Forum Non Conveniens in the Federal Courts

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Recommended Citation
(1947) "Forum Non Conveniens in the Federal Courts," Indiana Law Journal: Vol. 23 : Iss. 1 , Article 6. Available at: https://www.repository.law.indiana.edu/ilj/vol23/iss1/6

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FEDERAL JURISDICTION
FORUM NON CONVENIENS IN THE FEDERAL COURTS

A policy holder of the defendant company brought a derivative suit for an accounting in the Eastern District Court of New York, where the policy holder resided. The cause of action was based upon an alleged breach of trust by the president of the defendant company. The action was brought under a federal venue statute.¹ The three defendants in the suit were the company which issued the policy, organized under Illinois law and authorized to transact business in New York; the president of the company, an Illinois resident; and a second Illinois corporation acting as agent of the company. The company's files and records were kept at its principal place of business in Illinois. The District Court granted defendant company's motion to dismiss on the ground of forum non conveniens.² The Circuit Court of Appeals for the Second Circuit affirmed.³ On certiorari, the Supreme Court affirmed; dismissal was within the discretion of the District Court since inconvenience to the defendants of the suit in New York greatly outweighed any convenience of the plaintiff policyholder. Koster v. (American) Lumbermen's Mutual Casualty Co., 330 U.S. 518 (1947).⁴

In a companion case decided by the Supreme Court on the same day, a Virginia citizen brought an action in tort for negligence in the Southern District Court of New York. The action was brought under the same federal venue statute as in the Koster case. The defendant was a Pennsylvania corporation authorized to transact business in Virginia and in New York. An explosion occurred during defendant's delivery of gasoline to plaintiff's warehouse in Virginia, which destroyed the warehouse and its contents. The District Court granted defendant's motion to dismiss on the ground of forum non conveniens.⁵ The Circuit Court of Appeals for the Second Circuit reversed.⁶ The Supreme Court reversed, citing

² 64 F. Supp. 595 (E.D.N.Y. 1945).

The principal cases present the problem of whether and in what circumstances a federal district court may, in its discretion, refuse to exercise its jurisdiction in diversity cases because the plaintiff has chosen an inconvenient forum. The doctrine of *forum non conveniens* has for its purpose the prevention of an arbitrary choice by a plaintiff of a forum in which the defendant will encounter difficulties in his defense.

The Koster case also raised the problem of when a federal district court should base its refusal to take jurisdiction upon grounds that to do so would involve interference in the internal affairs of a foreign corporation. The "internal affairs rule" should not be confused with the doctrine of *forum non conveniens*. The former can be stated thus: state and federal courts may, in the exercise of a sound discretion, refuse to entertain suits involving the internal ownership, *i.e.*, the conflicting interests of stockholders, directors, and corporate officers, of a corporation domiciled in a foreign state. Neither state nor federal courts have been able to formulate a precise definition of cases which involve internal affairs. But if, in a given case, internal affairs of a foreign corporation are involved, it by no means follows that a refusal by a court to exercise its jurisdiction will at the same time achieve the ends

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for which the doctrine of *forum non conveniens* was created. A strict application of the "internal affairs rule" will often defeat the very purpose of the doctrine of *forum non conveniens*, and will result in a refusal to try a case in the forum actually most convenient to both parties.\(^\text{10}\)

In *Rogers v. Guaranty Trust Co.*,\(^\text{11}\) the Supreme Court first adopted the "internal affairs rule" by following lower federal court precedent.\(^\text{12}\) Thirteen years later the case of *Williams v. Green Bay & W. R. Co.*,\(^\text{13}\) while not expressly overruling the *Rogers* case, substantially repudiated the "internal affairs rule,"\(^\text{14}\) and laid down a new test: that whether or not a federal court is justified in refusing to exercise its diversity jurisdiction in any case where a *general* venue statute gives it jurisdiction, depends upon whether under the facts of the case a trial in plaintiff's chosen forum will be "vexatious and oppressive" to the defendant. Thus, the Supreme Court in the *Williams* case put internal affairs cases essentially on a *forum non conveniens* basis. On the other hand, determination of the Congressional intent in the Federal Employers Liability Act, a *special* venue statute,\(^\text{15}\) has resulted in decisions that the right to bring actions thereunder is absolute, not subject to defeat by a plea of *forum non conveniens*.\(^\text{16}\)

The Circuit Court's dissenting opinions in the principal cases were based primarily upon the fact that both were brought under a *general* venue statute.\(^\text{17}\) The basic argu-

\(^{10}\) Cf. Note, 33 Co L. Rev. 492, 502, n. 51 (1933).

\(^{11}\) 288 U.S. 123 (1933).


\(^{13}\) 326 U.S. 549 (1946).

\(^{14}\) The Court in the *Williams* case disposed of the *Rogers* decision with the comment that it was the only decision of the Supreme Court holding that a federal court should decline to hear a case because it concerned the internal affairs of a foreign corporation.


ment of the dissents followed the reasoning of *Meredith v. Winter Haven*\(^{18}\) which amounts to this: the jurisdiction given by a *general* venue statute, as well as that given by a *special* venue statute, is absolute and not subject to avoidance by a plea of *forum non conveniens*.

