FEDERAL JURISDICTION

FORUM NON CONVENIENS IN THE FEDERAL COURTS

A policy holder of the defendant company brought a derivative suit for an accounting in the Eastern District Court of New York, where the policy holder resided. The cause of action was based upon an alleged breach of trust by the president of the defendant company. The action was brought under a federal venue statute.[1] The three defendants in the suit were the company which issued the policy, organized under Illinois law and authorized to transact business in New York; the president of the company, an Illinois resident; and a second Illinois corporation acting as agent of the company. The company's files and records were kept at its principal place of business in Illinois. The District Court granted defendant company's motion to dismiss on the ground of *forum non conveniens*.[2] The Circuit Court of Appeals for the Second Circuit affirmed.[3] On certiorari, the Supreme Court affirmed; dismissal was within the discretion of the District Court since inconvenience to the defendants of the suit in New York greatly outweighed any convenience of the plaintiff policyholder. *Koster v. (American) Lumbermen's Mutual Casualty Co.*, 330 U.S. 518 (1947).[4]

In a companion case decided by the Supreme Court on the same day, a Virginia citizen brought an action in tort for negligence in the Southern District Court of New York. The action was brought under the same federal venue statute as in the *Koster* case. The defendant was a Pennsylvania corporation authorized to transact business in Virginia and in New York. An explosion occurred during defendant's delivery of gasoline to plaintiff's warehouse in Virginia, which destroyed the warehouse and its contents. The District Court granted defendant's motion to dismiss on the ground of *forum non conveniens*.[5] The Circuit Court of Appeals for the Second Circuit reversed.[6] The Supreme Court reversed, citing

1. 36 Stat. 1101 (1911), 28 U.S.C. § 112 (1940).
2. 64 F. Supp. 595 (E.D.N.Y. 1945).
3. 153 F. 2d 888 (C.C.A. 2d 1946).
4. Notes, 15 Geo. Wash. L. Rev. 489 (1947), 47 Col. L. Rev. 853 (1947).
5. 62 F. Supp. 291 (S.D.N.Y. 1945).
6. 153 F. 2d 883 (C.C.A. 2d 1946).

the *Koster* case. *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501 (1947).[7]

The principal cases present the problem of whether and in what circumstances a federal district court may, in its discretion, refuse to exercise its jurisdiction in diversity cases because the plaintiff has chosen an inconvenient forum. The doctrine of *forum non conveniens* has for its purpose the prevention of an arbitrary choice by a plaintiff of a forum in which the defendant will encounter difficulties in his defense.

The *Koster* case also raised the problem of when a federal district court should base its refusal to take jurisdiction upon grounds that to do so would involve interference in the internal affairs of a foreign corporation. The "internal affairs rule" should not be confused with the doctrine of *forum non conveniens.* The former can be stated thus: state and federal courts may, in the exercise of a sound discretion, refuse to entertain suits involving the internal ownership, *i.e.,* the conflicting interests of stockholders, directors, and corporate officers, of a corporation domiciled in a foreign state.[8] Neither state nor federal courts have been able to formulate a precise definition of cases which involve internal affairs.[9] But if, in a given case, internal affairs of a foreign corporation are involved, it by no means follows that a refusal by a court to exercise its jurisdiction will at the same time achieve the ends

---

7. Notes, 15 Geo. Wash. L. Rev. 489 (1947), 21 Tulane L. Rev. 669 (1947).

8. See Blair, "The Doctrine of Forum Non Conveniens in Anglo-American Law," 29 Col. L. Rev. 1 (1929); Foster, "Place of Trial—Interstate Application of Intrastate Methods of Adjustment," 44 Harv. L. Rev. 41 (1930); Dainow, "The Inappropriate Forum," 29 Ill. L. Rev. 867 (1934); Braucher, "The Inconvenient Federal Forum," 60 Harv. L. Rev. 908 (1947). For excellent treatment of the development of the internal affairs rule, see Notes, 33 Col. L. Rev. 492 (1933), 46 Col. L. Rev. 413 (1946).

