Michigan Law Review

Volume 39 | Issue 5

1941

FEDERAL COURTS - DECISIONS OF STATE INTERMEDIATE COURTS AS STATE LAW TO BE APPLIED BY FEDERAL COURTS

Spencer E. Irons
University of Michigan Law School

FEDERAL COURTS — DECISIONS OF STATE INTERMEDIATE COURTS AS STATE LAW TO BE APPLIED BY FEDERAL COURTS — The Circuit Court of Appeals for the Sixth Circuit held that a federal district court in Ohio was not bound by a decision of the Cuyahoga County Court of Appeals to the effect that in a case of wrongful transfer of shares of stock, a demand and refusal was necessary to start the statute of limitations running. On certiorari, *held*, that, in ascertaining what the state law is, lower state court decisions are data which are not to be disregarded by a federal court, unless it is convinced by other persuasive data that the highest court of the state would decide otherwise. *West v. American Telephone & Telegraph Co.*, (U. S. 1940) 61 S. Ct. 179.

On the same day, the Supreme Court decided that the Circuit Court of Appeals for the Third Circuit was in error in disregarding New Jersey lower court decisions interpreting New Jersey statutes, *Fidelity Union Trust Co. v. Field*, (U. S. 1940) 61 S. Ct. 176, and that the Circuit Court of Appeals for the Ninth Circuit was in error in disregarding the decision of a California District Court of Appeal concerning liquidated damages, *Six Companies of California v. Joint Highway Dist. No. 13 of California*, (U. S. 1940) 61 S. Ct. 186.

The doctrine of *Erie Railroad v. Tompkins* [1] requires the federal courts to apply the substantive law of each state,[2] whether this law "be declared by its Legislature in a statute or by its highest court in a decision. . . ." [3] In recent years there has been some tendency in the Supreme Court to recognize that lower state court decisions can enunciate the state law where the highest court of the state has not spoken,[4] but some of the lower federal courts have not followed this principle, especially when the state court has had less than state-wide juris-

[1] 304 U. S. 64, 58 S. Ct. 817 (1938).

[2] Sec. 34 of the Federal Judiciary Act of Sept. 24, 1789, c. 20, 1 Stat. L. 73 at 92, 28 U. S. C. (1935), § 725, provides: "the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply." In 1842, Swift v. Tyson, 16 Pet. (41 U. S.) 1 (1842), held that "laws of the several States" in this statute was limited to state statutes, and to strictly local law, and that matters of "general law," such as contract, tort, and commercial law should be decided independently by the federal courts. The Erie case, in 1938, specifically overruled this interpretation.

[3] Erie R. R. v. Tompkins, 304 U. S. 64 at 78, 58 S. Ct. 817 (1938).

[4] 17 HUGHES, FEDERAL PRACTICE, JURISDICTION AND PROCEDURE, § 18517 (1940). In Blair v. Commissioner of Internal Revenue, 300 U. S. 5 at 10, 57 S. Ct. 330

diction.[5] Their decisions found justification in the term "its highest court" in the *Erie Railroad* opinion, which suggests that the highest court of a state is the only source of state law that is binding upon the federal courts. Judge Allen, in deciding the *West* case in the Circuit Court of Appeals for the Sixth Circuit,[6] disregarded the decision of the Cuyahoga Circuit Court of Appeals, since this state court had no control over the decisions in the circuit courts of appeal in the other eighty-seven counties in Ohio, and therefore its decision did not establish the state law. The opinions in the three principal cases, however, deny the validity of this argument. The Court reasoned that although the *Erie Railroad* case held that the highest court of the state is the final arbiter of state law, still a state is not without law save as its highest court has declared it. Where the highest court has not passed on a question and there are lower court decisions establishing a rule, it is the duty of the federal court to consider these decisions as data in determining the state law.[7] Application of proper state law by a federal court amounts to a prediction of what the state supreme court would do at the present time, since even a decision of the highest court need not be accepted if it appears that the same decision would not be reached if the case were now before it.[8] The federal court, in making such a prediction, should certainly consider whether or not the state court was of state-wide jurisdiction, but this factor should not be controlling. The reasonableness of the decision and the ability and reputation of the judges making the decision should also be considered.[9] In a state court system where there are intermediate courts, each