The Supreme Court in the principal cases approved the *Williams* case and followed its test of "vexatious and oppressive." In the *Koster* case, the fact showing vexatiousness and oppressiveness was the necessity for defendant company's bringing its corporate records from Illinois to New York for a trial. Mr. Justice Black, with Mr. Justice Rutledge, dissented upon the ground that to make a stockholder traverse the continent all but nullifies his inclination to sue. Mr. Justice Reed, with Mr. Justice Burton, dissented upon the ground that no sufficient showing had been made by the defendant as to the relative convenience of the parties. In the *Gulf Oil Corp.* case, the requisite vexatiousness and oppressiveness was supplied by the fact that all of the defendant's witnesses resided in Virginia and would need to come to New York for trial.\(^{19}\) The court rejected the plaintiff's only counter contention for convenience of the New York forum: that Virginia juries were not accustomed to $400,000 law suits. Mr. Justice Black, with Mr. Justice Rutledge, dissented upon the ground that at least so far as *law* actions for recovery of money damages\(^{20}\) are concerned, a federal court should be required to exercise its jurisdiction when properly invoked. If the view of the dissenters had been accepted, the federal courts would be required to wait for Congress to adopt the doctrine of *forum non conveniens*.

Both the *Koster* and *Gulf Oil Corp.* cases held that the New York and federal standards of *forum non conveniens* were the same, and thus reserved decision on the question whether *Erie R.R. v. Tompkins*\(^{21}\) requires a federal court in

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18. 320 U.S. 228 (1943).
21. 304 U.S. 64 (1938).
a diversity suit to follow the *forum non conveniens* policy of the state in which the court is sitting. The purpose of the *Erie* doctrine is to assure that state courts and federal courts sitting in the same state shall reach uniform results in diversity suits. In *Weiss v. Routh* the Circuit Court of Appeals for the Second Circuit raised the question of its own motion and held that the *Erie* doctrine required a federal court in a diversity suit to apply the *forum non conveniens* policy of the state in which it is sitting. In the *Weiss* case Judge Learned Hand said that the purpose of the *Erie* doctrine "extends as much to determining whether the court shall act at all, as to how it shall decide, if it does." In *Griffin v. McCoach*, where a somewhat analogous problem was raised, the Supreme Court held a federal district court bound to follow a strong state policy of nonenforcement of rights under certain foreign insurance contracts. There are at least two reasons against the application of the *Erie* doctrine to the *forum non conveniens* policy. First, the problem of the expense of litigation to the state, being borne by the state taxpayers, is a highly important reason for refusing jurisdiction on grounds of *forum non conveniens* where a diversity suit is brought in state courts. This is not involved where the suit is brought in federal courts, since in the latter cases the expenses of maintaining the court are borne by the federal government. Second, a further reason frequently given by state courts for their dismissal on grounds of *forum non conveniens*—that their dockets are crowded—may not be a valid reason when given by federal courts. On the

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24. Cf. *Gulf Oil Corp. v. Gilbert*, 153 F.2d 883, 885 (C.C.A. 2d 1946), where the court said that its pronouncement in the *Weiss* case did not carry over to the facts of the *Gulf Oil Corp.* case. "It is true that in *Weiss v. Routh* ... the court looked to New York law for light as to the extent to which courts would interfere with the internal management of a corporation. But that appears to us much nearer substantive law—that of corporate supervision—than is this question of the place of enforcement of a claim for money damages."

other hand, federal court dockets may be equally crowded. It is submitted that, in the light of the Weiss and Griffin cases, when the Supreme Court finally makes a decision on the merits it will hold that the Erie doctrine is controlling.\footnote{26}

\footnote{26. H. R. No. 7124, 79th Cong., 2d Sess. 1404(a) (1947), proposed but not enacted by the recent Congress, is not enlightening upon the Erie question. It provides "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."}
STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACTS OF CONGRESS OF AUGUST 24, 1912, AND MARCH 3, 1933

Of Indiana Law Journal published quarterly at Bloomington, Indiana, for October 1, 1947.

State of Indiana, County of Marion, ss

Before me, a notary public in and for the State and county aforesaid, personally appeared Thomas C. Batchelor, who, having been duly sworn according to law, deposes and says that he is the Business Manager of the Indiana Law Journal and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, as amended by the Act of March 3, 1934, embodied in section 537, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:
   Publisher, Indiana State Bar Association .......... Indianapolis, Indiana
   Editor, W. Howard Mann ....................... Bloomington, Indiana
   Business Manager, Thomas C. Batchelor ........ Indianapolis, Indiana

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of the total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.)
   Indiana State Bar Association, Indianapolis, Indiana.
   President, Verne G. Cawley, Elkhart, Indiana.
   Secretary-Treasurer, Thomas C. Batchelor, Indianapolis, Indiana.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.)
   None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

   Thomas C. Batchelor, Bus. Mgr.

   Sworn to and subscribed before me this 8th day of October, 1947.

   Bertha L. Harrison, Notary Public.

   (Seal)

   (My commission expires March 13, 1950.)