RECENT CASES

Conflict of Laws—Public Policy—Application by Federal Court of State Policy against Enforcement of Insurance Contract by One Having No Insurable Interest—[United States].—An insurance contract was made and issued in New York on the life of Gordon, a Texas oil promoter. The beneficiary was a syndicate composed of seven men who were advancing considerable sums of money to Gordon in the course of business dealings.[1] By a subsequent arrangement, permissible under the terms of the policy, Gordon waived his right to change beneficiary, in consideration of an irrevocable change of the beneficiary granting a one-eighth interest in the proceeds of the policy to his wife. Thereafter, in New York, three members of the syndicate separately assigned their interests in the policy to three individuals, strangers to the insured.

The public policy of Texas forbids persons without an insurable interest to collect, as beneficiaries, the proceeds of insurance policies, and when an assignment is made to one having no such interest, Texas law gives the proceeds to the decedent's estate.[2] When Gordon died, the plaintiff, administrator of his estate, filed suit against the insurance company in a federal district court in Texas. The administrator alleged first, that the change of beneficiary, having taken place in Texas, was governed by Texas law, and that therefore the later assignment was governed by Texas law; second, that if the whole transaction was governed by the law of New York, where an insurable interest is not required of an assignee, the federal district court sitting in Texas was nevertheless bound to apply the public policy of Texas and therefore must award the fund to the plaintiff.[3] The insurance company thereupon interpleaded the defendant, trustee of the syndicate representing the beneficiaries, deposited the face value of the policy with the court, and was permitted to withdraw from the action as provided by the Federal Interpleader Act.[4] The district court found for the defendant. In affirming this decision the circuit court of appeals held, that since the change of beneficiary was made pursuant to the terms of the original contract, the entire contract was governed by New York law, and that to apply the public policy of Texas to a New York contract ". . . . would constitute an unwarranted extraterritorial control of contracts and regulation of business outside of Texas in disregard of the laws of New York."[5] On certiorari from the United States Supreme Court, *held*, that whether the change of beneficiary transaction created in effect a new contract governed by Texas law must be determined under Texas decisions, and that even if under these decisions

[1] Premiums on the policy were paid by the syndicate and were never repaid by Gordon.

[2] Price v. Knights of Honor, 68 Tex. 361, 4 S.W. 633 (1887); Schonfield v. Turner, 75 Tex. 324, 12 S.W. 626 (1889); Equitable Life Ins. Co. v. Hazlewood, 75 Tex. 338, 12 S.W. 621 (1889); Cheeves v. Anders, 87 Tex. 287, 28 S.W. 274 (1894); Wilke v. Finn, 39 S.W. (2d) 836 (Tex. Com'n App. 1931).

[3] Note 2 supra.

[4] 49 Stat. 1096 (1936), 28 U.S.C.A. § 41(26) (Supp. 1940).

[5] Griffin v. McCoach, 116 F. (2d) 261, 264 (C.C.A. 5th 1940).

the contract continued to be governed by New York law the federal court must apply Texas public policy. Judgment reversed and cause remanded to the district court for retrial. *Griffin v. McCoach.*[6]

The United States Supreme Court has held that state courts could refuse to enforce contractual obligations, valid under the proper law of the contract, when the forum had a substantial governmental interest in the transaction and where enforcement of the contract would violate the public policy of the forum.[7] Where no such governmental interests existed,[8] however, or where the subject matter of the obligation was deemed of sufficient national importance,[9] notably in insurance cases, the Supreme Court has held that state courts must enforce contractual obligations in accordance with the "proper law" of the contract. The former decisions were occasionally justified in terms of "comity,"[10] the latter in terms of "due process" or "full faith and credit."[11] The Court's opinion in the instant case attempts to distinguish prior insurance cases which held that state courts were bound to enforce insurance contracts according to their proper law, apparently on the ground that in none of those situations had the state law been that the statutes or police regulations involved were expressions of a fundamental public policy of the state.[12] The suggested distinction between legislative and judicial expressions to which the state courts ascribe the dignity of "fundamental public policy" and those to which they do not leaves it to the state courts to enforce their statutes and regulations whenever they feel it appropriate to do so. It would thus appear that the Court has effectively, if not avowedly, overruled its previous decisions, which undertook to limit the states' freedom to apply their own rules to foreign contracts. The holding that the federal courts must deny enforcement of foreign contracts where the state courts would and constitutionally could do so is but an extension of

[6] 313 U.S. 498 (1941).