9. The following are recent cases finding internal affairs involved: Kelley v. American Sugar Refining Co., 139 F.2d 76 (C.C.A. 1st 1943), cert. denied, 321 U.S. 791 (1944) (recovery of par value of preferred stock and proportionate share of earned surplus); Overfield v. Pennroad, 113 F.2d 6 (C.C.A. 3rd 1940) (accounting); Grismer v. Merger Mines Corp., 43 F. Supp. 990 (E.D. Wash. 1942) (cancellation of contract between corporation and director); Sharp v. Big Jim Mines, 39 Cal. App. 2d 435, 103 P.2d 430 (1940) (levying assessments on stockholders); Wojtczak v. American United L. Ins. Co., 293 Mich. 449, 292 N.W. 364 (1940) (injunction against performance of reinsurance contract); Miesse v. Seiberling Rubber Co., 264 App. Div. 373, 35 N.Y.S.2d 504 (1942) (redemption of preferred stock); Hopkins v. Great Western Fuse Co., 343 Pa. 438, 22 A. 2d 717 (1941) (cancellation of contract between corporation and director).

for which the doctrine of *forum non conveniens* was created. A strict application of the "internal affairs rule" will often defeat the very purpose of the doctrine of *forum non conveniens,* and will result in a refusal to try a case in the forum actually most convenient to both parties.[10]

In *Rogers v. Guaranty Trust Co.*,[11] the Supreme Court first adopted the "internal affairs rule" by following lower federal court precedent.[12] Thirteen years later the case of *Williams v. Green Bay & W. R. Co.*,[13] while not expressly overruling the *Rogers* case, substantially repudiated the "internal affairs rule,"[14] and laid down a new test: that whether or not a federal court is justified in refusing to exercise its diversity jurisdiction in any case where a *general* venue statute gives it jurisdiction, depends upon whether under the facts of the case a trial in plaintiff's chosen forum will be "vexatious and oppressive" to the defendant. Thus, the Supreme Court in the *Williams* case put internal affairs cases essentially on a *forum non conveniens* basis. On the other hand, determination of the Congressional intent in the Federal Employers Liability Act, a *special* venue statute,[15] has resulted in decisions that the right to bring actions thereunder is absolute, not subject to defeat by a plea of *forum non conveniens.*[16]

The Circuit Court's dissenting opinions in the principal cases were based primarily upon the fact that both were brought under a *general* venue statute.[17] The basic argu-

10. Cf. Note, 33 Co L. Rev. 492, 502, n. 51 (1933).
11. 288 U.S. 123 (1933).
12. Wallace v. Motor Products Corp., 25 F.2d 655 (C.C.A. 6th 1928); Eberhard v. Northwestern Mutual Life Ins. Co., 210 Fed. 520 (N.D. Ohio 1914); Chicago Title & Trust Co. v. Newman, 187 Fed. 573 (C.C.A. 7th 1911); Cf. Burnrite Coal Co. v. Riggs, 274 U.S. 208 (1927).
13. 326 U.S. 549 (1946).
14. The Court in the Williams case disposed of the Rogers decision with the comment that it was the only decision of the Supreme Court holding that a federal court should decline to hear a case because it concerned the internal affairs of a foreign corporation.
15. 35 Stat. 65 (1908), 45 U.S.C. § 56 (1940).
16. Leet v. Union Pac. R.R., 155 P.2d 42 (Cal. 1944); Cf. Miles v. Illinois Central R.R., 315 U.S. 698 (1942); Baltimore & Ohio R.R. v. Kepner, 314 U.S. 44 (1941). See Loomis, "Interstate Commerce In Damage Suits," 1 Wyo. L.J. 22 (1946), where the writer discusses abuses arising from the concentration of litigation under the Federal Employers Liability Act in a few cities, notably Chicago, Los Angeles, and Salt Lake City.
17. 36 Stat. 1101 (1911), 28 U.S.C. § 112 (1940).

ment of the dissents followed the reasoning of *Meredith v. Winter Haven*[18] which amounts to this: the jurisdiction given by a *general* venue statute, as well as that given by a *special* venue statute, is absolute and not subject to avoidance by a plea of *forum non conveniens.*

