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Private International Law (G. C. Cheshire, 1952)

Robert Trask Mann

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PRIVATE INTERNATIONAL LAW. By G. C. Cheshire. London: Oxford University Press. Fourth Edition. 1952. Pp. 1, 664 and index. $10.00.

The reviewer is of the opinion that there is no more readable text in the field of conflict of laws than this one. The beauty and clarity of its style make one wish that American writers were not so fatigued by the task of researching our vast expanse of reported judicial opinion that they have barely enough energy left to punctuate and none at all to polish. To spread the bouquets evenly, it may be said that the American writer prepares the better footnotes, the Englishman the better text. Indeed, of the English legal writers perhaps only Dicey would have felt at home in a drafting session of the American Law Institute. Dr. Cheshire's book is uncommonly good by English standards and, of course, incomparable by ours. This is not to say that there are no well-written American treatises; it is only meant to suggest that the reader unfamiliar with Cheshire's *Private International Law* who supposes it to be like a hornbook or a *Restatement* is in for a pleasant surprise.

Whether there is a more sensible book on the conflict of laws is a matter of some doubt. Opinions vary according to the prejudices of the reader, of course. This reviewer confesses a predilection toward judging a conflicts treatise by the writer's willingness to leave "open" questions open and to discuss opposing points of view. The English practitioner who wants a dogmatic answer will prefer Dicey, the American practitioner, Beale. Naturally Cheshire has opinions, but he generally refrains from presenting them as the only possible views on questionable matters. In general, his treatment of the subject is exceptionally good.

The chapter on contracts is an able exposition of Dr. Cheshire's thesis that the proper law of a contract is the law with which the transaction has the most substantial connection and that proper law is objectively ascertained.

The author ably criticizes the English concept of domicil, a permanent, as distinguished from an indefinite, connection with a place. If the concept of domicil were as rigid as the English courts make it, nationality would serve as well as the factor connecting persons with legal systems. Nationality is more easily proved; it is objectionable in that it does not reflect the individual's selection of a state to govern him and his status. Cheshire adequately discusses the English de-

cisions and proves the superiority of American law on this matter.

One point in particular in regard to Cheshire's discussion of torts bears scrutiny. In his discussion of the problem of determining the place of the wrong (p. 268) he mentions three theories as to which law governs: first, the place where defendant's act occurred; second, the place where the harm ensued as a result of defendant's conduct; and, third, the law most favorable to the plaintiff. This third theory he ascribes to Walter Wheeler Cook. As phrased by Cheshire the theory sounds as though plaintiffs were to be favored over defendants as a matter of principle. This is not what Cook intended. Cook's statement appears in his supplementary remarks to an article written some years before the publication of his volume entitled *The Logical and Legal Bases of the Conflict of Laws,* in which he advanced the thesis that the *Restatement's* position on the determination of the place of the wrong was inconsistent with its sections on legislative jurisdiction. Cook correctly argues that if *A* so conducts himself in *X* as to injure *B* in *Y* either state has jurisdiction to declare this combination of conduct and consequence a tort. If this is so, the plaintiff may allege that a tort has been committed according to the law of *X* irrespective of the law of *Y* on the matter. This view is quite sensible, but it is made to seem a little ridiculous if stated as a principle that the governing law is that which favors the plaintiff.

At one other point Cheshire seems to color the picture unfairly. In illustrating *renvoi* he uses cases which involve succession to movables. Plainly in a case like In re *Schneider's Estate*[1] the duty of the forum is to decide the case exactly as the appropriate foreign forum would. That case involved the validity of a devise of Swiss land. It was in a New York court solely by virtue of the fact that the land had been sold and the proceeds transmitted to New York. What Cheshire calls the "foreign court" theory is appropriate when the case is properly determinable in only one forum but has somehow been removed from it. What makes the foreign court theory look silly in some cases, notably In re *O'Keefe,*[2] is that we are not really certain why we refer the question of succession to movables to the law of the domicil. Is it because the decedent may be supposed to have selected the internal law of the domicil? Or is it because for the sake of uniformity all questions ought to be determined as the court of the decedent's domicil would decide them? If we don't know *why*

[1] 96 N.Y.S.2d 652 (Surr. Ct. 1950).

[2] [1940] Ch. 124.

the law of the domicil governs it is difficult to say what the "law" of the domicil means — its domestic rules alone or its entire law, including its conflicts rules. Clarification of our thinking in this one respect would simplify the law greatly and would go far toward removing the stigma from the word *renvoi*.

Cheshire's *Private International Law* is an outstanding treatise. It makes good reading; it makes good sense. It treats comprehensively the English conflict of laws. It is full of sound ideas that the American lawyer faced with a conflicts problem will find helpful.

ROBERT TRASK MANN
Member of Tampa, Florida, Bar

BOOKS NOTED

THE LAW OF MUNICIPAL CONTRACTS. By Charles S. Rhyne. Washington, D.C.: National Institute of Municipal Law Officers. 1952. Pp. 175, and index. $7.50.

This volume is a practical handbook on municipal contract law, with annotated model forms. In addition to general contract provisions, the model forms include: special provisions applicable to paving of streets, highways, and sidewalks; forms for contractors' performance; forms for prequalification of bidders, a form of bid, and forms suitable for other contract purposes. Also outlined are court decisions on the basic law of municipal contracts. This first effort of its kind in this field is suitable for the use of both municipal attorneys and municipal purchasing agents.

SUCCESSFUL JURY TRIALS. A symposium edited by John Alan Appleman. Indianapolis: Bobbs-Merrill Co., Inc. 1952. Pp. xiii, 574 and index. $13.50.

This volume's avowed purpose is to present concisely the thoughts of the more successful trial lawyers throughout the nation upon the technique of jury trials. It is valuable in its practical aspect of illustrating the tools available to the trial lawyer and their application in winning lawsuits.