STUDIES IN MODERN CHOICE-OF-LAW: TORTS, INSURANCE, LAND TITLES. By Moffatt Hancock. William S. Hein & Co., 1984. Pp. xviii, 466. ($45.00 U.S.)

North American conflict-of-laws scholarship has benefitted significantly from books of collected essays. In the United States, two such compilations, Walter Wheeler Cook's *The Logical and Legal Bases of the Conflict of Laws*[1] and E. J. Lorenzen's *Selected Articles on the Conflict of Laws*,[2] were among the most effective critical attacks on the extreme formalism of the 1934 *Restatement of Conflict of Laws*.[3] Following their publication, it became virtually indefensible to promulgate a choice-of-law method which did not, in some fashion, attempt to take into account the content of the competing substantive laws. And whether or not one is a Brainerd Currie fan, it is undeniable that his *Selected Essays on the Conflict of Laws*[4] is the single most significant American work on the subject.[5] Although the fourteen chapters of *Selected Essays* do not purport to be a comprehensive treatise, they do provide a compilation of the brilliant analytical work that had appeared during the previous five years in various American law journals. *Selected Essays* shook the entire field to its roots. Although many people had previously read the individual articles, the publication of the collected essays did more than simply make them available in a handy, bound and indexed form. It showed that what had initially appeared to be a series of comments on discrete areas of the law, was in fact a wide-ranging, theoretically unified study in common law method and jurisprudence.

John Delatre Falconbridge's *Essays on the Conflict of Laws*[6] was the first comprehensive Canadian work on the subject. The volume contains forty-six brief chapters, many of which had previously been published as articles or case comments in Canadian law reviews.[7] *Essays*

[1] W. COOK, THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS (1942). This book is largely a collection of law review articles which had appeared from 1924 to 1942. It is true that seven of the eighteen chapters of Cook's book had not been published previously, but their appearance in the volume does not purport to turn it into a treatise on the subject or even a comprehensive survey. The book is essentially a collection of studies in choice-of-law method.

[2] E. LORENZEN, SELECTED ARTICLES ON THE CONFLICT OF LAWS (1947).

[3] *Restatement of Conflict of Laws* (1934).

[4] B. CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS (1963) [hereafter cited as SELECTED ESSAYS].

[5] The conflict-of-laws symposium at the 1985 meeting of the Association of American Law Schools in Washington, D.C. was devoted to a discussion of the current status of Currie's theories.

[6] J. FALCONBRIDGE, ESSAYS ON THE CONFLICT OF LAWS (1947) [hereafter cited as ESSAYS].

[7] A few of the articles and case comments were written especially for the book. In the second edition in 1954, Falconbridge took the opportunity to revise and rearrange the volume and to incorporate several articles which had been published since 1947.

is so wide-ranging and extensively cross-referenced that it appears to be a monograph. Although it contains an introductory chapter containing general principles that renders the work accessible to the novice, it remains, in essence, a compilation of articles and case comments. It is still, however, one of the most influential pieces of scholarship in the area. Despite the fact that much of the book is now out of date, those chapters which have not been surpassed by legal change are still among the best material available on the subject.[8]

The recent essays of Moffatt Hancock have now appeared in a collected form. *Studies in Modern Choice-of-Law: Torts, Insurance, Land Titles* is a collection of thirteen articles that have appeared in various American, Canadian and British law journals since 1960. These articles are tied together by a common table of cases, bibliography and index. The volume is prefaced by an unusually large amount of introductory material: a Forward by Bora Laskin, an Introduction by David Cavers and a Preface and Prologue by the author. The book contains none of the groundbreaking theoretical work that is found in Currie's *Selected Essays*[9] and it makes no pretence to be as comprehensive as Falconbridge's *Essays*.[10] Although this book will certainly not have the impact of either of these earlier works, Hancock's principal modern writings, when grouped as a whole, do form a significant contribution to our understanding of contemporary choice-of-law problems.

