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State Conflict of Laws Rules in the Federal Courts - Klaxon Co. v. Stentor Electric Manujacturing Co.

Casenotes

STATE CONFLICT OF LAWS RULES IN THE FEDERAL COURTS

Klaxon Co. v. Stentor Electric Manufacturing Co.[1]

Griffin v. McCoach[2]

In the United States District Court for the District of Delaware respondent, a New York corporation that had transferred all its assets to the petitioning Delaware company, instituted this action in the belief that the latter had failed to perform its part of the New York-executed contract of transfer. The basis of the jurisdiction of the Court was diversity of citizenship. At the successful termination of its suit respondent invoked Section 480 of the New York Civil Practice Act,[3] moving to correct its judgment by the addition of interest at 6% from the date of the institution of the action. The Court granted this motion[4] and on appeal its ruling was affirmed by the Circuit Court of Appeals for the Third Circuit.[5] The lower courts reached this result without reference to how the state courts of Delaware would have resolved the conflict of laws question involved. The recurrent appearance of the question "whether in diversity cases the Federal courts must follow conflict of laws rules prevailing in the states in which they sit",[6] plus the appearance of a dissimilarity in the routes by which the Third and First Circuits[7] approached the problem, induced the Supreme Court to grant

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[1] 313 U. S. 487 (1941).

[2] 313 U. S. 498 (1941).

[3] ". . . In every action wherein any sum of money shall be awarded by verdict, report or decision upon a cause of action for the enforcement of or based upon breach of performance of a contract, express or implied, interest shall be recovered upon the principal sum whether theretofore liquidated or unliquidated and shall be added to and be a part of the total sum awarded."

[4] Stentor Electric Manufacturing Co. v. Klaxon Co., 30 F. Supp. 425 (D. C. Del., 1939).

[5] 115 F. (2d) 268 (C. C. A. 3rd, 1940). Shortly after its disposition of the Klaxon case the Circuit Court of Appeals for the Third Circuit seems to have changed its approach in recognition of the impact of the Tompkins decision upon conflict of laws. See Waggaman v. General Finance Co., 116 F. (2d) 254, 257 (C. C. A. 3rd, 1940).

[6] *Supra*, n. 1, 494.

[7] See Sampson v. Channell, 110 F. (2d) 754 (C. C. A. 1st, 1940).

certiorari. On June 2, 1941, the Court reversed the judgment below and remanded the case for discovery of and decision in conformity with the conflict of laws rule of Delaware, thus smashing a conflict of laws relic of *Swift v. Tyson.*[8]

The rule of the *Klaxon* case was confirmed by *Griffin v. McCoach.*[9] In an interpleader[10] brought in a United States District Court in Texas the proceeds of an insurance policy on the life of a Texan were claimed on the one hand by his estate, and on the other, by the named beneficiary. In derogation of the beneficiary's claim it was contended that some of the parties[11] for whom he was acting as trustee, had no insurable interest in the life of the insured as required by Texas law;[12] that the forum should apply the law of that state since the agreement whereby he was named beneficiary was a Texas contract;[13] and that if it should be determined that the whole transaction was governed by the law of a state unopposed to recovery of insurance proceeds by persons without insurable interests, the forum was bound by the public policy of Texas against granting such recovery. Affirming the judgment for the beneficiary,[14] the Circuit Court of Appeals for the Fifth Circuit declared that since the subsequent changes in the policy were made pursuant to the original New York contract, the governing law was still that of New York; and "to apply the laws of Texas to the New York contracts would constitute an unwarranted extra-territorial control of con-

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[8] 16 Pet. 1 (1842). See *infra circa*, notes 20-23.

[9] This companion-piece to the Klaxon case was decided the same day as the latter; Mr. Justice Reed, as in the Klaxon case, wrote the opinion.

[10] As the Federal Interpleader Act, 28 U. S. C. A., Sec. 41 (26), makes diversity of citizenship on the part of the claimants a condition to the vesting of jurisdiction in the district courts, the jurisdictional background of the Klaxon case is not essentially dissimilar to that of Griffin v. McCoach.

[11] The original beneficiary had been a New York syndicate composed of seven investors who, to protect their advances to the Texan, had purchased the policy and paid the premiums. By an agreement effected on his part in Texas, the insured obtained for his wife an eighth interest in the proceeds of the policy, in return for his release of the right to any further change of beneficiary. By the same agreement McCoach as trustee for the members of the syndicate, was named beneficiary. Subsequently three of the syndicate-members in New York assigned their interests in the policy to others, strangers to the insured; it was the right of these assignees to recover that the estate contested.

[12] See Wilke v. Finn, 39 S. W. (2d) 836, 838 (Tex., 1931) and cases there cited.

