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Angel v. Bullington: State Limitation on Federal Jurisdiction

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would be enormous. The standards and regulations of the state plus the numerous aids given the public school children have continued to increase until the church-supported school has found itself unable to meet such demands. It is under these circumstances that the schools request that their pupils be given the benefit of public welfare legislation. The support of a religious institution is remote at best and the relatively small expenditure of public funds involved may save the treasury the much larger cost of educating children induced to attend public schools.

The principle of separation of church and state as set forth in our constitution is still a cornerstone of our democratic system. The application of this principle, however, is not immutable. The dynamic nature of the constitution requires that its provisions be interpreted and extended in the light of conditions prevalent in each successive generation. In relation to public support of sectarian institutions this is no less true than in relation to other problems. It is submitted that the time has come for a re-examination of the incidents attending the First Amendment and a recognition of the fact that the circumstances which lead to its strict interpretation no longer exist. The courts must be vigilant in protecting our constitutional guarantees but they are not bound by interpretations of another age.

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ANGEL V. BULLINGTON

STATE LIMITATION ON FEDERAL JURISDICTION

Where the only basis for federal jurisdiction is diversity of citizenship, must the federal courts apply the jurisdictional limitations of the state in which the action is being tried? The answer to this question is determined by the designation of jurisdictional limitation as substantive or adjective law.

I

"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 decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general'

be they commercial law or a part of the law of torts." [1] The doctrine of *Erie Railroad v. Tompkins* [2] is applicable in cases involving diversity of citizenship; federal courts are bound by state law and state policy, whether it be statutory or decisional, on matters of substantive law only.

Since 1938, when *Erie Railroad v. Tompkins* was decided, federal courts have been differentiating between adjective law and substantive law. Substantive law is defined as that part of law which creates, defines, and regulates rights as opposed to adjective or remedial law which prescribes the method of enforcing rights and obtaining redress for their invasion.[3]

Generally, the distinction is clear, but where a rule of procedure affects a substantive right, as will hereinafter appear, what course must the federal court follow? To what extent would the doctrine of *Erie R. R. v. Tompkins* be applicable to these borderline cases?

Three years after the *Erie* case, the court was faced with the application of the conflict of laws rule laid down therein.[4] The action was prosecuted in a District Court in Delaware for breach of a New York contract. Under New York law [5] the measure of damages is greater by virtue of interest upon the total amount awarded from the time when the verdict was rendered to the time of entering judgment. The court held that the full faith and credit clause does not require that a state, contrary to its own policy, shall give effect in actions brought locally on contracts made in other states, to laws of those states relating, not to the validity of such contracts, but to the right to add interest to the recovery item of damages.

The court was under the opinion that by virtue of the doctrine of *Erie R. R. v. Tompkins* the conflict of laws rules to be applied by the federal court, is that of the state in which it is sitting, "Otherwise, the accident of diversity of citizenship would constantly disturb equal administration of justice in co-ordinate state and federal courts sitting side by side." [6]

The question of burden of proof also came before the Supreme Court in *Cities Service v. Dunlap*.[7] Under Texas law, on an issue involving a *bona fide* purchaser for value, without notice, the burden of proof is upon him who attacks the legal title and asserts a superior equity. The court stated that, ". . . it relates to a substantial right upon which the holder of recorded legal title to Texas land

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[1] Erie R. R. v. Tompkins, 304 U. S. 64, 78, 82 L. ed. 1188, 1194 (1938).
[2] *Ibid.*
[3] BLACK'S LAW DICTIONARY (3d ed. 1933) p. 1672.
[4] Klaxon Co. v. Stentor Electric Mfg. Co., 313 U. S. 487, 85 L. ed. 1477 (1941).
[5] N. Y. CIV. PRAC. ACT § 480.
[6] Klaxon Co. v. Stentor Electric Mfg. Co., 313 U. S. 487, 496, 85 L. ed. 1477, 1480 (1941).
[7] 308 U. S. 208, 84 L. ed. 196 (1939).

may confidently rely." [8] The Supreme Court treated burden of proof as a rule of substantive law, thus requiring the federal court to apply the local rule of law. In 1943, the court passed upon the burden of proving contributory negligence,[9] and held that the federal court *must* apply the local law, in diversity cases.