Despite the predominantly American perspective of the volume, it is this reviewer's contention that the book, nevertheless, should be of interest in Canada. When Hancock left this country for California in 1949, he had already made a lasting contribution to Canadian conflict-of-laws scholarship. His monograph, *Torts in the Conflict of Laws*,[11] was an important comparative study of American, English and Canadian law. In addition, he had published a number of articles in Canadian law journals,[12] including what is surely the most trenchant case comment ever to grace the pages of the Canadian Bar Review.[13] The present

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[8] Falconbridge's analysis of the substance/procedure distinction, for instance, is still useful. It was relied upon in Canadian Acceptance Corp. v. Matte, [1957] 22 W.W.R. 97, at 100-01, 9 D.L.R. (2d) 304, at 308 (Sask C.A.). Had the British Columbia Court of Appeal paid attention to this analysis in its recent decision of Alberta Treasury Branches v. Granoff, 58 B.C.L.R. 370 (C.A. 1984),the unfortunate decision reached there might have been avoided.

[9] *Supra* note 4.

[10] *Supra* note 6.

[11] *M. Hancock, Torts in the Conflict of Laws* (1942). The book was essentially Hancock's doctoral thesis from the University in Michigan in 1937.

[12] The principal ones in my opinion are: *Choice-of-Law Policies in Multiple Contract Cases*, 5 U. TORONTO L.J. 133 (1943-44) and *A Problem in Damages for Tort in the Conflict of Laws*, 22 CAN. B. REV. 843 (1944).

[13] His acerbic comments on McLean v. Pettigrew, [1948] S.C.R. 62, [1945] 2 D.L.R. 63, appeared in Hancock, *Conflict of Laws — Torts — Acts Punishable But Not Actionable Under Law of Place of Wrong*, 23 CAN. B. REV. 348 (1945). There

book, however, with the exception of a single chapter on choice-of-law in torts, does not explicitly touch on Canadian law at any length. In his studies of American conflicts problems, Hancock occasionally includes a reference to a Canadian decision, seemingly to extol the Canadian approach, nevertheless, the focus of these articles remains American. There are, however, practical reasons for Canadians to take note of this publication.

Recent American conflicts scholarship has been an interesting spectacle for foreigners to watch as the subject seems to have attracted considerable attention. Canadians, however, have had to observe this activity from a distance. In terms of any potential practical application, little of this scholarship has survived the border-crossing into Canada. The intense, often acrimonious, battles between warring camps of American choice-of-law theorists have an entrenched, absolutist character that often distorts the true issue for Canadians. The classical, academic choice-of-law formalism of the *First Restatement*,[14] with overly-inclusive rules such as "[c]ontracts shall be governed by the law of the place of contracting", induced a rigidity that was ripe for a Realist attack. That attack came,[15] effectivly reducing the *First Restatement* to rubble and Americans have been wondering ever since what sort of structure to erect in its place. In Canada, the *ancien régime* was never quite so rigid. Although often conceptual in form, many of our choice-of-law rules, for example those for determining the proper law of the contract, embodied a judge-made pragmatism that up to now has enabled the old edifice to endure the Realists.

A more important reason why modern American choice-of-law scholarship seems so foreign to Canada is that much of it appears premised upon and molded to constitutional concerns peculiar to the United States.[16] Currie's *Selected Essays*,[17] for example, contains a couple of chapters dealing exclusively with constitutional aspects of jurisdictional and choice-of-law questions. Even more significant is the fact

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were only two sentences:

> Students of conflict of laws will no doubt be interested to note that the decision of the English Court of Appeal in *Machado* v. *Fontes* (1897), disapproved by judges in Scotland, Victoria, Saskatchewan and Quebec, and criticized by Beale, Cheshire, Goodrich, Pollock, Wharton, Keith, Minor and Robertson has been followed by the Supreme Court of Canada without any discussion of the problem involved. This conclusion of the Court was supported by drawing a quite unnecessary implication from a statement made by Chief Justice Duff in a previous case and by a quotation from Dicey on Conflict of Laws.

