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Erie Railroad v. Tompkins Revisited

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ERIE RAILROAD v. TOMPKINS REVISITED

ROBERT McC. FIGG*

Under the above title the Thirty-fifth Judicial Conference of the Fourth Circuit held a panel discussion in June, 1965 at the Greenbriar moderated by Professor Charles Alan Wright of the University of Texas Law School, then visiting Professor of Law at Harvard Law School.

Comment here on the details of the "revisit" would encroach upon the reports to the conference of the four panelists, whose papers follow and most interestingly and capably cover the ground.

In his Cardozo Lecture *In Praise of Erie—And of the New Federal Common Law*,¹ Judge Henry J. Friendly concludes:

The complementary concepts—that federal courts must follow state decisions on matters of substantive law appropriately cognizable by the states whereas state courts must follow federal decisions on subjects within national legislative power where Congress has so directed—seem so beautifully simple, and so simply beautiful, that we must wonder why a century and a half were needed to discover them, and must wonder even more why anyone should want to shy away once the discovery was made. We may not yet have achieved the best of all possible worlds with respect to the relationship between state and federal law. But the combination of *Erie* with *Clearfield* and *Lincoln Mills* has brought us to a far, far better one than we have ever known before. It thus seems fitting, twenty-five years after the *Erie* decision, to lay this tribute at the feet of Mr. Justice Brandeis and his colleagues, and of the builders, most of them happily still with us, of the new federal common law.²

May not the very simplicity of this viewpoint properly offer encouragement to those engaged with the complexities of the area involved and indicate the best approach toward their solution?

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1. 19 RECORD OF N.Y.C.B.A. 64 (1964), 39 N.Y.U.L. REV. 383 (1964).
39 N.Y.U.L. REV. 383 (1964).

2. *Id.* at 92, 39 N.Y.U.L. REV. at 422.