In *Guaranty Trust Co. v. York* [10] the court considered the effect of a state statute of limitations. It was held that if a plea of the statute of limitations would bar a suit in a state court for equitable relief, a federal court whose jurisdiction rests upon diversity of citizenship ought not to afford relief. Recently the United States Supreme Court was faced with the problem of jurisdictional limitation placed on a state court by the state legislature and its effect on a federal court.

II

By its decision in the case of *Angel v. Bullington* [11] the Supreme Court has extended the *Erie* doctrine. The facts in the case are therefore important. In 1940 Bullington, a citizen of Virginia, sold land in Virginia to Angel, a citizen of North Carolina. Only part of the purchase price was paid. For the balance Angel executed a series of notes secured by a deed of trust on the land. Upon default of one of the notes, Bullington, acting on an acceleration clause in the deed, caused all other notes to become due and payable, and called upon the trustees to sell the land. The sale was duly made in Virginia and the proceeds of the sale applied to the payment of the notes.

Bullington began suit for the deficiency in the Superior Court of North Carolina and Angel countered with a demurrer, the substance of which was that a state statute [12] precluded recovery of such a deficiency judgment. The Superior Court overruled the demurrer, and on appeal to the North Carolina Supreme Court,[13] the action was dismissed.

After dismissal of his action by the North Carolina Supreme Court, Bullington did not elect to appeal to the United States Supreme Court on the ground that the United States Constitution precluded North Carolina from shutting the doors of its court to him.

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[8] Cities Service Co. v. Dunlap, 308 U. S. 208, 212, 84 L. ed. 196, 198 (1939).

[9] Palmer v. Hoffman, 318 U. S. 109, 87 L. ed. 645 (1943).

[10] 326 U. S. 99, 89 L. ed. 2079 (1945).

[11] — U. S. —, 91 L. ed. 557 (1947).

[12] N. C. GEN. STAT. (1943) § 45-36. "In all sales of real property by mortgagees and/or trustees under powers of sale contained in any mortgage or deed of trust hereafter executed, . . . the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust or obligation secured by same: . . ."

[13] Bullington v. Angel, 220 N. C. 18, 16 S. E. (2d) 411 (1941).

Instead he instituted a new suit in the Federal District Court of North Carolina.[14] Angel pleaded in bar, the judgment in the North Carolina action. The district court and the circuit court of appeals [15] held that the North Carolina statute is a limitation on the jurisdiction of the courts of that state, and does not deprive the federal district court of jurisdiction of an action brought by a non-resident to recover a deficiency judgment.

The United States Supreme Court reversed [16] and held that where the *only* basis for federal jurisdiction is diversity of citizenship, the federal court *must* apply the jurisdictional limitation of the state statute. The Supreme Court stated that the dismissal by the state court was *res judicata* as to all issues open for decision, and for purposes of diversity jurisdiction a federal court is "in effect, only another court of the state." [17]

A judgment rendered on a demurrer is conclusive, by way of estoppel, of facts confessed by the demurrer, as would be a verdict and judgment finding the same facts. But a judgment on demurrer, based merely on formal or technical defects, and raising a question of pleading, or want of jurisdiction is no bar to a second cause of action for the same claim.[18]

The dismissal by the North Carolina court was on the basis of jurisdiction and would not have been a bar to an action in a court having jurisdiction. Since the dismissal is based on a jurisdictional limitation, which deals with the manner of prosecuting the action to enforce his remedy, and in no way impairs his substantive right, in what court may he prosecute his action? Federal law gives jurisdiction to the federal district court on the grounds of diversity of citizenship.[19]

Before considering the question of federal jurisdiction, the legality of the state's right to determine what suits it will hear must be ascertained. "The power of a state to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them, is, of course, subject to the restrictions imposed by the Federal Constitution." [20] Such restrictions as the con-

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[14] Bullington v. Angel, 56 F. Supp. 372 (W. D. N. C. 1944).

[15] Angel v. Bullington, 150 F. (2d) 679 (C. C. A. 4th 1945), *cert. granted*, 326 U. S. 713, 90 L. ed. 421 (1945).

[16] Angel v. Bullington, — U. S. —, 91 L. ed. 557 (1947).

