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Jurisdiction--Federal Courts--Diversity of Citizenship--Application of State Law (Woods v. Interstate Realty Co., 337 U.S. 535 (1949))

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mits itself to the archaic distinction between mistake of fact and mistake of law, a dictum unhappily indicative of slavish adherence to precedent.[8]

P. F.

JURISDICTION—FEDERAL COURTS—DIVERSITY OF CITIZENSHIP —APPLICATION OF STATE LAW.—Plaintiff, a Tennessee corporation, sued for commissions allegedly due by reason of a sale of defendant's real estate located in Mississippi. Suit having been brought in the United States District Court for Mississippi on the grounds of diversity of citizenship, that court found the contract void under Mississippi law since plaintiff had failed to comply with a state statute[1] which required that foreign corporations doing business in that state file a written power of attorney designating an agent on whom service of process may be had. The United States Court of Appeals reversed, holding that the contract was not void but only unenforceable in Mississippi state courts, and the fact that the respondent could not sue in the state courts did not preclude its bringing the action in the federal court sitting in that state. The Court of Appeals relied on *David Lupton's Sons Co. v. Automobile Club of America,*[2] in which a similar prohibition against use of the courts of the State of New York[3] was held not to bar a non-complying corporation from bringing its suit in the federal court. "The State could not prescribe the qualifications of suitors in the courts of the United States, and could not deprive of their privileges those who were entitled under the Constitution and laws of the United States to resort to the Federal courts for the enforcement of a valid contract."[4] Because of the seeming conflict of that holding with the recent ruling of the United States Supreme Court in *Angel v. Bullington,*[5] a writ of certiorari was granted. *Held,* judgment reversed. For purposes of diversity jurisdiction a federal court is in effect only another court of the state in which it sits. The fact that

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[8] *See* Hunt v. Rousmaniere, supra note 2. For the more modern view concerning mistake of law, see N. Y. CIV. PRAC. ACT § 112f; Ryon v. Wanamaker, 116 Misc. 91, 190 N. Y. Supp. 250 (Sup. Ct. 1921), *aff'd,* 202 App. Div. 848, 194 N. Y. Supp. 977 (2d Dep't 1922), *aff'd,* 235 N. Y. 545, 139 N. E. 728 (1923).

[1] MISS. CODE ANN. § 5319 (1942), which also provides, ". . . any foreign corporation failing to comply with the above provisions shall not be permitted to bring or maintain any action or suit in any of the courts of this state."

[2] 225 U. S. 489 (1912).

[3] N. Y. GEN. CORP. LAW § 218.

[4] David Lupton's Sons Co. v. Automobile Club of America, 225 U. S. 489, 500 (1912).

[5] 330 U. S. 183 (1947). For an interesting discussion of this case see Note, 21 ST. JOHN'S L. REV. 184 (1947).

the corporation could not sue in Mississippi courts closed the doors of the federal courts sitting in that state. *Woods v. Interstate Realty Co.*, 337 U. S. 535 (1949).

The decision in the instant case has clarified the holding in *Angel v. Bullington.* It was doubtful whether the *Angel* case had in fact overruled the holding in the *Lupton's Sons Co.* case or whether the reference to that case had been mere dicta. The confusion existed because *Angel v. Bullington* had been decided both on the ground of res judicata and on the policy established in *Erie R. R. v. Tompkins,*[6] which precluded an action which is barred in a state court from being brought in a federal court on the basis of diversity of citizenship. In the *Angel* case the court commented, "Cases like *Lupton's Sons Co. v. Automobile Club* . . . are obsolete insofar as they are based on a view of diversity jurisdiction which came to an end with *Erie Railroad v. Tompkins.* . . ." [7] The doubtfulness of the *Angel* holding was expressed by the Court of Appeals when it said, "We do not consider it [*Angel v. Bullington*] to have overruled the *David Lupton's Sons Co.* case upon the question with which we are now concerned and with respect to which the *David Lupton's Sons Co.* case expressly dealt." [8] This doubt was promptly dispelled in the principal case by the Supreme Court when it said, "But where a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum.*" The court also helped to clarify the distinction between substantive and procedural law. It relied on the test laid down in *Guaranty Trust Co. v. York.*[9] Simply stated, this test is: "what will be the result of the particular ruling on the outcome of the litigation?" If the outcome is substantially affected, the matter is substantive. The court felt the matter here to be of substance and said, ". . . where in such cases one is barred from recovery in the state court, he should likewise be barred in the federal court." [10]

