestable clause in an insurance contract which is certainly a question that could well have been decided in a suit at law. And see language in Russell v. Todd, 309 U.S. 280 at 287, 60 S. Ct. 527(1940).

pelling difference that dictates a different rule in equity cases,[15] the Court had precedent from which it could argue that the rule of uniformity should be applied in the principal case. Recent cases have held federal courts bound by state "law" as to burden of proof, conflict of laws, and contributory negligence.[16] The affect of a statute of limitations would seem as much of the substance of the cause of action as are those questions. While some writers predicted the rule would be extended to equity cases,[17] there were others who thought not.[18] There are undoubtedly some very critical questions concerning application of the rule, especially in equity cases, which would seem to warrant more attention than that given in the majority opinion.[19] What if by state law the remedy of specific performance were denied in cases which, we will suppose, under a federal rule of procedure were allowed? Does the Congressional mandate in labor injunction cases under the Norris-LaGuardia Act except these cases from the *Erie* rule where state "law" does not prohibit such injunctions? The Court says that it does, but gives no reason. Is a federal court bound by state "law" when the only law is a lower court's decision on a very complex and difficult question, such as often arises in equity cases? What is the result if, after final judgment in the federal court, the state supreme court reverses the lower court?

[15] Many writers, at least one Supreme Court case, and numerous lower court decisions argue that there are compelling differences: COOK, LEGAL AND LOGICAL BASES FOR CONFLICT OF LAWS 144(1942); "Developments in the Doctrine of Erie Railroad v. Tompkins," 9 UNIV. CHI. L. REV. 113, 308(1941); 115 A.L.R. 1007(1938); 19 AM. JUR., Equity §§ 496, 497(1939); 30 C.J.S., Equity § 116(1942); Neeves v. Scott, 13 How. (54 U.S.) 268(1851); and Kirby v. Lake Shore & Mich. So. R.R., 120 U.S. 130, 7 S. Ct. 430(1887), now overruled. See also language in Russell v. Todd, 309 U.S. 280, 60 S. Ct. 527(1940); Guffey v. Smith, 237 U.S. 101, 35 S. Ct. 526(1915); Robinson v. Campbell, 3 Wheat. (16 U.S.) 212(1818); Michoud v. Girod, 4 How. (45 U.S.) 503(1846). For lower court decisions see Fraser v. United States, (C.C.A. 6th, 1944) 144 F.(2d) 139; Commercial National Bank v. Parsons, (C.C.A. 5th, 1944) 144 F.(2d) 231; Philco Corp. v. Phillip Mfg. Co., (C.C.A. 7th, 1943) 133 F.(2d) 663; Gillons v. Shell Co. of California, (C.C.A. 9th, 1936) 86 F.(2d) 600; Robinson v. Linfield College, (C.C.A. 9th, 1943) 136 F.(2d) 805; Hoehn v. Crewes, (C.C.A. 10th, 1944) 144 F.(2d) 665.

[16] Cities Service Oil Co. v. Dunlap, 308 U.S. 208, 60 S. Ct. 201(1939), Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 61 S. Ct. 1020(1941), and Palmer v. Hoffman, 318 U.S. 109, 63 S. Ct. 477 (1943), respectively, all cited by Justice Frankfurter in the majority opinion. The Court did have to specifically overrule Kirby v. Lake Shore & Mich. So. R.R., 120 U.S. 130, 7 S. Ct. 430(1887), however. See note 128 A.L.R. 405(1940).

[17] McCormick and Hewins, "The Collapse of 'General' Law in the Federal Courts," 33 ILL. L. REV. 126 at 140(1938); Trunks, "Categorization and Federalism: 'Substance' and 'Procedure' After Erie Railroad v. Tompkins," 34 ILL. L. REV. 271 at 296, 302(1939). And see Wichita Royalty Co. v. City Nat. Bank, 306 U.S. 103, 59 S. Ct. 420(1939).

[18] Note 14, supra.

[19] Justice Rutledge suggests this in his dissent, principal case at 1471. See also COOK, LEGAL AND LOGICAL BASES FOR CONFLICT OF LAWS 144(1942). The majority opinion rather lightly disposes of some of these problems without giving the reasons for the answers.

One writer at least suggests that for these reasons the *Erie* rule should not be applied to conflict of laws questions even in cases at law.[20] Some have even questioned that the application of the *Erie* rule for the sake of uniformity will prevent suits in federal courts based on diversity.[21] But granting, as does this writer, the logic and the merit of the result in this particular case as an application of the idea underlying such laws as the borrowing statutes,[22] has the Court provided any clear criteria for determining what is included in the category of binding state "law"? Does the Court actually mean to say that, every time a federal court by not applying state "law" would reach a result different from that reached by applying it, the court must follow that state "law," at law or in equity? All agree that as to formal rules of procedure the federal courts are bound by the federal rules.[23] Yet, does not the question of service of process as it affects jurisdiction of the court "significantly affect the result," if the state "law" holds a certain procedure sufficient while under federal law it is not sufficient? Likewise, does the Court mean that if the question of laches arises the federal court must look to the state decisions to try to find the answer? [24] Perhaps the Court will distinguish between questions which go to the jurisdiction or the remedies of the federal courts and those like the principal case. Though the extent may be questioned, the Court has cast some light in the dark corner where lurk "substance" and "procedure" and "uniformity of result," and has settled the question as to state statutes of limitations. It has not as yet, however, defined the limits of the application of the *Erie* rule.

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[20] COOK, LEGAL AND LOGICAL BASES FOR CONFLICT OF LAWS, c. 5(1942). See particularly his criticism of the Klaxon case applying the Erie rule to questions involving conflict of laws. As the dissenting opinion points out, the principal case may involve a conflict question since there was evidence that the transactions were essentially interstate in character.

[21] McCormick and Hewins, "The Collapse of 'General' Law in the Federal Courts," 33 ILL. L. REV. 126 at 144(1938). The authors express the opinion that because federal court judges are life appointees and federal court juries are selected from a wider area, many plaintiffs will continue to prefer the federal courts. Certainly, application of the rule will not guarantee the same result, Morgan, "Choice of Law Governing Proof," 58 HARV. L. REV. 153 at 194-5(1944), because of the different effect the same testimony and evidence will have on different judges and on juries of different composition.

[22] See 3 BEALE, A TREATISE ON THE CONFLICT OF LAWS, § 605(1935).

[23] See dissenting opinion of J. Hand in the principal case in the Circuit Court, 143 F. (2d) 503 at 529 (1944), and comment 115 A.L.R. 1007 at 1020 (1938).

[24] Justice Rutledge in his dissent, principal case at 1473, puts this question.