[17] Guaranty Trust Co. v. York, 326 U. S. 99, 89 L. ed. 196 (1945).

[18] Wiggins Ferry Co. v. O. & M. Ry., 142 U. S. 396, 35 L. ed. 1055 (1892); Stewart v. Masterson, 131 U. S. 151, 33 L. ed. 114 (1889); Bissell v. Spring Valley Township, 124 U. S. 225, 31 L. ed. 411 (1888); House v. Mullen, 22 Wall. 42, 22 L. ed. 838 (U. S. 1874); Aurora City v. West, 7 Wall. 82, 19 L. ed. 42 (U. S. 1868); Gilman v. Rives, 10 Pet. 298, 9 L. ed. 432 (U. S. 1836).

[19] REV. STAT. § 629 (1875), as amended, 54 STAT. 143 (1940), 28 U. S. C. § 41, subd. 1 (1940).

[20] McKnett v. St. Louis & S. F. Ry., 292 U. S. 230, 233, 78 L. ed. 1227, 1229 (1934).

tract clause,[21] the full faith and credit clause,[22] the privileges and immunities clause[23] must be observed, and a state cannot avoid its constitutional obligation by denying jurisdiction to its courts.[24] The question of the validity of the state statute to bar this type of action was not passed upon, but there is *dicta* in the opinion, to the effect, had an appeal been taken from the North Carolina Supreme Court, the judgment would have been for the plaintiff. Mr. Justice Reed, in the dissenting opinion, states the statute is unquestionably unconstitutional by federal tests.[25]

A state need not enforce 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 Constitution.[26] The state may prohibit performance within its borders of a contract validly made elsewhere, if the performance would violate its laws,[27] but it may not, on grounds of public policy, ignore a right which has lawfully vested elsewhere, if the interest of the forum has but slight connection with the substance of the contract obligation.[28]

As pointed out above plaintiff may have validly contested the state statute but "[plaintiff] forewent his right to have a higher court, . . . [the United States Supreme] Court, enable him to win his chance by holding that he was right and that the North Carolina Supreme Court was wrong. He cannot begin all over again in an action involving the same issues before another forum in the same State." [29]

III

For purposes of diversity jurisdiction a federal court is "in effect only another court of the state." [30] Diversity jurisdiction is founded on the assurance, to non-resident litigants, of courts free

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[21] U. S. CONST. Art. I, § 10.
[22] U. S. CONST. Art. IV, § 1.
[23] U. S. CONST. AMEND. XIV, § 1.
[24] Kenney v. Supreme Lodge, 252 U. S. 411, 64 L. ed. 638 (1920).
[25] Angel v. Bullington, — U. S. —, 91 L. ed. 557, 563 (1947); 2 BEALE, CONFLICT OF LAWS § 227.3 (1935 ed.). "Whether there may be a recovery of the amount by which the proceeds of the mortgage sale are insufficient to pay the debt, called the deficiency, depends on the law of the state of the situs of the land; (Sea Grove B. & L. Ass'n v. Stockton, 148 Pa. 146, 23 Atl. 1063 [1892]) therefore suit may be brought in a state which does not allow recovery (McGirl v. Brewer, 132 Ore. 422, 285 Pac. 208 [1930])."
[26] Hartford Fire Insurance Co. v. Chicago M. & St. P. Ry., 175 U. S. 91, 44 L. ed. 84 (1899); May v. Mulligan, 36 F. Supp. 596 (W. D. Mich. 1939).
[27] Home Ins. Co. v. Dick, 281 U. S. 397, 74 L. ed. 926 (1930).
[28] Hartford Ind. Co. v. Delta Co., 292 U. S. 143, 78 L. ed. 1178 (1934).
[29] Angel v. Bullington, — U. S. —, 91 L. ed. 557, 561 (1947).
[30] Guaranty Trust Co. v. York, 326 U. S. 99, 89 L. ed. 196 (1945).

from the susceptibility of potential local bias.[31] It is stated in *Guaranty Trust Co. v. York* [32] that Congress afforded out-of-state litigants another tribunal, *not another body of law.*

To say that a plaintiff has a substantive right, but he lacks a remedy, is to say the plaintiff is without a right. Where a state has *validly* closed the doors of its courts to a particular type of action, it is declarative of public policy and is substantive in nature, but adjective by definition.

