Duquesne Law Review

Volume 5 | Number 4 Article 3

1966

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DUQUESNE UNIVERSITY LAW REVIEW

VOLUME 5 | 1966-1967 | NUMBER 4

ERIE v. TOMPKINS: A GEOGRAPHY LESSON

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The United States Supreme Court, in 1938, deciding the case of *Erie Railroad Co. v. Tompkins*,[1] held that a federal court in a diversity of citizenship case must apply state law rather than federal law to the controversy.[2] The Court subsequently held in 1941, in *Klaxon Co. v. Stentor Electric Mfg. Co., Inc.*,[3] that the *Erie* case necessitated a ruling that a federal court, sitting solely on the basis of diversity jurisdiction, had to use the conflict of law rules of the state in which it was "sitting" in determining *which* state's law was applicable to the controversy. Eight years later, a ruling in *Woods v. Interstate Realty Co.*,[4] clearly announced that because of the *Erie* case, a federal court had to close its doors to a diversity of citizenship action, if the state in which it was "sitting" had a statute consistent with the United States Constitution which closed the doors of that state's courts to the same action.

It is the purpose of this work to show that the *Erie* case was decided on explicit constitutional grounds, *but* that the doctrine of that case was incorrectly extended in the *Klaxon* and *Woods* cases in that these decisions were considered by the Supreme Court to be a constitutional necessity. It will be shown that neither the Constitution nor *Erie* require that a federal court apply state conflict of laws rules corresponding to those of the state in which the federal court is "sitting," nor do either require that a federal court close its doors if the state in which it is "sitting" has closed its doors. It will be the position of this work that the United States should be free to formulate an independent body of

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

2. It was clear prior to the *Erie* case that a federal court had to apply the "written" law of a state, and that *Erie* was concerned with "unwritten" law, but for purposes of this paper, the distinction is not important. The effect of *Erie* was to enlarge the area of state law which had to apply in a diversity action and so require that all state law "written" and "unwritten" had to be applied in a diversity case. Erie v. Tompkins, *supra* note 1.

3. 313 U.S. 487 (1941).

4. 337 U.S. 535 (1949).

conflict of laws rules to be applied in a federal diversity case, and that the federal courts may ignore any state statute, though it may be constitutional, which operates to bar the diversity litigants from the state court.

THE ERIE CASE

In the *Erie* case, Tompkins, a citizen of Pennsylvania, sued the Erie Railroad Company, a New York State Corporation, in a New York federal court. In his suit he claimed damages for injuries sustained in an accident in Pennsylvania through the negligence of the railroad. Jurisdiction was based solely on diversity of citizenship. The issue was whether the law applicable to the case was *state law* or *federal* common law. The Supreme Court overruled the oft-challenged doctrine of *Swift v. Tyson*, which held that federal courts exercising jurisdiction on the ground of diversity of citizenship need not, in matters of general jurisprudence, apply the unwritten law of the state as declared by its highest court, but were ". . . free to exercise an independent judgment as to what the common law of the state is—or should be . . . ."[5] In overruling *Swift v. Tyson*, Mr. Justice Brandeis, after discussing the ". . . injustice and confusion incident to the doctrine of *Swift v. Tyson* . . ." and the correct interpretation of "laws" in the 34th section of the Judiciary Act of 1789, said: ". . . If only a doctrine of statutory construction were involved, we should not be prepared to abandon a doctrine so widely applied throughout nearly a century. But the unconstitutionality of the course pursued has now been made clear and compels us to do so. . . ."[6] From the above language, it is clear that the court was basing its decision primarily on constitutional grounds.

In explaining the constitutional compulsion, Brandeis adopted the language of Mr. Justice Field ". . . protesting in *Baltimore and Ohio R.R. Co. v. Baugh*, 149 U.S. 368, 401, . . ." which recognized ". . . the autonomy and independence of the States . . . *except* as to matters by the constitution *specifically authorized or delegated to the United States*. . . ."[7] Brandeis added, ". . . we merely declare that in applying the doctrine this court and the lower courts have *invaded rights* which in our opinion are reserved by the constitution to the several states . . ."[8] Brandeis's argument rested on the fact that the United States could not independently determine the law except in cases where it had specific authorization by the Constitution to do so. It is important to note that *Erie* was

5. 304 U.S. 64, 71 (1938).

6. *Id.* at 77-78.

7. *Id.* at 78-79.

