A Chance for the Ragan Court to Redeem Itself: Chappell v. Rouch

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NOTES

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A Kansas resident brought an action for personal injuries against an Indiana resident in the federal district court of Kansas. The action grew out of an automobile accident occurring in Kansas. The defendant filed a motion for summary judgment based on the running of the two-year statute of limitations. Although the plaintiff had filed the complaint before the running of the statute, under Kansas law the statute is tolled by service of summons, and the plaintiff did not effect service until after the limitations period had run. The district court denied the defendant's motion for summary judgment. The defendant appealed the order. *Held, affirmed*: The federal rule relating to commencement of an action rather than the state statute is to be applied in determining whether a diversity action had been commenced within the limitations period. *Chappell v. Rouch*, 448 F.2d 446 (10th Cir. 1971).

I. Federal Rules of Civil Procedure Conflicting with State Law—Erie to Hanna

In 1938 the Supreme Court in *Erie Railroad v. Tompkins*[1] held that in diversity of citizenship cases the federal courts were to apply the substantive law of the state in which they were sitting.[2] In the same year, under the authority of the Rules Enabling Act of 1934,[3] the Court promulgated the Federal Rules of Civil Procedure. Since the Federal Rules of Civil Procedure were intended to establish uniform *procedural* law in the federal courts, their application theoretically does not violate the mandate of *Erie*, which requires that the federal courts apply state *substantive* law[4] when sitting in diversity jurisdiction cases. But the problem inherent in the application of the *Erie* doctrine is the familiar one of determining the distinction between substance and procedure. The problem typically arises when a federal rule which may superficially be labeled procedural conflicts with some feature of arguably applicable state law. In the aftermath of the *Erie* decision two tests were fashioned to solve the problem of which law to apply. In *Sibbach v. Wilson & Co.*[5] the Court held that if a federal rule could rationally be classified as procedural it should apply instead of the conflicting state rule. The *Sibbach* test was premised upon the authority of the Rules Enabling Act[6] and the policy of establishing uniform procedural rules for federal courts.

In contrast to the *Sibbach* approach is Justice Frankfurter's opinion in

[1] 304 U.S. 64 (1938).

[2] *Erie* overruled Swift v. Tyson, 41 U.S. (16 Pet.) 1 (1842), which had required federal courts to apply "federal general common law." *Erie* held that there was no federal general common law. 304 U.S. at 66. The twin aims of the *Erie* doctrine were the discouragement of forum shopping and the prevention of the inequitable administration of the laws.

[3] 28 U.S.C. § 2072 (1971).

[4] For a discussion of whether *Erie* and the federal rules conflicted, see Clark, *The Tompkins Case and the Federal Rules*, 24 J. Am. Jud. Soc'y 158 (1941).

[5] 312 U.S. 1 (1941).

[6] 28 U.S.C. §§ 2071-72 (1971).

Guaranty Trust Co. v. York.[7] The *York* test, which is commonly referred to as the outcome-determinative test, concludes that a court should not solve *Erie*-type problems by a traditional substance-procedure distinction, but rather by an approach based on whether the use of the federal rule, instead of the conflicting state rule, would significantly affect the outcome of the litigation.[8] Too often, however, courts were inclined to apply the outcome-determinative test mechanically without regard to the true spirit of the *Erie* decision. Such was the case in *Ragan v. Merchants Transfer & Warehouse Co.*[9] There the Court mechanically applied the *York* outcome-determinative test and concluded that the state law controlled and that the statute of limitations had, therefore, run at the time the summons had been served.[10]

Since the application of many procedural rules is outcome-determinative at some stage of the litigation, the *Erie* doctrine, as redefined by *York* and mechanically applied in *Ragan*, caused great uncertainty with respect to the status of the federal rules in diversity cases.[11] This uncertainty was somewhat alleviated in *Byrd v. Blue Ridge Cooperative, Inc.*,[12] in which the Supreme Court retreated from the *York* outcome-determinative formula by holding that while a state rule must be applied if it is an integral part of a state-created right, a balancing of state and federal interests should otherwise determine whether state law controls.[13] *Hanna v. Plumer*,[14] the next decision refining the *York* rule, is significant because it discarded the mechanical approach to outcome-determinative analysis. It is understood to have established that the Federal Rules of Civil Procedure are immune from attack as being outcome determinative.[15] The opinion in *Hanna* advised that the proper application of the *Erie-York* doctrine requires a policy analysis in light of the twin aims of *Erie*, which were the "discouragement of forum-shopping and avoidance of inequitable

[7] 326 U.S. 99 (1945).

