Indiana Law Journal

Volume 21 | Issue 2 Article 7

Winter 1946

State Rules of Substance and Procedure

FEDERAL JURISDICTION

STATE RULES OF SUBSTANCE AND PROCEDURE

Plaintiff, a resident of Virginia, sued defendant, a resident of North Carolina, in a state court of North Carolina to recover a deficiency resulting from exercise of a power of sale contained in a deed of trust executed in Virginia on real estate situated in Virginia. A North Carolina statute provided: "In all sales of real property by mortgagees and/or trustees under powers of sale . . ., or where judgment or decree is given for foreclosure . . . the mortgagee or trustee or holder of notes secured by such a mortgage or deed of trust shall not be entitled to a deficiency judgment . . ."[1] Basing its decision on this statute the Supreme Court of North Carolina reversed a judgment for plaintiff and ordered the suit dismissed.[2] Thereupon, plaintiff instituted suit in a federal district court in the same state and recovered. On appeal to the Circuit Court of Appeals, affirmed. Angel v. Bullington, 150 F. (2d) 679 (C.C.A., 4th, 1945). Cert. granted.

The groundwork for this apparent departure from the doctrine of Erie B. Co. v. Tompkins[3] was laid by the Supreme Court of North Carolina when it interpreted the statute only to affect the jurisdiction of the state courts to render a deficiency judgment[4] and thereby to leave unhindered plaintiff's "substantive right." The Circuit Court of Appeals, bound by this construction, accordingly held that a state could not by statute deprive a federal court of jurisdiction.[5]

Had the North Carolina court interpreted the statute to express a public policy of the state or to affect substantive rights rather than remedial rights, it is quite possible that the federal courts would have followed the same course as the state court.[6] Thus in one case two triangular conflicts appear; one involving the contract clause,[7] the full faith and credit clause,[8] and the doctrine of public policy of a state; the second involving a conflict between federal jurisdiction, the public policy of a state, and the doctrine of Erie R. Co. v. Tompkins. Although the circuit court based its decision on the jurisdictional point only, it did at least recognize the latent possibilities in the statute involving the Federal Constitution.[9]

---

1. N. C. Laws 1933, c. 36; N. C. Gen. Stat. c. 45 §36 (1943).
2. Bullington v. Angel, 220 N. C. 18, 16 S. E. (2d) 411 (1941).
3. 304 U. S. 64 (1938).
4. Bullington v. Angel, 220 N. C. 18, 20, 16 S. E. (2d) 411, 412 (1941).
5. Angel v. Bullington, supra, 680.
6. Hartford Fire Ins. Co. v. Chicago, M. & St. P. Ry. Co., 175 U. S. 91 (1899); Transbel Inv. Co. v. Roth, 36 F. Supp. 396 (S. D. N. Y. 1940); May v. Mulligan, 36 F. Supp. 596 (W. D. Mich. 1939).
7. U. S. Const. Art. I, §10.
8. U. S. Const. Art. IV, §1.
9. "This raises the interesting questions whether the statute as thus interpreted runs afoul of the full faith and credit clause of . . . the Federal Constitution or the due process clause of §1 of the Fourteenth Amendment. We do not pass on these questions." Angel v. Bullington, supra, 681.

It has been a rule of law since 1840[10] that states cannot deprive federal courts of jurisdiction of any particular subject-matter when all the remaining conditions necessary for federal jurisdiction are present.[11] The most recent development of this rule was in *David Lupton & Sons v. Automobile Club of America*[12] where the plaintiff, barred from suing in state courts because of non-compliance with a state foreign corporation statute, was permitted to sue in the federal courts sitting in the same state.