[7] Union Trust Co. v. Grosman, 245 U.S. 412 (1918); cf. Bothwell v. Buckbee, Mears Co., 275 U.S. 274, 278 (1927) (refusal to enforce foreign contract because it required the doing of prohibited acts within the forum); see Bond v. Hume, 243 U.S. 15, 21 (1917); Home Ins. Co. v. Dick, 281 U.S. 397, 410 (1930); Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 150 (1934); Citizens' Nat'l Bank v. Waugh, 78 F. (2d) 325 (C.C.A. 4th 1935); Transbel Investment Co., Inc. v. Roth, 36 F. Supp. 396 (N.Y. 1940); Loucks v. Standard Oil Co., 224 N.Y. 99, 110, 120 N.E. 198, 202 (1918).

[8] Home Ins. Co. v. Dick, 281 U.S. 397 (1930); Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143 (1934); Citizens' Nat'l Bank v. Waugh, 78 F. (2d) 325, 327 (C.C.A. 4th 1935); Alaska Packers Ass'n v. Industrial Accident Com'n of California, 294 U.S. 532 (1935); see Overby v. Gordon, 177 U.S. 214, 222 (1900).

[9] New York Life Ins. Co. v. Head, 234 U.S. 149 (1914); New York Life Ins. Co. v. Dodge, 246 U.S. 357 (1918); Aetna Life Ins. Co. v. Dunken, 266 U.S. 389 (1924); Bradford Electric Light Co., Inc. v. Clapper, 286 U.S. 145 (1932); Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143 (1934).

[10] Note 8 supra.

[11] Note 9 supra.

[12] Griffin v. McCoach, 313 U.S. 498, 507 (1941). "But these fall short of a public policy which protects citizens against the assumed dangers of insurance on their lives held by strangers. It is for the state to say whether a contract contrary to such a statute or rule of law is so offensive to its view of public welfare as to require its courts to close their doors to its enforcement." Ibid., at 507.

the doctrine of *Klaxon Co. v. Stentor Electric Mfg. Co., Inc.*,[13] decided on the same day as the *Griffin* case. It was there held that federal courts are bound to apply the conflict of laws rules of the states in which they sit. Presumably, however, neither the state courts nor the federal courts can deny enforcement of such a claim on the ground of local public policy unless the state has a substantial interest in the transaction.[14]

An interesting aspect of the Court's opinion is its effect on the operation of the Federal Interpleader Act. The primary aim of this statute was to protect a stakeholder from the expense of multiple suits and from possible multiple liability resulting from divergent views of the facts taken by different juries.[15] This was accomplished by use of nation-wide service of process which brought all claimants before a single tribunal where all claims to the funds could be conclusively and finally determined. The interpleader act purported, however, neither to alter nor to destroy any of the substantive rights of the parties.[16] The interpleader act worked well under the doctrine of *Swift v. Tyson*,[17] since the rights of the parties were determined under a uniform system of federal common law. Its utility was somewhat impaired by *Erie R. Co. v. Tompkins*,[18] since the rights of the various claimants were no longer determined in accordance with a consistent body of federal law but were subject to the various state laws, with consequent unpredictability and uncertainty. But still, where the arguably applicable state laws differed, the federal courts were to choose between them under a uniform federal rule of conflict of laws.[19] Even this procedure has become impossible, however, under the *Klaxon* case, because the federal court must now determine which state law to apply by reference to the conflict of laws rules of the state of the forum. Thus the disposition of the fund becomes wholly dependent upon the fortuitous—or worse, the calculated—circumstance of where suit is instituted. The instant case goes on to nullify the last bit of doctrine making for uniformity in federal decisions by requiring federal courts to apply even the public policy of the state of the forum when dealing with a foreign contract. In the light of this development, choice of a forum in interpleader actions will be influenced not only by the favorableness, from the plaintiff's point of view, of the state's conflict of laws rule, but also by the peculiarities of local policy which can be relied on to induce the federal court to disregard the contentions of his opponent, although these contentions would be given effect under the proper law of the contract.[20]

The implications of the *Griffin* decision are, however, even more far reaching. Assume that on remand the federal court in Texas finds that under Texas decisions the

[13] 313 U.S. 487 (1941).