[8] The Court in *York* enunciated the rule that the "outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in the state court." *Id.* at 109. The outcome-determinative test of *York* became the usual way of solving *Erie* problems. *See, e.g.*, Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949); Wood v. Interstate Realty Co., 337 U.S. 535 (1949); Ragan v. Merchants Transfer & Warehouse Co., 337 U.S. 530 (1949).

[9] 337 U.S. 530 (1949). *Ragan* involved a highway accident between residents of different states. The plaintiff commenced his diversity action in federal district court within the period allowed by the state's two-year statute of limitations; however, summons had not been served until after the statute had run. FED. R. CIV. P. 3 provides that an action is commenced when filed, but the state law provided the statute was not tolled until service had been made. The *Ragan* Court held that the state law controlled. The Court's opinion indicated that a simplistic application of the outcome-determinative test compelled its decision. "It is conceded that if the present case were in a Kansas court it would be barred. The theory of *Guaranty Trust Co. v. York* would therefore seem to bar it in the federal court, as the Court of appeals held." *Id.* at 532.

[10] *Id.* at 533.

[11] *See* Clark, *State Law in the Federal Courts: The Brooding Omnipresence of Erie v. Tompkins*, 55 YALE L.J. 267 (1946).

[12] 356 U.S. 525 (1958).

[13] If the federal interest is great enough, it may justify the application of the federal rule even when it is possible that state law would have produced a different result. At issue in *Byrd* was whether a particular question should be answered by the judge or by the jury. State law indicated the former, federal law the latter. Justice Brennan found "a strong federal policy against allowing state rules to disrupt the judge-jury relationship in the federal courts." *Id.* at 538. The majority held this interest sufficient to overcome the general policy of uniformity of result.

[14] 380 U.S. 460 (1965).

[15] *Id.* at 471; C. WRIGHT, LAW OF FEDERAL COURTS 228, 245 (2d ed. 1970).

administration of the law."[16] If the application of the federal rule in the face of a conflicting state rule would encourage either of the evils that *Erie* was designed to prevent, then the state and not the federal rule should be applied. As a result of the policy approach of *Hanna*, the Court broadened the *Byrd* standard of "affirmative countervailing considerations" in favor of federal court independence, but at the same time recognized the constitutional limitations of federal power in rule-making. There is some doubt whether *Ragan* remains good authority after *Hanna*.[17] However, although the Court in *Hanna* referred to *Ragan*, it carefully refrained from overruling it. In fact it has been argued that the United States Supreme Court in *Hanna* interpreted the *Ragan* decision to mean that rule 3[18] does not speak to the question of commencement for purposes of a state statute of limitations. Therefore, since no federal rule governed the point in dispute in that case, *Erie* commanded the enforcement of state law. Such an interpretation might indicate why the Court refused specifically to overrule *Ragan* and explain how the Court could read the two cases consistently.[19] Thus, some lower courts have reasoned that until the Supreme Court itself "overrules its very positive statements in *Ragan*," they must follow its holdings in cases directly governed by the *Ragan* decision.[20]

II. Federal Rule 3 Versus State Law—The Conflict Between Ragan and Hanna

Because of both the difficulty of reading a consistent approach into *Ragan* and *Hanna* and the refusal of *Hanna* explicitly to overrule *Ragan*, it is not at all surprising that the lower courts have not been uniform in their subsequent decisions on the scope of rule 3. Since *Hanna* a number of cases have been decided involving the effect of rule 3 in tolling state statutes of limitations.[21] In approximately half of these decisions the state commencement-of-action provision has been held to control, while in the other half rule 3 has been held to govern. Very few cases have considered the question of whether rule 3 was sufficiently broad to cover the issue of commencement for limitations purposes. In most cases the courts have assumed that rule 3 was designed to cover such an issue.[22]

State Procedure Controls. Groninger v. Davison[23] was a diversity suit for per-

[16] 380 U.S. at 468.