A state need not enforce, however, a foreign contract or obligation when to do so would violate the expressed public policy of the forum on a matter not governed by federal law or the Constitution.[13] Federal Courts are likewise governed by the public policy of the state wherein they sit.[14] But to some extent the full faith and credit clause overrules the public policy of a state, even where the matter is not governed by federal law or the Constitution.[15] A state cannot by simply denying its courts jurisdiction, escape its duties under the full faith and credit clause.[16] The same argument has been applied in holding a statute or decision expressing state policy violative of the due process clause of the Fourteenth Amendment.[17]

Lastly, although a state may prohibit its citizens from entering into certain types of agreements and may declare agreements unlawful when contravening a recognized public policy, a state may not restrict the obligations of a contract entered into and to be performed wholly without the state, except when it has a sufficient interest either in the subject matter or the parties to warrant his interference.[18]

The most apparent problems resulting from these rules are, first,

---

10. Suydam v. Broadnax, 14 Pet. 67 (U. S. 1840).
11. This rule has been followed in a long line of decisions including Union Bank v. Vaiden, 18 How. 503 (U. S. 1855); Chicago & N. W. Ry. v. Whitton, 13 Wall. 270 (U. S. 1871).
12. 225 U. S. 489 (1912).
13. Hartford Fire Ins. Co. v. Chicago, M. & St. P. Ry. Co. 175 U. S. 91 (1899); May v. Mulligan, 36 F. Supp. 596 (W. D. Mich. 1939).
14. Klaxon Co. v. Stentor Elec. Man. Co., 313 U. S. 487 (1941); Griffin v. McCoach, 313 U. S. 498 (1941); Transbel Inv. Co. v. Roth, 36 F. Supp. 396 (S. D. N. Y. 1940).
15. Broderick v. Rosner, 294 U. S. 629 (1935); Milwaukee County v. M. E. White, 296 U. S. 268 (1935).
16. Kenny v. Supreme Lodge, 252 U. S. 411, 415 (1920); Broderick v. Rosner 294 U.S. 629, 642 (1935).
17. Hartford Acc. & Ind. Co. v. Delta & Pine Land Co., 292 U. S. 143, 150 (1934).
18. Id. at 149. The interest of the forum was considered sufficient in Alaska Packers v. Industrial Acc. Comm., 294 U. S. 532 (1935) (interest in welfare of non-resident inhabitants who might become a charge on the state); Griffin v. McCoach, 313 U. S. 498 (1941) (The insured was a resident of the forum); but insufficient in Citizens Nat. Bk. v. Waugh, 78 F. (2d) 325, (C. C. A. 4th, 1935) (makers of notes were residents of forum but notes were made and were payable in another state); John Hancock Ins. Co. v. Yates, 299 U. S. 178 (1936) (only interest of forum was that suit was brought there and plaintiff had become a resident of forum after cause of action had been completed).

a conflict between the rule of federal jurisdiction and the doctrine of *Erie R. Co. v. Tompkins*, and, second, a conflict between the full faith and credit and contract clauses of the Federal Constitution and the public policy of a state.

A practical answer is needed to eliminate the unsatisfactory distinction between "substantive" and "remedial" rights. To say that only the remedial right is affected and the substantive right remains in existence to be enforced elsewhere affords no practical solution. It is certainly contrary to the spirit of *Erie R. Co. v. Tompkins*,[19] to hold that a federal court can render a judgment which the state court cannot, where the only basis of federal jurisdiction arises from diversity of citizenship and where the law applied is supposedly the law of the state.

The Supreme Court has recently disposed of a somewhat similar case, involving the applicability of a state statute of limitations in a federal court, by simply ignoring the distinction between remedial and substantive rights and holding that whatever one calls it, the federal court is bound by the state law.[20]

To solve the problem by saying that a state cannot deprive a federal court of jurisdiction involves a falsely implied assumption, since no attempt is being made to deprive a federal court of jurisdiction where a state court has jurisdiction.