[14] Home Ins. Co. v. Dick, 281 U.S. 397 (1930); cf. Alaska Packers Ass'n v. Industrial Accident Com'n of California, 294 U.S. 532 (1935); see Griffin v. McCoach, 313 U.S. 498, 507 (1941).

[15] Consult Chafee, Federal Interpleader since the Act of 1936, 49 Yale L. J. 377 (1940).

[16] Ibid., at 422.

[17] 16 Pet. (U.S.) 1 (1842).

[18] 304 U.S. 64 (1938).

[19] Chafee, op. cit. supra note 15, at 422.

[20] Thus, the Texas claimant gets the fund by virtue of his having filed suit in Texas. Had either the assignees or the insurance company filed suit in New York before the Texas suit was instituted, the assignees would have secured the fund.

law of New York is the proper law of the contract, but that the defendant's rights are not enforcible because of Texas public policy.[21] The question will then arise as to whether the provisions of the interpleader act have been properly invoked. It has been held that, where the amount of the stakeholder's liability is uncertain, the act is not applicable.[22] In the case assumed, the amount of liability of the insurance company is uncertain. Under the Texas law, the fund, on the facts assumed, will go to the administrator.[23] But at the same time, it is arguable that the assignees will still have a valid cause of action against the insurance company in another state, such as New York. In New York the assignees would of course have to admit that by the terms of the interpleader act the insurance company is released from all liability by the Texas proceedings. Nevertheless, they can assert that to consider the Texas proceedings as binding upon them by virtue of the interpleader act would destroy the cause of action against the insurance company which, but for the interpleader act, they would have had in New York. As has been indicated, the interpleader act was not intended to bring about such a result. To make this argument the assignees need not rely upon that part of the interpleader act which, by making process run nation-wide, brought them into the court in Texas. All they need rely upon is the argument that if they had sought as plaintiffs to establish their claim against the insurance company in the state courts of Texas, a refusal by the Texas courts to enforce their right, on grounds of public policy, would not have prevented a recovery on the same cause of action in a subsequent suit in New York. It is true that the point has never been decided,[24] but it is supported by numerous dicta of the Supreme Court.[25] Apparently, while a state

[21] See Griffin v. McCoach, 313 U.S. 498, 506 (1941).

[22] Connecticut Gen'l Life Ins. Co. v. Yaw, 53 F. (2d) 684 (D.C.N.Y. 1931).

[23] Note 2 supra.

[24] Although the point seems fundamental, a plausible explanation of the lack of definitive decisions may be offered. As long as federal courts did not refuse to enforce rights derived from foreign law because of a conflict with the local public policy, no such cases could arise in the federal courts. Where the issue could have been presented after a decision by a state court, such as that in Union Trust Co. v. Grosman, 245 U.S. 412 (1918), the plaintiff was probably prevented from bringing suit in another state by an inability to get service of process upon the defendant.