[17] *See* Sylvestri v. Warner & Swasey Co., 398 F.2d 598 (2d Cir. 1968); Groninger v. Davison, 364 F.2d 638 (8th Cir. 1966); Szantay v. Beech Aircraft Corp., 349 F.2d 60 (4th Cir. 1965).

[18] FED. R. CIV. P. 3.

[19] C. WRIGHT, *supra* note 15, at 246.

[20] *See, e.g.*, Groninger v. Davison, 364 F.2d 638, 642 (8th Cir. 1966).

[21] *See, e.g.*, Sylvestri v. Warner & Swasey Co., 398 F.2d 598 (2d Cir. 1968); Groninger v. Davison, 364 F.2d 638 (8th Cir. 1966); Sylvester v. Messler, 351 F.2d 472 (6th Cir. 1965), *cert. denied*, 382 U.S. 1011 (1966); McCrea v. General Motors Corp., 53 F.R.D. 384 (D. Mont. 1971); Gatliff v. Little Audrey's Transp. Co., 317 F. Supp. 1117 (D. Neb. 1970); Wheeler v. Standard Tool & Mfg. Co., 311 F. Supp. 1177 (S.D.N.Y. 1970); O'Shea v. Binswanger, 42 F.R.D. 21 (D. Md. 1967).

[22] *See, e.g.*, Hanna v. Plumer, 380 U.S. 460 (1965); Sylvestri v. Warner & Swasey Co., 398 F.2d 598 (2d Cir. 1968); Wheeler v. Standard Tool & Mfg. Co., 311 F. Supp. 1177 (S.D.N.Y. 1970).

[23] 364 F.2d 638 (8th Cir. 1966).

sonal injuries sustained in an automobile accident. The Eighth Circuit held that under an Iowa statute of limitations the plaintiff's claim was barred when the complaint was filed in time but the summons was not effected until after the expiration of the two-year period. The court held the case to be controlled by *Ragan*. The court concluded that "while it is difficult to reconcile *Hanna v. Plummer* . . . with the holding in *Ragan*, we nevertheless must conclude that the majority of the Supreme Court, in supporting the opinion written by the Chief Justice, felt that it was not an overruling of *Ragan*."[24] Like *Groninger*, *O'Shea v. Binswanger*[25] was a diversity suit for personal injuries sustained in an automobile accident. The court relied on *Ragan* as a "broad holding" that the federal court must look to state law to determine when the statute of limitations is tolled, and maintained that *Ragan* had not been overruled by *Hanna*.[26] Both *Groninger* and *O'Shea* based their holdings on the *Ragan* case. Yet they may be distinguished from the very case upon which they rely. There was no finding in either *O'Shea* or *Groninger* that the commencement provision was an integral part of the statute of limitations. In fact, the commencement provision in both cases was located in a separate codification of rules of procedure, which indicated that it was a general-purpose definition and not specifically related to the statute of limitations. However, the reliance upon *Ragan* may be based upon the language used by the Court in *Hanna* to the effect that *Erie* did not command displacement of a federal rule by an inconsistent state rule, but rather that when the scope of the federal rule was not sufficiently broad to cover the issue in dispute, *Erie* required in federal court whatever would be required in a similar suit in state court.[27]

Another case holding that compliance with rule 3 did not serve to toll the state statute of limitations was *Sylvester v. Messler*.[28] In that case the Michigan statute of limitations provided for tolling when the complaint and summons were actually served.[29] The district court held that the commencement provision was an integral part of the Michigan statute of limitations.[30] Citing *Ragan*, the court said that the plaintiff's action was barred. The court of appeals affirmed, rejecting plaintiff's contention that *Ragan* had been overruled by *Hanna*. Since in this case the commencement provision was considered to be an integral part of the statute of limitations of the state of Michigan, *Sylvester* is more nearly in accord with the "integral part test" derived from *Ragan* than either *Groninger* or *O'Shea*.

