fer Co. v. Brown & Yellow Taxicab & Transfer Co.,[1093] it became highly important to the plaintiff company to bring its suit in federal court rather than in a state court. Thus, Black & White, a Kentucky corporation, dissolved itself and obtained a charter as a Tennessee corporation; the only change made was the state of incorporation, the name, officers, shareholders, and location of the business remaining the same. A majority of the Court, over a strong dissent by Justice Holmes,[1094] saw no collusion and upheld diversity, meaning that the company won whereas it would have lost had it sued in the state court. *Black & White Taxicab* probably more than anything led to a reexamination of the decision on the choice of law to be applied in diversity litigation.

The Law Applied in Diversity Cases.—By virtue of § 34 of the Judiciary Act of 1789,[1095] state law expressed in constitutional and statutory form was regularly applied in federal courts in diversity actions to govern the disposition of such cases. But, in *Swift v. Tyson*,[1096] Justice Story for the Court ruled that state court decisions were not laws within the meaning of § 34 and though entitled to respect were not binding on federal judges, except with regard to matters of a "local nature," such as statutes and interpretations thereof pertaining to real estate and other immovables, in contrast to questions of general commercial law as to which the answers were dependent not on "the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence."[1097]

[1093] 276 U.S. 518 (1928).

[1094] 276 U.S. at 532 (joined by Justices Brandeis and Stone). Justice Holmes here presented his view that Swift v. Tyson, 41 U.S. (16 Pet.) 1 (1842), had been wrongly decided, but he preferred not to overrule it, merely "not allow it to spread . . . into new fields." 276 U.S. at 535.

[1095] The section provided 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." 1 Stat. 92. With only insubstantial changes, the section now appears as 28 U.S.C. § 1652. For a concise review of the entire issue, *see* C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS ch. 9 (4th ed. 1983).

[1096] 41 U.S. (16 Pet.) 1 (1842). The issue in the case was whether a pre-existing debt was good consideration for an indorsement of a bill of exchange so that the endorsee would be a holder in due course.

[1097] 41 U.S. at 19. The Justice concluded this portion of the opinion: "The law respecting negotiable instruments may be truly declared in the language of Cicero, adopted by Lord Mansfield in Luke v. Lyde, 2 Burr. R. 883, 887, to be in great measure, not the law of a single country only, but of the commercial world. *Nun erit alia lex Romae, alia Athenis; alia munc, alia posthac, sed et apud omnes gentes, et omni tempore una eademque lex obtenebit.*" Id. The thought that the same law should prevail in Rome as in Athens was used by Justice Story in DeLovio v. Boit, 7 Fed. Cas. 418, 443 (No. 3776) (C.C.D. Mass. 1815). For a modern use, *see* United States v. Jefferson County Bd. of Educ., 372 F.2d 836 (5th Cir. 1966); 380 F.2d 385, 398 (5th Cir. 1967) (dissenting opinion).