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CONFLICT OF LAWS-VALIDITY OF A CONTRACT-APPLICATION OF RENVOI

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CONFLICT OF LAWS—VALIDITY OF A CONTRACT—APPLICATION OF RENVOI—Plaintiff (British actor, James Mason) and defendant signed an agreement in England contemplating the formation of an American company for producing motion pictures. Plaintiff was to give his exclusive services to the company, and defendant was to make all financial arrangements and generally to manage the company. A dispute arose as to the legal effect of the agreement. Plaintiff won a judgment that the agreement was not a valid contract because of its indefiniteness as to essential terms. On appeal, *held,* affirmed. *Mason v. Rose,* (2d Cir. 1949) 176 F. (2d) 486.

The point of interest in the principal case is that the doctrine of renvoi seemed to be recognized, at least by way of dictum.[1] The court thought the New York

[1] This doctrine is that the court of the forum, when its own conflict of laws rule refers it to the law of another jurisdiction, must take account of the whole law of the other juris-

rule settled that the validity of a contract depends upon the law of the place of contracting, in this case England. The appellant asserted, however, that California law should govern, because the English rule of conflicts would look to the law "to which the parties intended to submit themselves," which here, at least arguably, would be California law. The holding was that the agreement was not binding under either English law or California law "assuming an English court would look to California."[2] The New York case of *In re Tallmadge* is generally recognized as the leading case on the rejection of renvoi in the United States.[3] Whether the dictum in the principal case is an indication that a reconsideration may occur in that state is of course speculative,[4] as is the question whether other jurisdictions may feel inclined to follow the lead of so highly respected a court as the Court of Appeals for the Second Circuit.[5] Literature on the doctrine of renvoi is abundant,[6] and the cases few.[7] It may be that the most appealing case for the application of renvoi is not usually present in the United States, as none of our states accept the principle of nationality as a basis for choice

diction, including its rules as to conflict of laws. It is generally repudiated by United States authorities, who refer only to the foreign jurisdiction's internal law. See 11 AM. JUR., Conflict of Laws §3 (1937); 15 C.J.S., Conflict of Laws §7 (1939).

[2] Principal case at 488-489.

[3] "To state the problem ... would seem almost sufficient to refute the doctrine.... Renvoi ... has no place in our jurisprudence." In re Tallmadge, 109 Misc. 696, 181 N.Y.S. 336 (1909). On a dictum in Lann v. U.S. Steel Works Corp., 166 Misc. 465, 1 N.Y.S. (2d) 951 (1938) "cavalierly" dismissing renvoi, see 56 HARV. L. REV. 30 at 44 (1942).

[4] Of course, under the rule of Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817 (1938) as developed by Klaxon Co. v. Stentor Electric Mfg. Co. Ind., 313 U.S. 487, 61 S.Ct. 1020 (1941) and Griffin v. McCoach, 313 U.S. 498, 61 S.Ct. 1023 (1941), the federal court sitting in New York cannot announce an acceptance of renvoi so long as the state courts oppose it. Even though the Tallmadge rule was formulated by an inferior state court, there is a question as to whether it was proper for the federal court in the principal case to have discussed renvoi at all.

[5] The most common objection to renvoi is that it involves an "endless chain of references," in that having referred to a conflicts rule, it is only logical that the reference back (or across to a third jurisdiction as the case may be) should be to another conflicts rule, and so on. Courts which have applied renvoi have avoided this "ping-pong" game by "illogically" stopping at some internal law. Thus, U. of Chi. v. Dater, 277 Mich. 658, 270 N.W. 175 (1936) involved a simple two-way or "round trip" application, while the English case of In re Annesly, [1926] 1 Ch. D. 692 appears to have been a "circle and one-half." It is also said that the doctrine involves the surrender of the inherent sovereignty of the law of the forum.

[6] "It is the most famous dispute in conflicts law, a classic example of violently prejudiced literature confronting naively consistent practice." 1 RABEL, CONFLICT OF LAWS 70 (1945). See also: Lorenzen, "The Renvoi Theory and the Application of Foreign Law," 10 COL. L. REV. 190, 327 (1910); Lorenzen, "The Renvoi Doctrine in the Conflict of Laws—Meaning of 'The Law of a Country,'" 27 YALE L. J. 509 (1918); Cowan, "Renvoi Does Not Involve a Logical Fallacy," 87 UNIV. PA. L. REV. 34 (1938); Griswold, "Renvoi Revisited," 51 HARV. L. REV. 1165 (1938); Cormack, "Renvoi, Characterization, Localization and Preliminary Question in the Conflict of Laws," 14 So. CAL. L. REV. 221, 387 (1941); 31 IOWA L. REV. 130 (1945).