[25] See Bradford Electric Light Co., Inc. v. Clapper, 286 U.S. 145, 160 (1932), where it is said: "A state may, on occasion [i.e., where it has the requisite governmental interest], decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere." See also Bond v. Hume, 243 U.S. 15, 21 (1917); Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 150 (1934), discussed in 92 A.L.R. 932 (1934); Modern Woodmen of America v. Mixer, 267 U.S. 544, 551 (1925); consult Ross, Has the Conflict of Laws Become a Branch of Constitutional Law?, 15 Minn. L. Rev. 161, 162 (1931); Langmaid, The Full Faith and Credit Required for Public Acts, 24 Ill. L. Rev. 383, 418–19 n. 124 (1929); Goodrich, Conflict of Laws 261–62 (2d ed. 1938). In the instant case dicta from the above cases are quoted with apparent approval. "It is for the state to say whether a contract contrary to such a statute or rule of law is so offensive to its view of public welfare as *to require its courts to close their doors to its enforcement.*" (Italics added.) 313 U.S. 498, 507 (1941). But consult Developments in the Doctrine of Erie Railroad Co. v. Tompkins, 9 Univ. Chi. L. Rev. 113, 116 (1941).

The effect of a refusal to enforce a foreign contract on grounds of local public policy is thus analogous to a refusal by the courts of one state to enforce the penal laws of another,

court may constitutionally refuse to enforce a cause of action derived from foreign law, it may not thereby destroy the cause of action in the courts of another state. If this is a correct statement of the law, then the most the state courts in Texas could constitutionally have done would have been to refuse to enforce the assignees' cause of action. Or, if the assignees had been defendants relying on a defense valid under foreign law but regarded by the Texas state court as contrary to its public policy, the court would have had either to dismiss the action or to recognize the foreign law.[26] The assignees would still have had a cause of action in another state. If the state courts of Texas could not constitutionally deprive the assignees of their cause of action in another state, it may well be questioned whether an application of the interpleader act reaching this result in a federal court (applying state law) is constitutional.

Constitutional Law—Civil Rights—Validity of Blanket Legislative Provision for Sterilization of Habitual Criminals—[Oklahoma].—The Oklahoma Habitual Criminal Sterilization Act[1] provides that anyone judged to be an "habitual criminal" shall be rendered sexually sterile.[2] The act defines an habitual criminal as one who has been convicted two or more times for the commission of a felony involving moral turpitude. In a proceeding under the act initiated by the attorney general, the defendant, an inmate of the Oklahoma state penitentiary, admitted a record of three convictions—one for stealing chickens and two for robbery with firearms—all of which were committed prior to the passage of the act. The jury determined in accordance with the act 1) that the defendant was an habitual criminal as defined by the act and 2) that he might be sterilized without detriment to his general health. From a judgment ordering his sterilization, the defendant appealed with alternative contentions: if the act be considered a penal measure it should be invalidated as a cruel and unusual punishment prohibited by the state constitution and as an ex post facto law prohibited by the federal constitution. If, on the other hand, the act be considered a eugenic measure, it should be held invalid under the due process clause of both the federal and state constitutions because it does not require a finding by the court or jury that by the laws of heredity the defendant is the probable potential parent of children with criminal tendencies. *Held*, that the act is a eugenic measure and that the legislative determination that habitual criminals possess an inheritable tendency to crime which will be passed on to their

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Galveston, Harrisburg & San Antonio R. Co. v. Wallace, 223 U.S. 481, 490 (1912); or a refusal to enforce foreign claims on the ground that the procedure of the forum is inappropriate, Slater v. Mexican Nat'l R. Co., 194 U.S. 120, 128–29 (1904); or a refusal to enforce foreign claims because the forum has no court which can exercise jurisdiction over the controversy, Chambers v. Baltimore & Ohio R. Co., 207 U.S. 142, 148–49 (1907); or a refusal to enforce foreign claims because the doctrine of forum non conveniens is held applicable, Rogers v. Guaranty Trust Co., 288 U.S. 123, 131 (1933).

[26] Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 150 (1934); see Bradford Electric Light Co., Inc. v. Clapper, 286 U.S. 145, 160 (1932); Modern Woodmen of America v. Mixer, 267 U.S. 544, 550–51 (1925); Aetna Life Ins. Co. v. Dunken, 266 U.S. 389 (1924); consult Goodrich, Conflict of Laws 261–62 (2d ed. 1938).

[1] Okla. Stat. Ann. (Harlow, Supp. 1940) § 5044.

[2] The operation to be performed is vasectomy in the male, and salpingectomy in the female.