The Supreme Court in the principal cases approved the *Williams* case and followed its test of "vexatious and oppressive." In the *Koster* case, the fact showing vexatiousness and oppressiveness was the necessity for defendant company's bringing its corporate records from Illinois to New York for a trial. Mr. Justice Black, with Mr. Justice Rutledge, dissented upon the ground that to make a stockholder traverse the continent all but nullifies his inclination to sue. Mr. Justice Reed, with Mr. Justice Burton, dissented upon the ground that no sufficient showing had been made by the defendant as to the relative convenience of the parties. In the *Gulf Oil Corp.* case, the requisite vexatiousness and oppressiveness was supplied by the fact that all of the defendant's witnesses resided in Virginia and would need to come to New York for trial.[19] The court rejected the plaintiff's only counter contention for convenience of the New York forum: that Virginia juries were not accustomed to $400,000 law suits. Mr. Justice Black, with Mr. Justice Rutledge, dissented upon the ground that at least so far as *law* actions for recovery of money damages[20] are concerned, a federal court should be required to exercise its jurisdiction when properly invoked. If the view of the dissenters had been accepted, the federal courts would be required to wait for Congress to adopt the doctrine of *forum non conveniens.*

Both the *Koster* and *Gulf Oil Corp.* cases held that the New York and federal standards of *forum non conveniens* were the same, and thus reserved decision on the question whether *Erie R.R. v. Tompkins*[21] requires a federal court in

18. 320 U.S. 228 (1943).

19. But cf. Cox v. Pennsylvania R.R., 72 F. Supp. 278 (S.D.N.Y. 1947), where the court declined to grant defendant corporation's motion to dismiss on grounds of forum non convenience and distinguished the Gulf Oil Corp. case.

20. The cases in which the Supreme Court had previously upheld dismissals by lower federal courts upon grounds of forum non conveniens were suits in admiralty or in equity. Rogers v. Guaranty Trust Co., 288 U.S. 123 (1933); Canada Malting Co. v. Paterson S. S. Co., 285 U.S. 413 (1931); Cf. Williams v. Green Bay & W. R.R., 326 U.S. 549 (1946).

21. 304 U.S. 64 (1938).

a diversity suit to follow the *forum non conveniens* policy of the state in which the court is sitting. The purpose of the *Erie* doctrine is to assure that state courts and federal courts sitting in the same state shall reach uniform results in diversity suits.[22] In *Weiss v. Routh*[23] the Circuit Court of Appeals for the Second Circuit raised the question of its own motion and held that the *Erie* doctrine required a federal court in a diversity suit to apply the *forum non conveniens* policy of the state in which it is sitting.[24] In the *Weiss* case Judge Learned Hand said that the purpose of the *Erie* doctrine "extends as much to determining whether the court shall act at all, as to how it shall decide, if it does." In *Griffin v. McCoach*,[25] where a somewhat analogous problem was raised, the Supreme Court held a federal district court bound to follow a strong state policy of nonenforcement of rights under certain foreign insurance contracts. There are at least two reasons against the application of the *Erie* doctrine to the *forum non conveniens* policy. First, the problem of the expense of litigation to the state, being borne by the state taxpayers, is a highly important reason for refusing jurisdiction on grounds of *forum non conveniens* where a diversity suit is brought in state courts. This is not involved where the suit is brought in federal courts, since in the latter cases the expenses of maintaining the court are borne by the federal government. Second, a further reason frequently given by state courts for their dismissal on grounds of *forum non conveniens*—that their dockets are crowded—may not be a valid reason when given by federal courts. On the

22. York v. Guaranty Trust Co., 326 U.S. 99 (1945). See Angel v. Bullington, 330 U.S. 183, 191 (1947): "The essence of diversity jurisdiction is that a federal court enforces State law and State policy. If North Carolina has authoritatively announced that deficiency judgments caunot be secured within its borders, it contradicts the presuppositions of diversity jurisdiction for a federal court in that State to give such a deficiency judgment."

23. 149 F.2d 193 (C.C.A. 2d 1945).

24. Cf. Gulf Oil Corp. v. Gilbert, 153 F.2d 883, 885 (C.C.A. 2d 1946), where the court said that its pronouncement in the Weiss case did not carry over to the facts of the Gulf Oil Corp. case. "It is true that in Weiss v. Routh . . . the court looked to New York law for light as to the extent to which courts would interfere with the internal management of a corporation. But that appears to us much nearer substantive law—that of corporate supervision—than is this question of the place of enforcement of a claim for money damages."

25. 313 U.S. 498 (1941).

other hand, federal court dockets may be equally crowded. It is submitted that, in the light of the *Weiss* and *Griffin* cases, when the Supreme Court finally makes a decision on the merits it will hold that the *Erie* doctrine is controlling.[26]

26. H. R. No. 7124, 79th Cong., 2d Sess. 1404(a) (1947), proposed but not enacted by the recent Congress, is not enlightening upon the Erie question. It provides "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."