(1937), the Court held, in applying local trust law to a federal tax case, that a decision by an intermediate court in Illinois was binding on the federal court, saying: "The decision of the state court upon these questions is final. . . . It matters not that the decision was by an intermediate appellate court." See 1 MOORE, FEDERAL PRACTICE 97 (1938). It has been suggested that the state court's decision in the Blair case was followed because it was res judicata on the question before the federal court, but the language used by the Supreme Court indicates that the decision was applied as evidence of state law. See 11 TULANE L. REV. 651 (1937), commenting on the Blair case, and contra, 88 UNIV. PA. L. REV. 487 (1940), commenting on Field v. Fidelity Union Trust Co., (C. C. A. 3d, 1939) 108 F. (2d) 521.

[5] See Dye, "Development of the Doctrine of Erie Railroad v. Tompkins," 5 Mo. L. REV. 193 at 225 (1940); 17 OHIO OP. 214 (1940), noting West v. American Telephone & Telegraph Co., (C. C. A. 6th, 1939) 108 F. (2d) 347; 24 MINN. L. REV. 692 (1940), noting Field v. Fidelity Union Trust Co., (C. C. A. 3d, 1939) 108 F. (2d) 521.

[6] West v. American Telephone & Telegraph Co., (C. C. A. 6th, 1939) 108 F. (2d) 347.

[7] ". . . it is the duty of the [federal court] in every case to ascertain from all the available data what the state law is and apply it. . . . Where an intermediate appellate state court rests its considered judgment upon the rule of law which it announces, that is a datum for ascertaining state law which is not to be disregarded by a federal court unless it is convinced by other persuasive data that the highest court of the state would decide otherwise." West v. American Telephone & Telegraph Co., (U. S. 1940) 61 S. Ct. 179 at 183.

[8] "When it [the highest state court] has spoken, its pronouncement is to be accepted by federal courts as defining state law unless it has given clear and persuasive indication that its pronouncement will be modified, limited or restricted." Ibid. See Wichita Royalty Co. v. City National Bank of Wichita Falls, 306 U. S. 103 at 107, 59 S. Ct. 420 (1939).

[9] Justice Holmes, in applying a New Jersey lower court's interpretation of a

with less than state-wide jurisdiction, the federal court may be faced with a conflict of decisions with no immediate prospect of having the conflict resolved by the state supreme court. Ohio represents an extreme example of this situation, since the Ohio Supreme Court is obligated to review only a few types of cases which arise in the eighty-eight independent county courts of appeal. Where a conflict exists in these courts, the federal court must assemble other data to determine the state law.[10] Thus the question what state decisions should be followed by the federal courts can hardly be defined by specific rules, but must be decided on the basis of the circumstances surrounding each individual case.[11]

Spencer E. Irons

state statute, said: "In view of the importance of that tribunal [supreme court] in New Jersey, although not the highest court in the State, we see no reason why it should not be followed by the Courts of the United States, even if we thought its decision more doubtful than we do." Erie R. R. v. Hilt, 247 U. S. 97 at 100-101, 38 S. Ct. 435 (1918).

[10] The federal judges cannot decide as they think the state supreme court *ought* to decide, but as they think it *would* decide. McCormick and Hewins, "The Collapse of 'General' Law in the Federal Courts," 33 ILL. L. REV. 126 at 136 (1938).

[11] The principal cases have also been noted in 25 MINN. L. REV. 377 (1941); 27 VA. L. REV. 548 (1941); 9 GEO. WASH. L. REV. 458 (1941).