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Civil Procedure - Certified Question - Exercising the Power to Answer Federal Court Certification of State Law Questions - Hanchey v. Steighner

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CIVIL PROCEDURE—Certified Question— Exercising the Power to Answer Federal Court Certification of State Law Questions. Hanchey v. Steighner, 549 P.2d 1310 (Wyo. 1976).

In May, 1976, the United States District Court for the District of Wyoming for the first time certified a question to the Wyoming Supreme Court asking for a determination of the constitutionality of the Wyoming Guest Statute under the Wyoming and United States Constitutions. The district court felt that this question of law would be determinative of the case then pending in that court. The Supreme Court refused to answer the question, holding that the question was premature since the case had proceeded only as far as the pleading stage in the federal court.

ERIE AND THE ABSTENTION DOCTRINE

Prior to *Erie R.R. Co. v. Tompkins*,[1] the federal courts in exercising general jurisdiction in diversity cases were not required to apply the non-statutory law of a state as declared by the state's highest court. The federal courts were free to render decisions on the basis of general federal common law.[2]

The *Erie* decision held that federal courts are bound by state court decisions, as well as state statutes, when deciding questions of substantive law. This encounters difficulties when there is no state precedent to follow or when the law is in a state of uncertainty. In such instances, the federal court is required to make an educated guess as to what a state court would hold and apply that determination to the case.[3] The drawback in predicting state law is that the rule laid down may later be reversed by state decision, since state courts are not bound by federal court interpretation of state law, thus denying the parties before the federal court a proper application of the state law.

In order to deal with the problem, the United States Supreme Court introduced the abstention doctrine, which allows

1. Erie R.R. v. Tompkins, 304 U.S. 64 (1938).
2. Swift v. Tyson, 16 Pet. 1 (1842).
3. Meredith v. City of Winter Haven, 320 U.S. 228 (1943); Daily v. Parker, 152 F.2d 174 (7th Cir. 1945).

a federal court under certain factual circumstances and different procedural consequences to either stay a proceeding until the state court makes a determination on the point of law in issue or to dismiss the case altogether.[4] However useful and sound the doctrine was at its inception, its usefulness is now the subject of severe criticism. The strongest objection is that it imposes a tremendous burden upon the litigants in terms of costs and delays.[5] If the case is dismissed or stayed, the parties must then go through the state court system for a local determination of the questioned law, which would delay final adjudication on the merits for an undue length of time.[6] For the litigant who can barely afford one lawsuit, let alone two, the hardships and disadvantages are obvious.[7]

INTERJURISDICTIONAL CERTIFICATION

Florida was the first state to authoritatively deal with the problems created by the *Erie* decision and abstention in our federal systems.[8] In 1945 the Florida Legislature enacted a statute which permits a federal court to certify questions of unresolved state law to the state supreme court for its determination.[9] In the 1975 legislative session, Wyoming joined the increasing number of states to follow Florida's lead when it enacted the "Federal Court State Law Certificate Procedure Act."[10]

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4. Railroad Comm'n. v. Pullman Co., 312 U.S. 496 (1941). A detailed discussion of the abstention doctrine is beyond the scope of this note; but for good treatment of the doctrine *see* Kaplan, *Certification of Questions from the Federal Appellate Court to the Florida Supreme Court and its Impact on Abstention Doctrine*, 16 U. MIAMI L. REV. 413, 424 (1962).
5. *See, e.g.* Leiter Minerals, Inc. v. United States, 352 U.S. 220 (1957). The case represents a grotesque example of what can happen with the abstention doctrine. The case took 12 years to litigate at a cost of millions of dollars.
6. If the doctrine is invoked, the parties may appeal the order to the United States Court of Appeals and possibly the United States Supreme Court.
7. Clay v. Sun Ins. Office, Ltd., 363 U.S. 207 (1960). *See* dissent by Justice Douglas.
8. Comment, *Florida Interjurisdictional Certification: A Reexamination to Promote Expanded National Use*, 22 U. FLA. L. REV. 21 (1969).
9. FLA. STAT. ANN. § 25.031 (1973).
10. WYO. STAT. §§ 1-193.1 to 1-193.4 (Supp. 1975). States that have identical or similar statutes include: FLA. STAT. ANN. § 25.031 (1973); N.H. REV. STAT. ANN. § 390 App. R. 21; ME. REV. STAT. ANN., tit. 4, § 57 Supp. 1973; WASH. REV. CODE ANN. 2.60 Supp. 1975.

