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Conflicts of Law -- Transactions Involving U. S. Commercial Paper -- Federal or State Law

Frank M. Dunbaugh III

CASES NOTED

CONFLICTS OF LAW—TRANSACTIONS INVOLVING U. S. COMMERCIAL PAPER—FEDERAL OR STATE LAW

An action based on diversity of citizenship was brought in a federal district court for the conversion of Home Owners' Loan Corporation bearer bonds against the individuals and banks through whom they had been presented for payment. The obligations of the federal government on the bonds were not in issue. *Held*, state rather than federal law controls the burden of proving the good faith necessary to make the defendants holders in due course. *Bank of America Nat'l Trust and Savings Ass'n v. Parnell*, 25 U.S.L. Week 4009 (U.S. Nov. 14, 1956) (No. 21 and 22).

Under the doctrine of *Erie R. R. v. Tompkins*[1] a federal court must, in diversity cases, make its decisions on matters of "substantive law" conform with those of the courts of the state within which it sits.[2] It has been held that the *Erie* doctrine requires the federal court to use the state rule of burden of proof if it might effect the outcome of the case.[3] It would appear, then, that there should be no question about the instant decision.

Since the *Erie* decision was rendered, however, a number of exceptions have been made to the doctrine.[4] One such exception was made in the

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1. 304 U.S. 64 (1938).

2. "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. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a desision is not a matter of federal concern." *Id.* at 78.

"The nub of the policy that underlies Erie R. Co. v. Tompkins is that for same transaction the accident of a suit by a non-resident litigant in a federal court instead of in a State court a block away, should not lead to a substantially different result." Guaranty Trust Co. v. York, 326 U.S. 99, 109 (1945).

"The opinion of that case [Erie] sets forth as a moving consideration of policy that it is unfair and unseemly to have the outcome of litigation substantially affected by the fortuitous existence of diversity of citizenship." Sampson v. Channel, 110 F. 2d 754 (1st Cir. 1940), *cert. denied*, 310 U.S. 650.

3. Palmer v. Hoffman, 318 U. S. 109 (1943) (burden of proving contrubutory negligence in a grade crossing accident); Cities Service Oil Co. v. Dunlap, 308 U. S. 208 (1939) (burden of proving bona fide purchase for value without notice); Sampson v. Channell, 110 F.2d 754 (1st Cir. 1940), *cert. denied*, 310 U.S. 650 (burden of proving contributory negligence in an automobile accident); Equitable Life Assurance Soc'y v. MacDonald, 96 F.2d 437 (9th Cir. 1938) *cert. denied*, 305 U.S. 624 (burden of proving the fraudulent character of misrepresentations made by the insurer).

4. See Note, *Exception to Erie v. Tompkins: The Survival of Federal Common Law*, 59 HARV. L. REV. 966 (1946) which sets out three classes of exceptions:

(1.) *Suits by the United States.* Clearfield Trust Co. v. United States, 318 U.S. 363 (1943); Board of Commissioners v. United States, 308 U.S. 343 (1939).

(2). *Suits Under a Federal Statute.* Holmberg v. Ambrecht, 327 U.S. 392 (1946); D'Oench, Duhme & Co. v. FDIC, 315 U.S. 447 (1942); Deitrick v. Greaney, 309 U.S. 190 (1940).

(3). *Diversity Cases Involving a Federal Statute.* Sola Elec. Co. v. Jefferson

case of *Clearfield Trust Co. v. United States*[5] in which the United States was suing the bank for honoring a forged WPA check If applicable, Pennsylvania law would have barred the action because of unreasonable delay in informing the bank of the forgery.[6] The Supreme Court decided "that the rule of Erie R. Co. v. Tompkins . . . does not apply to this action. The rights of the United States on commercial paper which it issues are governed by federal rather than local law."[7] The Court reasoned that:

> The issuance of commercial paper by the United States is on a vast scale and transactions in that paper from issuance to payment will commonly occur in several states. The application of state law, even without the conflict of laws rules of the forum, would subject the rights and duties of the United States to exceptional uncertainty. It would lead to great diversity in results by making identical transactions subject to the vagaries of the laws of the several states. The desirability of a uniform rule is plain.[8]

In the instant case the majority of the Court was of the opinion that where the interests of the federal government have little or no connection with the issue at hand, the *Clearfield* exception to the *Erie* rule is not applicable.[9] On the other hand, the dissenters felt that the *Clearfield* doctrine should be applied in all cases involving commercial paper issued by the United States. They quoted from an opinion of the same Court which had rendered the *Clearfield* decision in which it was said, ". . . [O]ur conclusion [in the *Clearfield* case] was that legal questions involved in controversies over such commercial papers are to be resolved by the application of federal rather than local law . . . ."[10]

Elec. Co., 317 U. S. 173 (1942); O'Brien v. Western Union Tel. Co., 113 F.2d 539 (1st Cir. 1940).