8. *Id.* at 80. Although Brandeis's opinion does not make reference to Article 10 of the Constitution, his remarks about invasion of states' rights and the reservation of rights by the Constitution to the several states could only refer to that Article which reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people."

concerned with a conflict *between state and federal law*. The law applicable in a diversity case had to flow from a state authority because no authority had been delegated to the United States. Having decided that state law applied, Brandeis did not consider *which* state's law was to apply. The Court assumed Pennsylvania law, the *lex loci*, to be the governing law, although the federal court in *Erie* was "sitting" in the state of New York. The opinion does not indicate by what route Pennsylvania law was reached. It could have been reached by reference to the New York conflict of laws rule *or* by direct reference to Pennsylvania law as a result of an independent determination by the federal court as to *which* state's law should govern as the result of an accident which occurred in Pennsylvania. The opinion throws no light on why Pennsylvania law was used. The choice of the applicable state law was still an open question as far as the *Erie* case was concerned. Thus, *Erie* decided only that state law must apply to a diversity controversy, but did not decide the general problem of *which* state's law was to be chosen or the means of making a choice between the law of two or more states.

Could the same constitutional argument that sustained the need for a federal court to apply state law as opposed to federal law, sustain a decision as to *which* state's law had to be chosen by the federal court? Three years after *Erie*, the Supreme Court said "yes," or at least mumbled what sounded like an affirmative reply.

THE KLAXON DECISION

In *Klaxon Co. v. Stentor Electric Mfg. Co., Inc.*, a New York corporation suing a Delaware corporation in the federal district court in the state of Delaware, alleged a breach of contract. In holding the Delaware corporation liable for damages, the district court applied the law of the state of New York. As to *which* state's law should govern in awarding interest on the damages, the district court made *its own independent determination*[9] and concluded that New York law should govern; this was affirmed by the Court of Appeals.[10] The Supreme Court reversed the lower court and held that in choosing *which* state's law to apply, the lower court was to follow rules established by the state in which the federal court was "sitting." Thus, the lower federal court in *Klaxon* had to inquire of Delaware what the rules were by which Delaware would decide *which* state's law to apply.

The reasons for this result were briefly stated by Mr. Justice Reed. The result in *Klaxon* rested squarely on the *Erie* case. Reed stated that the ". . . prohibition declared in *Erie Railroad Co. v. Tompkins* against such independent determinations by the federal courts extends to con-

9. 30 F. Supp. 425, 431 (1939).
10. 115 F.2d 268, 275 (3d Cir. 1940).

flict of laws. . . ."[11] In referring to the *Erie* case, Reed doubtlessly had in mind the policy considerations of *Erie*, *e.g.*, he speaks of the principle of uniformity upon which the *Erie* case rests, and refers us to that portion of the *Erie* opinion which discusses "the injustice and confusion" incident to the *Swift v. Tyson* doctrine. But Reed likewise employs language which smacks of constitutionality. Reed states that the conflict of laws which a federal court "sitting" in Delaware applies ". . . must conform to those prevailing in Delaware courts. . . ."[12] He speaks of injustices which may result from the *Klaxon* decision as ". . . attributable to our federal system, which leaves to a state, within the limits permitted by the constitution, the right to pursue local policies diverging from those of its neighbor. . . ."[13] He denies to the federal court the power to enforce an independent "general law" of conflict of laws. In the opening sentence of the opinion, the question is posed as to whether a federal court *must* follow conflict of laws rules of the state in which it is sitting. Reed's description of the *Klaxon* result as a "must"; his reference to the "federal system" coupled with the expression that the prohibition in *Erie* necessitated the *Klaxon* result, leaves us, at best, in doubt as to whether the Court felt that the *Klaxon* result was constitutionally called for.[14] This is particularly evident when we recall that *Erie* was expressly decided on constitutional grounds by Mr. Justice Brandeis—a fact important to remember when the Supreme Court invokes the name of *Erie* as justification for other decisions.

The most interesting element is that in deciding that the rules by which a federal court determines which state's law to apply must themselves be state rules, the Court tells us that the standard in selecting a conflict of laws rule must be the geographical location of the federal court, *i.e.*, the state in which it is *sitting*. This phase of the *Klaxon* ruling, as will appear later, is the key to a correct analysis of the decision in relation to the Constitution. This standard of geographical location was later used in the *Woods* case as the keystone in a Supreme Court ruling affecting the jurisdiction of the federal courts in diversity cases.

THE WOODS CASE

The "geographical location" feature of *Klaxon* was used by the Court in 1947 in deciding a question of the availability of a federal forum to diversity litigants when the state in which the federal forum was located had closed its doors to the same litigants. The Court had held, in *Angel*

11. 313 U.S. 487, 496 (1941).