Id. at 348-49 (footnotes omitted).

[14] *Supra* note 3.

[15] *Supra* notes 1, 2.

[16] This has not always prevented Canadian lawyers from trying to import American case law wholesale. *See, e.g.*, MacLauchlan, Book Review, 33 U.N.B.L.J. 385, at 390-95.

[17] *Supra* note 4.

that Currie's whole choice-of-law scheme, derived in large part from approaches developed by Stone C.J. in certain constitutional decisions,[18] is expressly articulated with the Full Faith and Credit clause of the Federal Constitution in mind.[19] Currie's central and controversial contention is that true conflicts, those cases in which an examination of the underlying governmental interests discovered in the competing laws reveals that more than one state has an interest in the application of its law to the dispute of hand, should be resolved by applying the law of the forum. It is sometimes overlooked that this express forum-law preference is explicitly premised on the fact that, should its results in any given case seem inappropriate, Congress could use the *legislative* power in the Full Faith and Credit clause to resolve the issue.[20] Currie's scheme would sit rather awkwardly if parachuted into a Canadian courtroom because of the lack of an equivalent legislative power in Parliament[21] and the unifying function of our Supreme Court. A similar fate befalls other American choice-of-law schemes which purport to modify Currie. For instance, the comparative impairment method that William Baxter proposed for the resolution of true conflicts, was explicitly developed with a system of separate federal courts in mind.[22]

Hancock's approach suffers from neither of these defects and, consequently, cannot be summarily ruled "out of bounds" in Canada. Although firmly entrenched in the Realist camp, Hancock's method seems singularly removed from that camp's internecine disputes. His choice-of-law recipe is based on Leflar's better law approach,[23] a touch of Baxter's comparative impairment method[24] and a large portion of Currie's

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[18] Seeman v. Philadelphia Warehouse Co., 274 U.S. 403 (1927); Bradford Electric Light Co. v. Clapper, 286 U.S. 145 (1932); Alaska Packers Assoc. v. Industrial Accident Comm'n of California, 294 U.S. 532 (1935); and Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493 (1939).

[19] U.S. Const., art. IV, §1.

> Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general laws prescribe the manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.

[20] In fact Congress has only used the power once. In 1790 it passed an enabling statute, *The Judiciary Act*, for the enforcement of sister state judicial proceedings: Act of May 26, 1790, ch. 11, 1 Stat. 122 (now 28 U.S.C., §1738 (1966)).

[21] The judgment of Pigeon J. in Interprovincial Cooperatives Ltd. v. The Queen, [1976] 1 S.C.R. 477, at 505, 53 D.L.R. (3d) 321, at 351 (1975), suggests that the "Peace, Order and Good Government" clause could be used in a comparable manner. However, this was not the judgment of the Court and the option has not re-surfaced. The most comprehensive discussion of the constitutional aspects of conflict of laws problems in this country can be found in Swan's *The Canadian Constitution, Federalism and the Conflict of Laws*, 63 CAN. B. REV. 271 (1985).

[22] Baxter, *Choice of Law and the Federal System*, 16 STAN. L. REV. 1 (1963-64).

[23] R. LEFLAR, AMERICAN CONFLICTS LAW (3d ed. 1977).

[24] *Supra* note 22.

governmental interest analysis,[25] and yet manages to stay aloof from each of these camps. However, his approach does not form a camp of its own. Furthermore, his approach does not depend on or react to the American constitutional setting which characterizes most other American scholarship. That is not to say that crucial constitutional issues will not arise should Canadian courts decide to pay heed to Hancock's advice: these issues can arise in a variety of conflicts situations, regardless of the method of analysis. Nor is it to suggest that Hancock gives us any hints as to how the constitutional aspects of Canadian conflicts issues might be resolved. It is simply to say that Hancock's theories are not compounded with such a heavy admixture of American constitutional law as to make them irrelevant in Canada.