The deeper problem of full faith and credit and public policy of a state cannot be disposed of so easily. Here the two lines of authority have been moving along with no *Erie R. Co. v. Tompkins* situation interposed. All that can be said is that each case is decided on its own facts.[21] The court after balancing full faith and credit and considerations of public policy[22] comes up with another case to support one

19. Note the now famous language of that case: "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the state . . . There is no federal general common law." Erie R. Co. v. Tompkins, supra 78. However, it appears that deviations are made from these principles where by applying the state law as interpreted by the state court to the facts of a particular case, the result would render the state law unconstitutional. See Griffin V. McCoach, 313 U. S. 498, 504, 506 (1941) (where the court determined the state law would not be unconstitutional).

20. Guaranty Trust Co. v. York, 323 U. S. ——, 65 Sup. Ct. 1464 (1945). "It is therefore immaterial whether statutes of limitation are characterized either as 'substantive' or 'procedural' . . . . In essence, the intent of that decision (Erie R. Co. v. Tompkins) was to insure that, in all cases where a federal court is exercising jurisdiction because of diversity of citizenship of the parties, the outcome of the litigation in 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." (p. 1470). (Mr. Justice Rutledge and Mr. Justice Murphy dissented.)

21. Compare Bradford Electric Light Co. v. Clapper, 286 U. S. 145 (1932), with Alaska Packers v. Industrial Acc. Comm., 294 U. S. 532 (1935).

22. Note the following language in Alaska Packers v. Industrial Acc. Comm., 294 U. S. 532 (1935): ". . . there are some limitations upon the extent to which a state will be required by the full faith

of the two lines of reasoning. An attempt to rationalize the two lines so as to reach a general rule seems to be futile.

SALES

IMPLIED WARRANTY OF FITNESS

Plaintiff, after making examination as a texture, color, style and design, purchased a chenille lounging robe in defendant's department store. Undisputed testimony disclosed that on the third or fourth time the robe was worn, plaintiff waved or "fanned" a match after lighting a cigarette, the robe instantly caught fire, and plaintiff was badly burned. Plaintiff seeks damages, alleging breach of implied warranty. From a directed verdict for defendant, plaintiff appeals. *Held*: reversed. Lower court erred in failing to instruct the jury that, if the robe caught fire and burned as the witness testified, there was a breach of defendant's implied warranty of fitness.[1] Deffebach v. Lansburgh & Bro. (D.C. 1945), 150 F. (2d) 591.

Implied warranty in the sale of goods was unknown to the common law prior to the nineteenth century,[2] but in 1815 the need for legal recognition of such warranties was realized in sales in which the buyer had no opportunity to inspect his purchases.[3] During the years to follow the courts gradually enlarged their recognition of implied warranties until, prior to the adoption of the Uniform Sales Act, it had become well settled that manufacturers and producers impliedly

---

and credit clause to enforce even the judgment of another state, in contravention of its own statutes or policy." (p. 546) ". . . the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, . . . but by appraising the governmental interests of each jurisdiction, and turning the scale of decisions according to their weight." (p. 547). "The interest of Alaska is not shown to be superior to that of California. No persuasive reason is shown for denying to California the right to enforce its own laws in its own courts, and in the circumstances the full faith and credit clause does not require that the statute of Alaska be given that effect." (p. 550).

1. District of Columbia Code, like §§15(1) and 15(3), Uniform Sales Act, provides that, "Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment * * * *, there is an implied warranty that the goods shall be reasonably fit for such purpose. * * * * If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed." 50 Stat. 33 (1937), D.C. Code (1940) tit. 28, §1115. Thirty-seven states, including Indiana, have adopted similar statutes. *Cf.* IND. STAT. ANN. (Burns 1933) §58-115. Restatement, "Uniform Revised Sales Act" (Proposed Final Draft, 1944) §§39 and 41(2)(a), and the English Sale of Goods Act, 1893, 56 & 57 Vict., c. 71, §14(1) contain similar provisions.
2. None but express warranties were recognized in the early decisions. Chandelor v. Lopus, Cro. Jac. 4 (1606-1607); Ames, "History of Assumpsit" (1888) 2 Harv. L. Rev. 1, 8.
3. Gardner v. Gray, 4 Campb. 144 (N.P. 1815); Williston, "Sales" (2d ed. 1924) §228.