See also, Reiferberg, *Common Law—Federal*, 30 ORE. L. REV. 164 (1951) which sets out four areas of federal common law:

(1.) *Federal Statute Regulating the Activity Involved.* Sola Elec. Co. v. Jefferson Elec. Co., *supra*; D'Oench, Luhme & Co. v. FDIC, *supra*; Deitrick v. Greaney, *supra.*

(2.) *Contracts to Which the United States is a Party.* SRA v. Minnesota, 327 U.S. 558 (1946); National Metropolitan Bank v. United States, 323 U.S. 454 (1945); United States v. County of Allegheny, 322 U.S. 174 (1944); Clearfield Trust Co. v. United States, *supra*; Royal Indemnity Co. v. United States, 313 U.S. 289 (1941).

(3) *Cases Involving Torts.* United States v. Standard Oil Co., 332 U.S. 301 (1947).

(4.) *Questions Incidental to an Ultimate Federal Question.* (Mr. Reifenberg cites no cases in this area.)

5. 318 U.S. 363 (1943).

6. Market St. Title & Trust Co. v. Chelten Trust Co., 296 Pa. 230, 145 Atl. 848 (1929).

7. 318 U.S. 262, 366 (1943).

8. *Id.* at 367.

9. "The present litigation is purely between private parties and does not touch the rights and duties of the United States. The only possible interest of the United States . . . is that the floating securities of the United States might somehow or other be adversely affected by the local rule of a particular State regarding the liability of a converter. This is far too speculative, far too remote a possibility to justify the application of federal law to transactions essentially of local concern." —— U.S. ——, 77 Sup.Ct. 119, 121 (1956).

10. National Metropolitan Bank v. United States, 323 U.S. 454, 456 (1945). See also STUMBERG, CONFLICT OF LAWS 161 n.81 (2d ed. 1951), "The Clearfield case means that commercial paper issued by the United States is governed by general law as it is conceived to be by federal courts."

The dissenters [11] argue for uniformity. So does the majority. Whereas the former ask for uniformity among all federal courts across the nation, the latter, by holding the line with *Erie*, has maintained uniformity within each jurisdiction. So long as state laws differ, only one kind of uniformity can be attained, and the other must be compromised. To argue for either is to re-fight the *Erie* battle. Most of the "exceptions" to the *Erie* doctrine have been created in situations involving the United States as a party or a federal statute.[12] Since these are really more analogous to the federal question area, the problem of divergency between state and federal court decisions usually does not arise due largely to the absence of the former.[13]

Would the dissenters have us return completely to the rule of *Swift v. Tyson*?[14] The majority admits the applicability of the *Clearfield* rule to suits in which the United States is not a party where interests of a federal character are involved, [15] but they assert that it does not apply to the type of question of burden of proof presented here. And, if one believes in the soundness of *Erie R. R. v. Tompkins*, their decision is correct.

FRANK M. DUNBAUGH, III.

CONSTITUTIONAL LAW—MILITARY COURTS—JURISDICTION OVER DEPENDENTS OF MILITARY PERSONNEL

Petitioners, wives of military personnel living with their husbands outside the territorial limits of the United States, were tried and convicted by military general courts-martial for the murders of their husbands.[1] Each

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11. It is interesting to note that the two dissenters, Mr. Justice Douglas and Mr. Justice Black were the authors of the *Clearfield* opinion and the *National Metropolitan Bank* opinion, respectively. Mr. Justice Frankfurter, who wrote the majority opinion in the *Parnell* case, and Mr. Justice Reed, who concurred, also took part in the two earlier decisions which were rendered without dissent.

12. See note 4 *supra*.

13. "While the United States may sue in state courts, it cannot ordinarily, in the absence of a permissory statute, be sued in a state court. . . ." 91 C.J.S. *United States* § 190 (1955). However, in the Tables of Cases of the December 1956 issue of the General Digest, all 155 cases in which the United States was a named party were listed as federal court cases. In the cases involving a federal statute, uniformity can easily be maintained because once it has been interpreted by the United States Supreme Court, the state courts as well as the federal are bound to follow. United States v. Gilbert Associates, Inc., 345 U.S. 701 (1953).

14. 16 Pet. (U.S.) 1 (1842).

15. "We do not mean to imply that litigation with respect to Government paper necessarily precludes the presence of a federal interest, to be governed by federal law, in all situations merely because it is a suit between private parties. . . . Federal law of course governs the interpretation of the nature of the rights and obligations created by the Government bonds themselves." —— U.S. ——, 77 Sup. Ct. 119, 121, 122 (1956).

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1. Art. 118, Uniform Code of Military Justice, 50 U.S.C. § 712 (1952). Section 712. Murder (article 118). Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

1. has a premeditated design to kill; or