12. *Id.* at 496 (1941).

13. *Id.* at 496 (1941).

14. In *Klaxon*, Justice Reed referred to two circuit court cases [Sampson v. Channell, 110 F.2d 754, 759-762 (1st Cir. 1940); Waggaman v. General Finance Co., 116 F.2d 254, 257 (3d Cir. 1940)] which reached the same result as *Klaxon*, but neither of these cases throws additional light on the constitutional or policy reasons for the *Klaxon* result.

v. Bullington,[15] that if a state statute prohibits the use of the state's courts to hear a particular action, and the statute is constitutional, the federal court sitting in that state must likewise close its doors to the action even though all other requirements of diversity jurisdiction had been met. A subsequent case, *Woods v. Interstate Realty Co.*, decided in 1949 (although the Court was only reaffirming the *Angel* decision),[16] affords a better basis for discussion because of the simplicity of the facts. In *Woods*, the Court held that a Tennessee corporation could not bring suit against a Mississippi resident in the federal district court "sitting" in Mississippi, because a Mississippi statute[17] closed the doors of the Mississippi Courts to any corporation which had not filed a written power of attorney designating an agent on whom service of process might be had. Since the Mississippi state courts were closed to the diversity litigants, the federal court was also closed because it was geographically

15. 330 U.S. 183 (1947).

16. The Court's analysis of the *Angel* case in *Woods* is interesting, and incorrect. In *Angel*, a Virginia plaintiff had sued in a North Carolina state court for a deficiency judgment against a North Carolina resident. The Supreme Court of North Carolina said that a state statute closed the state courts to claims for deficiency judgment and barred the plaintiff. Plaintiff claimed that the state statute violated the United States Constitution but when the adverse decision was rendered by North Carolina, he did not appeal to the United States Supreme Court as he might have. He then commenced an action for the same deficiency judgment in the federal district court sitting in North Carolina. The Supreme Court said that the federal court could not hear the case. Douglas explains the *Angel* result in *Woods* by saying that it rests on two grounds, 1) the prior suit in the North Carolina court was res judicata and 2) the policy of *Erie* precluded maintenance in the federal court in diversity cases of suits to which the state had closed its doors. See Woods v. Interstate Realty Co., 337 U.S. 535, 537 (1949). He treats these two reasons as independent grounds for the *Angel* decision. He referred to the second reason as an alternative ground apart from the res judicata basis. But both reasons were absolutely necessary to the *Angel* result. Neither would have sufficed alone. The prior decision was res judicata because the plaintiff had had an opportunity to raise the constitutionality of the state statute in the United States Supreme Court by appealing the decision of the North Carolina Supreme Court. He did not avail himself of the opportunity to appeal the North Carolina decision and had "lost his chance." He could not raise the point in his federal action. But the North Carolina statute is only relevant to the federal action *if* the federal court was bound to respect the statute. If the federal court could have kept its doors open even though North Carolina closed its doors, the constitutionality of the North Carolina statute would be irrelevant, and the plaintiff's failure to appeal the decision would also be irrelevant. That which was res judicata was the issue of the state statute's constitutionality. This becomes relevant only after a decision that the federal court in North Carolina was bound by the state statute, and had to close its doors. The ruling that the court had to follow the state statute rests on the *Erie* doctrine. Thus, *Erie* was necessary to show that a federal court was bound by the state statute, and the res judicata to show that the statute's constitutionality had already been decided as far as the plaintiff was concerned.

17. MISS. CODE § 5319 (1942) required a foreign corporation doing business in the State to file a written power of attorney designating an agent on whom the service of process might be had. It also provided, "Any foreign corporation failing to comply with the above provisions shall not be permitted to bring or maintain any action or suit in any of the courts of this state."

located in the state. This was so, the Court said, because of *Erie v. Tompkins*. In a brief opinion, Mr. Justice Douglas tells us that the *Woods* result is necessary in the light of the *Angel* case, and that *Angel* follows the view of *Guaranty Trust Co. v. York*.[18] A reading of the *Angel* and *Guaranty Trust* cases leaves no doubt that their results were considered a constitutional necessity by the Court.[19] Douglas's reference to these cases clearly indicated, since Douglas does not present other grounds for the decision, that the *Woods* result was wrapped in the cloak of constitutional dignity.