In 1970 two more cases were decided in which courts relied on *Ragan* in reaching their decisions.[31] In both of these cases the courts concluded that if a suit was based on a right created by federal law, the filing of a complaint as

[24] *Id.* at 642.
[25] 42 F.R.D. 21 (D. Md. 1967).
[26] As a result the court found that the state law of Maryland governed with respect to when the statute of limitations is tolled.
[27] 380 U.S. at 471.
[28] 351 F.2d 472 (6th Cir. 1965), *cert. denied*, 382 U.S. 1011 (1966).
[29] MICH. COMP. LAWS § 27A.5856 (1962).
[30] Sylvester v. Messler, 246 F. Supp. 1 (E.D. Mich. 1964).
[31] Anderson v. Phoenix of Hartford Ins. Co., 320 F. Supp. 399 (W.D. La. 1970); Gatliff v. Little Audrey's Transp. Co., 317 F. Supp. 1117 (D. Neb. 1970). *See also* Hoffman v. Holden, 268 F.2d 280 (9th Cir. 1959); Bomar v. Keyes, 162 F.2d 136 (2d Cir.), *cert. denied*, 332 U.S. 825 (1947).

called for by rule 3 was sufficient without more to satisfy the statute of limitations. Despite rule 3, however, when the suit was on a state-created right, the plaintiff must, before the statute of limitations has run, do whatever he would be required to do in a similar suit in state court.[32]

Federal Rule 3 Controls. There were also several cases decided subsequent to *Hanna* in which the courts held that the commencement of an action pursuant to rule 3 tolled the state statute of limitations despite arguments that *Ragan* compelled application of the state rule. In *Sylvestri v. Warner & Swasey Co.*[33] the court held that *Ragan*, which if still good law would require application of the state rule, had been overruled by *Hanna*, so that rule 3 was applicable. The court recognized that a number of courts, not without justification, had continued to follow *Ragan* since *Hanna* had not specifically overruled *Ragan*. However, the court said that rule 3 was designed to cover the issue of commencement for purposes of the statute of limitations. Futhermore, *Hanna* did represent a modification or at least a refinement of the outcome-determinative test as applied in *Ragan*, and it enunciated a policy favoring the supremacy of the federal rules which was not discussed in *Ragan*. Consequently *Hanna* required consideration of the factors underlying the choice between the state and federal rule rather than the automatic application of *Ragan*, namely the twin aims of *Erie*, which were the prevention of forum-shopping and the prevention of the unequal administration of law. Applying these principles to the facts of the case, the court in *Sylvestri* concluded that rule 3 was the proper measure of the commencement of this action for purposes of the statute of limitations.[34]

Using the policy analysis that was announced in *Hanna* and relying on the decision in *Sylvestri*, a district court in New York in *Wheeler v. Standard Tool & Manufacturing Co.*[35] held that a diversity action for personal injuries commenced as provided by federal rule 3 was not barred by the state statute of limitations. The court pointed out that use of rule 3 as a proper measure to decide if the action was commenced for limitations purposes would not result in forum-shopping. The court said that the plaintiff had the choice of commencing the action in either the state or the federal court and had not been forced to resort to the federal court because of inability to effectuate service of summons prior to expiration of the three-year state statute of limitations. Turning to the second aim of *Erie* in its policy analysis, the court concluded that federal rule 3 did not substantially alter the character or outcome of the litigation from the consequences that would follow in the state court.

In a 1971 decision, *McCrea v. General Motors Corp.*,[36] a district court in a brief opinion held that federal rule 3, rather than a Montana statute,[37] governed the determination of whether a Montana diversity action was barred by the Montana statute of limitations. Relying on the decision in *Sylvestri*, the court

[32] 320 F. Supp. at 401; 317 F. Supp. at 1119.
[33] 398 F.2d 598 (2d Cir. 1968).
[34] *Id.* at 605, 606.
[35] 311 F. Supp. 1177 (S.D.N.Y. 1970).
[36] 53 F.R.D. 384 (D. Mont. 1971).
[37] MONT. REV. CODES ANN. §§ 93-2601, -2605 (1947).

pointed out that courts should look to federal law for a definition of the term "commencement of action in the federal courts."[38] In federal courts "a civil action is commenced by filing a complaint with the court."[39] The court concluded its opinion by saying that it preferred the certainty that a literal application of such a rule brought to limitations problems. Although the case did not speak specifically of either *Ragan* or *Hanna*, it did recognize the strong federal interest in uniformity of procedure in the federal courts—an interest which the Court had discussed in *Hanna*.

