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THE CONFLICT OF LAWS

WITH SPECIAL REFERENCE TO THE
LAW OF THE
PROVINCE OF QUEBEC

BY

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CHAPTER VI

IMMOVEABLES

Competence of the lex rei sitae: Article 6 C. C. *prima facie* deals only with immoveables situate in this province: "The laws of Lower Canada govern the immoveable property situate within its limits." No general principle of the conflict of laws is more universally understood and applied in its strict sense than this — that land, immoveable property, is governed by the law of the country in which it is situate. While the article expressly deals with immoveable property in this province, it is beyond question that it is founded upon and is authority for the general principle, that immoveable property situate outside Quebec is likewise governed by the law of the country of its situation (1). Land,

(1) Art. 3 C. N. — "*Les immeubles, même ceux possédés par les étrangers, sont régis par la loi française*". Niboyet, *Manuel de Dr. Int.*, 1928, 630: "Though the text speaks only of immoveables situate in France, the application is readily extended to immoveables situate out of France."

It is usual to base the rule upon considerations of public policy. Niboyet, *op. cit.*, 632-3, argues strongly that it is unnecessary and even confusing to do so; since the *statut réel* must apply for the fundamental reason that it is *statut réel* and no other law can conceivably apply.

the *situs* of which is permanent and which by its very stability is the foundation of personal and national wealth, must of its nature be subject to the absolute sovereignty of the country in which it lies, as also to the exclusive jurisdiction of the courts of that country.

Quebec courts will not adjudicate as to foreign lands: Our courts have not jurisdiction to adjudicate upon the title or the right to the possession of any immoveable not situate in Quebec.

So where an action was taken in Quebec claiming damages for trespass upon land in Ontario, and the court below ordered that the division line be fixed by experts to determine on which land certain timber had been cut, the Court of Appeal reversed, and held that a Quebec court had no jurisdiction to name experts to establish a boundary line in Ontario (1). Nor will our

(1) *Skead v. McDonnell* (1872), 3 Rev. Critique, 42. Dicey, Rule 53, at 203, note (z). And as to boundary lines in another province: *Long v. Long* (1917), 36 D. L. R. 722 (N. B.). *Brereton v. Canadian Pacific Ry. Co.* (1897) 29 O. R. 57: Brereton sued in Ontario for damages, claiming that by negligent use or management of its railway the defendant had allowed fire to spread from its right of way, whereby his house and furniture in Manitoba were burned. It was held that "*trespass on the case for injury to land through negligence*" is of the same local character as *trespass to the land*, and is covered by *British South Africa Co. v. Companhia of Mocambique*, (1893) A. C. 602, 621, the ultimate decision of which was that an action of trespass