The reason that Hancock's approach takes this form is because it is hardly a choice-of-law method at all. He advocates, even more strongly than Currie, who maintained that we would be better off without choice-of-law rules,[26] an approach to choice-of-law problems that resolves the problems into everyday matters of statutory construction and common law development. For Hancock, statutory construction is the alkahest that dissolves all choice-of-law cases into the sort of domestic cases which courts and lawyers face every day. Hancock's essays address, in turn, the traditional, well-known issues that have become the standard fare of choice-off-law scholars: guest-passenger statutes, inter-spousal tort immunity, statutes of limitations, damage limitations in wrongful death suits, statutes regulating charities, laws limiting the capacity of married women to contract, statutes of perpetuities and formality requirements for testamentary dispositions.[27] He argues that if courts and lawyers could forget choice-of law rules and the crudeness of the existing conceptual categories of conflicts law and, instead, view the disputes arising out of the application of these various laws in territorially complex cases as simply presenting the issue, "what is the proper geographic scope of these competing rules of law?", the cases could be more justly and consistently resolved.[28]

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[25] *Supra* note 4.

[26] *Id.* at 183.

[27] It is startling how much space, in both Hancock's book and current analysis generally, is devoted to choice-of-law problems arising out of domestic laws that, by and large, no longer exist. There are no longer many guest passenger statutes, interspousal immunity laws or statutes formally incapacitating married women. The classic cases arising out of such laws still form the bulk of the teachings in conflict of laws. In practice, however, these topics may be less important than, for example, inter-state product liability or the extent of American long-arm jurisdiction over foreign corporations. Hancock's book has little to say on these issues.

[28] It is interesting to note that a similar argument has recently been made in another jurisdiction. Such conflicts scholarship, however, has been largely ignored by common law Canadian courts and scholars: *see* Talpis, *Legal Rules Which Determine Their Own Sphere of Application: A Proposal for their Recognition in Quebec Private International Law*, 17 R.J. Du T. 201 (1982-83). Compared to Hancock's approach,

That such an approach will result in some lack of uniformity is undeniable. From time to time, similar cases will be decided differently depending on where the decision is made. Hancock does not shrink from that consequence. He argues that the goal of deciding all disputes the same way no matter where they are tried is not absolute. He accepts the fact that there may be more than one rational and fair solution for some choice-of-law cases. Indeed, he argues that it is the assumption of the existence of only one solution that is problematic for the other approaches.[29] Though some might view this as winning the game by changing the rules, Hancock's illustrations of the problems arising from the pursuit of uniformity, more specifically the disadvantages of disingenuousness, the unjust results that existing rules can dictate in certain cases and the grief worked by the inevitable mishandling of legal fictions, illustrate that his is an approach worth considering. The traditional pursuit of uniformity, Hancock argues, entails the adoption of conceptual categories that are so crude that they effectively preclude the attainment of that goal.

When Hancock applies his analysis to existing cases, he convincingly demonstrates that many of these cases are what Currie's approach would label "false conflicts". That is, an examination of the policies embodied in the rules of competing domestic laws demonstrate that only one state has an interest in the application of its law to the dispute at hand. Consequently, that state's law can be applied and the problem disappears. This analysis is useful but not original: such cases are "easy" and other approaches would lead us to the same result.

