The course of decision over the period of almost one hundred years was toward an expansion of the areas in which federal judges were free to construct a federal common law and a concomitant contraction of the definition of "local" laws.[1098] Although dissatisfaction with *Swift v. Tyson* was almost always present, within and without the Court,[1099] it was the Court's decision in *Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.*[1100] that brought

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[1098] The expansions included Lane v. Vick, 44 U.S. (3 How.) 464 (1845) (wills); City of Chicago v. Robbins, 67 U.S. (2 Bl.) 418 (1862), and Baltimore & Ohio R.R. v. Baugh, 149 U.S. 368 (1893) (torts); Yates v. City of Milwaukee, 77 U.S. (10 Wall.) 497 (1870) (real estate titles and rights of riparian owners); Kuhn v. Fairmont Coal Co., 215 U.S. 349 (1910) (mineral conveyances); Rowan v. Runnels, 46 U.S. (5 How.) 134 (1847) (contracts); Lake Shore & M.S. Ry. v. Prentice, 147 U.S. 101 (1893). It was strongly contended that uniformity, the goal of Justice Story's formulation, was not being achieved, in great part because state courts followed their own rules of decision even when prior federal decisions were contrary. Frankfurter, *Distribution of Judicial Power Between Federal and State Courts*, 13 CORNELL L.Q. 499, 529 n.150 (1928). Moreover, the Court held that, although state court interpretations of state statutes or constitutions were to be followed, federal courts could ignore them if they conflicted with earlier federal constructions of the same statute or constitutional provision, Rowan v. Runnels, 46 U.S. (5 How.) 134 (1847), or if they had been rendered after the case had been tried in federal court, Burgess v. Seligman, 107 U.S. 20 (1883), thus promoting lack of uniformity. *See also* Gelpcke v. City of Debuque, 68 U.S. (1 Wall.) 175 (1865); Williamson v. Berry, 49 U.S. (8 How.) 495 (1850); Pease v. Peck, 59 U.S. (18 How.) 595 (1856); Watson v. Tarpley, 59 U.S. (18 How.) 517 (1856).

[1099] Extensions of the scope of *Tyson* frequently were rendered by a divided Court over the strong protests of dissenters. *E.g.*, Gelpcke v. City of Debuque, 68 U.S. (1 Wall.) 175 (1865); Lane v. Vick, 44 U.S. (3 How.) 463 (1845); Kuhn v. Fairmont Coal Co., 215 U.S. 349 (1910). In Baltimore & Ohio R. Co. v. Baugh, 149 U.S. 368, 401–04 (1893), Justice Field dissented in an opinion in which he expressed the view that Supreme Court disregarding of state court decisions was unconstitutional, a view endorsed by Justice Holmes in Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co., 276 U.S. 518, 533 (1928) (dissenting opinion), and adopted by the Court in Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938). Numerous proposals were introduced in Congress to change the rule.

[1100] 276 U.S. 518 (1928). B. & W. had contracted with a railroad to provide exclusive taxi service at its station. B. & Y. began operating taxis at the same station and B. & W. wanted to enjoin the operation, but it was a settled rule by judicial decision in Kentucky courts that such exclusive contracts were contrary to public policy and were unenforceable in court. Therefore, B. & W. dissolved itself in Kentucky and reincorporated in Tennessee, solely in order to create diversity of citizenship and enable itself to sue in federal court. It was successful and the Supreme Court ruled that diversity was present and that the injunction should issue. In Mutual Life Ins. Co. v. Johnson, 293 U.S. 335 (1934), the Court, in an opinion by Justice Cardozo, appeared to retreat somewhat from its extensions of *Tyson*, holding that state law should be applied, through a "benign and prudent comity," in a case "balanced with doubt," a concept first used by Justice Bradley in Burgess v. Seligman, 107 U.S. 20 (1883).