Federal Jurisdiction: Interpretation of State Law in Federal Courts

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Federal Jurisdiction: Interpretation of State Law in Federal Courts—The plaintiff, Andrew Caporossi, obtained a tort judgment for $600,000 against the defendant, Atlantic City, New Jersey, on the grounds of negligence. The action was brought in federal district court based on diversity. The plaintiff and his bride were spending their honeymoon at Atlantic City. While swimming there, the plaintiff dived into the water, struck his head on an abandoned pipe, and sustained injuries to his spine. The beach at which they were swimming was owned and operated by Atlantic City. The pipe which the plaintiff struck had been installed by a private hotel, pursuant to a license issued by the city. That the particular pipe, as well as others, constituted a hazard to the swimming public was well known to the operators of the hotel and to at least two of the City Commissioners.

Attorneys for the defendant denied liability, invoking the common law doctrine of municipal immunity and a state statute which accorded a similar privilege. The statute provides: "No municipality or county shall be liable for injury to the person from the use of any public grounds, buildings, or structures, any law to the contrary notwithstanding." The defendant alleged that the site of the injury was a "public beach," and that as such it fell within the statutory definition of "public grounds," and that therefore no liability could attach to any injury sustained thereon. Atlantic City further contended that if the federal court allowed the plaintiff recovery, such action would exceed the authority vested in it to determine controversies according to the laws of the state within which they arise.

Title 40, as construed by the highest court of the state of New Jersey, was found merely to reiterate the common law rule of the state. Under such rule, a municipality is immune from liability for its torts only when they occur during the performance of a governmental rather than a proprietary function. On appeal, Atlantic City contended that in finding that it was engaged in a proprietary function, the federal court had deviated from the determination of the state supreme court.

In at least two cited cases the New Jersey Supreme Court has held that the maintenance of a public park and of a swimming pool by a city constitutes a "governmental function" within the meaning of the statute. The federal district court, however, ignored these decisions.
and decided the case in the manner in which they considered the state supreme court would have, had they been presently confronted with it.

In making its decision the court relied on an apparent trend in the decisions of the New Jersey Supreme Court toward the abolition of municipal immunity.

This then is the posture of the New Jersey law on this issue. There are no New Jersey cases which endow municipally owned public beaches or public parks with proprietary characteristics. The next logical query involves the legal compulsion of this court to apply the substantive holding of Kuchler which relies on Bisbing... 7

The court noted that the doctrine of municipal immunity was out-dated, and also pointed to a United States Supreme Court decision which pronounced state holdings not only disharmonious on this point, but also said that they "disclose the inevitable chaos when courts try to apply a rule of law that is inherently unsound." 8 With the presumption that the New Jersey court would, if faced with the problem, recognize the inherent unsoundness of the rule as last enunciated in Kuchler, 9 and reverse themselves, the court took that step in their stead.

The Rules of Decision Act 10 provided that: "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply." The question of whether "laws" within the meaning of the Act mean only the statutory law or the decisional law as well, was long debated. The question was finally decided in favor of a narrower construction in the case of Swift v. Tyson. 11 State decisions were found to be merely indicative of the state of the law, but not laws in themselves. This case was an attempt to realize the impossible, 12 namely, to standardize decisional law in all of the states. It was rooted in the jurisprudence of Cicero as interpreted by Lord Mansfield: "There should not be one law for Rome, another for Athens, one now, another later, but for all peoples and all times one and the same law should obtain." 13

The rule of Swift v. Tyson was considered by many to be contrary

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9 See note 6 supra.
10 See note 3 supra.
11 Swift v. Tyson, 14 U.S. 166 (1842).
12 The Supreme Court said, "There can be no common law of the United States." Wheaton v. Peters, 12 U.S. 591, 658 (1840).
to the intentions of the drafters of the Rules of Decision Act. It was denounced vigorously as "unsound, unjust, and illogical," and attacked as unprecedented and unparalleled in the area of conflict of laws, but remained unchanged for ninety-six years, adverse criticism notwithstanding.