Difficulties arise with "true conflicts" cases, that is, those disputes in which two or more states have laws whose purposes would be furthered by their application to the dispute at hand. Problems begin when it falls to the courts to decide which law applies. Most modern American analysis becomes, at this stage, indescribably complicated.[30] For Hancock, the problem, although more difficult, has not been fundamentally altered. In domestic cases, the courts must regularly decide between competing rules of law. In choice-of-law cases, they should do so in

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Talpis' proposal is tentative and incomplete. Talpis argues that Quebec law can and does recognize, albeit covertly, that some domestic rules are "self-localizing" and should necessarily and peremptorily apply without recourse to choice-of-law rules. He does not appear, however, to acknowledge the flip side of the coin: that the existence of foreign facts can legitimately cause local courts, again without reference to choice-of-law rules, to apply local laws.

[29] Pp. 135-36.

[30] For an extreme example, *see, e.g.*, A. SHAPIRA, THE INTEREST APPROACH TO CHOICE OF LAW (1970). Borrowing heavily from a number of earlier approaches, Shapira attempts to construct a complete methodological system for the choice-of-law process. I remain unconvinced as to whether the proposed methodology would consistently lead to acceptable results. In any event, the baroque process of the analysis is too complex for practical contemplation.

the normal fashion, that is, by examining the various competing interests and deciding the case in the most just manner.

Hancock's writings should be of interest in Canada for the above mentioned reasons. His approach includes the examination of cases that are not choice-of-law cases at all; they are just contract cases, wills cases, torts cases and, as such, are no more different from Canadian cases than are any other American private law cases. Of course, in the more complicated "true conflicts" cases, his proposed resolutions are understandably contentious. But lest we think that Hancock is just another academic who thinks it sufficient to identify the questions to be asked but fails to provide any answers, here are two examples in which his analysis of American problems provides an effective and helpful critique of the present Canadian situation.

Hancock is especially convincing when writing about "the land taboo",[31] a collection of choice-of-law and enforcement rules that require the courts to apply only the laws of the jurisdiction in which immovable property is situated. His critique of American law in this area is equally applicable in Canada. For instance, he discusses the United States Supreme Court case of *Fall v. Eastin*[32] in which a Washington Court had ordered the husband to convey to the wife his half interest in 160 acres of Nebraska land, of which they were co-owners, as corollary relief to a divorce action involving Washington domiciliaries. Instead of complying, the husband conveyed the land to his sister for no consideration and departed the scene. The wife brought suit in Nebraska to enforce the Washington judgment by setting aside the gift to the sister and having the court order the land vested in her. Despite the fact that the original order could not have been made by a Nebraska court in a divorce action, the Court awarded the wife the relief she requested.[33] This decision was reversed on a rehearing and the reversal upheld by the Supreme Court.[34] Relying on Joseph Story's *Commentaries on Conflict of Laws*,[35] the Court agreed with the Nebraska Court of Appeal's holding that "the transfer and devolution of title to real estate within the limits of a state is entirely subject to the laws of that state and no interference with it can be permitted by other states".[36]

Hancock argues that where a *non situs* court with jurisdiction over the parties applies domestic law that differs from the law of the

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[31] The phrase is not originally Hancock's, but he uses it repeatedly. Although Hancock nowhere mentions Jerome Frank, his employment of such Freudian terminology is reminiscent of Frank's work at several points. *See* J. FRANK, LAW AND THE MODERN MIND (1930). For example, Chapter 4 is entitled "Anti-Guest Statutes: Realism in Wisconsin and Rule Fetishism in New York".

[32] 215 U.S. 1 (1909).

[33] Fall v. Fall, 106 N.W. 412 (1905).

[34] 113 N.W. 175 (1907).

[35] J. STORY, COMMENTARIES ON CONFLICT OF LAWS (3d ed. 1846).

[36] *Supra* note 33, at 180.

jurisdiction in which the land is situated, there is no reason for the *situs* court to refuse enforcement of the decision if the applied law does not conflict with the policy of the *situs* court.

