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Federal Courts - Change of Venue - Transferee District Court Bound to Apply Law of Transferor State

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> minor in the face of that had refused counsel and stated that defendant wanted to enter a plea of guilty, the situation would be vastly different than it is as disclosed by the record and would have compelled affirmance. . . .

Everything that the Oklahoma court stated was necessary for affirmance is present and on record in the principal case. Clearly, the right to counsel may be waived by the parent of an accused minor.

The Vermont statute controlling the present decision is almost unique.[16] However, it is clear; it requires that a guardian ad litem must be appointed. In absence of a showing of antagonism between the accused and the guardian, the guardian should be permitted to waive the accused's right to counsel. It is pointless to require such an appointment and then to restrict unreasonably the power of the person appointed. It appears that the underlying purpose of the statute is to enable the courts to deal more effectively with the accused minor. Another aim of the statute is to provide advice and protection for the minor. The guardian, be he parent or other person, presumably is more experienced and more competent. To say that he may not waive counsel is to render his appointment meaningless. In conclusion, therefore, the court was correct in holding that a minor's right to counsel may be waived by a guardian ad litem appointed pursuant to the statute.

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FEDERAL COURTS — CHANGE OF VENUE — TRANSFEREE DISTRICT COURT BOUND TO APPLY LAW OF TRANSFEROR STATE.

Van Dusen v. Barrack (U.S. 1964)

Plaintiffs, personal representatives of victims of a Massachusetts plane crash, brought actions in the United States Court for the Eastern District of Pennsylvania against the airline, various manufacturers and the United States. Judge Van Dusen, acting pursuant to section 1404(a) of the United States Judicial Code,[1] granted defendants' motion for transfer of venue to the District Court of Massachusetts. In deciding that such transfer was justified he failed to consider whether the laws and conflict of laws rules of either Pennsylvania or Massachusetts would be applicable to the

16. There is only one other statute which is similar. CONN. GEN. STAT. ANN. tit. 54 § 199 (1957). A Florida statute requires only notice to parents. FLA. STAT. ANN. § 932.38 (1959), noted 14 U. FLA. L. REV. 290 (1962) and 16 U. MIAMI L. REV. 204 (1962).

1. 28 U.S.C. § 1404(a) (1958).
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.

action when transferred. The Court of Appeals, on a writ of mandamus, reversed and held that transfer could be granted only if at the time the suits were brought, plaintiffs were qualified to sue in Massachusetts.[2] The Supreme Court reversed both decisions and remanded to the district court *holding* that section 1404(a) of the Judicial Code and rule 17(b) of the Federal Rules of Civil Procedure must be so interpreted that the transferee district court, after a change of venue, is generally bound to apply the law of the state of the transferor; and that the district court was in error in ignoring several factors which stem from this conclusion in determining whether or not to grant the motion.[3] *Van Dusen v. Barrack,* 376 U.S. 612, 84 S.Ct 805 (1964).

The problem in this case was generated by an attempt to mesh two major policies applicable to litigation in the federal courts. The *Erie* Doctrine,[4] clarified by the Court in *Klaxon Co. v. Stentor Elec. Mfg. Co.*,[5] demanded that uniformity between state and federal court decisions in the same state be an axiom in the federal courts. Contrasted with this approach, a plaintiff may indulge in federal forum shopping without fear of an outright dismissal, regardless of the inconvenience of the chosen forum, so long as venue and jurisdiction are proper. In spite of the inevitable differences in decisions between federal forums sitting in different states, no problem should arise when a motion to transfer is granted. Courts applying conflict of laws rules should invariably reach the same result. However, state courts have precluded the Utopia either by categorizing certain foreign law as procedural, which they need not apply, or by a more forthright route, contending that local public policy forbids application of the undesirable law. Federal courts bound by *Klaxon* must, of course, reach the same conclusion. Previous lower court decisions, if aware of the issue at all, were almost unanimous in trying to protect the advantage which a plaintiff had secured by starting suit in a particular forum, even if an extremely inconvenient one.[6]

The major complicating factor here was that it was not altogether clear what attitude the Pennsylvania state courts would take as to the Massachusetts limitation of damages in wrongful death actions.[7] Quite understandably, however, the court avoided both this question as well as the question of whether a failure by Pennsylvania courts to apply the damage limitation in an action that arose in Massachusetts was unconstitu-

2. Barrack v. Van Dusen, 309 F.2d 953 (3d Cir. 1962).

3. This note will not consider the reversal of the Circuit Court's opinion on the interpretation of "where the action might have been brought."