The decision in this case represents a definite extension of the doctrine laid down in the *Erie* case, followed in the *York* case and in *Angel v. Bullington,* that for purposes of diversity jurisdiction a federal court is in effect only another court of the state in which it sits. Observing the spirit of the *Erie* case and the letter of the state statute involved, the federal court "cannot afford recovery if the right to recover is made unavailable by the state nor can it substantially affect the enforcement of the right given by the state." In so deciding, the intent of the *Erie* decision was followed. This intent was to assure the non-resident litigant of a court free from suscep-

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[6] 304 U. S. 64 (1938).
[7] 330 U. S. 183, 192 (1947).
[8] Interstate Realty Co. v. Woods, 170 F. 2d 694, 695 (C. A. 5th 1948).
[9] 326 U. S. 99 (1945). That court held that in a suit in equity in the federal court to recover upon a state-created right, jurisdiction being based solely upon diversity, a recovery cannot be had if a state statute of limitations would have barred recovery had the suit been brought in a court of the state.
[10] 337 U. S. 535, 69 Sup. Ct. 1235, 1237 (1949).

tibility to potential local bias, and not to give him another body of law under which he might gain a greater right than in the court of the state itself.

J. J. G.

TORTS—ATTRACTIVE NUISANCE DOCTRINE.—Plaintiff, a boy of seven years, brought an action for injuries sustained when he fell from a long raised runway maintained by the defendant for the purpose of unloading trucks into railroad coal cars. Plaintiff claimed that a duty of care arose under the attractive nuisance doctrine in favor of children who habitually frolicked in the vicinity of the ramp. It was established that defendant's watchman had consistently attempted to prevent the plaintiff from trespassing on the ramp. *Held,* directed verdict for defendant affirmed. Notwithstanding proof of the attractiveness of the instrumentality, liability will not be imposed unless plaintiff shows that the instrumentality possessed dangerous qualities and that defendant negligently failed to avert the injury. *Jarvis* et al. *v. Howard* et al., — Ky. —, 219 S. W. 2d 958 (1949).

The "attractive nuisance" doctrine applies in those cases where a defendant maintains upon his premises a condition, instrumentality, machine or other agency which is attractive to children of tender years by reason of their inability to appreciate the peril thereof.[1] In such cases the owner is under a duty to exercise reasonable care to protect children against the dangers of the attraction.

The doctrine creates a problem of reconciling two conflicting interests, namely, the owner's interest in the unrestricted use of his property [2] as opposed to society's interest in the protection of chil-

[1] United Zinc v. Britt, 258 U. S. 268 (1922). Mr. Justice Holmes formulated the rule that one of the essentials of this definition is that the child has been enticed to enter the land by some alluring condition which he sees while off the land. About two-thirds of the states follow this rule in an attempt to limit the landowner's liability. But since it is contrary to the theory of the doctrine, *i.e.,* the prevention of a foreseeable harm to a child, it has been rejected by the RESTATEMENT OF TORTS § 339 (1934). This view has been followed by: *Arizona,* Buckeye Irr. Co. v. Askren, 45 Ariz. 566, 46 P. 2d 1068 (1935); *Minnesota,* Gimmestad v. Rose Bros., 194 Minn. 531, 261 N. W. 194 (1935); *South Dakota,* Morris v. City of Britton, 66 S. D. 121, 279 N. W. 531 (1938); and either quoted or cited in support by: *California,* Melendez v. City of Los Angeles, 8 Cal. 2d 741, 68 P. 2d 971 (1937); *Colorado,* Phipps v. Mitze, 116 Colo. 288, 180 P. 2d 233 (1947); *Pennsylvania,* Altenbach v. Lehigh Valley Ry., 349 Pa. 272, 37 A. 2d 429 (1944); *Wisconsin,* Angelier v. Red Star Yeast & Products Co., 215 Wis. 47, 254 N. W. 351 (1934); *Wyoming,* Afton Elect. Co. v. Harrison, 49 Wyo. 367, 54 P. 2d 540 (1936).

[2] In New York, the only duty owed to a trespasser, whether child or adult, is to refrain from wilful and wanton injuries. The attractive nuisance doctrine is expressly rejected in Morse v. Buffalo Tank Corp., 280 N. Y. 110, 19 N. E. 2d 981 (1939); Walsh v. Fitchburg Ry., 145 N. Y. 301, 39 N. E. 1068 (1895). However, since a child has a *right* to be on a public highway, it has been held