III. CHAPPELL V. ROUCH

In *Chappell v. Rouch*[40] the Tenth Circuit held that rule 3 of the Federal Rules of Civil Procedure applied, rather than the Kansas state statute, in determining whether a diversity action had been commenced within the limitations period. By holding that rule 3 controlled, the court obviated the necessity of passing upon the related matters of the sufficiency or insufficiency of the attempted service within the limitations period. However, the Tenth Circuit based its decision on reasoning somewhat different from that of the district court. The district court, while recognizing the factual similarity of the instant case and *Ragan*, was persuaded by *Sylvestri v. Warner & Swasey Co.*[41] and that court's analysis of the effect of *Hanna* on *Ragan*. Using that analysis, the district court concluded that *Hanna* had sufficiently modified *Ragan* to the extent that federal rule 3 controlled the point at which an action was commenced for purposes of the statute of limitations. The court of appeals avoided the question of whether *Hanna* modified or overruled *Ragan*. Although it agreed with the trial court that *Hanna* governed, the court was of the opinion that *Chappell* was distinguishable on its facts from the *Ragan* case and that, therefore, a resolution of the *Hanna-Ragan* controversy was not necessary.

The court advanced two bases for its decision. The first ground advanced by the court was that the Kansas commencement-of-action statute[42] was merely procedural and not an integral part of the applicable Kansas statute of limitations;[43] therefore, *Ragan* did not govern. The second was that since the Kansas commencement statute was purely procedural it was in direct conflict with rule 3. Concluding that under *Hanna* the federal rule should control in such a case, the court held that rule 3 took precedence over the Kansas commencement statute.

In distinguishing *Chappell* from *Ragan*, a case intermediately decided by this same court some twenty-two years earlier,[44] the court emphasized that the Kansas statutes under consideration in *Ragan* were not the same statutes by which the present case was governed.[45] The statutes in *Ragan* were all within

[38] 53 F.R.D. at 385, quoting 398 F.2d at 604.
[39] FED. R. CIV. P. 3.
[40] 448 F.2d 446 (10th Cir. 1971).
[41] 398 F.2d 598 (2d Cir. 1968).
[42] KAN. STAT. ANN. § 60-203 (1971).
[43] *Id.* §§ 60-501, -513.
[44] 170 F.2d 987 (10th Cir. 1948), *aff'd*, 337 U.S. 530 (1949).
[45] The statutes applicable to the *Ragan* case were Law of May 29, 1935, ch. 182, §§ 17, 19, 58, [1935] Kan. Laws 1909 (repealed 1963). These statutes read as follows: Section 60-301—" 'A civil action may be commenced in a court of record by filing in the office of

chapter 60 of the General Statutes of Kansas, entitled "Procedure, Civil." They were also all within article 3 of chapter 60, entitled "Commencement and Limitation of Actions." Interpreting the language and context of those statutes, the court in *Ragan* concluded that a statute defining how and when an action was deemed commenced was so intertwined with the two-year statute of limitations that it became an integral part thereof to the end that it took precedence over rule 3. The court pointed out that the plain import from their decision in *Ragan* was that in the absence of a determination that the two state statutes were integrally connected, the applicable federal rule would control. With the revision of the Kansas statutes in 1964, the commencement of action statute still came within chapter 60; however, it became a part of article 2, which was labeled "Rules of Civil Procedure." The limitations provisions were incorporated in article 5 under the heading "Limitations of Actions." The court observed that as a result of the revision there was no section in article 5 similar to the one in *Ragan* that specifically provided when an action was commenced with respect to the statute of limitations. Rather, the court pointed out that the commencement-of-action provision now located in article 2 was not an integral part of the applicable Kansas statute of limitations, but was purely a state rule of procedure.

Since the state commencement statute was purely procedural in nature, the court concluded that there existed a direct conflict between it and rule 3, even though it failed to discuss why rule 3 was sufficiently broad to cover commencement for purposes of the state statute of limitations. Assuming that there was a conflict between the two provisions, the court looked to *Hanna* for a resolution of the issue of which provision took precedence. Borrowing from *Hanna*, the court concluded: "*Erie* and its offspring are not the appropriate test of the validity and applicability of a Federal Rule of Civil Procedure and cast no doubt on the long-recognized power of Congress to prescribe housekeeping rules for federal courts even though some of those rules will inevitably differ from comparable state rules."[46]

The court's analysis seems to be founded on the proposition that a state statute of limitations is "substantive,"[47] and as such the federal courts do not have the power to vary its operation. Therefore, a state commencement re-

the clerk of the proper court a petition, and causing a summons to be issued thereon.'" 170 F.2d at 991. Section 60-306—"[A personal injury action] must be brought within two years after it has accrued." *Id.* Section 60-308—"'An action shall be deemed commenced *within the meaning of this article*, as to each defendant, at the date of the summons which is served on him . . . .'" *Id.* at 992 (emphasis added). All three of these provisions were in the same article of the Kansas statutes.