4. Erie R.R. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817 (1938).

5. 313 U.S. 487, 61 S.Ct. 1020 (1941) (the federal court must apply the conflict of law rules of the state in which it sits).

6. Headrick v. Atchison, T.&S.F. Ry., 182 F.2d 305 (10th Cir. 1950) (the law of the transferor state applies); Hokanson v. Helene Curtis Indus., Inc., 177 F. Supp. 701 (S.D.N.Y. 1959) (transfer was granted only on stipulation that defendant would not assert shorter statute of limitations of transferee state). See generally, 1 BARRON & HOLTZOFF § 86.1 (Wright ed. 1960).

7. *Cf.* Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961).

tional.[8] Recent New York cases[9] and the *Restatement*[10] have cast doubts upon any previous notions of vested rights.

The instant court assumed a rather narrow interpretation of the transfer statute by regarding it merely as "federal judicial housekeeping" that authorizes only "a change of courtrooms."[11] Congress intended to go no further than to obviate the inconveniences resulting from overgenerous venue provisions; therefore, a conclusion that there would be a change of law would actually frustrate the Congressional intent. Section 1404(a) would become an instrument for further forum shopping and a judge would hesitate to transfer an action when he knew the transferee court would apply different laws, prejudicial to one of the parties. This approach is quite desirable to prevent a defendant from further forum shopping which, if permitted, would give him an undue advantage over the plaintiff. Thus the decision is seen to rest plainly on the concept that the federal court system is a national and unified tribunal, though bound to administer justice on a local level according to local law in diversity actions. When an advantage in the form of transfer of venue, is accorded to a defendant, every advantage for which plaintiff had chosen a particular forum where venue and jurisdiction were proper must also be retained. The opposite suggestion that the transferee court should apply the law of the state in which it sits because of the *Erie* Doctrine was rejected offhandedly by the Supreme Court. Even though the Court, in interpreting *Erie*, has been quite adamant in insisting that an identity had to be maintained between state and federal courts even though differences between federal courts result,[12] Mr. Justice Goldberg was careful to indicate that the identity to be maintained was that between the court which decides the case and the court of the state in which the action was filed. This conclusion is a natural corollary of a unitary court system and is analogous to a state court's transfer of an action to another district within the state.

While the decision in the present case solves one facet of the *Erie* problem when a motion to transfer is made, it creates the rather anomalous possibility of a vast disparity between the measure of damages recoverable by those who sued in Massachusetts and those who sued in Pennsylvania because of injuries arising out of the same tort. This pecularity will be heightened if the trial court should grant the defendants' motion to transfer to the District Court of Massachusetts. One possible solution would appear to be an application of state law requiring a dismissal of the action on the grounds of forum non conveniens following state law.[13] However, even if the state allowed a dismissal by its own courts, it is clear from this

8. *Cf.* Pearson v. Northeast Airlines, Inc., 309 F.2d 553 (2d Cir. 1962), *cert. denied*, 372 U.S. 912, 83 S.Ct. 726 (1963).
9. Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).
10. Restatement (Second) Conflict of Laws § 379 (Tent. Draft, 1963).
11. Van Dusen v. Barrack, 376 U.S. 612, 636, 84 S.Ct. 805, 819 (1964).
12. Klaxon Co. v. Stenton Elec. Mfg. Co., 313 U.S. 487, 61 S.Ct. 1020 (1941).
13. See generally Currie, *Change of Venue and the Conflict of Laws*, 22 U. CHI. L. REV. 405 (1955); Currie, *Change of Venue and the Conflict of Laws: A Retraction*, 27 U. CHI. L. REV. 341 (1960).