[7] "The renvoi doctrine is therefore no part of the conflict of laws in the United States. Its introduction into our law would be most unfortunate on account of the uncertainty and confusion to which it would give rise in the administration of justice and its demoralizing effect upon the future development of the conflict of laws." Gray v. Gray, 87 N.H. 82 at

of law.[8] The *Restatement* rejects renvoi except in cases where title to land and validity of a divorce decree is involved.[9] But if the doctrine should be extended to other areas, the result would probably not be as bad as its opponents contend.[10] The use of renvoi may reduce the possibility of a difference in result arising from what ought to be the immaterial factor of choice of forum in cases where the rules of conflict of laws differ in different states. Where the conflicts rule is the same in two jurisdictions, there is ordinarily no need of renvoi, for the choice of forum would not affect the result. But where a contracts question is involved, as in the principal case, there is apt to be less agreement than in other fields of law as to the correct conflicts rule. Thus the principal case would be a rather strong case for renvoi if the appellant's assumptions—that the English conflicts rule would refer to California law and that California law would consider the agreement binding—are correct. Assume further that the California conflicts rule would refer to the place of performance.[11] An English court would then decide the case by means of California law whether or not it used renvoi;[12] and if a California court tried the case, its conflicts rule would refer it to California law. In such a situation, it seems more reasonable that a New York court (having really no contact with the case at all) should see what English and California courts would do, and not arbitrarily apply English internal law. It should also be noted

88, 174 A. 508 (1934) quoting Lorenzen, "The Renvoi Theory and the Application of Foreign Law," 10 COL. L. REV. 327 at 344 (1910). Renvoi was also rejected in In re Tallmadge, supra, note 3; Lann v. U.S. Steel Works Corp., supra, note 3. It was applied in U. of Chi. v. Dater, supra, note 5, and, although not referred to as such, in Lando v. Lando, 112 Minn. 257, 127 N.W. 1125 (1910). Authorities are not agreed as to whether the doctrine was a part of the decision in Harral v. Harral, 39 N.J. Eq. 279 (1884).

[8] The type of case referred to is the In re Tallmadge type, supra, note 3, where the forum would distribute a decedent's personalty by use of his domiciliary law, but the domicile would use the law of the decedent's nationality.

[9] CONFLICTS RESTATEMENT §8(1) and (2) (1934). In these cases, the forum applies the conflicts rule of the situs of the land and the domicile of the parties respectively, but any further reference seems to go only to internal law.

[10] Professor Griswold argues for the application of the doctrine in appropriate cases and contends there are many situations where satisfactory and uniform results can be reached if the forum will decide a case the same way the jurisdiction to which it is referred would decide it. He believes the fear of the endless chain of references has been magnified into a generalization, and suggests there are situations where our courts do apply the principle of renvoi without mentioning it. E.g., the generally stated rule that succession to tangible movables follows the law of the domicile. Griswold, "Renvoi Revisited," 51 HARV. L. REV. 1165 (1938). Cowan points out that the ordinary doctrine of renvoi involves neither a vicious circle nor an indefinite regress of definitions. Cowan, "Renvoi Does Not Involve a Logical Fallacy," 87 UNIV. PA. L. REV. 34 (1938). For a discussion of Cowan's formal logic, see Griswold, "In Reply to Mr. Cowan's Views on Renvoi," 87 UNIV. PA. L. REV. 257 (1939).

[11] That this is at least a possibility, see 2 BEALE, CONFLICT OF LAWS 1124 (1935) and (perhaps on the basis of the parties' intent) 5 CALIF. JUR., Conflict of Laws 449 (1922).

[12] If the English court used renvoi, it would refer to the California conflicts rule (place of performance) which would refer it to California substantive law. If it did not use renvoi, it would merely refer to California internal law, which is, of course, the same substantive law. And even if California determines the validity of a contract by the law of the place of making, an English court using renvoi would probably decide the case by California substantive law by following the "circle and one-half" rule of In re Annesly, supra, note 5.

that the principal case is the first United States case where renvoi would send the reference across to a third jurisdiction instead of back to the forum. The chances of an "endless chain of references" are thus greatly reduced. This fact makes the principal case clearly distinguishable from the *Tallmadge* case, if not an adequate basis for departing from the rigid *Tallmadge* rule.

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