Under the doctrine of *Erie R. R. v. Tompkins* it is oftentimes difficult to differentiate between substantive and remedial law. In *Guaranty Trust Co. v. York,* the court refused to distinguish and label the statute of limitations as one or the other. "In these areas whether a particular situation or issue presents one aspect or the other depends upon how one looks at the matter. As form cannot always be separated from substance in a work of art, so adjective or remedial aspects cannot be parted entirely from substantive ones in these borderline regions." [33]

IV

Where a state has validly limited the jurisdiction of its courts, and the action is tried in a federal court on the sole basis of diversity of citizenship, the federal court must apply the jurisdictional limitation. The doctrine of *Angel v. Bullington* has its ramifications.

In *David Lupton's Sons v. Auto. Club of America* [34] it was held that the state statute [35] prohibiting suit by a foreign corporation, on a contract made by it in New York, while doing business before obtaining a certificate of authority, was a limitation on the jurisdiction of New York courts and in no way affected federal jurisdiction. New York has seen fit to deprive the foreign corporation of a right of action, when said corporation has violated its laws. Since the corporation is foreign, it would have an opportunity to have its case tried in federal district court. Today, the holding in *Angel v. Bullington* would compel the federal court to observe the limitation, since a federal court, on basis of diversity of citizenship, is only another court of the state.

Another example of a substantive right which may be affected by this holding is the stockholders derivative action in New York. Under New York law,[36] where a stockholder, owning less than 5% of outstanding stock and said stock has a market value of less than

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[31] Bank of the United States v. Deveaux, 5 Cranch 61, 87, 3 L. ed. 38, 45 (U. S. 1809).

[32] 326 U. S. 99, 112, 89 L. ed. 2079, 2088 (1945).

[33] Guaranty Trust Co. v. York, 326 U. S. 99, 116, 89 L. ed. 2079, 2090 (1945).

[34] 225 U. S. 489, 56 L. ed. 1117 (1912).

[35] N. Y. GENERAL CORPORATION LAW § 218.

[36] N. Y. GENERAL CORPORATION LAW § 61-b.

$50,000, brings a derivative action he may be required to give security to the corporation and other defendants. In two recent cases [37] the federal court held that the statute in no way affected substantive rights and the federal court was not bound to apply the state law. Had the same actions been brought in the New York courts, they could not have been maintained without giving such security. It would seem that *Angel v. Bullington* would require the federal court to give effect to this statute requiring security, when the action is being tried in a federal court on the basis of diversity grounds alone.

It should be noted that where resort is had to a federal court, not on grounds of diversity of citizenship, but because a federal right is claimed, the limitation upon the courts of a state do not control a federal court sitting in that state.[38]

It is evident that the holding in the *Angel v. Bullington* case is within the spirit of the *Erie* case. The federal court is not administering another body of law, it merely gives out-of-state litigants a court free from local bias. Although it may at times be difficult to designate a particular law as substantive or adjective, it is evident that where a state closes its doors to a particular type of action, the law is substantive in nature and is expressive of the state's public policy. Since the *Erie* case, Congress has permitted the holding, without statutory change, and none is needed. A federal court in diversity cases is only another court of the state, and the result of a case tried before its tribunal should be substantially the same as that of a state court.

The plaintiff is *not entitled to a greater right* in federal courts, on the basis of diversity of citizenship, than he would receive in the state court.

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THE PATENT REFUGE OF MONOPOLISTS

There has long been uncertainty as to the extent to which patent holders might extend their patent monopoly without infringing the purposes of the antitrust laws. In *United States v. Line Material Co.*,[1] a case involving an industry-wide patent license price-fixing scheme, Judge Duffy likened this clash to "what would happen if an

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[37] Boyd v. Bell, 64 F. Supp. 22 (S. D. N. Y. 1945); Craftsman Finance & Mortgage Co. v. Brown, 64 F. Supp. 168 (S. D. N. Y. 1945).

[38] Holmberg v. Armbecht, 327 U. S. 392, 90 L. ed. 743 (1946).

[1] 64 F. Supp. 970 (E. D. Wis. 1946).