[13] It was conceded that the original policy was controlled by the law of New York, since the insured had applied for the policy there and it had been delivered in that state.

[14] 116 F. (2d) 261 (C. C. A. 5th, 1940).

tracts and regulation of business outside of Texas in disregard of the laws of New York . . ."[15] Having granted *certiorari* for the same reasons as in the *Klaxon* case, the Supreme Court held that whether the insurance policy as altered was controlled by the law of New York or Texas, and whether in any event Texas public policy permitted recovery by a beneficiary without an insurable interest, were questions to be determined by reference to the Texas decisions.

Solely as a matter of case authority and text comment in the field of conflict of laws it can be said that in the *Klaxon* case both courts below made a proper choice of law in their application of that of New York.[16] The error of their ways, however, lay in their inattention to the Delaware conflict of laws rule. Of *Griffin v. McCoach,* substantially the same can be said.[17] As far as one can learn from the opinion of the Circuit Court of Appeals, there

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[15] *Supra,* n. 14, 264.

[16] Relying on 2 BEALE, CONFLICT OF LAWS (1935) 1259, to the effect that "in the absence of specific language, or of circumstances indicating a contrary intention, a contract is to be performed, in most cases, at the place of contracting . . .", as well as RESTATEMENT, CONFLICT OF LAWS, Sec. 355, Comment a: ". . . if the place of performance is not stated in specific words in the contract, it must be determined by construction and interpretation . . .", the Circuit Court of Appeals reached the conclusion that New York was the place of performance, by the laws of which place, of course, the measure of damages for breach of contract is determined (RESTATEMENT, CONFLICT OF LAWS, Sec. 413). In addition, this Court adverted to Sec. 418 of the Restatement; GOODRICH, CONFLICT OF LAWS (2d Ed., 1938) 215; and 2 BEALE, CONFLICT OF LAWS (1935) 1335, for support of the proposition that the law of the place of performance determines the rate of interest allowed as part of the damages for breach of contract. The District Court had reached the same result by a less academic journey; it merely followed the Federal courts' conflict of laws decisions rendered independently of state decision as a matter of so-called "general law". See Northern Pacific Railroad Company v. Babcock, 154 U. S. 190 (1894), and other cases mentioned at 30 F. Supp. 433 and 434.

[17] The Circuit Court of Appeals relied on Aetna Life Insurance Co. v. Dunken, 266 U. S. 389 (1924), for its proposition that changes made in an insurance policy pursuant to policy clauses providing therefor, do not constitute new contracts or change the governing law applicable to the policy. In support of its public policy conclusion the Court cited Overby v. Gordon, 177 U. S. 214 (1900); New York Life Insurance Co. v. Head, 234 U. S. 149 (1914); Bond v. Hume, 243 U. S. 15 (1917); and Aetna Life Insurance Co. v. Dunken, *supra.* For additional Supreme Court decisions on both sides of the perplexing public policy question see Union Trust Co. v. Grossman, 245 U. S. 412 (1918); Bothwell v. Buckbee, Mears Co., 275 U. S. 274 (1927); Alaska Packers Association v. Industrial Accident Commission of California, 294 U. S. 532 (1935); Bradford Electric Light Co., Inc., v. Clapper, 286 U. S. 145 (1932); Hartford Accident and Indemnity Co. v. Delta & Pine Land Co., 292 U. S. 143 (1934); Home Insurance Co. v. Dick, 281 U. S. 397 (1930); and New York Life Insurance Co. v. Dodge, 246 U. S. 357 (1918).

was no actual development of the Texas conflict of laws rules; and for that purpose, the case was remanded with the observation that a denial of recovery under those rules would be constitutional in the instant case. The defect in both cases was that the lower courts applied their own conflict of laws ideas—right or wrong—without reckoning with the far-reaching effect of *Erie Railroad v. Tompkins*.[18]

It was *Erie Railroad v. Tompkins* which largely destroyed the Federal courts' independence of decision in common law matters arising in diversity cases. In this case, a majority of the Supreme Court announced that Mr. Justice Story in *Swift v. Tyson* had been wrong in his contention that when the Judiciary Act provided that "the laws of the several states . . . shall be regarded as rules of decision in trials at common law, in the courts of the United States, *in cases where they apply*",[19] it did not embrace within the term "laws" the decisions of the state courts in common law matters. Moreover, Congress was declared powerless to formulate substantive rules of common law applicable in a state; and, the Federal judiciary, it was said, had been pursuing an unconstitutional course in applying its rules of "general law" in diversity cases.

