William and Mary Review of Virginia Law

Volume 1 (1949-1953)
Issue 5

Article 6

May 1953

Federal Procedure - The Erie R. Co. v. Tompkins Rule and State Created Rights in Admiralty Jurisdiction

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FEDERAL PROCEDURE—THE ERIE R. CO. V. TOMPKINS RULE AND STATE CREATED RIGHTS IN ADMIRALTY JURISDICTION

On June 19, 1948, plaintiffs' intestate died as a result of injuries received in a boat collision on the Ohio River in *Campbell* County, Kentucky. Deceased was a passenger in a motor boat owned and operated by the petitioner, which collided with a motor boat owned and operated by the copetitioner. Decedent was a resident of New York State, therefore, a domiciliary administrator was appointed in New York on October 22, 1948, and an ancillary administrator in *Kenton* County, Kentucky on December 7, 1948. The District Court sustained a special demurrer as the appointment of the ancillary administrator in *Kenton* County was void, granting leave to amend. Amended libel was tendered on July 29, 1949, and filed on September 9, 1949. The District Court sustained a general demurrer as the period of limitations on death actions in Kentucky had passed.[1] Upon appeal, *held,* reversed. The general maritime law was held controlling as opposed to the law of Kentucky which created the right sued upon. *Louis Levinson and Mitchell A. Hall v. William Deupree, Jr. Ancillary Admin. of Wing,*[2] 186 F.2d 297 (6th Cir. 1950).

The question herein involved is whether admiralty courts, when invoked to enforce the rights created by state law and unknown to admiralty,[3] are bound by the law of such state, or the general maritime law. Since 1886[4] the enforcement of state death statutes in admiralty has been expressly justified[5] under the "maritime but local" doctrine, *i.e.,* the nature of the remedy is such that it does not affect the uniformity requirement in admiralty.

The District Court held invalid the appointment of the ancillary administrator in Kenton County since decedent was possessed of no estate there and further the injury to decedent occurred in Campbell County. A glance at the time element of this case will show how the statute of limitations would apply: (1) June 19, 1948—death of decedent, (2) December 7, 1948—invalid appoint-

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1. K.R.S. 413.140 (1943) ("1. The following actions shall be commenced within one year after the cause of action accrued: (a) an action for an injury to the person of the plaintiff, or of his wife, child, ward, apprentice or servant.")
2. This case was remanded for determination of the amount of judgment to be granted the administrator. This trial was also appealed. 199 F.2d 760 (6th Cir. 1952), *cert. denied* 341 U.S. 915 (1952), upon appeal *certiorari* was granted, 73 Sup. Ct. 284 (1952).
3. Lindgren v. United States, 281 U.S. 38 (1930).
4. The Harrisburg, 119 U.S. 199 (1886).
5. Western Fuel Co. v. Garcia, 257 U.S. 233 (1921).

ment ot the ancillary administrator, (3) July 28, 1949 valid appointment of administrator. This shows a lapse of one year and forty days from the death to the appointment of an ancillary administrator. In *Quinette v. Bisso*,[6] after citing the wrongful death statute of Louisiana, the court said: "Without this statute the libelant could not maintain her libel. The statute must be applied in admiralty just as if the suit had been brought in the state courts, and any defenses which are open to the defendant under the jurisprudence of the state, if successfully maintained, will bar recovery under the libel." The above rule was again stated in 1921 by the United States Supreme Court in *Western Fuel Co. v. Garcia*.[7] There are two syllabi of the *Garcia* case:

> "1. A death upon the navigable waters of a state whose statutes give a right of action on account of death by wrongful act will when caused by a maritime tort committed on such waters, support a libel in personam in the admiralty courts for the damages sustained by those to whom such right is given. 2. A state statute prescribing one year as the period within which the statutory action for death caused by wrongful act or negligence shall be brought, governs a libel in personam, sustained by those to whom such right of action is given from a death upon the navigable waters of such state caused by a maritime tort committed on such waters."

It will be seen from the foregoing and many other cases,[8] that *every defense* available in a Kentucky court to a suit brought for wrongful death is available to petitioner in a court of admiralty. Respondent finds the basis of its libel in a state-created right and that being so the libelants should be made to take the statute in its entirety and not just the particular portions which are advantageous. Without this death by wrongful act statute respondent would have no cause of action.