The purpose of the enabling act is to provide the federal courts with a procedure for obtaining answers to questions of state law which may be determinative of the cause then pending in the federal court while preserving the litigant's rights to federal adjudication. The procedure avoids putting the litigants and courts through the delays and costs inherent in the practice under the abstention doctrine. Certification is a shortcut to the state supreme court. It is no longer necessary to institute a declaratory judgment action in the district court and to appeal to the supreme court for review.[11] The certification statute, properly applied, guarantees uniform interpretation of state substantive law by both state and federal courts.

Hanchey v. Steighner was the first interjurisdictional attempt to certify a question under the authority of the "Federal Court State Law Certificate Procedure Act."[12] The enabling act grants to the Wyoming Supreme Court the authority to receive and answer certified questions of state law only when there is no controlling precedent in the existing decisions of the Supreme Court.[13] The statute, however, does not place a mandatory direction upon the court to answer questions certified to it. The power to answer questions properly certified is purely discretionary.[14] The Supreme Court in exercising that discretion refused to answer the question for the simple reason that it considered the certified question premature.[15]

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11. *In re* Elliott, 446 P.2d 347 (Wash. 1968). The Washington Supreme Court in upholding the constitutionality of its own interjurisdiction statute discussed the purpose behind the statute. WYO. STAT. §§ 1-1049 to 1-1064 (1957) provides for a similar procedure.

12. Wyoming has had an intrajurisdictional reserved question statute on its books since 1903. WYO. STAT. § 1-191 (1957). For a good discussion of its use and limitations *see, e.g.*, Wheatland Irrigation Dist. v. Prosser, 501 P.2d 1 (Wyo. 1972).

13. WYO. STAT. § 1-193.3 (Supp. 1975) provides as follows: The Supreme Court may answer questions of law certified to it by a federal court when requested by the certifying court if there are involved in any proceeding before the federal court questions of law of this state which may be determinative of the cause then pending in the federal court, and as to which it appears to the federal court there is no controlling precedent in the existing decisions of the Supreme Court.

14. Hanchey v. Steighner, 549 P.2d 1310, 1311 (Wyo. 1976).

15. *Id.* at 1311.

THE CERTIFICATION PROCEDURE—WHEN TO CERTIFY

The Federal Court State Law Certificate Act also granted to the Supreme Court the authority to "adopt rules of practice and procedure to implement or otherwise facilitate utilization of certificate procedure."[16] The Supreme Court in *Hanchey* simply read this section of the act to be in *pari materia* with Wyoming's intrajurisdictional reserved question statute[17] and the court-adopted rule on requisite findings in reserved question cases.[18] Rules 52(c) of the Wyoming Rules of Civil Procedure demands that the district court first dispose of all necessary and controlling questions of fact and state its conclusion of law as to the construction, interpretation and meaning of statutes before a question may be reserved. Furthermore, the rule allows either party to appeal the special finding of facts and conclusions of law simultaneously with the reserved question.

Rule 52(c) was a response by the Supreme Court to some serious problems posed in administering appeals by reserved question.[19] Since the reserved question statute is limited only to constitutional questions, a determination by the Court did not constitute an appellate review of the entire proceeding. Thus, the Supreme Court would often find itself having to answer an appeal from the trial court's finding of fact and conclusions of law not reviewed by the reserved question. In view of the problems of administering essentially two appeals,

16. WYO. STAT. § 1-193.4 (Supp. 1975).

17. WYO. STAT. §§ 1-191 to 193 (1957).

18. WYO. R. CIV. P. 52(c) provides as follows:
In all cases in which a district court reserves an important and difficult constitutional question arising in an action or proceeding pending before it, the district court, before sending the question to the supreme court, for decision, shall (1) dispose of all necessary and controlling questions of fact and make special findings of fact thereon, and (2) state its conclusions of law on all points of common law and of construction, interpretation and meaning of statutes and of all instruments necessary for a complete decision of the case. No constitutional question shall be deemed to arise in an action unless, after all necessary special findings of fact and conclusions of law have been made by the district court, a decision on the constitutional question is necessary to the rendition of final judgment. The question reserved shall be specific, and shall identify the constitutional provision to be interpreted. The special findings of fact and conclusions of law required by this subdivision of this rule shall be deemed to be a final order from which either party may appeal, and such appeal may be considered by the supreme court simultaneously with the reserved question.

19. Trelease, *Wyoming Practice*, 12 WYO. L. J. 202, 213 (1958).

the Rule's intended limitation on the practice of reserving questions is justifiable. However, under interjurisdictional certification the Wyoming Supreme Court is not the appellate court once it has responded to a certified question. If either party is dissatisfied with the outcome his recourse on appeal is to the Tenth Circuit Court of Appeals.

