

# YALE LAW JOURNAL

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Published monthly during the Academic Year by the Yale Law Journal Co., Inc.  
Edited by Students and members of the Faculty of the Yale Law School.

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SUBSCRIPTION PRICE, \$4.50 A YEAR                      SINGLE COPIES, 80 CENTS  
Canadian subscription price is \$5.00 a year; foreign, \$5.25 a year.

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## HENRY WADE ROGERS

It is with great sorrow that the Journal reports the death of Judge Henry Wade Rogers on August 16, 1926. Judge Rogers was the dean of the Yale Law School from 1903 to 1916. His methods and his personality indelibly stamped themselves upon

the minds of all the students in the School during that period. Prior to his appointment by President Wilson as Judge of the United States Circuit Court of Appeals in 1913, the work of Judge Rogers had been almost wholly that of an educator. He had served for long periods as professor and dean of the University of Michigan Law School and as president of Northwestern University. At the Yale Law School he was held in affectionate esteem not unmixed with awe by all the students. None can fail to have a most lively remembrance of his vigor and impressiveness in the classroom. Many, indeed, thought that he was too exacting in his requirements.

When Judge Rogers was appointed dean, the Yale Law School and the development of legal education in the country had reached such a stage as to call for certain important changes in law school policy. The reasons for such changes were given ringing expression in the reports made by him to the American Bar Association as chairman of its Committee on Legal Education. Under the existing requirements for admission, the Yale Law School was growing so rapidly in numbers that in a very few years it must have rivaled the very largest of the unwieldy commercial law schools of today. No one at Yale was desirous of such a development; and, acting in harmony with the whole faculty and the corporation, Judge Rogers very courageously sacrificed the huge expected income from tuition and adopted the requirement of college work for admission to the School—first two years and very shortly afterwards a complete college course. Judge Rogers was never accused of lack of courage.

The law faculty in 1903 was composed almost wholly of practicing lawyers and judges. The increasing complexity of our national life was already calling for greater specialization and concentration of effort. Law teaching and research had become an independent profession. During the administration of Dean Rogers, the character of the faculty was almost wholly changed. Judge Rogers was not generally believed to be very diplomatic in his methods; but it can be said of him that in this development—one that in many other schools caused such heart-burning as to burst out into violent conflict—he brought about the result without any serious amount of resentment.

By the time of Dean Rogers the case method of instruction had established itself as far superior to methods previously used. The Dean recognized this fact and he acquiesced and assisted in the formal recognition of the case system in this School. This was in spite of the fact that he regretted the necessity of making the change in his own courses.

In these ways Judge Rogers greatly influenced the history of

the Yale Law School. Without making a marked impression himself in the field of legal scholarship, he fostered scholarship in others and as a teacher and administrator left his impress upon the lives and characters of all with whom he came in contact. The Law School owes much to the services of Judge Rogers as dean.

As a member of the United States Circuit Court of Appeals Judge Rogers won the esteem of the bar. He was an arduous worker and his opinions show his fondness for searching and accumulating the authorities.

#### THE RENVOI THEORY REJECTED—EXCEPTIONS

The law of every state includes a domestic or internal law which applies to local situations, and a body of law which is applicable in situations involving a foreign element. The latter is commonly referred to as the conflict of laws rule. Where a foreign state is the place of domicile, or the place where the contract was made, or the situs of the property, the conflict of laws rule of the forum may require that the "law" of the foreign state be applied. Does this reference to foreign "law" mean a reference to the local law of the foreign state, or does it mean a reference to the conflict of laws rule of that state? If the latter, then the court of the forum has accepted what is known as the *renvoi* doctrine.<sup>1</sup>

The answer to this problem depends upon the basic theory of the conflict of laws. According to some authorities each state possesses exclusive jurisdiction to control the legal consequences of facts occurring within that state.<sup>2</sup> This theory has been inappropriately called a theory of vested rights.<sup>3</sup> That this is a misnomer becomes apparent upon a careful analysis of the legal concept of "right."<sup>4</sup> No right exists unless a court will recognize

<sup>1</sup> Lorenzen, *The Renvoi Doctrine in the Conflict of Laws—Meaning of "The Law of a Country"* (1917) 27 YALE LAW JOURNAL, 509, 511; HIBBERT, INTERNATIONAL PRIVATE LAW (1917) Introduction, xxix. When the conflict of laws rule of the second country refers back to the law of the forum it is called remission (*Rückverweisung*); but if the reference is to the law of a third country it is termed transmission (*Weiterverweisung*).

<sup>2</sup> STORY, CONFLICT OF LAWS (8th ed. 1883) § 20; BEALE, TREATISE ON THE CONFLICT OF LAWS (1916) 100, 104-105. But see Cook, *The Logical and Legal Bases of the Conflict of Laws* (1924) 33 YALE LAW JOURNAL, 457; Guinness v. Miller, 291 Fed. 769, 770 (D. N. Y. 1923).

"In the very nature of things courts can enforce no obligations which are created elsewhere; when dealing with such obligations they merely recognize them as the original of the copies which they themselves enforce." Learned Hand, J. in *The James McGee*, 300 Fed. 93, 96 (S. D. N. Y. 1924).

<sup>3</sup> BEALE, *op. cit. supra* note 2, at 104 *et seq.*

<sup>4</sup> For an analysis of this concept cf. HOFFELD, FUNDAMENTAL LEGAL