Thus, we see that geographical location as a basis of constitutionality plays a vital role in both *Klaxon* and *Woods*. In *Klaxon*, location determines which state's conflict of laws rule must be followed, and in *Woods*, location is an indispensable consideration in determining jurisdiction of a federal court in diversity of citizenship cases.

At this point, let us recall that the *Erie* case, while maintaining that no constitutional delegation of authority by the states had been made to the United States to promulgate contract law, tort law, etc., of course qualified its position by recognizing that the United States did have authority to promulgate any law if the authority to do so had been delegated and enumerated by the states. Let us now examine provisions of the constitution which *did delegate* authority in certain matters to the United States.

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18. 326 U.S. 99 (1945).

19. It is, of course, difficult to quote piecemeal and give a fair impression of a court opinion but the following are not atypical of the spirit in which the *Erie* doctrine is viewed in both *Angel* and *Guaranty*. In *Angel*, Frankfurter said, ". . . If North Carolina has authoritatively announced that deficiency judgments cannot be secured within its borders, it contradicts the presupposition of diversity jurisdiction for a federal court in that State to give such a deficiency judgment. North Carolina would hardly allow defeat of a State-wide policy through occasional suits in a federal court. What is more important, diversity jurisdiction must follow State law and policy. A federal court in North Carolina, when invoked on grounds of diversity of citizenship, cannot give that which North Carolina has withheld. Availability of diversity jurisdiction which was put into the Constitution so as to prevent discrimination against outsiders is not to effect discrimination against the great body of local citizens." 330 U.S. at 191-92. And in *Guaranty*, the same writer had this to say in concluding that a federal court in New York had to follow the statute of limitations of the state in which it sat: ". . . Since it was conceived that there was 'a transcendental body of law outside of any particular State, but obligatory within it unless and until changed by statute' . . . State court decisions were not 'the law.' . . . Not unnaturally, the federal courts assumed power to find for themselves the content of such a body of law." 326 U.S. at 99. Frankfurter said that *Erie* expressed a policy "that touches vitally the proper distribution of judicial power between State and federal courts . . . ." Id. at 109. And later, that "a policy so important to our federalism must be kept free from entanglements with analytical or terminologies niceties . . . ." *Id.* at 110. He also describes the *Erie* doctrine as requiring critical analysis of the "nature of jurisdiction of the federal courts in diversity cases. . . ." *Id.* at 110. A full reading of the cases is necessary to appreciate that constitutional considerations were uppermost in the Court's mind.

DELEGATED POWER AND THE LOCATION DOCTRINE

In Section 8 of Article I, of the Constitution,[20] Congress is given the authority to establish *inferior federal courts*. There is no restriction in Section 8, or elsewhere in the Constitution, as to number, type, or *location* of these inferior federal courts which Congress may ordain and establish. The authority is general. In considering legislation under this section, the First Congress discussed various proposals as to the establishment of inferior federal courts, and by the Judiciary Act of 1789 set up a system of independent federal courts.[21] None of these courts had jurisdiction which overlapped state boundaries. The jurisdiction of the several courts was contained within state lines. This was the system which was established in 1789, and since that time, with one minor exception,[22] the jurisdiction of a federal court has never crossed a state line. This is the system which is functioning today.

This element of containment within state lines of the jurisdiction of an inferior court has had a history of permanency similar to the permanency of the constitutional elements of our government. But it *is not* a constitutional element of our federal system. There is no constitutional mandate in Article I that the jurisdiction of the inferior federal courts be contained within state lines. The First Congress introduced this feature into the system of federal courts, and this feature has been allowed to remain; but this has been done as a discretionary matter. It was not required by the Constitution. The authority delegated to Congress was broad enough so that it could have established a federal system of inferior courts whose jurisdiction not only crossed a state line but encompassed the total territory of two, three, or any number of states. Thus today, a federal district court "sits" in each of the 50 states only because of Congressional enactment, *not* constitutional mandate.

To pursue this by way of illustration, as an example of what Congress could do under Section 8 of Article I, a federal district court (a Section 8 "inferior court") could be established whose jurisdiction covered States A, B, C, and D. That court (*i.e.*, the courthouse, the judges and their offices, etc.) could be geographically located only in State A. But though it were "sitting" in State A, it would have jurisdiction covering the territory contained within States A, B, C, and D. No argument can be conceived by this author to show that such a plan would be without the authority granted to Congress by Section 8 of Article I, and therefore unconstitutional.

20. U.S. CONST. art. I, § 8, reads, "The Congress shall have the power . . . to constitute tribunals inferior to the supreme court. . . ."