However, as the Federal courts under the *Tompkins* case had to defer to state courts' rules of decision only in cases where they applied, there was always a possibility that in a conflict of laws case a Federal court, deeming inapplicable the law of the state where it sat, might feel free to disregard it and make its own choice of law in the manner of pre-*Tompkins* judges.[20] The Supreme Court had left expressly unanswered the question whether the doctrine of the *Tompkins* case extended to the field of conflict of laws.[21] Writers were in sharp disagreement on the subject when the instant decisions resolved the conflict in

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[18] 304 U. S. 64 (1938).

[19] Section 34. See 28 U. S. C. A., Sec. 725. Italics supplied.

[20] Ex Parte Heidelback, 11 Fed. Cas. 1021, 1022 (D. C. Mass., 1876) states that "the law of bills of exchange is part of general commercial jurisprudence, and not of local law or usage . . . and so is any question of the conflict of laws. When we have ascertained what local law applies to the case, we follow it; but the ascertainment itself is not a local question." To the same effect are Boseman v. Connecticut General Life Insurance Co., 301 U. S. 196 (1937); Citizens National Bank v. Waugh, 78 F. (2d) 325 (C. C. A. 4th, 1935); Dygert v. Vermont Loan and Trust Co., 94 F. 913 (C. C. A. 9th, 1899).

[21] Ruhlin v. New York Life Insurance Co., 304 U. S. 202, 208 (1938), decided shortly after the Tompkins case.

accord with a decision of the First Circuit Court of Appeals.[22]

In this latter case, *Sampson v. Channell*,[23] a Massachusetts Federal Court was confronted with a choice of law on the burden of proof of contributory negligence in a diversity case arising out of an accident in Maine. The local rules on burden of proof differed in Massachusetts and Maine. The Circuit Court of Appeals, observing that burden of proof had been characterized differently according to the purpose of classification,[24] decided that for purposes of application of the rule of *Erie Railroad v. Tompkins*,[25] burden of proof was a substantive and not a procedural matter,[26] and therefore the state rule of conflict of laws of Massachusetts should apply. Then referring to the Massachusetts' conflict of laws rule,[27] and finding that it treated questions of burden of proof as procedural, the Court applied the local Massachusetts rule on burden of proof, rather than that of Maine where the accident occurred. The Court conceded that in its ratiocination there was a "surface incongruity, viz., the deference owing to the substantive law of Massachusetts as pronounced by its courts requires the Federal court in that state to apply a Massachusetts rule as to burden of proof which the highest state court insists is procedural only".[28] This, however, was necessary to promote the controlling policy of the *Tompkins'* decision by reaching the result a Massachusetts state court would have reached.

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[22] See Cheatham, *Sources of Rules for Conflict of Laws* (1941) 89 U. of Pa. L. R. 430, 446; McCormick and Hewins, *The Collapse of General Law in the Federal Courts* (1938) 33 Ill. L. R. 126, 138; note (1939) 52 Harv. L. R. 1002, 1007.

[23] 27 F. Supp. 213 (D. C. D. Mass., 1939); vacated 110 F. (2d) 754 (C. C. A. 1st, 1940); discussed in (1940) 20 B. U. L. Rev. 566; (1941) 29 Calif. L. Rev. 228; (1940) 53 Harv. L. R. 1393; (1941) 25 Minn. L. Rev. 518; (1940) 18 N. Y. L. Q. Rev. 119; (1940) 7 Ohio St. L. J. 59; (1940) 88 U. of Pa. L. Rev. 1010; and (1940) 27 Va. L. Rev. 120.

[24] See Cook, *Substance and Procedure in the Conflict of Laws* (1942) 42 Yale L. J. 333, 337.

[25] Note that this determination was made independently of reference to state law. In Francis v. Humphrey, 25 F. Supp. 1 (D. C. D. Ill., 1938) the Illinois District Court had seemed to say that in the characterization of burden of proof even for purposes of application of the Tompkins decision, the Federal courts were bound by the decisions of the courts of the states in which they sat.

[26] The Tompkins case requires conformity to local decisions *in substantive matters* non-Federal in nature. At least so far as the Federal Rules of Civil Procedure have been promulgated, there is no necessity for the *procedural* conformity of the days of the Conformity Act.

[27] Levy v. Steiger, 233 Mass. 600 (124 N. E. 477 (1919); Smith v. Brown, 302 Mass. 432, 19 N. E. (2d) 732 (1939).

[28] *Supra*, n. 7, 762.

In following the approach of *Sampson v. Channell* the Supreme Court was treading theoretically and practically firm ground.[29] The rules of conflict of laws are no less substantively a part of a state's common law than are those of contracts and torts.[30] And, under the doctrine of the *Tompkins* case, "Congress has no power to declare substantive rules of common law applicable in a state . . . And no clause in the Constitution purports to confer such a power upon the federal courts."[31] Of course, the practical motivation of the decision was the fact that if Federal courts need not respect local rules of conflict of laws, "the ghost of *Swift v. Tyson* still walks abroad, somewhat shrunken in size, yet capable of much mischief"[32] with its lack of decisional uniformity within a state and the uncertainties and resort to legal artifices consequent thereon.[33] Moreover, it would seem that if *Swift v. Tyson* was conditioned upon an unitary conception of the common law,[34] it would be particularly in the field of conflict of laws, where such a conception is impugned by the very nature of the subject, that the soundness of the rule of *Swift v. Tyson* would be challengeable.