In *Erie R.R. Co. v. Tompkins,* the rule of *Swift v. Tyson* was declared unconstitutional as violative of the "equal protection of the law" clause. The court said that in attempting to obtain uniformity throughout the United States the rule prevented uniformity in administration of state law. It has since been argued, however, that this concept is inconsonant with Article III of the Constitution, which vests the federal judiciary with the "judicial power of the United States," which in turn implies the power to make law.

In the present case, however, the court did not follow the governing state decisional law as last decided by the highest court. It noted, instead, that the *Kuchler* case was thirty-five years old, and that its antiquity was tantamount to obsolescence. It pointed out that in more recent cases the intermediate court of appeals in New Jersey had departed from the *Kuchler* interpretation of proprietary functions, and that such departure was indicative of a trend in New Jersey law.

In *Bernhardt v. Polygraphic Company of America,* it was strongly argued by Justice Frankfurter in a concurring opinion that the strict rule of *Erie R.R. v. Tompkins* should be relaxed, and that a federal court should be able to reach a conclusion contrary to an outmoded state supreme court decision. He argued that the federal court should attempt to decide what the state court would do with a question at the present time, rather than what they had done with it in the distant past. His argument was espoused in the *Caporossi* case. *Stare decisis,* the court said, is not an immutable criterion, but rather should serve as a flexible marker for guidance and allow of re-analysis and re-determination of the issues involved.

The *Caporossi* decision, upon close analysis, is disturbing. If upheld, it would seem to give the federal courts a latitude of discretion never intended by the United States Supreme Court nor by the courts of

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15 40 L.R.A. (n.s.) 380 (1912).
16 71 A.L.R. 1102 (1931).
17 See note 3 supra.
19 See note 6 supra.
22 See note 3 supra.
the several states. It seems to be a subtle avoidance of the rule of *Erie R.R. v. Tompkins*, which would permit the federal courts, in any instance absent a very recent state decision, to acknowledge *stare decisis* as but a guide post, and then reverse the highest state courts according to their own determinations. By replacing the discretion of the state court with its own, a federal court can effectively reverse a state supreme court. This raises several final points of inquiry. Will federal courts follow their own precedents in the future? Will they extend *Caporossi* to avoid *Erie R.R.* entirely? Will we return to the chaos of *Tyson's* rule? Will state high courts be bound by federal court reversals of the judgments?

MICHAEL D. BAUDHUIN

Contracts: Restitution as a Remedy for Breach—Plaintiff, a professional engineer, entered into an oral agreement to provide plans and specifications for a proposed motel on land owned by the defendant. Relying upon defendant's representations and a plot survey provided by him, the plaintiff submitted preliminary plans for the proposed building which incorporated land not belonging to the defendant. This land was needed to provide parking facilities required by the city building code. The defendant's attempts to purchase additional property and to obtain a building permit were unsuccessful, and the defendant was unable to secure the necessary financing. As a result, the project was dropped. Plaintiff submitted a bill for services performed, and upon defendant's refusal to pay, the plaintiff sued for services rendered. *Barnes v. Lozoff.*

The Supreme Court of Wisconsin affirmed the lower court allowing plaintiff to recover the reasonable value of his services. The court held that there was no fault on the plaintiff's part in preparing the preliminary sketches and that such sketches were a part of the bargained-for performance, thus bringing the case within section 347 of the *Restatement of Contracts.*

Restitution in this sense lies as an alternative remedy to a suit on the contract for damages. The purpose of this remedy is to restore the injured party to as good a position as was occupied by him prior to

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23 Ibid.

1 Barnes v. Lozoff, 20 Wis. 2d 644, 123 N.W. 2d 543 (1963).

2 *Restatement, Contracts* §347 (1932) *Restitution of Value of a Performance Rendered By One Party as a Remedy For Total Breach by the Other*.