By adopting Rule 52(c) as the implementing procedure for interjurisdictional certification, the federal court like the Wyoming district court is now tied down to "doing absolutely everything up to the last step in making a final disposition and giving judgment."[20] The decision shows a similar distaste for certified questions and is sure to create the same limitations and "why bother" attitude that resulted when the rule was first introduced. Once a case has proceeded far enough for a question to fit the requirements of certification it is doubtful that a judge would pass on the question at that time. Having taken a case that far through the proceeding, more than likely the federal judge would decide the issue himself, since nothing would be saved except perhaps his record of reversal and affirmance.[21] If that is the result, the usefulness of certification is annulled, leaving the longer and more expensive road to the Federal Court of Appeals as the only alternative for a dissatisfied party.[22] Viewed in this light, the implementation procedure adopted by the Supreme Court has to a great extent limited the potential and scope of the statute.

There are of course valid reasons why the Supreme Court would want to limit the certification precedure to the

20. *Id.* at 213. *See* A.L.I., STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS (Tentative Draft No. 6) 217 (1968) states "It is possible that there are some state courts that will refuse to accept certified questions unless the case is in such a posture that any answer they give will resolve the case one way or the other. Perhaps Maine is such a state. Though its certification statute reads 'may be determinative,' the Maine court has said that to avoid concern about advisory opinions this must be read as 'will be determinative.' *In re* Richards, 223 A.2d 827 (Me. 1966)." The Maine court therefore concluded that answers to certified questions would have a binding res judicata effect. This should aid in answering any questions about the advisory nature of a certified question and the Wyoming Supreme Court's position of not rendering advisory opinions.
21. *Id.* at 217.
22. This is not to say that the Federal Court of Appeals could not certify the same question when it is before them. However, appealing to the Court of Appeals is a more time consuming and costly venture than certifying a question to the Wyoming Supreme Court.

extent that it has. There is the definite impracticality of interrupting a jury trial in order to certify a question. There is the fear that dockets would be overburdened by the procedure. There is also the consideration that the Supreme Court does not take any pleasure in deciding cases piecemeal on certificates and would rather have a complete record before them in which they could render a final judgment on the case.[23] However, the greatest obstacle blocking the path of a more flexible implementation procedure appears to be the problem of a sufficient fact basis for certification. The Supreme Court is not a fact finding tribunal and will therefore be reluctant to decide an issue when there has not been a complete finding of facts by the trial court.

In answer to the first proposition it may be said that the presence of a jury admittedly makes certification in the middle of a trial impractical. However as one commentator has suggested,

> [J]ust as it is possible to certify after the trial it is more likely that certification will be agreed on by counsel at the pretrial conference in an atmosphere of cooperation between judge and counsel. If the judge felt argument on the matter was necessary, it could be presented at a motions hearing.[24]

Second, the possibility that the procedure will produce a flood of certified questions from the federal court seems contrary to the experience in other states that have adopted more flexible standards for entertaining federal certified questions. Certification has not substantially increased the workload of the Florida Court. Although the Florida Statute is limited to certification by the United States Court of Appeals, only seven cases were certified between 1945 and 1968. Nor has certification overcrowded the court dockets of Maine.

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23. Clay v. Sun Ins. Office, Ltd., *supra* note 7. *See* Black's dissent at 227.

24. Comment, *Florida Interjurisdictional Certification: A Reexamination to Promote Expanded National Use*, *supra* note 8. The author also notes that at least three questions certified by the United States District Court for the District of Maine were agreed upon at the pretrial conference.

In the first three years of its statute's enactment only two questions were entertained.[25]

As to the inconvenience of adjudicating cases piecemeal, there is the countervailing argument that a less restricted interjurisdictional certification procedure would serve an important judicial function. It would grant to citizens of a state their right to have the same rule of law applied on an issue regardless of whether it arises in a federal court or state court.[26] It would also aid in synthesizing a dual court system by removing one of the problems of the system, namely, that of maintaining uniformity of the law.[27]

The problem of fact finding is not as easily resolved but a close look at the experiences of other states with statutes similar to Wyoming's may provide a solution. Maine has compared its certification procedure to that of the Declaratory Judgment Act.[28] The rule is adopted for certifying questions requires that "[t]he certificate . . . shall contain . . . a statement of fact showing the nature of the case and the circumstances out of which the question of law arises."[29] Any time the Maine Supreme Court feels that there are insufficient facts to make a proper determination of the issue, the court under its permissive authority could summarily dismiss the certified question.

It is of course conceivable that a statement of facts could be disputed which would make it impossible to render a final determination of the law.[30] Reviewing cases under these circumstances, again presents an instance where the discretionary feature of the Wyoming Statute with its predisposition to deny certification is most applicable. However such a situation will not always exist, as exemplified by the *Hanchey* case which dealt with a constitutional challenge.