The Circuit Court of Appeals refused to extend the doctrine of *Erie R. Co. v. Tompkins*,[9] and *Guaranty Trust Co. v. York*[10] to this case in admiralty overlooking the theory that uniformity in the admiralty practice is required only when the essential features of

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6. 136 F. 825 (5th Cir. 1905).
7. 257 U.S. 233 (1921).
8. *See*, Truelson v. Whitney, 10 F.2d 412 (5th Cir. 1926), *cert. denied* 271 U.S. 661 (1926); Bloom v. Furness-Withy & Co., 293 F. 98 (S.D. Cal. 1923); O'Brien v. Luckenback S.S. Co., 293 F. 170 (2d Cir. 1923); Robinson v. Detroit & C. Steam Navigation Co., 73 F. 883 (6th Cir. 1896).
9. 304 U.S. 64 (1938).
10. 326 U.S. 99 (1945).

an exclusive federal jurisdiction are involved, as held by the United States Supreme Court in *Just v. Chambers*[11] and *Standard Dredging Corporation v. Murphy*[12] where the "maritime but local" doctrine was applied.

Respondent argued that to grant or deny leave to amend is a matter of procedural and not substantive law, it is controlled by the law of the forum, and that under the holding of the United States Supreme Court in *Missouri, Kansas and Texas Ry. Co. v. Wulf*[13] the amendment is proper and relates back to the date of the filing of the original pleading so as to save the cause from the bar of the statute of limitation. With this contention the Court of Appeals agreed. Upon some thought it will be noted that if that decision is not reversed it will establish not only a double system of conflicting laws in the same state, but a double system in the same court in actions founded on the same state statute. If in this case in question the jurisdiction of the federal court had been invoked because of diversity of citizenship, the original judgment of the District Court would of necessity have been affirmed under *Guaranty Trust Co. v. York.* Should the mere circumstance of the fatal accident to decedent having occurred upon a water highway of Kentucky instead of a turnpike, road or street, vest respondent in a federal admiralty court with a right denied him in a federal court? To answer affirmatively would do violence to *Guaranty Trust Co. v. York,* which has been thought to express a federal policy.[14]

In *Guaranty Trust Co. v. York,*[15] the court said: "Here we are dealing with a right to recover derived not from the United States but from one of the States, when because the plaintiff happens to be a non-resident, such a right is enforceable in a federal as well as in a State court, the forms and mode of enforcing the right may at times, naturally enough, vary because the two judicial systems are not identic. But since a federal court adjudicating a State-created right solely because of the diversity of citizenship of the parties is for that purpose, in effect, only another court of the State, it cannot afford recovery if the right to recover is made unavailable by the State nor can it substantially affect the enforcement of the right as given by the State."

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11. 312 U.S. 383 (1941).
12. 319 U.S. 306 (1943).
13. 226 U.S. 570 (1913).
14. Rose v. United States, 73 F. Supp. 759,763 (E.D. N.Y. 1947).
15. 326 U.S. 99, 108 (1945).

The question is not whether the statute of limitations is a matter of "procedure" but whether that statute deals with the manner and means whereby the right to recover,as recognized by the state, is enforced, "or whether such statutory limitation is a matter of substance in the aspect that alone is relevant to the problem, namely, does it significantly affect the result of a litigation for a federal court to disregard a law of a State that would be controlling in an action upon the same claim by the same parties in a State court?"[16] The true test here would seem to be whether a different result would be obtained if the same cause between the same parties be litigated in a state as compared to a federal court. If so, the state rule must prevail.

It is not sufficient for respondent to say that the granting or denying leave to amend is a mere matter of procedure, as distinguished from substantive law, and is therfore, governed by the decisions of the federal courts even though such decisions be in conflict with those of the Court of Appeals of Kentucky. The objection to the amendment of the appointment of the ancillary administrator goes deeper. It strikes at the very right to maintain an action.

The rule of *Erie R. Co. v. Tompkins* and *Guaranty Trust Co. v. York* compels that no substantially different result be obtained whether the substantial view or the procedural view be correct, when the state law says, "no recovery to respondent."

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16. Id. at 109.