21. ACT OF SEPT. 24, 1789, § 2, 1 STAT. 73.

22. During 1801-1802, a district court encompassed the territory in the District of Columbia and parts of Maryland and Virginia. FRANKFURTER AND LANDIS, THE BUSINESS OF THE SUPREME COURT II (1928).

By the first section of Article III, the inferior courts which Congress may establish without restriction as to location may be vested with the judicial power of the United States, which is defined in the second section of Article III.[23] This power is by way of delegation of authority by the states to the United States. One of the grants of judicial power extends "to all Cases, in Law and Equity . . . between citizens of different states . . . ." This is the basis of what is commonly known as diversity jurisdiction of the federal courts. This grant of power has been vested by Congress in the federal district courts.[24] The authority of the federal courts to hear cases between citizens of different states is clear enough and statement of that fact should suffice.

A federal court, then, from what has been said above, may be located anywhere when hearing a diversity of citizenship case. Yet, it was the geographical location of the federal court in the *Klaxon* case which determined that the rules of Delaware were to be used in deciding which state's law should apply. Keep in mind that the court was not "sitting" in Delaware because of a constitutional mandate. As far as the Constitution is concerned the federal court's "sitting" in Delaware was accidental. It could just as well have been sitting in New Jersey deciding the very same case, between the New York and Delaware corporations. Since the Court's location was constitutionally accidental, the Court's decision that location determines the conflict of laws rule to be applied does not have constitutional merit.

Once the location criterion is eliminated from *Klaxon*, the case loses its effect constitutionally. The opinion is reduced to a requirement that state conflict of laws rules be used without any constitutionally required criterion by which a choice of states' rules should be made. In view of this fact a brief examination will be later made concerning the necessity of using state conflict of laws rules in a federal court, and whether the prohibition declared in *Erie* against an independent "federal law" should be interpreted as including conflict of laws rules.

The same criticism of the location doctrine applied to the *Klaxon* decision is applicable to the *Woods* decision. The federal court in *Woods* was required to respect the Mississippi statute because the court was "sitting" in Mississippi. Since the constitution is indifferent to the location of the federal courts, the place in which the court "sits" cannot be a constitutional standard limiting the diversity jurisdiction of a federal court.

Both *Klaxon* and *Woods*, resting as they do on the constitutionally

23. U.S. CONST. art. III, § 3, reads: "The judicial power shall extend to all Cases, in Law and Equity . . . between Citizens of different States; . . ." U.S. CONST. art. III, § I, reads, "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . ."

24. 28 U.S.C. § 1332 (1958).

invalid location theory, are not then essential ingredients of any federal system as conceived by the Constitution.

FEDERAL CONFLICT OF LAWS RULES

Let us again assume a situation in which a federal court could be sitting in State A, exercising diversity jurisdiction in an action involving litigants from States B and C. In such a situation, suppose a disagreement were to arise as to whether the law of State B or State C is applicable to the controversy. State A has no interest whatsoever in the controversy except, of course, that the United States has rented or purchased space for a courthouse in which the federal court is "sitting." The Court, cognizant of the limitations imposed by the *Erie* case, must find some state authority behind the law which it applies in the case. But which state's law? The law of State B or the law of State C? A choice must be made!

If the requirement in *Erie* that a federal court must apply "state law" is read to include conflict of laws rules, the court is facing a blank wall. It must make a choice between the law of State B or State C, and the very rules by which it is to make this choice must themselves be rules of either State B or State C. Yet, the court would still face the problem of determining whether the conflict of laws rules of State B or State C should be used in solving the first problem, namely, which state's law is applicable to the controversy. We could go on, of course, and say that *Erie* also requires that the rules by which the court is to determine those rules by which the state law is chosen must also be the rules of some state. But this game of logical gymnastics could go on and on until it rendered the diversity litigants indigent as a result of paying for appellate briefs. At some point in the game, it would be necessary for the court to make an initial independent determination as to which state's sovereign authority is applicable, without reference to either state's laws or conflict of laws rules; otherwise the court could not get its feet off the ground. By what standard, then, is the court to make this initial independent determination? The Constitution provides no affirmative standard nor does it contain any limitations of the use of an independent standard. The Supreme Court's location doctrine provides one means of making this initial independent determination, but the court could also establish any other independent standard. Only after this initial determination had been made would the court fall under the yoke of *Erie* and be constitutionally bound to apply the law of the state which it had independently selected as applicable. Such a procedure would not violate the constitutional principles of the *Erie* case. *Erie* was concerned with a cleavage between state and federal law, and said that the law applicable in a diversity case had to flow from a state authority and could not flow from any federal authority because no authority had been delegated to the United States to declare such law. But as we have seen, the Constitution did delegate au-

thority to the United States to establish federal courts and to vest in them diversity of citizenship jurisdiction. These two grants of power necessarily carry with them the authority to make the initial determination as to which state's law is applicable; otherwise, as suggested, a federal court could not get its feet off the ground in a diversity suit, because it would be lost for a guiding first principle in the selection of applicable state law.