> What was the policy underlying the Nebraska rule forbidding divorce courts to order a husband to convey real property to his wife? It was clearly not designed to regulate the use of the land or to secure the marketability of titles. As the court itself conceded ... it was a policy "in relation to the duty of marital support". The policy was to be applied in the divorce courts of Nebraska where the litigants would necessarily be Nebraska domiciliaries. To give it the effect of reaching out to encompass a wife and husband domiciled in Washington, whose property was being divided by a court of that state according to its law, was an absurd result. . . .[37]

Hancock's commentary on *Fall* is relevant in this country in light of the Supreme Court of Canada's decision in *Duke v. Andler*.[38] *Duke* concerned a dispute between California vendors and purchasers who, while present in that state, had sold land in British Columbia. The plaintiff vendors found that false representations had been made by the purchaser, Duke, and brought suit in California to have their British Columbia land reconveyed to them. Judgment was given for the plaintiffs and Duke was ordered to reconvey the land. However, he conveyed it instead to a third party friend. The plaintiffs then brought suit in British Columbia to enforce the California judgment. As in *Fall* the trial Court held for the plaintiffs and enforced the judgment stating that by virtue of the judgment of the Superior Court of California, the plaintiffs should be made the owners of the property in question.[39] This decision was slightly altered by the Court of Appeal,[40] although that Court still required the property to be vested in the plaintiffs. The Supreme Court of Canada allowed Duke's appeal, relying as did the Supreme Court of the United States in *Fall* on Joseph Story's treatise.[41] It held that British Columbia law should have been applied in the original suit[42] and that, in any event, California judgments affecting British Columbia land would be unenforceable in British Columbia, even at the discretion of a British Columbia court. Suits concerning British Columbia land should be heard only in that province's courts.[43] Hancock's assessment of the decision

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[37] P. 339.

[38] [1932] S.C.R. 734, [1932] 4 D.L.R. 529.

[39] 43 B.C.R. 549, [1931] 3 D.L.R. 361 (S.C.).

[40] 44 B.C.R. 96, [1932] 2 D.L.R. 19 (C.A. 1931).

[41] P. 8.

[42] It was unclear that British Columbia's law was likely to be any different than California's on the substantive issue. It seems likely that in British Columbia, the plaintiffs would have had little trouble proving fraudulent misrepresentation on Duke's part, thus avoiding the transaction.

[43] The aspect of "the land taboo" which states that courts lack jurisdiction to hear disputes concerning land in another province or country is still very much alive in Anglo-Canadian law. *See, e.g.*, Hesperides Hotels Ltd. v. Muftizade, [1978] 3 W.L.R. 378, at 390-95, [1978] 2 All E.R. 1168 (H.L.), at 1180-84, *per* Lord Fraser of Tullybelton

in *Fall* is also applicable here. Nothing need be added. There was no reason not to let California contract law govern the rights between the Californians. There was no need to worry about California judgments appearing on the British Columbia land registry and potentially clouding title since the California plaintiffs did not seek to register their American judgment directly in the British Columbia land titles office. They merely wanted to sue in a British Columbia court and let that court confirm the judgment and order the conveyance of the land. The fraud in question took place entirely in California among Californians. There was no policy in British Columbia which would have been furthered by applying British Columbia law to the case or requiring the initial dispute to be heard before a court in that province.

A second instance in which Hancock's analysis of American law can be made useful in Canada is his commentary on choice-of-law problems created by laws designed to secure the free circulation of property. He examines the treatment of a nineteenth-century New York law imposing tight limitations upon the creation of charitable trusts and the operation of charitable corporations.[44] The law created problems for settlors in states with less stringent laws who sought to establish trusts to be administered in New York and for residents of New York who sought to use New York property to establish charitable trusts in other jurisdictions. In looking at two New York cases which dealt with the latter problem, Hancock has praise for the statutory construction approach adopted in *Chamberlain v. Chamberlain*.[45] In that case, a testator domiciled in New York had died possessed of both movable and immovable property in New York which he directed his executors to sell and convert into cash for the purpose of payment to two Pennsylvania charities. The Court believed the bequest to be void by the New York law but valid by Pennsylvania law. In finding that the disposition was outside the effective reach of New York law the Court said:

> It is no part of the policy of the State of New York to interdict perpetutities or gifts in mortmain in Pennsylvania or California. Each state determines those matters according to its own views of policy or right, and no other state has any interest in the question; and there is no reason why the courts of this state should follow the funds bequeathed to the Centenary Fund Society of Pennsylvania, to see whether they will be there administered in all respects in strict harmony with our policy and our laws.[46]

This case is a fine example of the virtues of Hancock's approach.