25. *In re* Elliott, *supra* note 11, at 358 n.5.
26. *Id.* at 358.
27. *Id.* at 358.
28. Comment, *Florida Interjurisdictional Certification: A Reexamination to Promote Expanded National Use, supra* note 8, at 31.
29. ME. R. CIV. P. 76B(b).
30. Comment, *Florida Interjurisdictional Certification: A Reexamination to Promote Expanded National Use, supra* note 8, at 31.

Further, difficulties over factual disputes could be better overcome through the use of a procedure such as that employed by the State of Washington. Washington's rule of implementation requires a "stipulation of facts approved by the federal court showing the nature of the case. . . ."[31] The Washington Supreme Court has read this rule to require a "certified agreed statement of facts," which should eliminate the problem of a disputed fact bases altogether.[32] It would have better served the purpose of the certification statute had the Wyoming Supreme Court adopted an implementation procedure similar to the one used by the Washington Court, rather than adhering to the rigid guidelines of Rule 52(c).

This note does not suggest that certification at the end of a trial after there has been a complete finding of fact is always a superfluous motion. There will obviously be those instances where a full record of the proceedings would be needed to make a dispositive determination of the law in question but different situations compel different requirements. However, an inflexible procedure like Rule 52(c) only defeats the potentiality and usefulness of the certification statute. With regard to *Hanchey*, had the court allowed certification at the pleading stage of the trial, it would definitely have influenced the course the litigants took at trial, provided they decided to pursue the case at all. It may have been that the plaintiff in *Hanchey* only had a case for simple negligence. In any event, because of the court's posture on procedural implementation, the plaintiff in *Hanchey* either may be forced to accept an unsatisfying settlement or possibly no compensation at all. On the other hand, defendant either may have to pay more than he should have or escape liability altogether.

Certification by no means provides a panacea for all the ills inherent in a dual judicial system regardless of when a question is certified. The same criticism directed at the abstention doctrine has again surfaced in response to the cer-

31. WASH. REV. CODE ANN. § 2.60.010(4) (Supp. 1975).
32. *In re* Elliott, *supra* note 11, at 354.

tification procedure. The strongest repeated objection is that the delay and cost problems sought to be remedied by certification are still present. It has been suggested that there could not be a better way of delaying a case than by stopping it in the federal court and moving it to a state court where it would have to wait docketing, briefing, hearing, writing, and filing of the opinion and then moving it back again to the federal sysytem for a final determination.[33] "The availability of a certification procedure may tempt a federal court to abstain by certification where there is no justification for abstention except that the state question is difficult."[34] This has prompted some commentators to suggest that certification is an undersirable innovation because it may lead to an abrogation of the mandate laid down by the United States Supreme Court in *Meredith v. City of Winter Haven.*[35] The Court announced in *Meredith* that the difficulty in ascertaining uncertain state law does not in itself afford a sufficient ground for a federal court to decline to exercise its jurisdiction.[36]

Although such criticism is worthy comment for debate, in actuality, it loses much of its validity when it is directed at those certain instances, as previously illustrated, where certification is indeed a valuable and useful tool in resolving important areas of state law. Furthermore, cooperation and a mutual understanding of the certification statute by the Wyoming Supreme Court and the federal court should alleviate any burden inherent in the procedure. The use of the procedure is left to the discretion of the federal court. The federal court should not certify a question unless it feels the issue of state law is crucial and is unresolved by state decisions. It may also refuse to certify when there are special circumstances that would produce undue delay. On the other hand the decision of whether to answer a certified question is left to the discretion of the Wyoming Supreme Court. If the court considers the state law clear or undeterminative of the

33. *Id.* at 371. *See* dissenting opinion of Judge Hale.
34. WRIGHT, LAW OF FEDERAL COURTS 204 (2d ed. 1970).
35. Meredith v. City of Winter Haven, *supra* note 3.
36. *Id.* at 235.

federal case it may remand the question back to the federal court unanswered. The court may exercise its discretion even to the extent that the state issue in its view has not reached a judicial ripeness which may be the real rationale behind *Hanchey*.[37]

CONCLUSION

Whether the Federal Court State Law Certificate Procedure Act is to have any real impact in resolving the problems faced by federal courts in determining uncertain state law will inevitably depend on whether the Wyoming Supreme Court changes its procedure of implementing the enabling act. Rule 52(c) may have a usefulness within the scope of reserved constitutional questions coming from a lower state court but different factors compel a different procedure when a question of state law comes from a federal court. The purpose behind the statute would be better served if the Wyoming Supreme Court followed a procedure more closely in line with those adopted by Maine and Washington rather than adhering to the rigid standards of Rule 52(c).

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37. The court found that the case in the federal court was at the pleading stage and thus the question certified was premature. Hanchey v. Steighner, *supra* note 14, at 1311.