With the above-mentioned delegation of powers, the authority of the United States to promulgate an independent body of conflict of laws rules is particularly clear in view of the "necessary and proper" clause of the Constitution. Section 8 of Article I gives to Congress the authority ". . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or office thereof. . . ."[25] The meaning of the "necessary and proper" requirement of this clause was defined by Chief Justice Marshall in the case of *McCulloch v. Maryland*,[26] as follows: ". . . Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional. . . ."[27] As noted earlier, authority to promulgate federal conflict of laws rules is a necessary concomitant of the United States' delegated authority to hear diversity cases in inferior federal courts, and nothing in the Constitution declares a prohibition against such authority. The authority is "necessary and proper."

Since the United States is free to provide independent conflict of laws rules for diversity actions, the result in the *Klaxon* case was not constitutionally necessary. The lower court had made an independent determination that the award of interest should be governed by New York law.[28] A Supreme Court reversal would have been proper only if it criticized the method by which the independent determination had been made. This, of course, would have been a policy, as distinguished from a constitutional, criticism.

The *Woods* case did not involve the same problem as *Klaxon*, but the same analysis applies. The Mississippi federal court was constitutionally free to determine which state's law was applicable to the case. It may, of course, have determined independently that only Mississippi law should govern the controversy, and would then have to decide whether Mississippi law gave the plaintiff a right to damages, or merely closed the doors of its courts to the plaintiff. There can practically be a significant differ-

25. U.S. CONST. art. I, § 8.
26. 128 Wheat. 316 (1819).
27. *Id.* at 421.
28. 30 F. Supp. 425, 431 (1939).

ence. The difference is not academic. If the plaintiff had a right but could not sue in Mississippi, there may be no difference as far as Mississippi is concerned, but any one of the other 49 states could have opened their courts to the action and applied Mississippi law. A federal court is not more bound by the statute of Mississippi, the defendant's state, which closed the court doors, than it is bound by Tennessee's, the plaintiff's state, law, which conceivably would open its doors to the same claim. The federal court's jurisdiction to hear a diversity case is a constitutional delegation of power not limited by location of the court.

CONCLUSION

This paper, as stated earlier, was to show that the result in *Klaxon* and *Woods* were not constitutionally necessary. No opinion is expressed concerning the wisdom of the results on policy grounds. Certainly no opinion could be expressed on the basis of what the Supreme Court has told us in those cases about policy grounds. Both assume, with practically no discussion, that the same policy considerations which were discussed in the *Erie* case are applicable to *Klaxon* and *Woods*. It is the opinion of this writer that policy discussion was sparse because the court did think that the decisions were constitutionally necessary and that an elimination of the constitutional grounds which are not valid, would prompt the court to consider more thoroughly the wisdom of the *Klaxon* and *Woods* results. In doing so they could well perceive that the same policy considerations discussed in *Erie* might not be applicable to the *Klaxon* and *Woods* results. This seems particularly true of the *Woods* result,[29] and opponents of the *Klaxon* result, who see significant differences between the policy considerations of *Erie* and those of *Klaxon*, are not lacking.[30]

The Supreme Court should at the first opportunity provide us policy reasons why *Klaxon* and *Woods* are wise, and should keep in mind the Congressional prerogative to overrule *Klaxon* and *Woods* at any time.

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29. The *Woods* decision affected the jurisdiction of a federal court to hear a diversity suit, which raises more serious problems than *Klaxon*. And certainly the "forum shopping" arguments behind the *Erie* decision are not applicable because a reversal of *Woods* would not mean that a plaintiff could "forum shop" for a favorable law. He could, of course, take advantage of a federal forum in a state which would deny him access to its courts but the "law" applied would always be a "state" law, not a "federal" law.

30. HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 633-636 (1953); 2 CROSSKEY, POLITICS AND THE CONSTITUTION IN THE HISTORY OF THE UNITED STATES 928, 934 (1953).