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who expressed serious doubts about efficacy of the rule but felt constrained to agree in a questionable result. Again Hancock's approach would have led to a different, and I think preferable, disposition of the case. That element of "the land taboo" has previously been effectively criticized in Canada. *See, e.g.*, Welling and Heakes, *Torts and Foreign Immovables Jurisdiction in Conflict of Laws*, 18 U.W.O.L. REV. 295 (1979-80).

[44] Pp. 238-92.

[45] 43 N.Y. 424 (1871).

[46] *Id.* at 434.

The Court simply construed the proper reach of the New York rule and found that it was unconcerned with the operation of charitable trusts administered in other jurisdictions. Hancock's support for the case could have been usefully applied in the context of a Canadian case with virtually identical facts. In *Jewish National Fund Inc. v. Royal Trust Co.*[47] a British Columbia domiciliary had died leaving both realty and personalty situated in the province. In his will he had directed that the property be sold and given in trust to the Jewish National Fund, a charitable organization located in New York. The trust was a perpetual one, void for perpetuity under the law of British Columbia but valid under the laws of New York State, which considered the Jewish National Fund to be a charitable corporation. The Supreme Court of Canada delved into Dicey's *Conflict of Laws*[48] and came up with the general rule that "the material or essential validity of a will of movables or of any particular gift of movables contained therein is governed by the law of the testator's domicile at the time of his death".[49] It is difficult to see what policy of British Columbia is advanced by the decision. A rule designed to ensure the free movement of property in British Columbia could hardly be affected by the fact that money in New York might be withheld from productive use.[50] The Supreme Court had no business applying British Columbia law to the trust.

The examples of *Duke* and *Jewish National Fund* are instances where Hancock's analysis of choice-of-law problems might have prevented these questionable but significant Canadian decisions. This book has numerous other passages where Hancock's examination of American choice-of-law problems could provoke reconsideration of some Canadian choice-of-law rules.[51] In many cases, the arguments for change will be less clear than in the examples I have given, but this is simply saying that some readers may disagree with Hancock's resolution of certain

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[47] [1965] S.C.R. 784, 53 D.L.R. (2d) 577.

[48] A. DICEY, CONFLICT OF LAWS 609 (7th ed. J. Harris 1958).

[49] *Supra* note 47, at 788, 53 D.L.R. (2d) at 580.

[50] At one point Cartwright J., writing for the majority, noted that it was at least conceivable that the New York charity might employ the funds in question to purchase land in British Columbia and that that land could be rendered stagnant by the perpetual nature of the trust in question. Therefore, it might be proper to apply British Columbia law. That construction of the reach of British Columbia's perpetuities rule seems a questionable one. There was no evidence that the rule was normally applied to deny extra-provincial purchasers who might use funds of a trust which would be invalid under British Columbia's internal law the right to buy British Columbia land. *Id.* at 790, 53 D.L.R. (2d) at 582. The Supreme Court's statement here is a feeble attempt to find a statutory policy to back up the rigid application of Dicey's choice-of-law rule. Perhaps we should be pleased that they even chose to speak the language of statutory interpretation.

[51] Pp. 361-65, 352-54, 205-25.

legal disputes, for example in the areas of torts disputes and insurance problems. *Studies in Modern Choice-of-Law: Torts, Insurance, Land Titles* should at least prompt us to start speaking in language appropriate to the real issues.

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