A probable consequence of conformity of federal and state rules of conflict of laws is an increase in emphasis on the impingement of this subject upon constitutional law.[35] Now that the avenue of federal "general law" has

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[29] The Court, it should be remarked, buttressed its "general considerations" on the Tompkins case and conflict of laws with the observation that "the traditional treatment of interest in diversity cases brought in the federal courts points to the same conclusion." *Supra*, n. 1, 497.

[30] See GOODRICH, CONFLICT OF LAWS (2d Ed., 1938) Sec. 6; RESTATEMENT, CONFLICT OF LAWS, Sec. 5; and 1 BEALE, CONFLICT OF LAWS (1935), Sec. 5. 3.

[31] *Supra*, n. 18, 78. For comment on the meaning of Mr. Justice Brandeis, see Shulman, *The Demise of Swift v. Tyson* (1938) 47 Yale L. J. 1336, 1344.

[32] *Supra*, n. 7, 761.

[33] See the celebrated Black and White Taxicab Co. v. Brown & Yellow Taxicab Co., 276 U. S. 518 (1928).

[34] See McCormick and Hewins, *supra*, n. 22, 128, where it is suggested that the Federal courts' independence of state courts' decisions on the common law was more acceptable to an era when Bench and Bar, forced to rely on Supreme Court and English decisions through the relative paucity and slimness of state reports, were more accustomed to think of the common law as "a transcendental body of law", as "one august corpus, to understand which clearly is the only task of any Court concerned." See Mr. Justice Holmes' dissent in Black and White Taxicab Co. v. Brown & Yellow Taxicab Co., *supra*, n. 33, 533.

[35] See Ross, *Has the Conflict of Laws Become a Branch of Constitutional Law?* (1930) 15 Minn. L. R. 161; and Dodd, *The Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws* (1926) 39 Harv. L. R. 533.

been closed to the litigant hoping to escape a state conflict of laws rule,[36] there might be a considerable intensification of effort to show that the state choice of law violates either the due process or full faith and credit provisions of the Federal Constitution.[37] And it is not unreasonable to suppose that the District Courts, accustomed to independence and impartiality in conflict of laws, will be astute to discern a constitutional problem in the application of a parochial choice of law.

If, faced with the necessity of solving numerous conflicts problems, the Supreme Court should take the position advocated by some legal writers,[38] perhaps that ideal of national decisional uniformity which *Swift v. Tyson* failed to realize, and which the *Tompkins* decision discarded in favor of one of intra-state uniformity, might be attainable in the field of conflict of laws through the use of constitutional devices.[39] However, the discussion in the instant cases of the constitutionality of the possible conflict of laws rules of the states involved indicates no present intention on the part of the Court to recognize full faith and credit or due process objections to any state's freedom of choice of its own conflict of laws rule in the average case.[40]

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[36] "There is no federal general common law," said Mr. Justice Brandeis in Erie Railroad v. Tompkins, *supra*, n. 18, 78. For probable qualifications of this statement see McCormick and Hewins, *supra*, n. 27, 142.

[37] "For the Supreme Court would hardly require the federal courts to follow a local decision which, had it been appealed, would have been reversed by the Supreme Court on constitutional grounds." (Sampson v. Channell, *supra*, n. 7, 759). So, in the Klaxon case it was argued (unsuccessfully) that the state courts of Delaware would be compelled to give effect to Section 480 of the New York Civil Practice Act, *supra*, n. 3, under the full faith and credit clause. A similar argument of unconstitutionality of a conflict of laws rule applying Texas law or policy to out-of-state insurance was answered in Griffin v. McCoach. See cases cited *supra*, n. 17.

[38] *Supra*, n. 35.

[39] For a discussion of the desirability of uniformity in the field of conflict of laws, see Dodd, *supra*, n. 35, 560; Cavers, *A Critique of the Choice of Law Problem* (1933) 47 Harv. L. R. 173, 199; note (1939) 52 Harv. L. R. 1002, 1007.

[40] See *Supra*, n. 37. For more exhaustive treatment of the problems of the cases noted herein, see Cook, *The Federal Courts and the Conflict of Laws* (1942) 36 Ill. L. Rev. 493; and Note, *Application by Federal Courts of State Rules on Conflict of Laws* (1941) 41 Col. L. Rev. 1403.