The statutes applicable to the *Chappell* case as promulgated in 1964 were KAN. STAT. ANN. §§ 60-203, -501, -513 (1971), and read as follows: "Sec. 60-203. A civil action is commenced by filing a petition with the clerk of the court, provided service of process is obtained . . . within ninety days after the petition is filed; otherwise the action is deemed commenced at the time of service of process . . . ." "Sec. 60-501. The provisions of this article govern the limitation of time for commencing civil actions, except where a different limitation is specifically provided by statute." "Sec. 60-513(4). An action for injury to the rights of another, not arising on contract and not herein enumerated . . . shall be brought within two (2) years."

The court in *Chappell* placed great emphasis on the fact that in the revised statutes the commencement of action provision was in art. 2, "Rules of Civil Procedure," and not a part of art. 5, entitled "Limitations of Actions."

[46] 448 F.2d at 450, quoting 380 U.S. at 473.

[47] *See, e.g.*, Guaranty Trust Co. v. York, 326 U.S. 99 (1945).

quirement, when it is an integral part of the statute of limitations, must acquire substantive character and, therefore, take precedence over the federal rule. Likewise, when the commencement provision is not physically connected with the statute of limitations, but located under the heading "Rules of Civil Procedure," it would be classified as procedural and, thus, subordinated to the federal rule on the reasoning of *Hanna*. Such an analysis seems to put too great an emphasis on the physical location of the provision in the state statutes and totally disregards the holding of *Hanna*, namely that the *Erie-York*, outcome-determinative, substance-procedure approach cannot be mechanically followed as in *Ragan*, but must be read in light of the underlying policies of *Erie*.[48] This was the approach taken in *Sylvestri*.[49] Had the court in *Chappell* made the type of policy analysis that *Hanna* suggested, it would have reached the same result on seemingly firmer grounds.

The application of rule 3 definitely would not have resulted in forum shopping. When the original complaint was filed, there was more than sufficient time for the summons to be served before the expiration of the statutory period, and, therefore, the possible availability of rule 3 could not have played any part in the plaintiff's choice of courts. Likewise, the application of rule 3 rather than the Kansas rule would not so change the character or result of the litigation as to discriminate against citizens of Kansas. In any event, the plaintiffs were the Kansas citizens, not the defendant. But instead of following this sounder approach to the case, the court in *Chappell* took the opportunity to distinguish the instant case from its earlier decision in *Ragan* on the flimsy basis of the physical location of two groups of statutes almost identical in substance. Furthermore, the court seemed to disregard the language of the Supreme Court in *Hanna*, by assuming that rule 3 was designed to cover commencement for the purposes of the statute of limitations. Although federal courts have consistently applied rule 3, for purposes of commencement of a statute of limitations the rule itself does not mention tolling of a statute of limitations and the United States Supreme Court has not specifically spoken upon that exact point. But certainly its language in *Hanna* referring to the *Ragan* case would seem to suggest that rule 3 is not sufficiently broad to cover the tolling of a statute of limitations.[50] If that is so, then state commencement provisions will apply in all statute-of-limitations cases since there will be no federal rule in direct conflict with the applicable state provision.

IV. CONCLUSION

The *Chappell* court fails to clear up any of the confusion surrounding the applicability of rule 3. Although it does not follow *Ragan*, it does use the in-

[48] 380 U.S. at 468.

[49] 398 F.2d at 598.

[50] It is true that there have been cases where this court has held applicable a state rule in the face of an argument that the situation was governed by one of the federal rules. But the holding of each such case was not that *Erie* commanded displacement of a federal rule by an inconsistent state rule, but rather that the scope of the federal rule was not as broad as the losing party urged and therefore there being no federal rule which covered the point in dispute, *Erie* commanded the enforcement of state law.
380 U.S. at 471.