AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 5: The Jacksonian Era – Judicial Power and Constitutional Authority

Swift v. Tyson, 41 U.S. 1 (1842)

"Diversity" jurisdiction, explicitly created by the U.S. Constitution and recognized by the Judiciary Act of 1789, was among the most important bases on which the U.S. Supreme Court heard cases in the nineteenth century. Diversity cases are those in which the two parties to a lawsuit are residents of different states (i.e., "diverse" jurisdictions). Rather than giving one party or the other a home-court advantage, the Constitution allows such cases to be tried in federal court instead of a state court, even though the case may not involve any federal law or constitutional issue. Diversity cases are unusual, however, in that they only exist in the federal courts because of who the parties in the lawsuit are rather than because of what the law is that applies to the case. Diversity jurisdiction provides a federal forum for resolving cases, but it does not provide a federal law to settle the dispute. Indeed, the Constitution does not delegate to Congress the authority to make statutory law on subjects such as contracts, inheritance, and property unless they are in interstate commerce. Instead, federal judges apply the relevant state law to the case at hand.

The relevance of state laws to deciding diversity cases raises both practical and policy problems. From a practical perspective, diversity jurisdiction requires federal judges to understand and apply state law with which they otherwise have little experience or expertise. In the early republic, this raised particular challenges in that federal judges would need to know not only relevant statutes passed by state legislatures but also relevant judicial opinions issued by state courts interpreting or supplementing those statutes, and legal materials from each state were not always readily available to federal judges hearing cases in their individual districts or circuits. From a policy perspective, federal judges may well disagree with the law as it had developed within a particular state and were loath to carry it into the federal system. If state laws were, for example, idiosyncratic or biased toward home-state interests, then part of the benefit of creating a federal forum for diversity cases would be lost.

As a lawyer, scholar and judge, Justice Joseph Story was particularly concerned with creating a rational and uniform body of law that could facilitate commerce and economic growth. In Swift v. Tyson*, he seized the opportunity to announce that the federal courts would not be bound by state law in diversity cases. Instead, he distinguished the "general commercial law" from the "local" rule and committed the federal courts to interpreting and applying the former rather than the latter. Federal courts would participate in the development of a judicially constructed, national common law for the United States, and in doing so they would no longer be bound by the "mistaken" interpretations of that general law by particular state courts. What remained unclear was the extent to which state legislatures or state courts could explicitly opt out of this new federal common law. In the decades after* Swift*, the answer was often, "not very much."*[1]

John Swift accepted a third-party bill of exchange in payment of a debt in New York. The bill of exchange was originally written by George Tyson as a promise for payment for land in Maine. When Swift attempted to collect, Tyson refused to pay, claiming that he had been defrauded on the original land transaction. The bill of exchange in this case was part of a broader class of commercial paper that was commonly used as a means of exchange in business transactions in the early republic. New York common law, however, said that a bill of exchange could not be assigned to a third party, like Swift, and Tyson hoped to take advantage of this rule to sustain his refusal to pay. Swift sued in federal court to collect. The New York rule potentially hampered the growth of the economy (but also avoided the kind of tangled disputes that had arisen in this case). Under traditional understanding the federal courts were obliged to follow the rule where the paper had been accepted. Story persuaded

[1] See, e.g., *Watson v. Tarpley* (1855); *Gelpcke v. City of Dubuque* (1863).

the court to take a different path, raising questions of just how much authority the federal courts had under Article III.

JUSTICE STORY delivered the opinion of the Court.

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But, admitting the doctrine to be fully settled in New York, it remains to be considered, whether it is obligatory upon this Court, if it differs from the principles established in the general commercial law. It is observable that the Courts of New York do not found their decisions upon this point upon any local statute, or positive, fixed, or ancient local usage: but they deduce the doctrine from the general principles of commercial law. It is, however, contended, that the thirty-fourth section of the judiciary act of 1789, ch. 20, furnishes a rule obligatory upon this Court to follow the decisions of the state tribunals in all cases to which they apply. That section provides "that the laws of the several states, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the Courts of the United States, in cases where they apply." In order to maintain the argument, it is essential, therefore, to hold, that the word "laws," in this section, includes within the scope of its meaning the decisions of the local tribunals. In the ordinary use of language it will hardly be contended that the decisions of Courts constitute laws. They are, at most, only evidence of what the laws are; and are not of themselves laws. They are often reexamined, reversed, and qualified by the Courts themselves, whenever they are found to be either defective, or ill-founded, or otherwise incorrect. The laws of a state are more usually understood to mean the rules and enactments promulgated by the legislative authority thereof, or long established local customs having the force of laws. In all the various cases which have hitherto come before us for decision, this Court have uniformly supposed, that the true interpretation of the thirty-fourth section limited its application to state laws strictly local, that is to say, to the positive statutes of the state, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intraterritorial in their nature and character. It never has been supposed by us, that the section did apply, or was designed to apply, to questions of a more general nature, not at all dependent upon local statutes or local usages of a fixed and permanent operation, as, for example, to the construction of ordinary contracts or other written instruments, and especially to questions of general commercial law, where the state tribunals are called upon to perform the like functions as ourselves, that is, to ascertain upon general reasoning and legal analogies, what is the true exposition of the contract or instrument, or what is the just rule furnished by the principles of commercial law to govern the case. And we have not now the slightest difficulty in holding, that this section, upon its true intendment and construction, is strictly limited to local statutes and local usages of the character before stated, and does not extend to contracts and other instruments of a commercial nature, the true interpretation and effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence. Undoubtedly, the decisions of the local tribunals upon such subjects are entitled to, and will receive, the most deliberate attention and respect of this Court; but they cannot furnish positive rules, or conclusive authority, by which our own judgments are to be bound up and governed. . . .

It becomes necessary for us, therefore, upon the present occasion to express our own opinion of the true result of the commercial law upon the question now before us. And we have no hesitation in saying, that a pre-existing debt does constitute a valuable consideration in the sense of the general rule already stated, as applicable to negotiable instruments. . . . [W]e are prepared to say, that receiving it in payment of, or as security for a pre-existing debt, is according to the known usual course of trade and business. And why upon principle should not a pre-existing debt be deemed such a valuable consideration? It is for the benefit and convenience of the commercial world to give as wide an extent as practicable to the credit and circulation of negotiable paper, that it may pass not only as security for new purchases and advances, made upon the transfer thereof, but also in payment of and as security for pre-existing debts. The creditor is thereby enabled to realize or to secure his debt, and thus may safely give a prolonged credit, or forbear from taking any legal steps to enforce his rights. The debtor also has the advantage of making his negotiable securities of equivalent value to cash. . . .

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JUSTICE CATRON, concurring.